

<b>Tab 1</b>	<b>SB 220 by Bean;</b> (Compare to H 0889) Contraband Forfeiture						
914898	D	S	RCS	CJ, Bradley	Delete everything after	01/25 04:29 PM	
<b>Tab 2</b>	<b>SB 436 by Simpson;</b> (Similar to CS/H 0257) Terroristic Threats						
660248	D	S	RCS	CJ, Bradley	Delete everything after	01/25 04:29 PM	
<b>Tab 3</b>	<b>SB 636 by Benacquisto;</b> (Compare to H 0167) Evidence Collected in Sexual Assault Investigations						
320858	D	S	RCS	CJ, Bradley	Delete everything after	01/25 04:29 PM	
<b>Tab 4</b>	<b>SB 784 by Flores;</b> (Compare to CS/CS/H 0545) Human Trafficking						
399382	D	S	RCS	CJ, Bradley	Delete everything after	01/25 04:29 PM	
<b>Tab 5</b>	<b>SB 912 by Flores;</b> (Similar to CS/H 0761) Fraudulent Activities Associated with Payment Systems						
854308	A	S	RCS	CJ, Bradley	Delete L.43 - 71:	01/25 04:29 PM	
<b>Tab 6</b>	<b>SB 930 by Evers;</b> (Similar to H 0757) Trust Funds/State-Operated Institutions Inmate Welfare Trust Fund/DOC						
<b>Tab 7</b>	<b>SB 932 by Evers;</b> (Compare to H 0755) Inmate Welfare and Employee Benefit Trust Funds						
836554	A	S	RCS	CJ, Evers	Delete L.108 - 109:	02/01 07:50 PM	
<b>Tab 8</b>	<b>SB 954 by Simmons;</b> (Similar to CS/H 0075) Electronic Monitoring Devices						
813350	A	S	RCS	CJ, Bradley	Delete L.33 - 39:	01/25 04:30 PM	
<b>Tab 9</b>	<b>SB 1044 by Brandes (CO-INTRODUCERS) Negron, Clemens;</b> (Identical to H 0883) Forfeiture of Contraband						
<del>616254</del>	A	S	WD	CJ, Brandes	Delete L.44:	01/22 12:33 PM	
448030	A	S	RS	CJ, Brandes	Delete L.44 - 49:	01/25 04:30 PM	
323058	SA	S	RCS	CJ, Brandes	Delete L.44 - 49:	01/25 04:30 PM	
<b>Tab 10</b>	<b>SPB 7022 by CJ;</b> OGSR/Agency Photograph, Video, or Audio Recording/Killing of a Person						
753234	D	S	FAV	CJ, Bradley	Delete everything after	02/01 07:50 PM	

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CRIMINAL JUSTICE**  
**Senator Evers, Chair**  
**Senator Gibson, Vice Chair**

**MEETING DATE:** Monday, January 25, 2016

**TIME:** 1:00—3:30 p.m.

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

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 220</b> Bean (Compare H 889)	Contraband Forfeiture; Requiring each state or local law enforcement agency that seizes property for the purpose of forfeiture to perform a specified review at least annually; requiring each seizing agency to adopt and implement specified written policies and procedures for the prompt release of seized property under certain circumstances; requiring each state or local law enforcement agency that seizes property for the purpose of forfeiture to complete an annual report, etc.  CJ      01/25/2016 Fav/CS ACJ FP	Fav/CS Yeas 5 Nays 0
2	<b>SB 436</b> Simpson (Similar CS/H 257)	Terroristic Threats; Providing that a person commits the crime of terroristic threats if he or she communicates, directly or indirectly, a threat to commit specified acts; providing criminal penalties; requiring a person convicted of terroristic threats to, in addition to other restitution ordered, pay restitution in an amount equal to the cost of evacuation, etc.  CJ      01/25/2016 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
3	<b>SB 636</b> Benacquisto (Compare H 167, CS/H 179, H 1331, S 368, S 1614)	Evidence Collected in Sexual Assault Investigations; Requiring that DNA evidence collected in sexual assault investigations be submitted to a member of the statewide criminal analysis laboratory system within a specified period; requiring the Department of Law Enforcement to submit a report by a specified date to the Governor and the Legislature on how it will analyze the unanalyzed forensic evidence in sexual assault cases currently held in the statewide criminal analysis laboratory system, etc.  CJ      01/25/2016 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, January 25, 2016, 1:00—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 784</b> Flores (Compare CS/CS/H 545)	Human Trafficking; Providing that a licensed massage establishment may not receive a new or renewal license if specified persons connected with it are convicted of renting space to be used for lewdness, assignation, or prostitution; eliminating coercion as an element of certain human trafficking offenses; providing that minors may not be charged with specified prostitution offenses; requiring a person convicted of specified racketeering offenses to register as a sexual predator or sexual offender under certain circumstances, etc.  CJ 01/25/2016 Fav/CS ACJ FP	Fav/CS Yeas 5 Nays 0
5	<b>SB 912</b> Flores (Similar CS/H 761)	Fraudulent Activities Associated with Payment Systems; Revising the felony classification for unlawful conveyance of fuel; requiring retail petroleum fuel measuring devices fitted with scanning devices to have certain security measures; requiring the owner or operator of a device to have certain security measures in place within a specified timeframe upon notice from the Department of Agriculture and Consumer Services; requiring the Department of Agriculture and Consumer Services to enforce provisions; reducing the number of counterfeit credit cards that a person can be in possession of to qualify as unlawful, etc.  CJ 01/25/2016 Fav/CS AGG FP	Fav/CS Yeas 5 Nays 0
6	<b>SB 930</b> Evers (Similar H 757, Compare H 755, Linked S 932)	Trust Funds/State-Operated Institutions Inmate Welfare Trust Fund/DOC; Creating the State-Operated Institutions Inmate Welfare Trust Fund within the Department of Corrections; providing a purpose; providing for the termination of the trust fund, etc.  CJ 01/11/2016 Not Considered CJ 01/25/2016 Not Considered ACJ AP	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, January 25, 2016, 1:00—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 932</b> Evers (Compare H 755, H 757, Linked S 930)	Inmate Welfare and Employee Benefit Trust Funds; Requiring that specified proceeds and funds be deposited in the State-Operated Institutions Inmate Welfare Trust Fund or the General Revenue Fund, rather than only the General Revenue Fund; requiring that the State-Operated Institutions Inmate Welfare Trust Fund be a trust held by the Department of Corrections for the benefit and welfare of certain inmates; requiring that deposits in excess of that amount be deposited in the General Revenue Fund; requiring that funds from the trust fund be used exclusively for specified purposes at correctional facilities operated by the department; prohibiting the funds from the trust fund or any other fund from being used for the purchase of weight training equipment, etc.  CJ 01/11/2016 Not Considered CJ 01/25/2016 Not Considered ACJ AP	Not Considered
8	<b>SB 954</b> Simmons (Similar CS/H 75)	Electronic Monitoring Devices; Prohibiting a person from removing, destroying, altering, tampering with, damaging, or circumventing the operation of an electronic monitoring device being worn or used pursuant to any court order or an order by the Florida Commission on Offender Review; specifying that the Department of Corrections may electronically monitor an offender sentenced to community control when the court has imposed electronic monitoring as a condition of community control, etc.  CJ 01/25/2016 Fav/CS ACJ FP	Fav/CS Yeas 5 Nays 0
9	<b>SB 1044</b> Brandes (Identical H 883)	Forfeiture of Contraband; Providing for the acquisition of the provisional title of seized property under certain circumstances; prohibiting a forfeiture under the Florida Contraband Forfeiture Act from being final until the owner of the seized property is prosecuted and convicted of a criminal act that renders the property a contraband article; providing that the property is deemed a contraband article and forfeited subject to forfeiture proceedings under certain circumstances; specifying circumstances under which the seizing law enforcement agency must return the property to the owner, etc.  CJ 01/25/2016 Fav/CS ACJ FP	Fav/CS Yeas 4 Nays 1

Consideration of proposed bill:



**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, January 25, 2016, 1:00—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	<b>SPB 7022</b>	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.	Temporarily Postponed
11	Presentation by Secretary Daly on recent developments and agency activities in juvenile justice.		Not Considered
12	Presentation by OPPAGA on "Civil Asset Forfeiture in Florida: Policies and Practices," Report #15-10.		Presented
Other Related Meeting Documents			

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

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

---

BILL: CS/SB 220

INTRODUCER: Criminal Justice Committee and Senator Bean

SUBJECT: Civil Forfeiture of Contraband

DATE: January 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			ACJ	
3.			FP	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 220 amends s. 932.704, F.S., by adding additional requirements to the guidelines under the Florida Contraband Forfeiture Act as follows:

- All settlements must be personally approved by the head of the seizing law enforcement agency, or his or her designee under specified circumstances, once the property is seized;
- The seizing agency must perform a specified review of its seizures, settlements, and forfeitures at least annually and if there are deficiencies, it must promptly take action to comply with the act;
- The employment, salary, or other compensation of a law enforcement officer may not be dependent upon the officer's ability to meet seizure quotas;
- The seizing agency shall adopt and implement written policies, procedures, and training to ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- The seizing agency's legal counsel must be notified promptly of all seizures and review them for legal sufficiency, and supervisory personnel must promptly review all seizures for probable cause;
- The seizing agency must adopt and implement written policies and procedures promoting the prompt release of seized property when there is no legitimate basis for holding it, as well as adopt written policies and procedures ensuring that all asserted claims of interest are promptly reviewed;
- Any forfeiture action settlement must be consistent with the act and the agency's policy; and

- The seizing agency must maintain records showing every law enforcement officer's compliance with the required forfeiture training, including the legal aspects of forfeiture, search and seizure, and other constitutional considerations.

The bill increases the minimum percentage of forfeiture proceeds from 15 percent to 25 percent that law enforcement agencies receiving over \$15,000 annually in forfeiture funds must donate to drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer programs.

It creates s. 932.7061, F.S., requiring every law enforcement agency to submit an annual report to the FDLE indicating whether it has seized or forfeited property under the act. If the agency has received or expended forfeited property or proceeds, it must submit a completed annual report by October 10. The report must be submitted electronically to the entity having budgetary authority over the agency and to FDLE. The FDLE will maintain the report in consultation with the Office of Program Policy Analysis and Government Accountability (OPPAGA).

If a seizing law enforcement agency is in noncompliance with the reporting requirement, the bill provides for a \$5,000 civil fine to be levied against the agency, unless the agency substantially complies within 60 days after receiving written notice of its noncompliance.

## II. Present Situation:

The Florida Contraband Forfeiture Act, ss. 932.701-932.706, F.S., prescribes procedures and guidelines for law enforcement agencies to follow when seizing, forfeiting, and disposing of property under the act.<sup>1</sup> Currently, under s. 932.703, F.S., any contraband article<sup>2</sup>, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the provisions of the act.<sup>3</sup> All rights to, interest in, and title to contraband articles used in violation of the act immediately vest in the seizing law enforcement agency upon seizure.<sup>4</sup>

### Seizure Process

Personal property may be seized at the time of the violation or subsequent to the violation based upon a law enforcement officer's determination that probable cause exists to believe the property is being used in violation of the act. The person entitled to notice (the owner, entity, bona fide

---

<sup>1</sup> The act provides for civil forfeiture, an action taken against the property or assets, also known as an action in rem. Civil forfeiture, unlike criminal forfeiture, does not require a nexus between the criminal activity of the property owner and the property. The constitutionality of the act was upheld by the Florida Supreme Court in *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991).

<sup>2</sup> "Contraband article" includes but is not limited to any real property or personal property which was used or attempted to be used as an "instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the act." Section 932.701(2)(a)5. and 6., F.S.

<sup>3</sup> Section 932.703(1), F.S.

<sup>4</sup> Section 932.703(1)(c), F.S.

lienholder, or person in possession of the property)<sup>5</sup> must be given notice, at the time of seizure or within 5 days of the seizure by certified mail, of his or her right to have a court review such determination in a postseizure adversarial preliminary hearing.<sup>6</sup>

When a court review is desired, the person entitled to notice must request it in writing by certified mail. The agency must hold a hearing within 10 days (or as soon as practicable thereafter) after receiving the request. (Unlike personal property, seizure of real property may not occur until the person entitled to notice has the opportunity to attend a preseizure adversarial hearing at which time the court determines whether or not probable cause exists to justify the seizure.)<sup>7</sup> The seizing agency must make a diligent effort to notify persons entitled to notice of the seizure.<sup>8</sup> If after reviewing the evidence at the adversarial preliminary hearing, the court finds probable cause that the property was used in violation of the act, it must authorize the seizure or continued seizure of the contraband article.<sup>9</sup>

### **Forfeiture Proceedings**

If the person entitled to notice does not request an adversarial preliminary hearing, the seizing law enforcement agency must promptly proceed against the contraband article. It does so by filing a complaint in the civil division of the circuit court within 45 days after the seizure, requesting the court to issue a judgment of forfeiture. The Florida Rules of Civil Procedure apply to forfeiture proceedings under the act.<sup>10</sup> The court must enter an order showing a finding of probable cause before a complaint can be served upon the claimant.<sup>11</sup> A claimant contesting the forfeiture has 20 days after receiving the complaint and the probable cause finding to file any responsive pleadings.<sup>12</sup>

Under the act, the civil forfeiture trial must be decided by a jury unless that right is waived by the claimant.<sup>13</sup> At trial, the seizing agency must prove that the contraband article was being used in violation of the act by clear and convincing evidence. Property may not be forfeited under the act unless the seizing agency shows by the preponderance of the evidence that the owner or any co-owner knew or should have known after reasonable inquiry, that the property was being used in criminal activity. Bona fide lienholders must have actual knowledge. The act also provides that it is an affirmative defense to forfeiture that the nexus between the property and the underlying violation was incidental or entirely accidental.<sup>14</sup>

The act also authorizes the claimant and the seizing law enforcement agency to settle the forfeiture action prior to the conclusion of the forfeiture proceeding. A settlement agreement

---

<sup>5</sup> Interests of bona fide lienholders, property held jointly by a husband and wife, interests in property held jointly, and rental cars may not be forfeited under s. 932.703, F.S.

<sup>6</sup> The court review must occur within 15 days after the notice is received. Section 932.703(2), F.S.

<sup>7</sup> The hearing must occur within 10 days of the filing of the lis pendens or as soon as practicable. Section 932.703(2)(b), F.S.

<sup>8</sup> Section 932.703(2), F.S.

<sup>9</sup> Section 932.703(2)(c), F.S.

<sup>10</sup> Section 932.701(2)(c) and (d), and 932.704(2), F.S.

<sup>11</sup> A “claimant” is any party who has proprietary interest in the seized property who has standing to challenge the forfeiture, including owners, registered owners, bona fide lienholders, and title-holders. Section 932.701(2)(h), F.S.

<sup>12</sup> Section 932.704(5), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 932.703, F.S.

must be reviewed by the court or a mediator (unless the claimant signs a written waiver). If the claimant is not represented by an attorney, the agreement must specify that the claimant has freely and voluntarily agreed to the settlement without the benefit of counsel.<sup>15</sup>

If the court orders that the property be forfeited to the seizing law enforcement agency, the final order of forfeiture perfects in the agency right, title, and interest in and to the property, subject only to the rights and interests of bona fide lienholders, and relates back to the date of seizure.<sup>16</sup>

The act requires the seizing agency to pay claimants the reasonable loss of value of the property or loss of income when the claimant prevails. It prohibits the agency from assessing fees and costs against a successful claimant. The seizing agency is also required to pay reasonable attorney's fees and costs up to \$1,000 if the claimant prevails at the adversarial preliminary hearing.<sup>17</sup>

### **Guidelines and Training Procedures**

Section 932.704, F.S., requires the Florida Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, to develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the act.<sup>18</sup> For instance, each agency that seizes property must periodically review its seizures, settlements, and forfeiture proceedings to determine whether they comply with the act and the adopted guidelines. The determination of whether an agency will file a forfeiture action must be the sole responsibility of the head of the agency or his or her designee. The determination of whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible.<sup>19</sup>

Section 932.706, F.S., requires the Criminal Justice Standards and Training Commission to develop a standardized course of training which is designed to develop proficiency in the seizure and forfeiture of property under the act. The curriculum must include racial and ethnic sensitivity, search and seizure case law, the use of drug-courier profiles, and the use of an order to stop based on a pretext.

### **Disposition of Forfeited Property**

Section 932.7055, F.S., provides for the disposition of liens and forfeited property under the act. The seizing agency may do any of the following when a final judgment of forfeiture is granted:

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.<sup>20</sup>

---

<sup>15</sup> Section 932.704, F.S.

<sup>16</sup> Section 932.704(8), F.S.

<sup>17</sup> Section 932.704(9) and (10), F.S.

<sup>18</sup> Section 932.704(11), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 932.7055(1), F.S.

If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.<sup>21</sup>

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund and may be used to fund school resource officers, crime prevention, safe neighborhood, drug abuse education and prevention programs, or other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for law enforcement vehicles, and providing matching funds to obtain federal grants. These proceeds and interest may not be used to meet normal operation expenses.<sup>22</sup>

Additionally, any local law enforcement agency that acquires at least \$15,000 under the act within a fiscal year must expend or donate no less than 15 percent of these proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program. The agency has discretion to determine which program receives the funds.<sup>23</sup>

An agency or organization, other than the seizing agency, that wishes to receive such funds shall apply to the sheriff or chief of police for an appropriation. If the agency or organization receives funding under the act, it must provide an accounting, indicating that the funds were only used for the above stated purposes.<sup>24</sup>

If the seizing agency is a local law enforcement agency, the proceeds are deposited into a special law enforcement trust fund established by the governing body of a county or municipality. The funds may be appropriated only to the sheriff's office by the board of county commissioners or to the police department by the governing body of the municipality when the sheriff or police chief has certified that the request for funds will be used in compliance with the act.<sup>25</sup>

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund, except that the following agencies have their own forfeiture trust fund:

- FDLE;
- Division of Alcoholic Beverages and Tobacco;
- Department of Highway Safety and Motor Vehicles;
- Fish and Wildlife Conservation Commission;
- State Attorney Offices;
- School Board Security Agencies;
- State University System Police Departments;

---

<sup>21</sup> Sections 932.7055(3) and (4), F.S.

<sup>22</sup> Section 932.7055(5), F.S.

<sup>23</sup> Section 932.7055(5)(c)3., F.S.

<sup>24</sup> Section 932.7055(5)(c), F.S.

<sup>25</sup> Section 932.7055(5), F.S.

- Department of Agriculture and Consumer Services;
- Department of Military Affairs;
- Medicaid Fraud Control Unit of the Department of Legal Affairs;
- Division of State Fire Marshal of the Department of Financial Services; and
- Division of Insurance Fraud of the Department of Financial Services.<sup>26</sup>

### III. Effect of Proposed Changes:

The bill amends s. 932.704, F.S., by adding additional requirements to the guidelines under the Florida Contraband Forfeiture Act as follows:

- All settlements must be personally approved by the head of the seizing law enforcement agency, or his or her designee under specified circumstances, once the property is seized;
- The seizing agency must perform a specified review of its seizures, settlements, and forfeitures at least annually and if there are deficiencies, it must promptly take action to comply with the act;
- The employment, salary, or other compensation of a law enforcement officer may not be dependent upon the officer's ability to meet seizure quotas;
- The seizing agency shall adopt and implement written policies, procedures, and training to ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- The seizing agency's legal counsel must be notified promptly of all seizures and review them for legal sufficiency, and supervisory personnel must promptly review all seizures for probable cause;
- The seizing agency must adopt and implement written policies and procedures promoting the prompt release of seized property when there is no legitimate basis for holding it, as well as adopt written policies and procedures ensuring that all asserted claims of interest are promptly reviewed;
- Any forfeiture action settlement must be consistent with the act and the agency's policy; and
- The seizing agency must maintain records showing every law enforcement officer's compliance with the required forfeiture training, including the legal aspects of forfeiture, search and seizure, and other constitutional considerations.

The bill amends s. 932.7055, F.S., by increasing the minimum percentage of forfeiture proceeds from 15 percent to 25 percent that law enforcement agencies receiving over \$15,000 annually in forfeiture funds must donate to drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer programs.

The bill also creates s. 932.7061, F.S., requiring every law enforcement agency to submit an annual report to FDLE indicating whether it has seized or forfeited property under the act. If the agency has received or expended forfeited property or proceeds, it must submit a completed annual report by October 10. It must be submitted electronically to the entity having budgetary authority over the agency and to FDLE.

The report must specify the following:

---

<sup>26</sup> Section 932.7055(6), F.S.

- The type of property;
- The property's approximate value;
- The court case number;
- The type of offense for which the property was seized;
- The disposition of the property, and
- The dollar amount of the proceeds received or expended.

The FDLE is required to maintain the report in consultation with OPPAGA. The FDLE must compile the information in the law enforcement agencies' annual reports, along with a list of agencies that failed to comply with the reporting requirement and submit it to OPPAGA. Any action taken by the Office of the Chief Financial Officer against a noncomplying agency must also be included in the report.

Under another newly created section, s. 932.7062, F.S., if a seizing law enforcement agency is not in compliance with the reporting requirement, it is subjected to a \$5,000 civil fine, unless the agency substantially complies within 60 days after receiving written notice of its noncompliance. The fine is payable to the General Revenue Fund and is enforceable by the Office of the Chief Financial Officer.

The effective date of the bill is 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:**

Law enforcement agencies not complying with the bill's new reporting requirements will be subjected to a civil fine of \$5,000. Seizing agencies, along with the FDLE, may incur some costs associated with the new reporting requirements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The OPPAGA recently reviewed Florida's current civil asset forfeiture practices by local law enforcement agencies and released its findings in a report entitled *Civil Asset Forfeiture in Florida: Policies and Practices*.<sup>27</sup> Some of the findings in the report included the following:

- There is no current requirement for law enforcement agencies to report seizures and forfeitures under the act and without statewide information, the Legislature does not know the extent of civil asset forfeiture practices in Florida.<sup>28</sup>
- Vehicles and currency were the most commonly seized assets, related primarily to drug offenses.<sup>29</sup>
- An arrest was made in conjunction with most seizures during FY 2013-14.<sup>30</sup>
- Many assets were returned to the owners, either in whole or in part.<sup>31</sup>
- Sixteen percent of seizure actions were contested by an adversarial hearing request, and 1% resulted in a civil trial.<sup>32</sup>
- Responding agencies reported spending over \$12 million in forfeited assets during FY 2013-14.<sup>33</sup>

Also included in the report were the following options that could be considered by the Legislature when making changes to the Florida Contraband Forfeiture Act:

- Require law enforcement agencies to report seizure actions and forfeitures to the state at least annually;<sup>34</sup>
- Require a criminal conviction before forfeiture;<sup>35</sup>

---

<sup>27</sup> Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, Report No. 15-10 (November 2015), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1510rpt.pdf> (last visited Jan. 15, 2016).

<sup>28</sup> *Id.* at 11.

<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Id.* at 5. Responding agencies gave the following examples of when an arrest is not possible to make at the time of seizure: an arrest is premature because the officer was unable to positively identify the owner of the cash and illegal drugs; an arrest is premature during an ongoing economic crime investigation but the seizure of currency is ripe; and an arrest is premature when owners of property subject to seizure are willing to give information on higher level crimes leading to later related arrests.

<sup>31</sup> *Id.* at 7 and 8.

<sup>32</sup> *Id.* at 7.

<sup>33</sup> *Id.* at 9. Responding agencies indicated they used forfeiture money primarily for supporting substance abuse and crime prevention programs, buying additional equipment, defraying costs of complex investigations, providing additional expertise, providing matching funds to obtain federal grants, and buying automatic external defibrillators. *Id.* at 10.

<sup>34</sup> Thirty-three states have some sort of reporting requirement. *Id.* at 11.

<sup>35</sup> Several states, including Minnesota, Montana, Nevada, New Mexico, and North Carolina have this requirement. *Id.* at 12.

- Increase the evidentiary standard of proof from clear and convincing to beyond a reasonable doubt;<sup>36</sup> and
- Restrict the use of civil asset forfeiture proceeds.<sup>37</sup>

The bill codifies the options of requiring law enforcement agencies to annually report seizure and forfeiture actions, and restricting the use of forfeiture proceeds.

### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 932.704 and 932.7055.

The bill creates the following sections of the Florida Statutes: 932.7061 and 932.7062.

The bill makes technical and conforming changes to the following sections of the Florida Statutes: 932.701, 322.34, 323.001, 328.07, 817.625, 27.3451, and 874.08.

### **IX. Additional Information:**

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

##### **CS by Criminal Justice on January 25, 2016:**

- Strengthens the annual reporting requirement in the bill by requiring law enforcement agencies to send an annual electronic report by October 10 to the agencies' budgetary authority and to FDLE.
- Requires FDLE to compile the information in these reports and send it to OPPAGA.
- Provides that a law enforcement agency is subjected to a civil fine of \$5,000 if it is not in compliance with the reporting requirements.
- Requires all settlements to be personally approved by the head of the seizing law enforcement agency, or his or her designee under specified circumstances, once the property is seized.
- Increases the minimum percentage of forfeiture proceeds from 15 percent to 25 percent that law enforcement agencies receiving over \$15,000 annually in forfeiture funds must donate to certain specified programs.

#### **B. Amendments:**

None.

---

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

---

<sup>36</sup> Florida is one of 11 states that has a clear and convincing proof standard, which is higher than most other states. Nebraska, North Carolina, and Wisconsin use the criminal standard of proof, beyond a reasonable doubt. *Id.* at 12.

<sup>37</sup> *Id.* at 13.



914898

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2016	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (1) of section 932.701, Florida  
Statutes, is amended to read:

932.701 Short title; definitions.—

(1) Sections 932.701-932.7062 ~~932.706~~ shall be known and  
may be cited as the "Florida Contraband Forfeiture Act."

Section 2. Subsections (7) and (11) of section 932.704,



914898

Florida Statutes, are amended to read:

932.704 Forfeiture proceedings.—

(7) Once property is seized pursuant to the Florida Contraband Forfeiture Act, regardless of whether the civil complaint has been filed, all settlements must be personally approved by the head of the law enforcement agency making the seizure. If the agency head is unavailable and a delay would adversely affect the settlement, approval may be given by a subordinate of the agency head who is designated to grant such authority. When the claimant and the seizing law enforcement agency agree to settle the forfeiture action after the civil complaint has been filed and before ~~prior to~~ the conclusion of the forfeiture proceeding, the settlement agreement shall be reviewed, unless such review is waived by the claimant in writing, by the court or a mediator or arbitrator agreed upon by the claimant and the seizing law enforcement agency. If the claimant is unrepresented, the settlement agreement must include a provision that the claimant has freely and voluntarily agreed to enter into the settlement without benefit of counsel.

(11)(a) The Department of Law Enforcement, in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, shall develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the Florida Contraband Forfeiture Act. At least annually, each state or local law enforcement agency that seizes property for the purpose of forfeiture shall ~~periodically~~ review such seizures ~~of assets made by the agency's law enforcement officers,~~ any settlements, and any forfeiture proceedings initiated by the law



914898

enforcement agency, to determine whether ~~they such seizures,~~  
~~settlements, and forfeitures~~ comply with the Florida Contraband  
Forfeiture Act and the guidelines adopted under this subsection.  
If the review suggests deficiencies, the state or local law  
enforcement agency shall promptly take action to comply with the  
Florida Contraband Forfeiture Act.

(b) The determination as to ~~of~~ whether an agency will file  
a civil forfeiture action is ~~must be~~ the sole responsibility of  
the head of the agency or his or her designee.

(c) ~~(b)~~ The determination as to ~~of~~ whether to seize currency  
must be made by supervisory personnel. The agency's legal  
counsel must be notified as soon as possible after a  
determination is made.

(d) The employment, salary, promotion, or other  
compensation of any law enforcement officer may not be dependent  
on the ability of the officer to meet a quota for seizures.

(e) A seizing agency shall adopt and implement written  
policies, procedures, and training to ensure compliance with all  
applicable legal requirements regarding seizing, maintaining,  
and forfeiting property under the Florida Contraband Forfeiture  
Act.

(f) When property is seized for forfeiture, the probable  
cause supporting the seizure must be promptly reviewed by  
supervisory personnel. The seizing agency's legal counsel must  
be notified as soon as possible of all seizures and shall  
conduct a review to determine whether there is legal sufficiency  
to proceed with a forfeiture action.

(g) Each seizing agency shall adopt and implement written  
policies and procedures promoting the prompt release of seized



914898

property as may be required by the act or by agency  
determination when there is no legitimate basis for holding  
seized property. To help assure that property is not wrongfully  
held after seizure, each law enforcement agency must adopt  
written policies and procedures ensuring that all asserted  
claims of interest in seized property are promptly reviewed for  
potential validity.

(h) The settlement of any forfeiture action must be  
consistent with the Florida Contraband Forfeiture Act and the  
agency's policy.

(i) Law enforcement agency personnel involved in the  
seizure of property for forfeiture shall receive basic training  
and continuing education as required by the Florida Contraband  
Forfeiture Act. Each agency shall maintain records demonstrating  
each law enforcement officer's compliance with this requirement.  
Among other things, the training must address the legal aspects  
of forfeiture, including, but not limited to, search and seizure  
and other constitutional considerations.

Section 3. Paragraph (c) of subsection (5) of section  
932.7055, Florida Statutes, is amended to read:

932.7055 Disposition of liens and forfeited property.—

(5)

(c) An agency or organization, other than the seizing  
agency, that wishes to receive such funds shall apply to the  
sheriff or chief of police for an appropriation and its  
application shall be accompanied by a written certification that  
the moneys will be used for an authorized purpose. Such requests  
for expenditures shall include a statement describing  
anticipated recurring costs for the agency for subsequent fiscal



914898

years. An agency or organization that receives money pursuant to this subsection shall provide an accounting for such moneys and shall furnish the same reports as an agency of the county or municipality that receives public funds. Such funds may be expended in accordance with the following procedures:

1. Such funds may be used only for school resource officer, crime prevention, safe neighborhood, drug abuse education, or drug prevention programs or such other law enforcement purposes as the board of county commissioners or governing body of the municipality deems appropriate.

2. Such funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency.

3. ~~After July 1, 1992, and during every fiscal year thereafter,~~ Any local law enforcement agency that acquires at least \$15,000 pursuant to the Florida Contraband Forfeiture Act within a fiscal year must expend or donate no less than 25 ~~15~~ percent of such proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program or programs ~~program(s)~~. The local law enforcement agency has the discretion to determine which program or programs ~~program(s)~~ will receive the designated proceeds.

Notwithstanding the drug abuse education, drug treatment, drug prevention, crime prevention, safe neighborhood, or school resource officer minimum expenditures or donations, the sheriff and the board of county commissioners or the chief of police and the governing body of the municipality may agree to expend or donate such funds over a period of years if the expenditure or



914898

donation of such minimum amount in any given fiscal year would exceed the needs of the county or municipality for such program or programs ~~program(s)~~. ~~Nothing in this section precludes~~ The minimum requirement for expenditure or donation of forfeiture proceeds in excess of the minimum amounts established in this subparagraph does not preclude expenditures or donations in excess of that amount herein.

Section 4. Section 932.7061, Florida Statutes, is created to read:

932.7061 Reporting seized property for forfeiture.—

(1) Every law enforcement agency shall submit an annual report to the Department of Law Enforcement indicating whether the agency has seized or forfeited property under the Florida Contraband Forfeiture Act. A law enforcement agency receiving or expending forfeited property or proceeds from the sale of forfeited property in accordance with the Florida Contraband Forfeiture Act shall submit a completed annual report by October 10 documenting the receipts and expenditures. The report shall be submitted in an electronic form, maintained by the Department of Law Enforcement in consultation with the Office of Program Policy Analysis and Government Accountability, to the entity that has budgetary authority over such agency and to the Department of Law Enforcement. The annual report must, at a minimum, specify the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended.

(2) The Department of Law Enforcement shall submit an annual report to the Office of Program Policy Analysis and Government Accountability compiling the information and data in





914898

the annual reports submitted by the law enforcement agencies.  
The annual report shall also contain a list of law enforcement  
agencies that have failed to meet the reporting requirements and  
a summary of any action taken against the noncomplying agency by  
the office of Chief Financial Officer.

(3) Neither the law enforcement agency nor the entity  
having budgetary control over the law enforcement agency shall  
anticipate future forfeitures or proceeds therefrom in the  
adoption and approval of the budget for the law enforcement  
agency.

Section 5. Section 932.7062, Florida Statutes, is created  
to read:

932.7062 Penalty for noncompliance with reporting  
requirements.—A seizing agency that fails to comply with the  
reporting requirements in s. 932.7061 is subject to a civil fine  
of \$5,000 payable to the General Revenue Fund. However, such  
agency is not subject to the fine if, within 60 days after  
receipt of written notification from the Department of Law  
Enforcement of noncompliance with the reporting requirements of  
the Florida Contraband Forfeiture Act, the agency substantially  
complies with those requirements. The Department of Law  
Enforcement shall submit any substantial noncompliance to the  
office of Chief Financial Officer, which shall be responsible  
for the enforcement of this section.

Section 6. Paragraph (a) of subsection (9) of section  
322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled,  
or disqualified.—

(9) (a) A motor vehicle that is driven by a person under the



914898

influence of alcohol or drugs in violation of s. 316.193 is subject to seizure and forfeiture under ss. 932.701-932.7062 ~~932.706~~ and is subject to liens for recovering, towing, or storing vehicles under s. 713.78 if, at the time of the offense, the person's driver license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

Section 7. Subsection (4) of section 323.001, Florida Statutes, is amended to read:

323.001 Wrecker operator storage facilities; vehicle holds.—

(4) The requirements for a written hold apply when the following conditions are present:

(a) The officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act, ss. 932.701-932.7062 ~~932.706~~;

(b) The officer has probable cause to believe the vehicle should be seized and forfeited under chapter 379;

(c) The officer has probable cause to believe the vehicle was used as the means of committing a crime;

(d) The officer has probable cause to believe that the vehicle is itself evidence that tends to show that a crime has been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a crime has been committed;

(e) The officer has probable cause to believe the vehicle was involved in a traffic accident resulting in death or personal injury and should be sealed for investigation and collection of evidence by a vehicular homicide investigator;



914898

(f) The vehicle is impounded or immobilized pursuant to s. 316.193 or s. 322.34; or

(g) The officer is complying with a court order.

Section 8. Paragraph (b) of subsection (3) of section 328.07, Florida Statutes, is amended to read:

328.07 Hull identification number required.—

(3)

(b) If any of the hull identification numbers required by the United States Coast Guard for a vessel manufactured after October 31, 1972, do not exist or have been altered, removed, destroyed, covered, or defaced or the real identity of the vessel cannot be determined, the vessel may be seized as contraband property by a law enforcement agency or the division, and shall be subject to forfeiture pursuant to ss. 932.701-932.7062 ~~932.706~~. Such vessel may not be sold or operated on the waters of the state unless the division receives a request from a law enforcement agency providing adequate documentation or is directed by written order of a court of competent jurisdiction to issue to the vessel a replacement hull identification number which shall thereafter be used for identification purposes. No vessel shall be forfeited under the Florida Contraband Forfeiture Act when the owner unknowingly, inadvertently, or neglectfully altered, removed, destroyed, covered, or defaced the vessel hull identification number.

Section 9. Paragraph (c) of subsection (2) of section 817.625, Florida Statutes, is amended to read:

817.625 Use of scanning device or reencoder to defraud; penalties.—

(2)



914898

(c) Any person who violates subparagraph (a)1. or subparagraph (a)2. shall also be subject to the provisions of ss. 932.701-932.7062 ~~932.706~~.

Section 10. For the purpose of incorporating the amendment made by this act to section 932.704, Florida Statutes, in a reference thereto, section 27.3451, Florida Statutes, is reenacted to read:

27.3451 State Attorney's Forfeiture and Investigative Support Trust Fund.—There is created for each of the several state attorneys a trust fund to be known as the State Attorney's Forfeiture and Investigative Support Trust Fund. Revenues received by a state attorney as a result of forfeiture proceedings, as provided under s. 932.704, shall be deposited in such trust fund and shall be used, when authorized by appropriation or action of the Executive Office of the Governor pursuant to s. 216.181(11), for the investigation of crime, prosecution of criminals, or other law enforcement purposes.

Section 11. For the purpose of incorporating the amendment made by this act to section 932.704, Florida Statutes, in a reference thereto, section 874.08, Florida Statutes, is reenacted to read:

874.08 Criminal gang activity and recruitment; forfeiture.—All profits, proceeds, and instrumentalities of criminal gang activity and all property used or intended or attempted to be used to facilitate the criminal activity of any criminal gang or of any criminal gang member; and all profits, proceeds, and instrumentalities of criminal gang recruitment and all property used or intended or attempted to be used to facilitate criminal gang recruitment are subject to seizure and forfeiture under the



914898

Florida Contraband Forfeiture Act, s. 932.704.

Section 12. 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 contraband forfeiture; amending s.  
932.701, F.S.; revising the applicability of a short  
title; amending s. 932.704, F.S.; requiring that  
specified persons approve a settlement once property  
has been seized; specifying when a settlement  
agreement must be reviewed; requiring each state or  
local law enforcement agency that seizes property for  
the purpose of forfeiture to perform a specified  
review at least annually; prohibiting certain  
compensation or benefit to any law enforcement officer  
from being dependent upon attaining a quota of  
seizures; requiring a seizing agency to adopt certain  
written policies, procedures, and training to ensure  
compliance; requiring that supervisory personnel  
review seizures to determine whether probable cause  
existed; requiring prompt notification of the seizing  
agency's legal counsel after a determination is made  
regarding seizure; requiring that the legal counsel  
conduct a specified review; requiring each seizing  
agency to adopt and implement specified written  
policies and procedures for the prompt release of



914898

seized property under certain circumstances; requiring that the settlement of forfeiture actions be consistent with certain mandates and with the seizing agency's policy; requiring specified training and the maintenance of related records; amending s. 932.7055, F.S.; increasing the minimum amount of forfeiture proceeds that certain law enforcement agencies must donate to certain programs; creating s. 932.7061, F.S.; requiring each state or local law enforcement agency that seizes property for the purpose of forfeiture to complete an annual report; requiring certain information to be included in the annual report; requiring the Department of Law Enforcement to make an annual report to the Office of Program Policy Analysis and Government Accountability compiling the information; prohibiting a law enforcement agency and an entity having budgetary control over the law enforcement agency from anticipating proceeds from forfeitures in their budgeting processes; creating s. 932.7062, F.S.; providing a monetary penalty for seizing agencies that fail to comply with reporting requirements; providing an exception; providing for enforcement; amending ss. 322.34, 323.001, 328.07, and 817.625, F.S.; conforming cross-references; reenacting ss. 27.3451 and 874.08, F.S., relating to the State Attorney's Forfeiture and Investigative Support Trust Fund, and criminal gang activity, recruitment, and forfeiture, respectively, to incorporate the amendment made to s. 932.704, F.S., in references thereto;



914898

330

providing an effective date.

By Senator Bean

4-00282-16

2016220\_\_

1 A bill to be entitled  
 2 An act relating to contraband forfeiture; amending s.  
 3 932.701, F.S.; revising the applicability of a short  
 4 title; amending s. 932.704, F.S.; requiring each state  
 5 or local law enforcement agency that seizes property  
 6 for the purpose of forfeiture to perform a specified  
 7 review at least annually; prohibiting certain  
 8 compensation or benefit to any law enforcement officer  
 9 from being dependent upon attaining a quota of  
 10 seizures; requiring a seizing agency to adopt certain  
 11 written policies, procedures, and training to ensure  
 12 compliance; requiring that supervisory personnel  
 13 review seizures to determine whether probable cause  
 14 existed; requiring prompt notification of the seizing  
 15 agency's legal counsel after a determination is made  
 16 regarding seizure; requiring that the legal counsel  
 17 conduct a specified review; requiring each seizing  
 18 agency to adopt and implement specified written  
 19 policies and procedures for the prompt release of  
 20 seized property under certain circumstances; requiring  
 21 that the settlement of forfeiture actions be  
 22 consistent with certain mandates and with the seizing  
 23 agency's policy; requiring specified training and the  
 24 maintenance of related records; creating s. 932.7061,  
 25 F.S.; requiring each state or local law enforcement  
 26 agency that seizes property for the purpose of  
 27 forfeiture to complete an annual report; requiring  
 28 certain information to be included in the annual  
 29 report; requiring the report to be maintained by the

Page 1 of 8

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

4-00282-16

2016220\_\_

30 seizing agency and made available to the public;  
 31 amending ss. 322.34, 323.001, 328.07, and 817.625,  
 32 F.S.; conforming cross-references; reenacting ss.  
 33 27.3451 and 874.08, F.S., relating to the State  
 34 Attorney's Forfeiture and Investigative Support Trust  
 35 Fund, and criminal gang activity, recruitment, and  
 36 forfeiture, respectively, to incorporate the amendment  
 37 made to s. 932.704, F.S., in references thereto;  
 38 providing an effective date.

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

41  
 42 Section 1. Subsection (1) of section 932.701, Florida  
 43 Statutes, is amended to read:

44 932.701 Short title; definitions.—

45 (1) Sections 932.701-932.7061 ~~932.706~~ shall be known and  
 46 may be cited as the "Florida Contraband Forfeiture Act."

47 Section 2. Subsection (11) of section 932.704, Florida  
 48 Statutes, is amended to read:

49 932.704 Forfeiture proceedings.—

50 (11)(a) The Department of Law Enforcement, in consultation  
 51 with the Florida Sheriffs Association and the Florida Police  
 52 Chiefs Association, shall develop guidelines and training  
 53 procedures to be used by state and local law enforcement  
 54 agencies and state attorneys in implementing the Florida  
 55 Contraband Forfeiture Act. At least annually, each state or  
 56 local law enforcement agency that seizes property for the  
 57 purpose of forfeiture shall ~~periodically~~ review such seizures ~~of~~  
 58 ~~assets made by the agency's law enforcement officers, any~~

Page 2 of 8

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



4-00282-16

2016220\_\_

59 settlements, and any forfeiture proceedings initiated by the law  
 60 enforcement agency, to determine whether ~~they such seizures,~~  
 61 ~~settlements, and forfeitures~~ comply with the Florida Contraband  
 62 Forfeiture Act and the guidelines adopted under this subsection.  
 63 If the review suggests deficiencies, the state or local law  
 64 enforcement agency shall promptly take action to comply with  
 65 this act.

66 (b) The determination as to ~~of~~ whether an agency will file  
 67 a civil forfeiture action is ~~must be~~ the sole responsibility of  
 68 the head of the agency or his or her designee.

69 (c) ~~(b)~~ The determination as to ~~of~~ whether to seize currency  
 70 must be made by supervisory personnel. The agency's legal  
 71 counsel must be notified as soon as possible after a  
 72 determination is made.

73 (d) The employment, salary, promotion, or other  
 74 compensation of any law enforcement officer may not be dependent  
 75 on the ability of the officer to meet a quota for seizures.

76 (e) A seizing agency shall adopt and implement written  
 77 policies, procedures, and training to ensure compliance with all  
 78 applicable legal requirements regarding seizing, maintaining,  
 79 and forfeiting property under this act.

80 (f) When property is seized for forfeiture, the probable  
 81 cause supporting the seizure must be promptly reviewed by  
 82 supervisory personnel. The seizing agency's legal counsel must  
 83 be notified as soon as possible of all seizures and shall  
 84 conduct a review to determine whether there is legal sufficiency  
 85 to proceed with a forfeiture action.

86 (g) Each seizing agency shall adopt and implement written  
 87 policies and procedures promoting the prompt release of seized

4-00282-16

2016220\_\_

88 property as may be required by the act or by agency  
 89 determination when there is no legitimate basis for holding  
 90 seized property. To help assure that property is not wrongfully  
 91 held after seizure, each law enforcement agency must adopt  
 92 written policies and procedures ensuring that all asserted  
 93 claims of interest in seized property are promptly reviewed for  
 94 potential validity.

95 (h) The settlement of any forfeiture action must be  
 96 consistent with this act and the agency's policy.

97 (i) Law enforcement agency personnel involved in the  
 98 seizure of property for forfeiture shall receive basic training  
 99 and continuing education as required by this act. Each agency  
 100 shall maintain records demonstrating each law enforcement  
 101 officer's compliance with this requirement. Among other things,  
 102 the training must address the legal aspects of forfeiture,  
 103 including, but not limited to, search and seizure and other  
 104 constitutional considerations.

105 Section 3. Section 932.7061, Florida Statutes, is created  
 106 to read:

107 932.7061 Reporting seized property for forfeiture.—Each  
 108 state or local law enforcement agency that seizes property for  
 109 the purpose of forfeiture must complete an annual report  
 110 indicating whether that agency has received or forfeited  
 111 property under this act. The report, which must be submitted on  
 112 a form designed by the law enforcement agency, must, at a  
 113 minimum, specify the type of property seized, its approximate  
 114 value, the court case number, the type of offense in connection  
 115 with which the property was seized, disposition of the property,  
 116 and the dollar amount of the proceeds received or expended in

4-00282-16 2016220\_\_

seizing the property. The seizing agency shall maintain the report, which must be available to the public.

Section 4. Paragraph (a) of subsection (9) of section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(9) (a) A motor vehicle that is driven by a person under the influence of alcohol or drugs in violation of s. 316.193 is subject to seizure and forfeiture under ss. 932.701-932.7061 ~~932.706~~ and is subject to liens for recovering, towing, or storing vehicles under s. 713.78 if, at the time of the offense, the person's driver license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

Section 5. Subsection (4) of section 323.001, Florida Statutes, is amended to read:

323.001 Wrecker operator storage facilities; vehicle holds.—

(4) The requirements for a written hold apply when the following conditions are present:

(a) The officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act, ss. 932.701-932.7061 ~~932.706~~;

(b) The officer has probable cause to believe the vehicle should be seized and forfeited under chapter 379;

(c) The officer has probable cause to believe the vehicle was used as the means of committing a crime;

(d) The officer has probable cause to believe that the vehicle is itself evidence that tends to show that a crime has

4-00282-16 2016220\_\_

been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a crime has been committed;

(e) The officer has probable cause to believe the vehicle was involved in a traffic accident resulting in death or personal injury and should be sealed for investigation and collection of evidence by a vehicular homicide investigator;

(f) The vehicle is impounded or immobilized pursuant to s. 316.193 or s. 322.34; or

(g) The officer is complying with a court order.

Section 6. Paragraph (b) of subsection (3) of section 328.07, Florida Statutes, is amended to read:

328.07 Hull identification number required.—

(3)

(b) If any of the hull identification numbers required by the United States Coast Guard for a vessel manufactured after October 31, 1972, do not exist or have been altered, removed, destroyed, covered, or defaced or the real identity of the vessel cannot be determined, the vessel may be seized as contraband property by a law enforcement agency or the division, and shall be subject to forfeiture pursuant to ss. 932.701-932.7061 ~~932.706~~. Such vessel may not be sold or operated on the waters of the state unless the division receives a request from a law enforcement agency providing adequate documentation or is directed by written order of a court of competent jurisdiction to issue to the vessel a replacement hull identification number which shall thereafter be used for identification purposes. No vessel shall be forfeited under the Florida Contraband Forfeiture Act when the owner unknowingly, inadvertently, or

4-00282-16 2016220\_\_

175 neglectfully altered, removed, destroyed, covered, or defaced  
176 the vessel hull identification number.

177 Section 7. Paragraph (c) of subsection (2) of section  
178 817.625, Florida Statutes, is amended to read:

179 817.625 Use of scanning device or reencoder to defraud;  
180 penalties.-

181 (2)

182 (c) Any person who violates subparagraph (a)1. or  
183 subparagraph (a)2. shall also be subject to the provisions of  
184 ss. 932.701-932.706 ~~932.706~~.

185 Section 8. For the purpose of incorporating the amendment  
186 made by this act to section 932.704, Florida Statutes, in a  
187 reference thereto, section 27.3451, Florida Statutes, is  
188 reenacted to read:

189 27.3451 State Attorney's Forfeiture and Investigative  
190 Support Trust Fund.-There is created for each of the several  
191 state attorneys a trust fund to be known as the State Attorney's  
192 Forfeiture and Investigative Support Trust Fund. Revenues  
193 received by a state attorney as a result of forfeiture  
194 proceedings, as provided under s. 932.704, shall be deposited in  
195 such trust fund and shall be used, when authorized by  
196 appropriation or action of the Executive Office of the Governor  
197 pursuant to s. 216.181(11), for the investigation of crime,  
198 prosecution of criminals, or other law enforcement purposes.

199 Section 9. For the purpose of incorporating the amendment  
200 made by this act to section 932.704, Florida Statutes, in a  
201 reference thereto, section 874.08, Florida Statutes, is  
202 reenacted to read:

203 874.08 Criminal gang activity and recruitment; forfeiture.-

Page 7 of 8

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

4-00282-16 2016220\_\_

204 All profits, proceeds, and instrumentalities of criminal gang  
205 activity and all property used or intended or attempted to be  
206 used to facilitate the criminal activity of any criminal gang or  
207 of any criminal gang member; and all profits, proceeds, and  
208 instrumentalities of criminal gang recruitment and all property  
209 used or intended or attempted to be used to facilitate criminal  
210 gang recruitment are subject to seizure and forfeiture under the  
211 Florida Contraband Forfeiture Act, s. 932.704.

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

Page 8 of 8

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** September 16, 2015

---

I respectfully request that **Senate Bill # 220**, relating to Contraband Forfeiture, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

---

Senator Aaron Bean  
Florida Senate, District 4

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-25-16  
Meeting Date

SB 220  
Bill Number (if applicable)

Topic CIVIL FORFEITURES

Amendment Barcode (if applicable)

Name MONICA HOFHEINZ

Job Title ASST STATE ATTORNEY

Address 201 SE 6THS

Phone \_\_\_\_\_

Street

FTL

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FPAA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

220  
Bill Number (if applicable)

Topic Seizes of property

Amendment Barcode (if applicable)

Name Greg Pound

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr.  
Street

Phone \_\_\_\_\_

Largo Fla. 33773  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Saving families

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/16

Meeting Date

220

Bill Number (if applicable)

Topic Contraband Forfeiture

Amendment Barcode (if applicable)

Name Rob Bullara

Job Title Major

Address 2008 E. 8th Ave.

Phone 813 363-0375

Street

Tampa FL 33605

City

State

Zip

Email LBowden@hso.tampa.fl.us

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Hillsborough County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

SB 220  
Bill Number (if applicable)

Topic Forfeiture

Amendment Barcode (if applicable)

Name Buddy JACOBS

Job Title General Counsel Fla. Prosecuting Attorneys Association

Address 961687 Gateway Blvd.  
Street

Phone 904 261-3693

Fernandina Bch, FL  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing State Attorneys

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

S. 220  
Bill Number (if applicable)

Topic Contraband Forfeiture

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850/425-1344  
Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

01/25/16

Meeting Date

220

Bill Number (if applicable)

Topic Civil Forfeiture

Amendment Barcode (if applicable)

Name Justin Pearson

Job Title Managing Attorney, Institute for Justice

Address 999 Brickell Ave, Suite 720

Phone (305) 721-1600

Street

Miami

FL

33131

City

State

Zip

Email JPearson@IJ.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Myself/Institute for 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)

1/25/16  
Meeting Date

220  
Bill Number (if applicable)

914898  
Amendment Barcode (if applicable)

Topic Contraband Forfeiture

Name BRADLEY WEISSMAN

Job Title Asst. City Attorney

Address 1300 W. BROWARD BLVD,

Street

FORT LAUDERDALE, FL 3312

City

State

Zip

Phone 954 828 5626

Email bweissman@fortlauderdale.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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)

January 25, 2016  
Meeting Date

220  
Bill Number (if applicable)

Topic Contraband Forfeiture

Amendment Barcode (if applicable)

Name Bradley Weissman

Job Title Assistant City Attorney,

Address 1300 W. Broward Blvd.  
Street

Phone 954-828-5626

Fort Lauderdale FL 33312  
City State Zip

Email bweissman@fortlauderdale.gov

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)

1-25-16

*Meeting Date*

220

*Bill Number (if applicable)*

Topic Contraband Forfeiture

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

*Street*

Tallahassee

*City*

FL

*State*

32308

*Zip*

Phone 850-274-3599

Email mdunagan@flsheriffs.org

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 436

INTRODUCER: Criminal Justice Committee and Senator Simpson

SUBJECT: Terroristic Threats

DATE: January 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	<b>Fav/CS</b>
2.			ACJ	
3.			AP	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 436 creates an act relating to terroristic threats. The bill makes it unlawful for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing terror or the evacuation of a building, place of assembly, or facility of public transportation.

Persons violating this provision commit a third degree felony punishable by up to 5 years imprisonment and a \$5,000 fine. Persons commit a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine if occupants of the building, place of assembly, or facility of public transportation are diverted from their normal or customary operations; if the threat is against instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official or any of their family members.

The bill provides that in addition to any restitution or penalty, persons violating this section shall pay restitution for all costs and damages caused by the evacuation resulting from the criminal conduct.

## **II. Present Situation:**

### **Threat to Throw, Project, Place or Discharge any Destructive Device**

Section 790.162, F.S., makes it a second degree felony if a person threatens to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person.

### **False reports concerning planting a bomb, explosive, or weapon of mass destruction in or committing arson against, state-owned property**

Section 790.164, F.S., makes it a second degree felony if a person makes a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or other deadly explosive, or weapon of mass destruction.<sup>1</sup> Persons who are convicted of commission of this offense that resulted in the mobilization of any law enforcement officer or any state or local agency, may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

### **Planting of “hoax bomb”**

Section 790.165, F.S., makes it a second degree felony if a person who, without lawful authority manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use or conspires to use, or who makes readily accessible to others a “hoax bomb.”<sup>2</sup>

### **Written Threats to Kill or Do Bodily Injury**

Section 836.10, F.S., provides that it is a second degree felony to write or compose and send, or procure the sending, of any written communication containing a threat to kill or do bodily injury to the person to whom the letter is sent or a threat to kill or do bodily injury to the family of the person to whom such letter or communication is sent.

### **Corruption by threat against public servants**

It is a felony to unlawfully harm or threaten to harm any public servant,<sup>3</sup> his or her immediate family, or any other person whose welfare the public servant is interested with the intent or purpose of:

- Influencing the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation or performance of a public duty<sup>4</sup>;

---

<sup>1</sup> “Weapon of mass destruction” means any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; any device or object involving a biological agent or that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life or any biological agent, toxin, vector, or delivery system.

<sup>2</sup> “Hoax bomb” means any device or object that by its design, construction, content, or characteristics appears to be, or to contain, or is represented to be or to contain a destructive device or explosive but is in fact inoperable. s. 790.165(1), F.S.

<sup>3</sup> Section 838.021, F.S.

<sup>4</sup> Section 838.021(1)(a), F.S.

- Causing or inducing the public servant to use or exert, or procure the use of exertion of any influence upon or with any other public servant regarding any act or omission which the defendant believes to be or the public servant represents as being, within the official discretion of the public servant, in violation or performance of a public duty.<sup>5</sup>

Prosecution under this section does not require allegation or proof that:

- The public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way;
- That the public servant had assumed office;
- That the matter was properly pending before him or her or might by law properly be brought before him or her;
- That the public servant possessed jurisdiction over the matter; or
- That his or her official action was necessary to achieve the person's purpose.<sup>6</sup>

It is a second degree felony if the defendant actually does harm or a third degree felony if the defendant threatens harm.<sup>7</sup>

According to the Pasco Sheriff's Office, this bill would address issues that existing statutes do not. By eliminating the need for a specific victim, including threats that cause an evacuation of a building and cause serious public inconvenience, law enforcement will have the necessary tools to bring charges when these types of events take place.

### **III. Effect of Proposed Changes:**

The bill creates s. 775.32, F.S., an act related to terroristic threats, making it a third degree felony punishable by up to five years in prison and a \$5,000 fine for persons who threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing:

- Terror; or
- Evacuation of a building, place of assembly, or facility of public transportation.

Persons commit a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine if:

- Occupants of the building, place of assembly, or facility of public transportation are diverted from their normal or customary operations;
- If the threat is against instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official or any of their family members.

The bill provides that in addition to any restitution or penalty, persons violating this section shall pay restitution for all costs and damages caused by the evacuation resulting from the criminal conduct.

For purposes of the act the bill provides the following definitions:

---

<sup>5</sup> Section 838.021(1)(b), F.S.

<sup>6</sup> Section 838.021(2), F.S.

<sup>7</sup> Section 838.021(3)(a) and (b), F.S.



- “Facility of public transportation” – is defined as a public conveyance and any area, structure, or device which is used to support, guide, control, permit, or facilitate the movement, starting, stopping, takeoff, landing, or servicing of a public conveyance, or the loading or unloading of passengers, freight, or goods. (“Public conveyance” for purposes of this paragraph includes a passenger or freight train, airplane, bus, truck, car, boat, tramway, gondola, lift, elevator, escalator, or other device used for the public carriage of persons or property.
- “Family member of a person” is defined as:
  - An individual related to the person by blood or marriage;
  - An individual living in the person’s household or having the same legal residence as the person;
  - An individual who is engaged to be married to the person, or who holds himself or herself out as, or is generally known as, an individual whom the person intends to marry; or
  - An individual to whom the person stands in loco parentis.<sup>8</sup>
- “Instructional personnel” is defined in accordance with s. 1012.01, F.S.<sup>9</sup>
- “Law enforcement officer” is defined as a current or former:
  - Law enforcement officer, correctional officer, correctional probation officer, part-time law enforcement officer, part-time correctional officer, part-time correctional probation officer, auxiliary law enforcement officer, auxiliary correctional officer, or auxiliary correctional probation officer, as those terms are respectively defined in s. 943.10, or a county probation officer;
  - Employee or agent of the Department of Corrections who supervises or provides services to inmates;
  - Officer of the Florida Commission on Offender Review;
  - Federal law enforcement officer as defined in s. 901.1505; or
  - Law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

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

#### **IV. Constitutional Issues:**

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

None.

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

None.

---

<sup>8</sup> “In loco parentis” means “in the place of a parent.” MERRIAM-WEBSTER, *In Loco Parentis*, <http://www.merriam-webster.com/dictionary/in%20loco%20parentis> (last visited Nov. 9, 2015).

<sup>9</sup> “Instructional personnel” means any K-12 staff member whose function includes the provision of direct instructional services to students. The term also includes K-12 personnel whose functions provide direct support in the learning process of students. s. 1012.01(2), F.S.

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 (CJIC) reviewed HB 257 which is similar to SB 436 and found that it will have a positive insignificant prison bed impact on the Department of Corrections (an increase of ten or fewer beds).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 775.32 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Criminal Justice on January 25, 2016:**

- Adds and clarifies definitions.
- Revises the prohibition in the bill to apply to threats to commit a crime of violence with intent to cause, or reckless disregard for causing terror or the evacuation of a public building, place of assembly, or facility of public transportation.
- Clarifies the requirement for persons convicted under the bill to pay restitution.
- The effective is changed from October 1, 2016 to July 1, 2016.

B. Amendments:

None.

---

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

---



660248

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2016	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 836.12, Florida Statutes, is created to  
read:

836.12 Terroristic threats.—

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

(a) "Facility of public transportation" means a public  
conveyance and any area, structure, or device which is used to



660248

support, guide, control, permit, or facilitate the movement, starting, stopping, takeoff, landing, or servicing of a public conveyance, or the loading or unloading of passengers, freight, or goods. For purposes of this paragraph, the term "public conveyance" includes a passenger or freight train, airplane, bus, truck, car, boat, tramway, gondola, lift, elevator, escalator, or other device used for the public carriage of persons or property.

(b) "Family member of a person" means:

1. An individual related to the person by blood or marriage;

2. An individual living in the person's household or having the same legal residence as the person;

3. An individual who is engaged to be married to the person, or who holds himself or herself out as, or is generally known as, an individual whom the person intends to marry; or

4. An individual to whom the person stands in loco parentis.

(c) "Instructional personnel" has the same meaning as provided in s. 1012.01.

(d) "Law enforcement officer" means a current or former:

1. Law enforcement officer, correctional officer, correctional probation officer, part-time law enforcement officer, part-time correctional officer, part-time correctional probation officer, auxiliary law enforcement officer, auxiliary correctional officer, or auxiliary correctional probation officer, as those terms are respectively defined in s. 943.10, or county probation officer;

2. Employee or agent of the Department of Corrections who



660248

supervises or provides services to inmates;

3. Officer of the Florida Commission on Offender Review;

4. Federal law enforcement officer as defined in s.

901.1505; or

5. Law enforcement personnel of the Fish and Wildlife  
Conservation Commission or the Department of Law Enforcement.

(2) It is unlawful for a person to threaten to commit a  
crime of violence with the intent to cause, or with reckless  
disregard for the risk of causing:

(a) Terror; or

(b) The evacuation of a building, place of assembly, or  
facility of public transportation.

(3) Except as provided in subsection (4), a person who  
violates subsection (2) commits a felony of the third degree,  
punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who violates subsection (2) commits a felony  
of the second degree, punishable as provided in s. 775.082, s.  
775.083, or s. 775.084, if the violation:

(a) Causes the occupants of a building, place of assembly,  
or facility of public transportation to be diverted from their  
normal or customary operations;

(b) Involves a threat against instructional personnel, a  
law enforcement officer, state attorney or assistant state  
attorney, firefighter, judge, or elected official; or

(c) Involves a threat against a family member of a person  
identified in paragraph (b).

(5) A person convicted of violating subsection (2) shall,  
in addition to any other restitution or penalty provided by law,  
pay restitution for all costs and damages caused by an



660248

evacuation resulting from the criminal conduct.

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 terroristic threats; creating s.  
836.12, F.S.; providing definitions; providing that a  
person commits the crime of terroristic threats if he  
or she threatens to commit a crime of violence under  
certain circumstances; providing criminal penalties;  
requiring payment of restitution; providing an  
effective date.

By Senator Simpson

18-00447-16

2016436\_\_

A bill to be entitled

An act relating to terroristic threats; creating s. 775.32, F.S.; defining terms; providing that a person commits the crime of terroristic threats if he or she communicates, directly or indirectly, a threat to commit specified acts; providing criminal penalties; requiring a person convicted of terroristic threats to, in addition to other restitution ordered, pay restitution in an amount equal to the cost of evacuation; providing that a judgment or order of restitution does not preclude relief recovery in a civil action; requiring that an award from a civil action be reduced by the amount paid under a judgment or order of restitution; providing an effective date.

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

Section 1. Section 775.32, Florida Statutes, is created to read:

775.32 Terroristic threats.—

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

(a) "Communicate" means to convey to another person or other persons a message, including words, images, or language, orally or in writing, in person, by telephone, or by electronic means, including through the use of e-mail, the Internet, or any other type of electronic communication.

(b) "Immediate family member" of a person means:

1. A spouse, parent, brother, sister, child, uncle, aunt, first cousin, nephew, niece, half brother, half sister, father-

18-00447-16

2016436\_\_

in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepmother, stepfather, stepbrother, stepsister, stepdaughter, stepson, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, or step great grandchild of the person; a person who is engaged to be married to such person, or who otherwise holds himself or herself out, or is generally known, as the person whom the person intends to marry; or a person standing in loco parentis of a minor; or

2. Any other person living in the person's household and related to the person by blood or marriage or any other natural person having the same legal residence as the person.

(c) "Law enforcement officer" includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, and a county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Florida Commission on Offender Review; a federal law enforcement officer as defined in s. 901.1505; and law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

(2) A person commits the crime of terroristic threats if the person communicates, directly or indirectly, a threat to commit any of the following with the intent to terrorize, intimidate, injure, or coerce a person or group:

(a) Commit any violent act or any act dangerous to human



18-00447-16

2016436\_\_

59 life.

60 (b) Cause the evacuation of a building, place of assembly,  
61 or facility of public transportation.

62 (c) Cause serious public inconvenience or terror, or to  
63 make such a threat with reckless disregard of the risk of  
64 causing public inconvenience or terror.

65 (3) A person who violates subsection (2) commits a felony  
66 of the third degree, punishable as provided in s. 775.082, s.  
67 775.083, or s. 775.084.

68 (4) A person who violates subsection (2) commits a felony  
69 of the second degree, punishable as provided in s. 775.082, s.  
70 775.083, or s. 775.084, if the violation:

71 (a) Causes the occupants of the building, place of  
72 assembly, or facility of public transportation to be diverted  
73 from their normal or customary operations;

74 (b) Involves a threat against a law enforcement officer or  
75 an immediate family member of a law enforcement officer; or

76 (c) Involves a threat against a state attorney or an  
77 assistant state attorney, or an immediate family member of a  
78 state attorney or an assistant state attorney.

79 (5) A person convicted of violating subsection (2) shall,  
80 in addition to any other restitution that may be ordered, pay  
81 restitution in an amount equal to the cost of the evacuation,  
82 including, but not limited to, fire and police response  
83 expenses; emergency medical service or emergency management  
84 response expenses; and expenses incurred in the transportation  
85 of an individual from the building, place of assembly, or  
86 facility of public transportation. A judgment or order of  
87 restitution does not preclude a person from recovering from the

Page 3 of 4

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

18-00447-16

2016436\_\_

88 offender such relief as may be available in a civil action  
89 authorized by law, provided that a civil award shall be reduced  
90 by the amount paid under the judgment or order of restitution.

91 Section 2. This act shall take effect October 1, 2016.

Page 4 of 4

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Community Affairs, *Chair*  
Environmental Preservation and Conservation,  
*Vice Chair*  
Appropriations Subcommittee on General Government  
Finance and Tax  
Judiciary  
Transportation

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

### SENATOR WILTON SIMPSON

18th District

October 12, 2015

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

Chairman Evers,

Please place Senate Bill 436 relating to Terroristic Threats, on the next Criminal Justice Committee agenda.

Please contact my office with any questions. Thank you.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson  
Senator, 18<sup>th</sup> District

CC: Amanda Cannon, Staff Director

#### REPLY TO:

- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- ☐ Post Office Box 938, Brooksville, Florida 34605
- ☐ Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: [www.flsenate.gov](http://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)

1/25/2016  
Meeting Date

SB 436  
Bill Number (if applicable)

Topic Terroristic Threats

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 308 East Brevard St.

Phone \_\_\_\_\_

Street

Tallahassee

FL

32301

City

State

Zip

Email \_\_\_\_\_

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  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

436  
Bill Number (if applicable)

Topic Terroristic Threats

Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Firefighter

Address 345 W Madison St  
Street

Phone 850-224-7333

Tallahassee  
City

FL  
State

32301  
Zip

Email rocco.salvatori@icloud.com

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)

1/25/16

*Meeting Date*

436

*Bill Number (if applicable)*

Topic Terroristic Threats

*Amendment Barcode (if applicable)*

Name James Mallo

Job Title Captain

Address 8700 Citizens Dr

Phone 727-277-6226

*Street*

New Port Richey

FL

34654

Email jmallo@pascosheriff.org

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Pasco County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/25/16

*Meeting Date*

436

*Bill Number (if applicable)*

Topic Terroristic Threats

*Amendment Barcode (if applicable)*

Name Chase Daniels

Job Title Policy Director

Address 8700 Citizens Dr

Phone 727-277-6226

*Street*

New Port Richey

FL

34654

Email cdaniels@pascosheriff.org

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Pasco County Sheriff's Office

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 636

INTRODUCER: Criminal Justice Committee and Senator Benacquisto

SUBJECT: Evidence Collected in Sexual Assault Investigations

DATE: January 26, 2016

REVISED: \_\_\_\_\_

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

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 636 creates s. 943.326, F.S., which addresses the collection and processing of evidence in sexual offense investigations that may contain DNA evidence.

The bill requires that a sexual offense evidence kit collected in a sexual offense investigation be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is received by a law enforcement agency if a report of the sexual offense is made to the agency, or when the victim or his or her representative requests that the evidence be tested.

Testing of the sexual offense evidence kit must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.

A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency approves the kit's destruction.

The victim, or his or her representative, shall be informed of the purpose of testing and of his or her right to demand testing. The victim shall be informed by either the medical provider conducting the physical forensic examination for purposes of evidence collection for a sexual offense evidence kit or, if no kit is collected, a law enforcement agency that collects *other* DNA evidence associated with the offense.

By January 1, 2017, FDLE and each lab within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, must adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence obtained in connection with an alleged sexual offense.

The guidelines and procedures must include:

- Standards for packaging evidence for submission to the laboratories for testing;
- What evidence must be submitted for testing, which would include a collected sexual offense evidence kit and possibly other evidence related to the crime scene;
- Timeframes for evidence submission including the 30 day deadline for collected sexual offense evidence kits as set forth in the bill;
- Timeframes for evidence analysis including the bill's requirement that testing of sexual offense evidence kits must be completed no later than 120 days after submission; and
- Timeframes for evidence comparison to DNA databases.

The bill becomes effective July 1, 2016.

## **II. Present Situation:**

### **Forensic Evidence Collection in Sexual Assault Cases, Submission for DNA Testing**

A sexual assault kit (SAK), is a medical kit used to collect evidence from the body and clothing of a victim of rape or other sexual offense during a forensic physical examination. The kit contains tools such as swabs, tubes, glass slides, containers, and plastic bags. These items are used to collect and preserve fibers from clothing, hair, and bodily fluids, which can help identify DNA and other forensic evidence left by a perpetrator.<sup>1</sup>

In Florida, a victim of certain sexual offenses may have a forensic physical examination conducted by a healthcare provider for free regardless of whether the victim reports the offense to law enforcement authorities.

Pursuant to s. 960.28(2), F.S., up to \$500 for expenses for a forensic physical examination must be paid for by the Crime Victims' Services Office within the Department of Legal Affairs (DLA) for a victim of sexual battery as defined in ch. 794, F.S., or a lewd or lascivious offense as defined in ch. 800, F.S. Such payment is made regardless of whether the victim is covered by health or disability insurance and whether the victim participates in the criminal justice system or cooperates with law enforcement.<sup>2</sup> Information received or maintained by the DLA which identifies an alleged victim who seeks payment of such medical expenses is confidential and exempt from the provisions of s. 119.07(1), F.S.<sup>3</sup>

According to protocols developed by the DLA, healthcare providers conducting the forensic physical examination should complete the document entitled "Sexual Assault Kit Form for

---

<sup>1</sup> The White House, Office of Communications, *FACT SHEET: INVESTMENTS TO REDUCE THE NATIONAL RAPE KIT BACKLOG AND COMBAT VIOLENCE AGAINST WOMEN*, March 16, 2015, at 1.

<sup>2</sup> Section 960.28(2), F.S.

<sup>3</sup> Section 960.28(4), F.S.



Healthcare Providers.”<sup>4</sup> This document includes a consent form that requires the victim or his or her legal guardian to indicate that he or she consents to a forensic physical examination for the preservation of evidence of a sexual offense.<sup>5</sup> Additionally, the victim or legal guardian must select one of the following two options:

- For Reporting Victims [i.e., victims who choose to report the sexual offense to law enforcement]: I do authorize this medical facility and the examiner to perform all necessary tests, examinations, photography, and treatment, and to supply copies of all pertinent medical laboratory reports, immediately upon completion to the law enforcement agency and the State Attorney’s Office having jurisdiction.
- For Non-Reporting Victims [i.e., victims who choose to not report the sexual offense to law enforcement]: I do authorize this medical facility and the examiner to perform all necessary tests, examinations, photography, and treatment at this time.<sup>6</sup>

The DLA protocols provide instructions for sealing the SAK upon completion of the exam and indicate that the SAK must stay with the medical examiner or secured in a locked area with limited access and proper chain of custody procedures until transferred to law enforcement. For a SAK of a non-reporting victim, the protocol states that the medical examiner should check the local area for storage procedures and that a law enforcement agency is recommended for long-term storage.<sup>7, 8</sup>

Generally, law enforcement agencies in Florida submit SAKs for DNA analysis to the statewide criminal analysis laboratory system, which consists of six laboratories operated by the Florida Department of Law Enforcement (FDLE) in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties.<sup>9</sup>

In some cases, a law enforcement agency may not submit a SAK for DNA analysis and may instead retain the SAK in evidence storage. Reasons for not analyzing a SAK include: (a) the victim did not want to file a police report regarding the assault (non-reporting victim); (b) the victim no longer wants the investigation to proceed; (c) the case is not being pursued by the state attorney; and (d) the suspect has pled guilty or nolo contendere.<sup>10</sup>

---

<sup>4</sup> Florida Department of Legal Affairs, Division of Victim Services and Criminal Justice Programs, *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination*, April 2015, at 13.

<sup>5</sup> Florida Department of Law Enforcement, *Sexual Assault Kit Form for Healthcare Providers*, available at <http://www.fdle.state.fl.us/Content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx> (last visited Nov. 28, 2015).

<sup>6</sup> *Id.*

<sup>7</sup> Florida Department of Legal Affairs, *supra* note 4, at 21; *see also* Florida Department of Law Enforcement, *Instruction List for Forensic Exam Kit*, available at <http://www.fdle.state.fl.us/Content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx> (last visited Nov. 28, 2015).

<sup>8</sup> Chief Frank Fabrizio, who represents the Florida Police Chiefs Association, testified at a Florida Senate hearing that in Orange and Volusia Counties, SAKs for non-reporting victims are stored by a law enforcement agency, but are not submitted to a crime laboratory for analysis. Hearing of the Florida Senate Appropriations Subcommittee on Criminal and Civil Justice, Nov. 3, 2015, available at [http://www.flsenate.gov/media/videooplayer?EventID=2443575804\\_2015111024](http://www.flsenate.gov/media/videooplayer?EventID=2443575804_2015111024).

<sup>9</sup> Section 943.32, F.S.; *see also* Florida Department of Law Enforcement, *Biology Screening of Sexual Assault Evidence Kits*.

<sup>10</sup> These reasons were provided during testimony by Jennifer Pritt, Assistant Commissioner of the Florida Department of Law Enforcement, and Chief Frank Fabrizio, representing the Florida Police Chiefs Association. Hearing of the Florida Senate Appropriations Subcommittee on Criminal and Civil Justice, Nov. 3, 2015, available at [http://www.flsenate.gov/media/videooplayer?EventID=2443575804\\_2015111024](http://www.flsenate.gov/media/videooplayer?EventID=2443575804_2015111024).

According to information provided by the FDLE, DNA analysis of a SAK requires on average approximately 26.25 hours of crime analyst and supervisor time.<sup>11</sup>

DNA profiles resulting from such analyses are uploaded by the laboratory to its local DNA Index System (DIS), which then uploads the profiles to the state DNA database. From there, DNA profiles are uploaded to the Federal Bureau of Investigation's Combined DIS, referred to as CODIS, which consists of DNA profiles contributed by federal, state, and local participating forensic laboratories. DNA profiles within these local, state, and federal databases are continuously searched against one another to determine whether a match exists.<sup>12</sup>

### **National Backlog of SAKs Not Submitted for DNA Testing**

To better understand the issue of SAKs that have not been submitted for analysis, the National Institute of Justice (NIJ) awarded grants in 2011 to the Houston, Texas Police Department and Wayne County, Michigan Prosecutor's Office.<sup>13</sup> Both entities conducted a census of untested SAKs:<sup>14</sup>

- 6,663 untested SAKs were found in storage at the Houston Police Department.<sup>15</sup> Each of these SAKs were submitted for analysis. As of February 2015, such analyses had resulted in 850 matches identifying the perpetrator and in the prosecutions of 29 offenders.<sup>16</sup>
- 8,707 untested SAKs were found in Detroit.<sup>17</sup> Of these SAKs, approximately 2,000 were analyzed. The analyses resulted in 760 matches identifying the perpetrator, the identification of 188 serial offenders, and 15 convictions.<sup>18</sup>

In July of 2015 the USA TODAY newspaper released the results of its own nationwide inventory of untested SAKs. The records of 1,000-plus law enforcement agencies, including some agencies in Florida, showed at least 70,000 untested SAKs.<sup>19</sup> Many police agencies have no idea how many untested SAKs they have in their property rooms.<sup>20</sup>

---

<sup>11</sup> Florida Department of Law Enforcement, *supra* note 9, at 7.

<sup>12</sup> *Id.* at 7-8; see also Federal Bureau of Investigation, *Frequently Asked Questions (FAQs) on the CODIS Program and the National DNA Index System*, <https://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet> (last visited Nov. 28, 2015). Note that a profile developed from a non-reporting victim's SAK is not currently eligible to be loaded into the national database according to FBI standards. *Florida Department of Law Enforcement Sexual Assault Kit Assessment*.

<sup>13</sup> The White House, *supra* note 1, at 2.

<sup>14</sup> National Institute of Justice, Office of Justice Programs, *Untested Evidence in Sexual Assault Cases*, <http://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx#determining> (last visited Nov. 28, 2015).

<sup>15</sup> *Id.*

<sup>16</sup> Katherine Driessen, *City done with lab testing of rape kit backlog*, Houston Chronicle (February 23, 2015), <http://www.chron.com/news/politics/houston/article/City-done-with-lab-testing-of-rape-kit-backlog-6096424.php>.

<sup>17</sup> National Institute of Justice, *supra* note 16.

<sup>18</sup> The White House, *supra* note 1, at 2.

<sup>19</sup> The USA TODAY report covers a fraction of the 18,000 police agencies in the country suggesting a potential for untested SAKs in the hundreds of thousands may exist. <http://www.floridatoday.com/story/news/2015/07/16/unttested-rape-kits-evidence-across-usa/299021>.

<sup>20</sup> Samara Martin-Ewing, *#TesttheKits: Thousands of rape kits go untested*, WUSA9 TV, <http://www.wusa9.com/story/news/local/2015/07/16/testthekits-unttested-rape-kits/30230447/>.

Some states have adopted legislation requiring audits to be conducted of the untested SAKs in the possession of law enforcement agencies and reports of such audits to be filed with the state.<sup>21</sup>

In other states, legislation has been adopted which specifies requirements, such as procedures and timeframes, for SAK use, submission, and analysis. For example:

- Colorado enacted legislation effective June 5, 2013, which requires the state's Department of Public Safety to adopt rules that require forensic evidence to be collected when requested by a sexual offense victim, specify standards for what evidence must be submitted to an accredited crime laboratory, and specify time frames for when such evidence must be submitted, analyzed, and compared in DNA databases. The law also directed the department to adopt a plan for prioritizing the analysis of its backlog of SAKs and to include a requirement in its rules after the backlog is resolved that evidence be submitted for analysis within 21 days after receipt by a law enforcement agency.<sup>22</sup>
- Illinois enacted legislation effective September 1, 2010, which requires law enforcement agencies to submit sexual offense evidence collected in connected with an investigation within 10 business days after receipt to an approved crime laboratory and requires crime laboratories to analyze such evidence within six months.<sup>23</sup>
- Ohio adopted legislation effective March 23, 2015, which requires law enforcement agencies to forward the contents of a SAK related to an investigation initiated after the act's effective date to a crime laboratory within 30 days for analysis and directs the crime laboratory to perform the analysis as soon as possible after receipt.<sup>24</sup>

### **SAKs Not Submitted for DNA Testing in Florida**

At the direction of the Legislature, the Florida Department of Law Enforcement has conducted a statewide assessment of SAKs that have not been submitted for DNA analysis by law enforcement.<sup>25</sup> Agencies had access to the online survey from August 15 – December 15, 2015.<sup>26</sup>

Sixty-nine percent of Florida's police departments responded to the survey and 100 percent of the sheriff's offices responded.<sup>27</sup> These 279 law enforcement agencies represent 89 percent of the state's population.<sup>28</sup>

---

<sup>21</sup> See Arkansas House Bill 1208 (2015) (requiring annual audits of untested SOEKs stored by law enforcement agencies and healthcare providers and submission of reports to the State Crime Laboratory and Legislature); Kentucky Senate Joint Resolution 20 (2015) (directing the state's Auditor of Public Accounts to study the number of untested SOEKs in the possession of law enforcement and prosecutorial agencies and to report such information to the Legislative Research Commission); Virginia Senate Bill 658 (2014) (requiring law enforcement agencies to inventory and report all untested physical evidence recovery kits to the Department of Forensic Science and requiring the Department to report to the General Assembly).

<sup>22</sup> COLO. REV. STAT. §24-33.5-113 (2015).

<sup>23</sup> 725 IL. COMP. STAT. 202/10 and 202/15 (2015).

<sup>24</sup> OHIO REV. CODE ANN. §2933.82 (2015).

<sup>25</sup> Florida Department of Law Enforcement Sexual Assault Kit Assessment, <http://www.fdle.state.fl.us/docs/SAKResults.pdf>.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

Survey responses indicate that there are 13,435 unsubmitted SAKs in law enforcement evidence storage statewide.<sup>29</sup> Of the 13,435 unsubmitted SAKs, the agencies indicated that 9,484 of them should be submitted for DNA testing.<sup>30</sup> Individual agency guidelines, not state law, dictate which SAKs should be submitted for testing.<sup>31</sup>

The FDLE statewide survey did not specifically request the responding agencies to do a case-by-case analysis of the reasons why all reported SAKs being held in evidence were not submitted for testing.<sup>32</sup> Agencies were asked to identify from a list of five possible reasons (and an “other” category) provided in the survey why a SAK may not have been submitted.<sup>33</sup> Among the reasons a SAK may not have been submitted was that the victim was a non-reporting victim.<sup>34</sup>

The survey asked (and the agencies responded):

Please indicate the reasons for not submitting sexual assault kits (mark all that apply):

41% - victim decided not to proceed

31% - case not being prosecuted by State Attorney’s Office

20% - suspect pled guilty/no contest

18% - non-reporting victim

A summary of “other reasons” written in by agencies included: allegation unfounded, recanted; no issue of identification; suspect convicted on other charges; did not recognize the evolution of DNA testing; victim deceased.<sup>35</sup>

### **FDLE Plan for Analyzing Backlog of Unsubmitted SAKs**

Part of the report by FDLE on the SAK Assessment includes alternatives for analyzing and uploading the results of the unsubmitted SAK backlog. It should be remembered that FDLE’s crime labs are only part of the statewide criminal analysis laboratory system. The entire system consists of six laboratories operated by FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties. The Indian River lab is a regional lab which provides forensic services to Indian River, Martin, Okeechobee, and St. Lucie counties.<sup>36</sup> The FDLE alternative plans regarding the SAK backlog relate only to those cases that should come to an FDLE lab, not those that will be analyzed by local labs.

FDLE suggests that a comprehensive business plan which incorporates DNA analysis of the backlog of untested SAKs should consider:

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*; (Note: There was an attempt by the survey to gather specific numbers from the agencies as to how many SAKs were being held in evidence only because the victim was a non-reporting victim, but the accuracy of this quantification by some of the agencies is somewhat unclear based upon other responses given by the agencies and the wording of the survey.)

<sup>35</sup> *Id.*

<sup>36</sup> Section 943.35, F.S.

- The recent bulk submission of 2,000 older SAKs;
- The remaining 6,600 untested backlog of SAKs within FDLE lab jurisdiction accounted for in the survey of law enforcement agencies;
- Current incoming casework;
- Increasing biology/DNA evidence submissions anticipated by FDLE over time;
- Issues regarding getting and keeping qualified lab personnel;
- The acquisition of equipment that can make the lab process more efficient;
- Increased lab capacity; and
- FDLE's ability to outsource selected cases.

Additionally, FDLE suggests that agencies should be encouraged to develop formal policies and standardized procedures for collecting, submitting, and tracking SAKs in order to limit the impact to the statewide lab system.<sup>37</sup>

### **III. Effect of Proposed Changes:**

The bill creates s. 943.326, F.S., which addresses the collection and processing of evidence in sexual offense investigations which may contain DNA evidence. The bill states that the timely submission and testing of sexual assault evidence kits is a core public safety issue.

The bill requires that a sexual offense evidence kit collected in a sexual offense investigation be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is received by a law enforcement agency if a report of the sexual offense is made to the agency, or when the victim or his or her representative requests that the evidence be tested.

Testing of the sexual offense evidence kit must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system. The testing requirement is met when a member of the statewide criminal analysis laboratory system tests the contents of the kit in an attempt to identify the foreign DNA attributable to a suspect.

A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency approves the kit's destruction.

The victim, or his or her representative, shall be informed of the purpose of testing and of his or her right to demand testing. The victim shall be informed by either the medical provider conducting the physical forensic examination for purposes of evidence collection for a sexual offense evidence kit or, if no kit is collected, a law enforcement agency that collects *other* DNA evidence associated with the offense.

If probative information is obtained from testing the sexual offense evidence kit then the examination of other evidence directly related to the crime scene should be based upon the potential evidentiary value to the case as cooperatively determined by the investigating agency, laboratory, and the prosecutor.

---

<sup>37</sup> Florida Department of Law Enforcement Sexual Assault Kit Assessment, <http://www.fdle.state.fl.us/docs/SAKResults.pdf>.

By January 1, 2017, FDLE and each lab within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, must adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence obtained in connection with an alleged sexual offense.

The guidelines and procedures must include:

- Standards for packaging evidence for submission to the laboratories for testing;
- What evidence must be submitted for testing, which would include a collected sexual offense evidence kit and possibly other evidence related to the crime scene;
- Timeframes for evidence submission including the 30 day deadline for collected sexual offense evidence kits as set forth in the bill;
- Timeframes for evidence analysis including the bill's requirement that testing of sexual offense evidence kits must be completed no later than 120 days after submission; and
- Timeframes for evidence comparison to DNA databases.

The newly-created s. 943.326, F.S. does not create a cause of action or create rights for a person to challenge the admission of evidence or create an action for damages or relief for a violation of the new section of law.

The bill becomes effective on July 1, 2016.

#### **IV. Constitutional Issues:**

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

Article VII, Section 18(a), of the Florida Constitution, states that county and municipality governments are not bound by any general law requiring one or more county or municipality governments to spend funds, unless it satisfies certain exemptions or exceptions. One such exemption is that the law will have an “insignificant fiscal impact.”

The term “insignificant” has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. The 2010 United States census, which contains the most recent federal census data, indicates that the Florida population is 18,801,310.<sup>38</sup> A bill having a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1.88 million would be characterized as a mandate.

The bill's requirements for SAK submission to laboratories may require the expenditure of funds by the counties where the five local laboratories are located if state funding for these laboratories is not available. Currently, such expenditures are indeterminate.

One of the exceptions to the application of Section 18(a), Article VII, Florida Constitution, is a law that applies to all persons similarly situated, including state and local governments. It is anticipated that FDLE will also see increased evidence testing

---

<sup>38</sup> U.S. Census Bureau, 2010 Census Interactive Population Search, <http://www.census.gov/2010census/popmap/ipmtext.php?fl=12> (last visited Nov. 30, 2015).

costs so it appears as if the bill meets the exception, and the only other Constitutional requirement is that the Legislature determines the bill fulfills an important state interest. The bill contains a finding of important state interest on lines 59-61.

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

FDLE submitted its Bill Analysis of SB 636 in October 2016. The bill analysis did not include any fiscal analysis.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 943.326 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Criminal Justice on January 25, 2016:**

- Creates or modifies timeframes within which sexual offense evidence kits must be submitted for testing (30 days) and have the testing completed (120 days), which are triggered by the alleged victim making a report with law enforcement or requesting testing;
- Requires safe storage of collected sexual offense evidence kits;

- Collected kits are required to be retained until the prosecuting agency approves their destruction;
- Eliminates rule-making by FDLE for handling sexual offense evidence kits and substitutes a collaboration between FDLE, local labs in the statewide system, and the Florida Council Against Sexual Violence to adopt and disseminate guidelines and procedures;
- Specifies minimum requirements for the guidelines and procedures;
- Eliminates the reporting requirement of FDLE by the original bill;
- Provides for the handling of other evidence related to the alleged crime scene; and
- Specifies that the bill does not create a cause of action or any individual rights or other relief for a violation of the new section of law.

B. Amendments:

None.





320858

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2016	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 943.326, Florida Statutes, is created to  
read:

943.326 DNA evidence collected in sexual offense  
investigations.—

(1) A sexual offense evidence kit, or other DNA evidence if  
a kit is not collected, must be submitted to a member of the



320858

statewide criminal analysis laboratory system under s. 943.32  
for forensic testing within 30 days after:

(a) Receipt of the evidence by a law enforcement agency if  
a report of the sexual offense is made to the law enforcement  
agency; or

(b) A request to have the evidence tested is made to the  
medical provider or the law enforcement agency by:

1. The alleged victim;

2. The alleged victim's parent, guardian, or legal  
representative, if the alleged victim is a minor; or

3. The alleged victim's personal representative, if the  
alleged victim is deceased.

(2) An alleged victim or, if applicable, the person  
representing the alleged victim under subparagraph (1)(b)2. or  
subparagraph (1)(b)3. must be informed of the purpose of  
submitting evidence for testing and the right to request testing  
under subsection (1) by:

(a) A medical provider conducting a forensic physical  
examination for purposes of a sexual offense evidence kit; or

(b) A law enforcement agency that collects other DNA  
evidence associated with the sexual offense if a kit is not  
collected under paragraph (a).

(3) A collected sexual offense evidence kit must be  
retained in a secure, environmentally safe manner until the  
prosecuting agency has approved its destruction.

(4) By January 1, 2017, the department and each laboratory  
within the statewide criminal analysis laboratory system, in  
coordination with the Florida Council Against Sexual Violence,  
shall adopt and disseminate guidelines and procedures for the



320858

collection, submission, and testing of DNA evidence that is obtained in connection with an alleged sexual offense. The timely submission and testing of sexual offense evidence kits is a core public safety issue. Testing of sexual offense evidence kits must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.

(a) The guidelines and procedures must include the requirements of this section, standards for how evidence is to be packaged for submission, what evidence must be submitted to a member of the statewide criminal analysis laboratory system, and timeframes for when the evidence must be submitted, analyzed, and compared to DNA databases.

(b) The testing requirements of this section are satisfied when a member of the statewide criminal analysis laboratory system tests the contents of the sexual offense evidence kit in an attempt to identify the foreign DNA attributable to a suspect. If a sexual offense evidence kit is not collected, the laboratory may receive and examine other items directly related to the crime scene, such as clothing or bedding or personal items left behind by the suspect. If probative information is obtained from the testing of the sexual offense evidence kit, the examination of other evidence should be based on the potential evidentiary value to the case and determined through cooperation among the investigating agency, the laboratory, and the prosecutor.

(5) This section does not create a cause of action or create any rights for an individual to challenge the admission of evidence or create a cause of action for damages or any other



320858

relief for a violation of this section.

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 evidence collected in sexual  
offense investigations; creating s. 943.326, F.S.;  
requiring that a sexual offense evidence kit or other  
DNA evidence be submitted to a member of the statewide  
criminal analysis laboratory system within a specified  
timeframe after specified occurrences; requiring a  
medical provider or law enforcement agency to inform  
an alleged victim of a sexual offense of certain  
information relating to sexual offense evidence kits;  
requiring the retention of specified evidence;  
requiring adoption and dissemination of guidelines and  
procedures by certain entities by a specified date;  
requiring the testing of sexual offense evidence kits  
within a specified timeframe after submission to a  
member of the statewide criminal analysis laboratory;  
providing requirements for such guidelines and  
procedures; providing construction; providing an  
effective date.

By Senator Benacquisto

30-00495-16

2016636\_\_

A bill to be entitled

An act relating to evidence collected in sexual assault investigations; creating s. 943.326, F.S.; requiring that DNA evidence collected in sexual assault investigations be submitted to a member of the statewide criminal analysis laboratory system within a specified period; providing for a request by an alleged victim or specified representative for earlier submission; requiring that an alleged victim be informed of the right to demand earlier submission; requiring rulemaking and providing requirements for rules; requiring the Department of Law Enforcement to submit a report by a specified date to the Governor and the Legislature on how it will analyze the unanalyzed forensic evidence in sexual assault cases currently held in the statewide criminal analysis laboratory system; providing an effective date.

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

Section 1. Section 943.326, Florida Statutes, is created to read:

943.326 DNA evidence collected in sexual assault investigations.—

(1) Any DNA evidence collected in a sexual assault investigation must be submitted to a member of the statewide criminal analysis laboratory system for forensic testing within 21 days after the forensic evidence is received by a law enforcement agency or, if made earlier, a request to have the

Page 1 of 2

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

30-00495-16

2016636\_\_

evidence tested is made by:

(a) The alleged victim;

(b) The alleged victim's parent or guardian, if the alleged victim is a minor; or

(c) The alleged victim's personal representative, if the alleged victim is deceased.

(2) An alleged victim must be informed of the purpose of the submission of the medical forensic evidence and the right to demand testing as provided in subsection (1).

(3) The department shall adopt rules for forensic medical evidence collected in connection with an alleged sexual assault. The rules must include the requirements of this section and standards for what evidence must be submitted to a member of the statewide criminal analysis laboratory system and timeframes for when the evidence must be submitted, analyzed, and compared to DNA databases.

Section 2. By October 1, 2016, the Department of Law Enforcement must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives setting out the plan the department will follow to analyze the unanalyzed sexual assault forensic evidence currently held in the statewide criminal analysis laboratory system by June 30, 2017.

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

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

January 7, 2015

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

### RE: SB 636- Evidence Collected in Sexual Assault Investigations

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 636, Relating to Evidence Collected in Sexual Assault Investigations, 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

### 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](http://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)

1/25/16  
Meeting Date

636  
Bill Number (if applicable)

Topic Untested Sexual Assault Kits

Amendment Barcode (if applicable)

Name Jennifer DRIIT

Job Title Executive Director

Address 1820 E. PARK AVE, STR 100  
Street

Phone 850/297-2000

MILWAUKEE FL 32301  
City State Zip

Email jdriit@fcasv.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA COUNCIL AGAINST SEXUAL VIOLENCE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-25-16  
Meeting Date

SB 634  
Bill Number (if applicable)

Topic Evidence collection

Amendment Barcode (if applicable)

Name Stephanie Kunkel

Job Title \_\_\_\_\_

Address 873 Kingsway Rd  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850-320-4208

Email Stef.Kunkel@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Federation of Business and Professional Women

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)

January 25, 2016

Meeting Date

636

Bill Number (if applicable)

Topic Evidence Collected in Sexual Assault Investigations Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham Drive

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850-219-3631

Email amercer@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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)

11/25/11

Meeting Date

SB 636

Bill Number (if applicable)

Topic Evidence Collected in Sex Assault Inv Amendment Barcode (if applicable)

Name Jennifer C Priitt

Job Title Assistant Commissioner

Address PO Box 2331

Phone \_\_\_\_\_

Street

Phillips Rd Tall

City

State

Zip

32306

Email jenniferpriitt@fdle.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FDLE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1-25-16

*Meeting Date*

636

*Bill Number (if applicable)*

Topic Evidence Collected in Sexual Assault Investigations

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-274-3599

*Street*

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-25-16

Meeting Date

636

Bill Number (if applicable)

Topic Rape Kit Testing

Amendment Barcode (if applicable)

Name Rob Johnson

Job Title Legislative Director

Address PL-01 Capitol

Phone 245-0155

Street

Tall.

FL

32399

City

State

Zip

Email rob.johnson@myfloridalegal.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Attorney General Pam Bondi

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 784

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Human Trafficking

DATE: January 26, 2016

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	<b>Fav/CS</b>
2. _____	_____	ACJ	_____
3. _____	_____	FP	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 784 addresses human trafficking and offenses that are often associated with human trafficking by:

- Reclassifying the felony degree of human trafficking offenses under s. 787.06, F.S., which increases the maximum penalty of these offenses, if the victim suffers great bodily harm, permanent disability, or permanent disfigurement;
- Clarifying that the offense of branding a victim of human trafficking is for the purpose of committing or facilitating a human trafficking offense under s. 797.06, F.S.;
- Adding human trafficking as a predicate (qualifying) felony for first degree murder in the commission of a felony;
- Increasing from a second degree misdemeanor (maximum penalty of 60 days in jail) to a first degree misdemeanor (up to one year in jail) a first violation of s. 796.06, F.S. (renting space to be used for lewdness, assignation, prostitution), and increasing from a first degree misdemeanor to a third degree felony (maximum penalty of 5 years in state prison) a second or subsequent violation of that statute;
- Amending s. 796.07, F.S. (prostitution and related acts), to:
  - Remove minors from being prosecuted for prostitution, lewdness, or assignation under s. 796.07, F.S.;
  - Specify that programs offered by faith-based providers are included in a required educational program on the negative effects of prostitution and human trafficking (applicable to offenders sentenced for soliciting prostitution or related acts) if such programs exist in the judicial circuit; and

- Reclassify the misdemeanor or felony degree of a violation of s. 796.07, F.S., if the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of the statute is a massage establishment that is or should be licensed under s. 480.043, F.S.;
- Requiring the Department of Health to issue an emergency order suspending the license of a massage therapist of the massage establishment if the therapist, establishment owner, etc., committed a reclassified violation of s. 796.07, F.S.;
- Requiring the Board of Massage Therapy to deny an application for a new or renewal massage therapist license if the applicant has committed a reclassified violation of s. 796.07, F.S.;
- Requiring the Department of Health to deny an application for a new or renewal massage establishment license if the applicant has committed a reclassified violation of s. 796.07, F.S.;
- Consistent with removing minors from being prosecuted for a violation of s. 796.07, F.S., involving prostitution, lewdness, or assignation, removing language regarding arrest or prosecution of a minor for these offenses from the definition “sexual abuse of a child” in ch. 39, F.S. (child dependency); and
- Adding racketeering to the list of the offenses that may require a person to register as a sexual predator or sexual offender if the court makes a written finding that the racketeering activity involved at least one registration-qualifying sexual offense or one registration-qualifying offense with sexual intent or motive.

## **II. Present Situation:**

### **Human Trafficking**

Section 787.06, F.S., punishes human trafficking, which the statute defines as the “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.” The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking using labor or services or for commercial sexual activity.<sup>1</sup>

Relevant to the bill, s. 787.06(4)(b), F.S., provides that it is a second degree felony for a person to permanently brand,<sup>2</sup> or direct to be branded, a victim of an offense under s. 787.06, F.S.

### **Felony Murder**

Florida law punishes felony murder. Section 782.04(1)(a)2., F.S., defines first degree murder as including the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate any offense listed in this subparagraph, such as drug trafficking, arson, or sexual battery. Currently, human trafficking is not a listed offense.

---

<sup>1</sup> See s. 787.06(3) and (4), F.S.

<sup>2</sup> Section 787.06(4)(b), F.S., defines permanently brand as a mark on the body that can only be removed or repaired by surgical means, laser treatment or other medical procedure.

First degree murder is a capital felony punishable by death if the proceeding held to determine the sentence according to the procedure set forth in s. 921.141, F.S.,<sup>3</sup> results in findings by the court that such person shall be punished by death. If such proceeding results in findings by the court that the person shall not be punished by death, such person must be punished by life imprisonment and is ineligible for parole.

### **Massage Therapist and Massage Establishment Licensing**

Chapter 480, F.S., entitled the “Massage Practice Act” (Act), governs the practice of massage<sup>4</sup> in Florida. A significant portion of the Act is dedicated to regulating massage establishments, which are defined as “a site or premises, or portion thereof, wherein a massage therapist practices massage.”<sup>5</sup>

Massage establishments may only operate if they have applied for and received a license from the Department of Health (DOH) in accordance with rules adopted by the Board of Massage Therapy (Board).<sup>6</sup> The Board’s rules:

- Govern the operation of massage establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, and insurance coverage;
- Require the DOH to inspect a proposed massage establishment upon receipt of an application for licensure to ensure that the site is to be utilized for massage; and
- Require the DOH to periodically inspect licensed massage establishments at least once a year.<sup>7</sup>

In order to be licensed as a massage therapist, an applicant must:

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a massage school or apprentice program approved by the Board;
- Pass an examination; and
- Submit to a background screening.<sup>8</sup>

---

<sup>3</sup> Section 921.141, F.S., requires a court, upon conviction or adjudication of guilt of a defendant of a capital felony, to conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable. After hearing all the evidence, the jury must deliberate and render an advisory sentence to the court, based upon specified aggravating and mitigating circumstances. Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, must enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it must set forth in writing its findings upon which the sentence of death is based. However, the United States Supreme Court recently held that Florida’s capital sentencing scheme violates the Sixth Amendment of the United States Constitution. See *Hurst v. Florida*, Case No. 14–7505 (January 12, 2016) (Slip. Op.), available at [http://www.supremecourt.gov/opinions/15pdf/14-7505\\_5ie6.pdf](http://www.supremecourt.gov/opinions/15pdf/14-7505_5ie6.pdf) (last visited on January 25, 2016).

<sup>4</sup> The term “massage” is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation. Section 480.033(3), F.S.

<sup>5</sup> Section 480.033(7), F.S.

<sup>6</sup> Section 480.043(1), F.S.

<sup>7</sup> See Rules 64B7-26.003, 64B7-26.004, and 64B7-26.005, F.A.C.

<sup>8</sup> Sections 480.041, and 480.042, F.S.

In addition to practicing massage therapy in a licensed massage establishment, a massage therapist may practice at a client's residence or office, at a sports event, or at a convention or trade show.<sup>9</sup>

The DOH must issue an emergency order suspending the license of a massage therapist or massage establishment upon information that the therapist, a person with ownership interest in the establishment, or other specified person<sup>10</sup> has committed a listed offense, e.g., a violation of s. 787.06, F.S. (human trafficking), and s. 796.07(4)(c), F.S. (third or subsequent violation of s. 796.07, F.S., relating to prostitution and related acts).<sup>11</sup>

The Board must deny an application for a new or renewal massage therapist license if the applicant has committed a listed offense (essentially the same list of offenses that requires an emergency license-suspension order).<sup>12</sup> Similarly, the DOH must deny an application for a new or renewal massage establishment license if the applicant has committed a listed offense (essentially the same list of offenses that requires an emergency license-suspension order).<sup>13</sup>

Additionally, Florida law prohibits sexual misconduct<sup>14</sup> in the practice of massage therapy.<sup>15</sup> In 2013, the Legislature passed legislation to restrict the practice of illicit sex acts at massage establishments by limiting the hours a massage establishment may be open at night.<sup>16</sup>

### **Renting and Using Space for Lewdness, Assignment, or Prostitution**

Section 796.06(1), F.S., provides that it is unlawful for any person to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used for the purpose of lewdness, assignment,<sup>17</sup> or prostitution. Section 796.06(2), F.S., provides that a first violation of s. 796.06, F.S., is a second degree misdemeanor; a second or subsequent violation is a first degree misdemeanor.

### **Prostitution**

Section 796.07(2), F.S., punishes engaging in prostitution and related acts. Currently both minors and adults may be charged with engaging in prostitution, lewdness, or assignment.<sup>18</sup>

---

<sup>9</sup> Section 480.046(1)(n), F.S.

<sup>10</sup> For a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the establishment. Section 456.074(5), F.S.

<sup>11</sup> Id.

<sup>12</sup> Section 480.041(7), F.S.

<sup>13</sup> Section 480.03(8), F.S.

<sup>14</sup> "Sexual misconduct in the practice of massage therapy means violation of the massage therapist-patient relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient." Section 480.0485, F.S.

<sup>15</sup> Id.

<sup>16</sup> Ch. 2013-212, L.O.F. Section 480.0475(1), F.S., provides that a person may not operate a massage establishment between the hours of midnight and 5 a.m., with exceptions. A person who violates this subsection commits a first degree misdemeanor but any subsequent violations is a third degree felony. Section 480.0475(3), F.S.

<sup>17</sup> The term "assignment" is not defined in statute. In the context of s. 796.06, F.S., it is essentially setting up an appointment or meeting for prostitution or related acts punished by the statute.

<sup>18</sup> Section 796.07(2)(e), F.S.



Relevant to the bill, s. 787.07(2)(f), F.S., punishes soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignation. Section 796.07(5), F.S., in part, provides that in addition to any other penalty imposed, the court shall order a person convicted of a violation of paragraph (2)(f) to pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, if such program exists in the judicial circuit in which the offender is sentenced.

In 2014, the Legislature amended ch. 796, F.S.<sup>19</sup> One of the amendments was the creation of s. 796.001, F.S., which provides:

It is the intent of the Legislature that adults who involve minors in any behavior prohibited under this chapter be prosecuted under other laws of this state, such as, but not limited to, s. 787.06, chapter 794, chapter 800, s. 810.145, chapter 827, and chapter 847. The Legislature finds that prosecution of such adults under this chapter is inappropriate since a minor is unable to consent to such behavior.

This legislation also repealed the following provisions from ch. 796, F.S.:

- Procuring persons under age 18 for prostitution;
- Selling or buying of minors into prostitution; and
- Reclassifying prostitution violations involving minors.

### **Sexual Predator and Sexual Offender Registration**

Florida law requires certain persons to register as a sexual predator or sexual offender. A person is designated by a court to be a sexual predator and administratively determined to be a sexual offender by the Florida Department of Law Enforcement (FDLE). In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>20</sup>

A sexual predator or sexual offender must comply with a number of registration requirements.<sup>21</sup> Most of these requirements relate to the registration of particular identifying and residence information but other information may also be required (e.g., vehicular information, attendance at an institution of higher education, and temporarily or permanently departing from or reentering this state). The agency to which the person reports this information is determined by the person's status or the type of information that has to be reported. For example, if the person is not in the custody of or under the supervision of the Department of Corrections, Department of Juvenile Justice, or Department of Children and Families (civilly-confined violent sexual predators), he or she would report, in most circumstances, to the local sheriff's office. An exception would be reporting to the Department of Highway Safety and Motor Vehicles to obtain

---

<sup>19</sup> Ch 2014-160, L.O.F.

<sup>20</sup> See ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S.

<sup>21</sup> *Id.* Failure to comply with these requirements is generally a third degree felony. See ss. 775.21, 943.0435, and 985.4815, F.S.

or renew a driver license or state identification card (or to update information relevant to the license or card).

Information reported by registered sexual predators and sexual offenders is provided to the FDLE and entered in a statewide database. The FDLE maintains a website that makes available to the public some of this information (e.g., identifying information, residence information, and registration-qualifying sexual offense or offenses).<sup>22</sup>

### **III. Effect of Proposed Changes:**

The bill, which takes effect October 1, 2016, addresses human trafficking and offenses often associated with human trafficking, in the following manner:

#### **Human Trafficking**

The bill amends s. 787.06, F.S., the human trafficking statute, to reclassifying the felony degree of human trafficking offenses under s. 787.06, F.S., which increases the maximum penalty of these offenses, if the victim suffers great bodily harm, permanent disability, or permanent disfigurement. The offense is reclassified as follows:

- A second degree felony<sup>23</sup> is reclassified as a first degree felony;<sup>24</sup> and
- A first degree felony is reclassified as a life felony.<sup>25</sup>

Section 787.06, F.S., is also amended to clarify that the offense of branding a victim of human trafficking is for the purpose of committing or facilitating a human trafficking offense under that statute.

#### **Felony Murder**

The bill amends s. 782.04(1)(a)2., F.S., to add human trafficking as a predicate (qualifying) felony for first degree murder in the commission of a felony.

#### **Renting and Using Space for Lewdness, Assignment, or Prostitution**

The bill amends s. 796.06(2), F.S., to increase from a second degree misdemeanor (maximum penalty of 60 days in jail) to a first degree misdemeanor (up to one year in jail) a first violation of s. 796.06, F.S. (renting space to be used for lewdness, assignment, prostitution), and increase from a first degree misdemeanor to a third degree felony (maximum penalty of 5 years in state prison) a second or subsequent violation of that statute.

---

<sup>22</sup> See <https://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on January 20, 2016).

<sup>23</sup> The maximum penalty is 15 years in state prison. Section 775.082, F.S.

<sup>24</sup> The maximum penalty is generally 30 years in state prison. Section 775.082, F.S.

<sup>25</sup> The maximum penalty is generally life imprisonment or a terms of years not exceeding life imprisonment. Section 775.082, F.S.

## **Prostitution**

The bill amends s. 796.07(2)(e), F.S., to provide that only an adult may be charged under the statute with engaging in prostitution, lewdness, or assignation.

As previously noted s. 796.07(2)(f), F.S., provides that it is unlawful to solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation. Section 796.07(5), F.S., in part, provides that in addition to any other penalty imposed, the court shall order a person convicted of a violation of paragraph (2)(f) to pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, if such program exists in the judicial circuit in which the offender is sentenced. The bill specifies that an educational program includes such programs offered by faith-based providers (if they exist in the judicial circuit in which the offender is sentenced).

The bill also amends s. 796.07, F.S., to reclassify the misdemeanor or felony degree of a violation of s. 796.07, F.S., if the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of the statute is a massage establishment that is or should be licensed under s. 480.043, F.S. The reclassification is as follows:

- A second degree misdemeanor for a first violation is reclassified as a first degree misdemeanor;
- A first degree misdemeanor for a second violation is reclassified as a third degree felony;<sup>26</sup> and
- A third degree felony for a third or subsequent violation is reclassified as a second degree felony.

Consistent with removing minors from being prosecuted for a violation of s. 796.07, F.S., involving prostitution, lewdness, or assignation, the bill removes language regarding arrest or prosecution of a minor for these offenses from the definition “sexual abuse of a child” in s. 39.01, F.S., the definitions section of ch. 39, F.S. (child dependency).

## **Massage Therapist and Massage Establishment Licensing**

The bill amends s. 456.074(5), F.S., to require the Department of Health to issue an emergency order suspending the license of a massage therapist of the massage establishment if the therapist, establishment owner, etc., committed a reclassified violation of s. 796.07, F.S.

The bill amends s. 480.041(7), F.S., to requiring the Board of Massage Therapy to deny an application for a new or renewal massage therapist license if the applicant has committed a reclassified violation of s. 796.07, F.S.

The bill amends s. 480.043(8), F.S., to require the Department of Health to deny an application for a new or renewal massage establishment license if the applicant has committed a reclassified violation of s. 796.07, F.S.

---

<sup>26</sup> The maximum penalty is 5 years in state prison. Section 775.082, F.S. However, if the third degree is not a forcible felony and if the total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082(10), F.S.

### **Sexual Predator and Sexual Offender Registration**

The bill amends the list of offenses in ss. 775.21, 943.0435, 944.606, and 944.707, F.S., which are relevant qualifying offenses for purposes of designation as a sexual predator or classification as a sexual offender and for registration requirements applicable to those offenders. The bill adds the following additional qualifying offense: racketeering (s. 895.03, F.S.) where the court has made a written finding that the racketeering activity involved at least one sexual offense in the list of qualifying offenses or at least one offense in the list with sexual intent or motive.

#### **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 (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed CS/SB 784. However, the bill is substantively identical to CS/CS/HB 545, which the CJIC determined will have an insignificant impact on state prison beds (an increase in 10 or fewer prison beds) in that the bill increases the number of people subject to sex offender registration requirements and reclassifies existing felony offenses.

The bill amends s. 782.04(1)(a)2., F.S., to make it a first degree murder when an unlawful killing is committed by a person engaged in the perpetration of human trafficking. In Fiscal Year 2014-15, there were 12 offenders sentenced under s. 787.06, F.S. (human trafficking), and 9 of these offenders were sentenced to prison (average sentence length 149.3 months). None of those sentenced to prison were charged with the additional

offense of first degree murder. Furthermore, no offender sent to prison for manslaughter or murder had an additional charge of human trafficking.

The bill also amends s. 787.06(4)(b), F.S., to clarify that a person can only be convicted of branding a victim of human trafficking if it is for the purpose of committing or facilitating an offense of human trafficking. In Fiscal Year 2014-15, there were no offenders sentenced under s. 787.06(4)(b), F.S.

The bill also amends s. 787.06, F.S., to provide that if a human trafficking offense causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense, the degree of that offense will be reclassified as follows: second degree felony increased to a first degree felony and a first degree felony increased to a life felony. In Fiscal Year 2014-15, there were 12 offenders sentenced under s. 787.06, F.S. (human trafficking), and 9 of these offenders were sentenced to prison (average sentence length 149.3 months). Two offenders were charged with felony battery in addition to human trafficking, and 1 was charged with domestic battery.

The bill also amends s. 796.06(2)(b), F.S., to increase the current first degree misdemeanor to an unranked third degree felony for a second or subsequent violation of renting space to be used for lewdness, assignation, or prostitution. In Fiscal Year 2014-15, of the 8 convictions and 1 adjudication withheld for violating s. 796.06, F.S., all were second degree misdemeanors and none were repeat offenders. In Fiscal Year 2014-15, the incarceration rate for an unranked third degree felony was 9.9 percent.

The bill also amends s. 796.07(2)(a), F.S., to reclassify the second degree misdemeanor offense as a first degree misdemeanor for a first violation, a first degree misdemeanor as an unranked third degree felony for a second violation, and the third degree felony as a second degree felony for a third or subsequent violation, if the place, structure, building, or conveyance that is owned, established, maintained, or operated for prostitution is a massage establishment required to be licensed under s. 480.043, F.S. In Fiscal Year 2014-15, there were no guilty/convicted counts and 2 adjudication withheld counts for violating s. 796.07(2)(a), F.S.

The bill also amends s. 796.07(2)(e), F.S., to specify that only adults may be charged with the offense of offering to commit, or to commit, or to engage in, prostitution, lewdness, or assignation. This offense is currently a second degree misdemeanor for a first violation, a first degree misdemeanor for a second violation, and an unranked third degree felony for a third or subsequent violation. In Fiscal Year 2014-15, there was 1 guilty/convicted count and 1 adjudication withheld count for violating s. 796.07(2)(e), F.S. In Fiscal Year 2014-15, there were no offenders sentenced for committing the offense of prostitution for a third or subsequent violation while under 18 years of age.

The bill also amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to add the offense of s. 895.03, F.S. (racketeering) to the qualifying offenses for sexual offender and sexual predator if the court has made written findings that the racketeering activity involved at least one sexual offense included in the definition of sexual predator or sexual offender or the offense involved sexual intent or motive. This change adds these offenders to the pool

of offenders who could potentially commit sexual offender/predator registration-related offenses. In Fiscal Year 2014-15, there were 12 offenders sentenced under s. 787.06, F.S. (human trafficking), and 9 of these offenders were sentenced to prison (mean sentence length 149.3 months) and 1 was sentenced to prison with both racketeering and sexual offenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.01, 456.074, 480.041, 480.043, 782.04, 787.06, 796.06, 796.07, 775.21, 943.0435, 944.606, 944.607, 39.01305, and 921.0022.

The bill reenacts provisions of the following sections of the Florida Statutes: 39.013, 39.509, 39.806, 60.05, 63.089, 63.092, 68.07, 92.55, 95.11, 322.141, 394.495, 394.912, 394.9125, 397.4872, 409.1678, 775.082, 775.0823, 775.0862, 775.0877, 775.13, 775.15, 775.21, 775.24, 775.25, 775.261, 782.065, 794.075, 796.08, 796.09, 895.02, 903.0351, 903.046, 921.0022, 921.11, 921.16, 938.10, 943.0435, 943.0436, 944.607, 944.608, 94.609, 947.1405, 947.16, 948.06, 948.062, 948.063, 948.064, 948.16, 948.30, 948.31, 960.065, 985.04, 985.265, 985.4815, 1012.315, and 1012.467.

**IX. Additional Information:**

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

**CS by Criminal Justice on January 25, 2016:**

- Reclassifies the felony degree of human trafficking offenses under s. 787.06, F.S., which increases the maximum penalty of these offenses, if the victim suffers great bodily harm, permanent disability, or permanent disfigurement;
- Clarifies that the offense of branding a victim of human trafficking is for the purpose of committing or facilitating a human trafficking offense under s. 797.06, F.S.;
- Adds human trafficking as a predicate (qualifying) felony for first degree murder in the commission of a felony;
- Increases from a second degree misdemeanor (maximum penalty of 60 days in jail) to a first degree misdemeanor (up to one year in jail) a first violation of s. 796.06, F.S. (renting space to be used for lewdness, assignation, prostitution), and increases from a first degree misdemeanor to a third degree felony (maximum penalty of 5 years in state prison) a second or subsequent violation of that statute;
- Amends s. 796.07, F.S. (prostitution and related acts) to reclassify the misdemeanor or felony degree of a violation of s. 796.07, F.S., if the place, structure, building, or

conveyance that is owned, established, maintained, or operated in violation of the statute is a massage establishment that is or should be licensed under s. 480.043, F.S.;

- Requires the Department of Health to issue an emergency order suspending the license of a massage therapist of the massage establishment if the therapist, establishment owner, etc., committed a reclassified violation of s. 796.07, F.S.;
- Requires the Board of Massage Therapy to deny an application for a new or renewal massage therapist license if the applicant has committed a reclassified violation of s. 796.07, F.S.;
- Requires the Department of Health to deny an application for a new or renewal massage establishment license if the applicant has committed a reclassified violation of s. 796.07, F.S.; and
- Consistent with removing minors from being prosecuted for a violation of s. 796.07, F.S., involving prostitution, lewdness, or assignation, removing language regarding arrest or prosecution of a minor for these offenses from the definition “sexual abuse of a child” in ch. 39, F.S. (child dependency).

**B. Amendments:**

None.



399382

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2016	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (g) of subsection (69) of section  
39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the  
context otherwise requires:

(69) "Sexual abuse of a child" for purposes of finding a  
child to be dependent means one or more of the following acts:





399382

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, ~~provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 based on such behavior;~~ or the act of allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution;
2. Engage in a sexual performance, as defined by chapter 827; or
3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g).

Section 2. Paragraph (a) of subsection (1) of section 782.04, Florida Statutes, is amended to read:

782.04 Murder.—

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;
2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:
  - a. Trafficking offense prohibited by s. 893.135(1),
  - b. Arson,
  - c. Sexual battery,
  - d. Robbery,
  - e. Burglary,
  - f. Kidnapping,
  - g. Escape,
  - h. Aggravated child abuse,
  - i. Aggravated abuse of an elderly person or disabled adult,



399382

40           j. Aircraft piracy,  
41           k. Unlawful throwing, placing, or discharging of a  
42 destructive device or bomb,  
43           l. Carjacking,  
44           m. Home-invasion robbery,  
45           n. Aggravated stalking,  
46           o. Murder of another human being,  
47           p. Resisting an officer with violence to his or her person,  
48           q. Aggravated fleeing or eluding with serious bodily injury  
49 or death,  
50           r. Felony that is an act of terrorism or is in furtherance  
51 of an act of terrorism,  
52           s. Human trafficking; or  
53           3. Which resulted from the unlawful distribution of any  
54 substance controlled under s. 893.03(1), cocaine as described in  
55 s. 893.03(2)(a)4., opium or any synthetic or natural salt,  
56 compound, derivative, or preparation of opium, or methadone by a  
57 person 18 years of age or older, when such drug is proven to be  
58 the proximate cause of the death of the user,  
59  
60 is murder in the first degree and constitutes a capital felony,  
61 punishable as provided in s. 775.082.  
62           Section 3. Subsections (8) and (9) of section 787.06,  
63 Florida Statutes, are renumbered as subsections (9) and (10),  
64 respectively, paragraph (b) of subsection (4) is amended, and a  
65 new subsection (8) is added to that section, to read:  
66           787.06 Human trafficking.—  
67           (4)  
68           (b) Any person who, for the purpose of committing or



399382

69 facilitating an offense under this section, permanently brands,  
70 or directs to be branded, a victim of an offense under this  
71 section commits a second degree felony, punishable as provided  
72 in s. 775.082, s. 775.083, or s. 775.084. For purposes of this  
73 subsection, the term "permanently branded" means a mark on the  
74 individual's body that, if it can be removed or repaired at all,  
75 can only be removed or repaired by surgical means, laser  
76 treatment, or other medical procedure.

77 (8) The degree of an offense shall be reclassified as  
78 follows if a person causes great bodily harm, permanent  
79 disability, or permanent disfigurement to another person during  
80 the commission of an offense under this section:

81 (a) A felony of the second degree shall be reclassified as  
82 a felony of the first degree.

83 (b) A felony of the first degree shall be reclassified as a  
84 life felony.

85 Section 4. Subsection (5) of section 456.074, Florida  
86 Statutes, is amended to read:

87 456.074 Certain health care practitioners; immediate  
88 suspension of license.—

89 (5) The department shall issue an emergency order  
90 suspending the license of a massage therapist or establishment  
91 as defined in chapter 480 upon receipt of information that the  
92 massage therapist, a person with an ownership interest in the  
93 establishment, or, for a corporation that has more than \$250,000  
94 of business assets in this state, the owner, officer, or  
95 individual directly involved in the management of the  
96 establishment has been convicted or found guilty of, or has  
97 entered a plea of guilty or nolo contendere to, regardless of



399382

adjudication, a violation of s. 796.07(2)(a) which is  
reclassified under s. 796.07(7) or a felony offense under any of  
the following provisions of state law or a similar provision in  
another jurisdiction:

- (a) Section 787.01, relating to kidnapping.
- (b) Section 787.02, relating to false imprisonment.
- (c) Section 787.025, relating to luring or enticing a  
child.
- (d) Section 787.06, relating to human trafficking.
- (e) Section 787.07, relating to human smuggling.
- (f) Section 794.011, relating to sexual battery.
- (g) Section 794.08, relating to female genital mutilation.
- (h) Former s. 796.03, relating to procuring a person under  
the age of 18 for prostitution.
- (i) Former s. 796.035, relating to the selling or buying of  
minors into prostitution.
- (j) Section 796.04, relating to forcing, compelling, or  
coercing another to become a prostitute.
- (k) Section 796.05, relating to deriving support from the  
proceeds of prostitution.
- (l) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a  
felony of the third degree for a third or subsequent violation  
of s. 796.07, relating to prohibiting prostitution and related  
acts.
- (m) Section 800.04, relating to lewd or lascivious offenses  
committed upon or in the presence of persons less than 16 years  
of age.
- (n) Section 825.1025(2)(b), relating to lewd or lascivious  
offenses committed upon or in the presence of an elderly or



399382

disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

Section 5. Subsection (7) of section 480.041, Florida Statutes, is amended to read:

480.041 Massage therapists; qualifications; licensure; endorsement.—

(7) The board shall deny an application for a new or renewal license if an applicant has been convicted or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, a violation of s. 796.07(2)(a) which is reclassified under s. 796.07(7) or a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.



399382

(h) Former s. 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Former s. 796.035, relating to the selling or buying of minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of prostitution.

(l) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

Section 6. Subsection (8) of section 480.043, Florida Statutes, is amended to read:



399382

480.043 Massage establishments; requisites; licensure;  
inspection.—

(8) The department shall deny an application for a new or renewal license if a person with an ownership interest in the establishment or, for a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the establishment has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a violation of s. 796.07(2)(a) which is reclassified under s. 796.07(7) or a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.

(h) Former s. 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Former s. 796.035, relating to selling or buying of minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of prostitution.



399382

(l) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

Section 7. Subsection (2) of section 796.06, Florida Statutes, is amended to read:

796.06 Renting space to be used for lewdness, assignation, or prostitution.—

(2) A person who violates this section commits:

(a) A misdemeanor of the first ~~second~~ degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

(b) A felony ~~misdemeanor~~ of the third ~~first~~ degree for a second or subsequent violation, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.





399382

Section 8. Paragraph (e) of subsection (2) and paragraph (b) of subsection (5) of section 796.07, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

796.07 Prohibiting prostitution and related acts.—

(2) It is unlawful:

(e) For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.

(5)

(b) In addition to any other penalty imposed, the court shall order a person convicted of a violation of paragraph (2)(f) to:

1. Perform 100 hours of community service; and

2. Pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, including such programs offered by faith-based providers, if such programs exist ~~program exists~~ in the judicial circuit in which the offender is sentenced.

(7) If the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of paragraph (2)(a) is a massage establishment that is or should be licensed under s. 480.043, the offense shall be reclassified to the next higher degree as follows:

(a) A misdemeanor of the second degree for a first violation is reclassified as a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A misdemeanor of the first degree for a second violation is reclassified as a felony of the third degree,



399382

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A felony of the third degree for a third or subsequent violation is reclassified as a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 9. Paragraph (a) of subsection (4) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a “sexual predator” under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim’s parent or guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim’s parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025; s. 827.071; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or



399382

at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

Section 10. Paragraph (a) of subsection (1) of section 943.0435, Florida Statutes, is amended to read:

943.0435 Sexual offenders required to register with the department; penalty.—

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



399382

(a)1. "Sexual offender" means a person who meets the criteria in sub-subparagraph a., sub-subparagraph b., sub-subparagraph c., or sub-subparagraph d., as follows:

a.(I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-sub-subparagraph or at least one offense listed in this sub-sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-subparagraph; and

(II) Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in sub-sub-subparagraph (I). For purposes of sub-sub-subparagraph (I), a sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention



399382

facility;

b. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;

c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed



399382

in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph; or

d. On or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense:

(I) Section 794.011, excluding s. 794.011(10);

(II) Section 800.04(4)(a)2. where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;

(III) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals; or

(IV) Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals.

2. For all qualifying offenses listed in sub-subparagraph (1)(a)1.d., the court shall make a written finding of the age of the offender at the time of the offense.

For each violation of a qualifying offense listed in this subsection, except for a violation of s. 794.011, the court shall make a written finding of the age of the victim at the time of the offense. For a violation of s. 800.04(4), the court shall also make a written finding indicating whether the offense involved sexual activity and indicating whether the offense involved force or coercion. For a violation of s. 800.04(5), the court shall also make a written finding that the offense did or did not involve unclothed genitals or genital area and that the



399382

offense did or did not involve the use of force or coercion.

Section 11. Paragraph (b) of subsection (1) of section 944.606, Florida Statutes, is amended to read:

944.606 Sexual offenders; notification upon release.—

(1) As used in this section:

(b) "Sexual offender" means a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this paragraph or at least one offense listed in this paragraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection, when the department has received verified information regarding such conviction; an offender's computerized criminal history record is not, in and of itself, verified information.

Section 12. Paragraph (a) of subsection (1) of section 944.607, Florida Statutes, is amended to read:

944.607 Notification to Department of Law Enforcement of



399382

information on sexual offenders.—

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

(a) "Sexual offender" means a person who is in the custody or control of, or under the supervision of, the department or is in the custody of a private correctional facility:

1. On or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this subparagraph or at least one offense listed in this subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this paragraph; or

2. Who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a





399382

result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard as to whether the person otherwise meets the criteria for registration as a sexual offender.

Section 13. For the purpose of incorporating the amendment made by this act to section 39.01, Florida Statutes, in a reference thereto, paragraph (p) of subsection (4) of section 394.495, Florida Statutes, is reenacted to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(4) The array of services may include, but is not limited to:

(p) Trauma-informed services for children who have suffered sexual exploitation as defined in s. 39.01(69)(g).

Section 14. For the purpose of incorporating the amendment made by this act to section 39.01, Florida Statutes, in references thereto, paragraph (c) of subsection (1) and paragraphs (a) and (b) of subsection (6) of section 409.1678, Florida Statutes, are reenacted to read:

409.1678 Specialized residential options for children who are victims of sexual exploitation.—

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

(c) "Sexually exploited child" means a child who has suffered sexual exploitation as defined in s. 39.01(69)(g) and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

(6) LOCATION INFORMATION.—

(a) Information about the location of a safe house, safe



399382

foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01(69)(g), which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such confidential and exempt information held by an agency before, on, or after the effective date of the exemption.

(b) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01(69)(g), may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations in the safe house, safe foster home, or other residential facility.

Section 15. For the purpose of incorporating the amendment made by this act to section 39.01, Florida Statutes, in a reference thereto, subsection (5) of section 960.065, Florida Statutes, is reenacted to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01(69)(g).

Section 16. For the purpose of incorporating the amendments made by this act to sections 775.21 and 782.04, Florida Statutes, in references thereto, paragraphs (d) and (n) of subsection (1) of section 39.806, Florida Statutes, are reenacted to read:

39.806 Grounds for termination of parental rights.—



399382

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(d) When the parent of a child is incarcerated and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a significant portion of the child's minority. When determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is



399382

in the best interest of the child. When determining harm, the court shall consider the following factors:

- a. The age of the child.
- b. The relationship between the child and the parent.
- c. The nature of the parent's current and past provision for the child's developmental, cognitive, psychological, and physical needs.
- d. The parent's history of criminal behavior, which may include the frequency of incarceration and the unavailability of the parent to the child due to incarceration.
- e. Any other factor the court deems relevant.

(n) The parent is convicted of an offense that requires the parent to register as a sexual predator under s. 775.21.

Section 17. For the purpose of incorporating the amendments made by this act to sections 775.21 and 782.04, Florida Statutes, in references thereto, paragraph (b) of subsection (4) of section 63.089, Florida Statutes, is reenacted to read:

63.089 Proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.—

(4) FINDING OF ABANDONMENT.—A finding of abandonment resulting in a termination of parental rights must be based upon clear and convincing evidence that a parent or person having legal custody has abandoned the child in accordance with the definition contained in s. 63.032. A finding of abandonment may also be based upon emotional abuse or a refusal to provide reasonable financial support, when able, to a birth mother during her pregnancy or on whether the person alleged to have abandoned the child, while being able, failed to establish contact with the child or accept responsibility for the child's



399382

welfare.

(b) The child has been abandoned when the parent of a child is incarcerated on or after October 1, 2001, in a federal, state, or county correctional institution and:

1. The period of time for which the parent has been or is expected to be incarcerated will constitute a significant portion of the child's minority. In determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by a court of competent jurisdiction to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, convicted of child abuse as defined in s. 827.03, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of a substantially similar offense in another jurisdiction. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated



399382

parent would be harmful to the child and, for this reason, termination of the parental rights of the incarcerated parent is in the best interests of the child.

Section 18. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, subsection (10) of section 95.11, Florida Statutes, is reenacted to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph (4) (d), an action for wrongful death seeking damages authorized under s. 768.21 brought against a natural person for an intentional tort resulting in death from acts described in s. 782.04 or s. 782.07 may be commenced at any time. This subsection shall not be construed to require an arrest, the filing of formal criminal charges, or a conviction for a violation of s. 782.04 or s. 782.07 as a condition for filing a civil action.

Section 19. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, paragraph (b) of subsection (1) and paragraphs (a), (b), and (c) of subsection (3) of section 775.082, Florida Statutes, are reenacted to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)



399382

(b)1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple



399382

defendants killed, intended to kill, or attempted to kill the victim.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed before October 1, 1983, by a term of imprisonment for life or for a term of at least 30 years.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4.a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of at least 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

5. Notwithstanding subparagraphs 1.-4., a person who is convicted under s. 782.04 of an offense that was reclassified as a life felony which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life





399382

or by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

6. For a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g), by a term of imprisonment for life.

(b)1. For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

2. Notwithstanding subparagraph 1., a person convicted under s. 782.04 of a first degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was



399382

reclassified as a first degree felony punishable by a term of years not exceeding life, which was committed before the person attained 18 years of age may be punished by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(c) Notwithstanding paragraphs (a) and (b), a person convicted of an offense that is not included in s. 782.04 but that is an offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18



399382

years of age may be punished by a term of imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(d).

Section 20. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, section 782.065, Florida Statutes, is reenacted to read:

782.065 Murder; law enforcement officer, correctional officer, correctional probation officer.—Notwithstanding ss. 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant shall be sentenced to life imprisonment without eligibility for release upon findings by the trier of fact that, beyond a reasonable doubt:

(1) The defendant committed murder in the first degree in violation of s. 782.04(1) and a death sentence was not imposed; murder in the second or third degree in violation of s. 782.04(2), (3), or (4); attempted murder in the first or second degree in violation of s. 782.04(1)(a)1. or (2); or attempted felony murder in violation of s. 782.051; and

(2) The victim of any offense described in subsection (1) was a law enforcement officer, part-time law enforcement officer, auxiliary law enforcement officer, correctional officer, part-time correctional officer, auxiliary correctional officer, correctional probation officer, part-time correctional



399382

probation officer, or auxiliary correctional probation officer, as those terms are defined in s. 943.10, engaged in the lawful performance of a legal duty.

Section 21. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, subsection (1) of section 921.16, Florida Statutes, is reenacted to read:

921.16 When sentences to be concurrent and when consecutive.—

(1) A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently. Any sentence for sexual battery as defined in chapter 794 or murder as defined in s. 782.04 must be imposed consecutively to any other sentence for sexual battery or murder which arose out of a separate criminal episode or transaction.

Section 22. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 948.062, Florida Statutes, is reenacted to read:

948.062 Reviewing and reporting serious offenses committed by offenders placed on probation or community control.—

(1) The department shall review the circumstances related



399382

to an offender placed on probation or community control who has been arrested while on supervision for the following offenses:

(a) Any murder as provided in s. 782.04;

Section 23. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 985.265, Florida Statutes, is reenacted to read:

985.265 Detention transfer and release; education; adult jails.—

(3)

(b) When a juvenile is released from secure detention or transferred to nonsecure detention, detention staff shall immediately notify the appropriate law enforcement agency, school personnel, and victim if the juvenile is charged with committing any of the following offenses or attempting to commit any of the following offenses:

1. Murder, under s. 782.04;
2. Sexual battery, under chapter 794;
3. Stalking, under s. 784.048; or
4. Domestic violence, as defined in s. 741.28.

Section 24. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 1012.315, Florida Statutes, is reenacted to read:

1012.315 Disqualification from employment.—A person is ineligible for educator certification, and instructional personnel and school administrators, as defined in s. 1012.01, are ineligible for employment in any position that requires direct contact with students in a district school system,



399382

charter school, or private school that accepts scholarship students under s. 1002.39 or s. 1002.395, if the person, instructional personnel, or school administrator has been convicted of:

(1) Any felony offense prohibited under any of the following statutes:

(d) Section 782.04, relating to murder.

Section 25. For the purpose of incorporating the amendment made by this act to sections 782.04 and 943.0435, Florida Statutes, in references thereto, paragraph (g) of subsection (2) of section 1012.467, Florida Statutes, is reenacted to read:

1012.467 Noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.—

(2)

(g) A noninstructional contractor for whom a criminal history check is required under this section may not have been convicted of any of the following offenses designated in the Florida Statutes, any similar offense in another jurisdiction, or any similar offense committed in this state which has been redesignated from a former provision of the Florida Statutes to one of the following offenses:

1. Any offense listed in s. 943.0435(1)(a)1., relating to the registration of an individual as a sexual offender.

2. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and the reporting of such sexual misconduct.

3. Section 394.4593, relating to sexual misconduct with certain mental health patients and the reporting of such sexual



399382

misconduct.

4. Section 775.30, relating to terrorism.

5. Section 782.04, relating to murder.

6. Section 787.01, relating to kidnapping.

7. Any offense under chapter 800, relating to lewdness and indecent exposure.

8. Section 826.04, relating to incest.

9. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

Section 26. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, subsections (1) and (2) of section 775.0823, Florida Statutes, are reenacted to read:

775.0823 Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.—The Legislature does hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to s. 27.01 or assistant state attorney appointed under s. 27.181; or against any justice or judge of a court described in Art. V of the State Constitution, which offense arises out of or in the scope of the officer's duty as a law enforcement or correctional officer, the state attorney's or assistant state attorney's duty as a prosecutor or investigator, or the justice's or judge's duty as a judicial officer, as follows:

(1) For murder in the first degree as described in s.



399382

782.04(1), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release.

(2) For attempted murder in the first degree as described in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

Section 27. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (i) of subsection (3) of section 921.0022, Florida Statutes, is reenacted to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.





399382

933	409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
934	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
935	560.123(8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
936	560.125(5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
937	655.50(10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
938	775.0844	1st	Aggravated white collar crime.
939	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual



399382

battery, robbery, burglary,  
aggravated fleeing or eluding  
with serious bodily injury or  
death, and other specified  
felonies.

940

782.051(1)                      1st      Attempted felony murder while  
perpetrating or attempting to  
perpetrate a felony enumerated  
in s. 782.04(3).

941

782.07(2)                      1st      Aggravated manslaughter of an  
elderly person or disabled  
adult.

942

787.01(1)(a)1.              1st,PBL      Kidnapping; hold for ransom or  
reward or as a shield or  
hostage.

943

787.01(1)(a)2.              1st,PBL      Kidnapping with intent to  
commit or facilitate commission  
of any felony.

944

787.01(1)(a)4.              1st,PBL      Kidnapping with intent to  
interfere with performance of  
any governmental or political  
function.

945

787.02(3)(a)              1st,PBL      False imprisonment; child under



399382

age 13; perpetrator also  
commits aggravated child abuse,  
sexual battery, or lewd or  
lascivious battery,  
molestation, conduct, or  
exhibition.

946

787.06(3)(c)1.           1st    Human trafficking for labor and  
services of an unauthorized  
alien child.

947

787.06(3)(d)           1st    Human trafficking using  
coercion for commercial sexual  
activity of an unauthorized  
adult alien.

948

787.06(3)(f)1.       1st,PBL Human trafficking for  
commercial sexual activity by  
the transfer or transport of  
any child from outside Florida  
to within the state.

949

790.161               1st    Attempted capital destructive  
device offense.

950

790.166(2)           1st,PBL Possessing, selling, using, or  
attempting to use a weapon of  
mass destruction.

951



399382

794.011(2) 1st Attempted sexual battery;  
victim less than 12 years of  
age.

794.011(2) Life Sexual battery; offender  
younger than 18 years and  
commits sexual battery on a  
person less than 12 years.

794.011(4)(a) 1st,PBL Sexual battery, certain  
circumstances; victim 12 years  
of age or older but younger  
than 18 years; offender 18  
years or older.

794.011(4)(b) 1st Sexual battery, certain  
circumstances; victim and  
offender 18 years of age or  
older.

794.011(4)(c) 1st Sexual battery, certain  
circumstances; victim 12 years  
of age or older; offender  
younger than 18 years.

794.011(4)(d) 1st,PBL Sexual battery, certain  
circumstances; victim 12 years  
of age or older; prior  
conviction for specified sex



399382

offenses.

957

794.011(8)(b)      1st,PBL      Sexual battery; engage in  
sexual conduct with minor 12 to  
18 years by person in familial  
or custodial authority.

958

794.08(2)      1st      Female genital mutilation;  
victim younger than 18 years of  
age.

959

800.04(5)(b)      Life      Lewd or lascivious molestation;  
victim less than 12 years;  
offender 18 years or older.

960

812.13(2)(a)      1st,PBL      Robbery with firearm or other  
deadly weapon.

961

812.133(2)(a)      1st,PBL      Carjacking; firearm or other  
deadly weapon.

962

812.135(2)(b)      1st      Home-invasion robbery with  
weapon.

963

817.535(3)(b)      1st      Filing false lien or other  
unauthorized document; second  
or subsequent offense; property  
owner is a public officer or  
employee.



399382

964

817.535(4)(a)2.           1st     Filing false claim or other  
  unauthorized document;  
  defendant is incarcerated or  
  under supervision.

965

817.535(5)(b)           1st     Filing false lien or other  
  unauthorized document; second  
  or subsequent offense; owner of  
  the property incurs financial  
  loss as a result of the false  
  instrument.

966

817.568(7)               2nd,  
                                  PBL     Fraudulent use of personal  
  identification information of  
  an individual under the age of  
  18 by his or her parent, legal  
  guardian, or person exercising  
  custodial authority.

967

827.03(2)(a)           1st     Aggravated child abuse.

968

847.0145(1)           1st     Selling, or otherwise  
  transferring custody or  
  control, of a minor.

969

847.0145(2)           1st     Purchasing, or otherwise  
  obtaining custody or control,  
  of a minor.



399382

970

859.01                      1st      Poisoning or introducing  
   bacteria, radioactive  
   materials, viruses, or chemical  
   compounds into food, drink,  
   medicine, or water with intent  
   to kill or injure another  
   person.

971

893.135                      1st      Attempted capital trafficking  
   offense.

972

893.135 (1) (a) 3.              1st      Trafficking in cannabis, more  
   than 10,000 lbs.

973

893.135                      1st      Trafficking in cocaine, more  
    (1) (b) 1.c.                      than 400 grams, less than 150  
   kilograms.

974

893.135                      1st      Trafficking in illegal drugs,  
    (1) (c) 1.c.                      more than 28 grams, less than  
   30 kilograms.

975

893.135                      1st      Trafficking in hydrocodone, 200  
    (1) (c) 2.d.                      grams or more, less than 30  
   kilograms.

976

893.135                      1st      Trafficking in oxycodone, 100  
    (1) (c) 3.d.                      grams or more, less than 30



399382

kilograms.

977

893.135                      1st      Trafficking in phencyclidine,  
(1) (d) 1.c.                      more than 400 grams.

978

893.135                      1st      Trafficking in methaqualone,  
(1) (e) 1.c.                      more than 25 kilograms.

979

893.135                      1st      Trafficking in amphetamine,  
(1) (f) 1.c.                      more than 200 grams.

980

893.135                      1st      Trafficking in gamma-  
(1) (h) 1.c.                      hydroxybutyric acid (GHB), 10  
kilograms or more.

981

893.135                      1st      Trafficking in 1,4-Butanediol,  
(1) (j) 1.c.                      10 kilograms or more.

982

893.135                      1st      Trafficking in Phenethylamines,  
(1) (k) 2.c.                      400 grams or more.

983

896.101 (5) (c)              1st      Money laundering, financial  
instruments totaling or  
exceeding \$100,000.

984

896.104 (4) (a) 3.              1st      Structuring transactions to  
evade reporting or registration  
requirements, financial  
transactions totaling or





399382

exceeding \$100,000.

Section 28. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (i) of subsection (3) of section 947.146, Florida Statutes, is reenacted to read:

947.146 Control Release Authority.—

(3) Within 120 days prior to the date the state correctional system is projected pursuant to s. 216.136 to exceed 99 percent of total capacity, the authority shall determine eligibility for and establish a control release date for an appropriate number of parole ineligible inmates committed to the department and incarcerated within the state who have been determined by the authority to be eligible for discretionary early release pursuant to this section. In establishing control release dates, it is the intent of the Legislature that the authority prioritize consideration of eligible inmates closest to their tentative release date. The authority shall rely upon commitment data on the offender information system maintained by the department to initially identify inmates who are to be reviewed for control release consideration. The authority may use a method of objective risk assessment in determining if an eligible inmate should be released. Such assessment shall be a part of the department's management information system. However, the authority shall have sole responsibility for determining control release eligibility, establishing a control release date, and effectuating the release of a sufficient number of inmates to maintain the inmate



399382

population between 99 percent and 100 percent of total capacity.  
Inmates who are ineligible for control release are inmates who  
are parole eligible or inmates who:

(i) Are convicted, or have been previously convicted, of  
committing or attempting to commit murder in the first, second,  
or third degree under s. 782.04(1), (2), (3), or (4), or have  
ever been convicted of any degree of murder or attempted murder  
in another jurisdiction;

In making control release eligibility determinations under this  
subsection, the authority may rely on any document leading to or  
generated during the course of the criminal proceedings,  
including, but not limited to, any presentence or postsentence  
investigation or any information contained in arrest reports  
relating to circumstances of the offense.

Section 29. For the purpose of incorporating the amendment  
made by this act to section 782.04, Florida Statutes, in a  
reference thereto, paragraph (a) of subsection (9) of section  
394.912, Florida Statutes, is reenacted to read:

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

(9) "Sexually violent offense" means:

(a) Murder of a human being while engaged in sexual battery  
in violation of s. 782.04(1)(a)2.;

Section 30. For the purpose of incorporating the amendment  
made by this act to section 787.06, Florida Statutes, in a  
reference thereto, subsection (19) of section 775.15, Florida  
Statutes, is reenacted to read:

775.15 Time limitations; general time limitations;  
exceptions.—



399382

(19) A prosecution for a violation of s. 787.06 may be commenced at any time. This subsection applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2014.

Section 31. For the purpose of incorporating the amendment made by this act to section 796.07, Florida Statutes, in a reference thereto, subsection (4) of section 60.05, Florida Statutes, is reenacted to read:

60.05 Abatement of nuisances.—

(4) On trial if the existence of a nuisance is shown, the court shall issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance and shall adjudge that the costs are a lien on all personal property found in the place of the nuisance and on the failure of the property to bring enough to pay the costs, then on the real estate occupied by the nuisance. No lien shall attach to the real estate of any other than said persons unless 5 days' written notice has been given to the owner or his or her agent who fails to begin to abate the nuisance within said 5 days. In a proceeding abating a nuisance pursuant to s. 823.10 or s. 823.05, if a tenant has been convicted of an offense under chapter 893 or s. 796.07, the court may order the tenant to vacate the property within 72 hours if the tenant and owner of the premises are parties to the nuisance abatement action and the order will lead to the abatement of the nuisance.

Section 32. For the purpose of incorporating the amendment made by this act to section 796.07, Florida Statutes, in a reference thereto, paragraph (m) of subsection (1) of section 775.0877, Florida Statutes, is reenacted to read:



399382

775.0877 Criminal transmission of HIV; procedures;  
penalties.—

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, or the attempt thereof, which offense or attempted offense involves the transmission of body fluids from one person to another:

(m) Sections 796.07 and 796.08, relating to prostitution; the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

Section 33. For the purpose of incorporating the amendment made by this act to section 796.07, Florida Statutes, in references thereto, subsections (2) and (3) of section 796.08, Florida Statutes, are reenacted to read:

796.08 Screening for HIV and sexually transmissible diseases; providing penalties.—

(2) A person arrested under s. 796.07 may request screening for a sexually transmissible disease under direction of the



399382

Department of Health and, if infected, shall submit to appropriate treatment and counseling. A person who requests screening for a sexually transmissible disease under this subsection must pay any costs associated with such screening.

(3) A person convicted under s. 796.07 of prostitution or procuring another to commit prostitution must undergo screening for a sexually transmissible disease, including, but not limited to, screening to detect exposure to the human immunodeficiency virus, under direction of the Department of Health. If the person is infected, he or she must submit to treatment and counseling prior to release from probation, community control, or incarceration. Notwithstanding the provisions of s. 384.29, the results of tests conducted pursuant to this subsection shall be made available by the Department of Health to the offender, medical personnel, appropriate state agencies, state attorneys, and courts of appropriate jurisdiction in need of such information in order to enforce the provisions of this chapter.

Section 34. For the purpose of incorporating the amendment made by this act to section 796.07, Florida Statutes, in a reference thereto, subsection (2) of section 796.09, Florida Statutes, is reenacted to read:

796.09 Coercion; civil cause of action; evidence; defenses; attorney's fees.—

(2) As used in this section, the term "prostitution" has the same meaning as in s. 796.07.

Section 35. For the purpose of incorporating the amendment made by this act to section 796.07, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is reenacted to read:



399382

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or s. 440.106, relating to workers' compensation.

7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

9. Section 499.0051, relating to crimes involving contraband and adulterated drugs.

10. Part IV of chapter 501, relating to telemarketing.

11. Chapter 517, relating to sale of securities and investor protection.

12. Section 550.235 or s. 550.3551, relating to dogracing



399382

and horseracing.

13. Chapter 550, relating to jai alai frontons.

14. Section 551.109, relating to slot machine gaming.

15. Chapter 552, relating to the manufacture, distribution, and use of explosives.

16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

17. Chapter 562, relating to beverage law enforcement.

18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

19. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

20. Chapter 687, relating to interest and usurious practices.

21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

23. Section 777.03, relating to commission of crimes by accessories after the fact.

24. Chapter 782, relating to homicide.

25. Chapter 784, relating to assault and battery.

26. Chapter 787, relating to kidnapping or human trafficking.



399382

- 1187           27. Chapter 790, relating to weapons and firearms.
- 1188           28. Chapter 794, relating to sexual battery, but only if
- 1189 such crime was committed with the intent to benefit, promote, or
- 1190 further the interests of a criminal gang, or for the purpose of
- 1191 increasing a criminal gang member's own standing or position
- 1192 within a criminal gang.
- 1193           29. Former s. 796.03, former s. 796.035, s. 796.04, s.
- 1194 796.05, or s. 796.07, relating to prostitution.
- 1195           30. Chapter 806, relating to arson and criminal mischief.
- 1196           31. Chapter 810, relating to burglary and trespass.
- 1197           32. Chapter 812, relating to theft, robbery, and related
- 1198 crimes.
- 1199           33. Chapter 815, relating to computer-related crimes.
- 1200           34. Chapter 817, relating to fraudulent practices, false
- 1201 pretenses, fraud generally, and credit card crimes.
- 1202           35. Chapter 825, relating to abuse, neglect, or
- 1203 exploitation of an elderly person or disabled adult.
- 1204           36. Section 827.071, relating to commercial sexual
- 1205 exploitation of children.
- 1206           37. Section 828.122, relating to fighting or baiting
- 1207 animals.
- 1208           38. Chapter 831, relating to forgery and counterfeiting.
- 1209           39. Chapter 832, relating to issuance of worthless checks
- 1210 and drafts.
- 1211           40. Section 836.05, relating to extortion.
- 1212           41. Chapter 837, relating to perjury.
- 1213           42. Chapter 838, relating to bribery and misuse of public
- 1214 office.
- 1215           43. Chapter 843, relating to obstruction of justice.





399382

44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 36. For the purpose of incorporating the amendment made by this act to section 796.07, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 948.16, Florida Statutes, is reenacted to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program.—

(1)(a) A person who is charged with a nonviolent, nontraffic-related misdemeanor and identified as having a substance abuse problem or who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, prostitution under s. 796.07, possession of alcohol while under 21 years of age under s. 562.111, or possession of a controlled substance without a valid prescription under s.



399382

499.03, and who has not previously been convicted of a felony, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a period based on the program requirements and the treatment plan for the offender, upon motion of either party or the court's own motion, except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

Section 37. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 39.0139, Florida Statutes, is reenacted to read:

39.0139 Visitation or other contact; restrictions.—

(3) PRESUMPTION OF DETRIMENT.—

(a) A rebuttable presumption of detriment to a child is created when:

1. A court of competent jurisdiction has found probable cause exists that a parent or caregiver has sexually abused a child as defined in s. 39.01;

2. A parent or caregiver has been found guilty of, regardless of adjudication, or has entered a plea of guilty or nolo contendere to, charges under the following statutes or



399382

substantially similar statutes of other jurisdictions:

a. Section 787.04, relating to removing minors from the state or concealing minors contrary to court order;

b. Section 794.011, relating to sexual battery;

c. Section 798.02, relating to lewd and lascivious behavior;

d. Chapter 800, relating to lewdness and indecent exposure;

e. Section 826.04, relating to incest; or

f. Chapter 827, relating to the abuse of children; or

3. A court of competent jurisdiction has determined a parent or caregiver to be a sexual predator as defined in s. 775.21 or a parent or caregiver has received a substantially similar designation under laws of another jurisdiction.

Section 38. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (b) of subsection (6) of section 39.509, Florida Statutes, is reenacted to read:

39.509 Grandparents rights.—Notwithstanding any other provision of law, a maternal or paternal grandparent as well as a stepgrandparent is entitled to reasonable visitation with his or her grandchild who has been adjudicated a dependent child and taken from the physical custody of the parent unless the court finds that such visitation is not in the best interest of the child or that such visitation would interfere with the goals of the case plan. Reasonable visitation may be unsupervised and, where appropriate and feasible, may be frequent and continuing. Any order for visitation or other contact must conform to the provisions of s. 39.0139.

(6) In determining whether grandparental visitation is not



399382

in the child's best interest, consideration may be given to the following:

(b) The designation by a court as a sexual predator as defined in s. 775.21 or a substantially similar designation under laws of another jurisdiction.

Section 39. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, subsection (3) of section 63.092, Florida Statutes, is reenacted to read:

63.092 Report to the court of intended placement by an adoption entity; at-risk placement; preliminary study.—

(3) PRELIMINARY HOME STUDY.—Before placing the minor in the intended adoptive home, a preliminary home study must be performed by a licensed child-placing agency, a child-caring agency registered under s. 409.176, a licensed professional, or an agency described in s. 61.20(2), unless the adoptee is an adult or the petitioner is a stepparent or a relative. If the adoptee is an adult or the petitioner is a stepparent or a relative, a preliminary home study may be required by the court for good cause shown. The department is required to perform the preliminary home study only if there is no licensed child-placing agency, child-caring agency registered under s. 409.176, licensed professional, or agency described in s. 61.20(2), in the county where the prospective adoptive parents reside. The preliminary home study must be made to determine the suitability of the intended adoptive parents and may be completed prior to identification of a prospective adoptive minor. A favorable preliminary home study is valid for 1 year after the date of its completion. Upon its completion, a signed copy of the home study



399382

must be provided to the intended adoptive parents who were the subject of the home study. A minor may not be placed in an intended adoptive home before a favorable preliminary home study is completed unless the adoptive home is also a licensed foster home under s. 409.175. The preliminary home study must include, at a minimum:

- (a) An interview with the intended adoptive parents;
- (b) Records checks of the department's central abuse registry and criminal records correspondence checks under s. 39.0138 through the Department of Law Enforcement on the intended adoptive parents;
- (c) An assessment of the physical environment of the home;
- (d) A determination of the financial security of the intended adoptive parents;
- (e) Documentation of counseling and education of the intended adoptive parents on adoptive parenting;
- (f) Documentation that information on adoption and the adoption process has been provided to the intended adoptive parents;
- (g) Documentation that information on support services available in the community has been provided to the intended adoptive parents; and
- (h) A copy of each signed acknowledgment of receipt of disclosure required by s. 63.085.

If the preliminary home study is favorable, a minor may be placed in the home pending entry of the judgment of adoption. A minor may not be placed in the home if the preliminary home study is unfavorable. If the preliminary home study is



399382

unfavorable, the adoption entity may, within 20 days after receipt of a copy of the written recommendation, petition the court to determine the suitability of the intended adoptive home. A determination as to suitability under this subsection does not act as a presumption of suitability at the final hearing. In determining the suitability of the intended adoptive home, the court must consider the totality of the circumstances in the home. A minor may not be placed in a home in which there resides any person determined by the court to be a sexual predator as defined in s. 775.21 or to have been convicted of an offense listed in s. 63.089(4)(b)2.

Section 40. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (i) of subsection (3) and subsection (6) of section 68.07, Florida Statutes, are reenacted to read:

68.07 Change of name.—

(3) Each petition shall be verified and show:

(i) Whether the petitioner has ever been required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435.

(6) The clerk of the court must, within 5 business days after the filing of the final judgment, send a report of the judgment to the Department of Law Enforcement on a form to be furnished by that department. If the petitioner is required to register as a sexual predator or a sexual offender pursuant to s. 775.21 or s. 943.0435, the clerk of court shall electronically notify the Department of Law Enforcement of the name change, in a manner prescribed by that department, within 2



399382

business days after the filing of the final judgment. The Department of Law Enforcement must send a copy of the report to the Department of Highway Safety and Motor Vehicles, which may be delivered by electronic transmission. The report must contain sufficient information to identify the petitioner, including the results of the criminal history records check if applicable, the new name of the petitioner, and the file number of the judgment. The Department of Highway Safety and Motor Vehicles shall monitor the records of any sexual predator or sexual offender whose name has been provided to it by the Department of Law Enforcement. If the sexual predator or sexual offender does not obtain a replacement driver license or identification card within the required time as specified in s. 775.21 or s. 943.0435, the Department of Highway Safety and Motor Vehicles shall notify the Department of Law Enforcement. The Department of Law Enforcement shall notify applicable law enforcement agencies of the predator's or offender's failure to comply with registration requirements. Any information retained by the Department of Law Enforcement and the Department of Highway Safety and Motor Vehicles may be revised or supplemented by said departments to reflect changes made by the final judgment. With respect to a person convicted of a felony in another state or of a federal offense, the Department of Law Enforcement must send the report to the respective state's office of law enforcement records or to the office of the Federal Bureau of Investigation. The Department of Law Enforcement may forward the report to any other law enforcement agency it believes may retain information related to the petitioner.

Section 41. For the purpose of incorporating the amendments



399382

made by this act to sections 775.21, 943.0435, and 944.607, Florida Statutes, in references thereto, subsection (3) of section 322.141, Florida Statutes, is reenacted to read:

322.141 Color or markings of certain licenses or identification cards.—

(3) All licenses for the operation of motor vehicles or identification cards originally issued or reissued by the department to persons who are designated as sexual predators under s. 775.21 or subject to registration as sexual offenders under s. 943.0435 or s. 944.607, or who have a similar designation or are subject to a similar registration under the laws of another jurisdiction, shall have on the front of the license or identification card the following:

(a) For a person designated as a sexual predator under s. 775.21 or who has a similar designation under the laws of another jurisdiction, the marking "SEXUAL PREDATOR."

(b) For a person subject to registration as a sexual offender under s. 943.0435 or s. 944.607, or subject to a similar registration under the laws of another jurisdiction, the marking "943.0435, F.S."

Section 42. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraphs (a) and (c) of subsection (2) of section 397.4872, Florida Statutes, are reenacted to read:

397.4872 Exemption from disqualification; publication.—

(2) The department may exempt a person from ss. 397.487(6) and 397.4871(5) if it has been at least 3 years since the person has completed or been lawfully released from confinement,





399382

supervision, or sanction for the disqualifying offense. An exemption from the disqualifying offenses may not be given under any circumstances for any person who is a:

(a) Sexual predator pursuant to s. 775.21;

(c) Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

Section 43. For the purpose of incorporating the amendments made by this act to sections 775.21, 943.0435, and 944.607, Florida Statutes, in references thereto, paragraphs (e) and (f) of subsection (4) of section 775.13, Florida Statutes, are reenacted to read:

775.13 Registration of convicted felons, exemptions; penalties.—

(4) This section does not apply to an offender:

(e) Who is a sexual predator and has registered as required under s. 775.21;

(f) Who is a sexual offender and has registered as required in s. 943.0435 or s. 944.607; or

Section 44. For the purpose of incorporating the amendments made by this act to sections 775.21, 943.0435, 944.606, and 944.607, Florida Statutes, in references thereto, section 775.25, Florida Statutes, is reenacted to read:

775.25 Prosecutions for acts or omissions.—A sexual predator or sexual offender who commits any act or omission in violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s. 944.607, or former s. 947.177 may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the



399382

sexual predator or sexual offender, in the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator or sexual offender, in the county where the sexual predator or sexual offender was released from incarceration, or in the county of the intended address of the sexual predator or sexual offender as reported by the predator or offender prior to his or her release from incarceration. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

Section 45. For the purpose of incorporating the amendments made by this act to sections 775.21, 943.0435, and 944.607, Florida Statutes, in references thereto, paragraph (b) of subsection (3) of section 775.261, Florida Statutes, is reenacted to read:

775.261 The Florida Career Offender Registration Act.—

(3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.—

(b) This section does not apply to any person who has been designated as a sexual predator and required to register under s. 775.21 or who is required to register as a sexual offender under s. 943.0435 or s. 944.607. However, if a person is no longer required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435 or s. 944.607, the person must register as a career offender under this section if the person is otherwise designated as a career offender as provided in this section.

Section 46. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, subsection (1) of section 794.075, Florida



399382

Statutes, is reenacted to read:

794.075 Sexual predators; erectile dysfunction drugs.—

(1) A person may not possess a prescription drug, as defined in s. 499.003(43), for the purpose of treating erectile dysfunction if the person is designated as a sexual predator under s. 775.21.

Section 47. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 903.0351, Florida Statutes, is reenacted to read:

903.0351 Restrictions on pretrial release pending probation-violation hearing or community-control-violation hearing.—

(1) In the instance of an alleged violation of felony probation or community control, bail or any other form of pretrial release shall not be granted prior to the resolution of the probation-violation hearing or the community-control-violation hearing to:

(c) A person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense as defined in s. 948.06(8)(c) on or after the effective date of this act.

Section 48. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (m) of subsection (2) of section 903.046, Florida Statutes, is reenacted to read:



399382

903.046 Purpose of and criteria for bail determination.—

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

(m) Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under chapter 316, is required to register as a sexual offender under s. 943.0435 or a sexual predator under s. 775.21; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Section 49. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (o) of subsection (5) of section 921.141, Florida Statutes, is reenacted to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

Section 50. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, subsection (1) of section 938.10, Florida Statutes, is reenacted to read:

938.10 Additional court cost imposed in cases of certain crimes.—



399382

(1) If a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, any offense against a minor in violation of s. 784.085, chapter 787, chapter 794, former s. 796.03, former s. 796.035, s. 800.04, chapter 827, s. 847.012, s. 847.0133, s. 847.0135(5), s. 847.0138, s. 847.0145, s. 893.147(3), or s. 985.701, or any offense in violation of s. 775.21, s. 823.07, s. 847.0125, s. 847.0134, or s. 943.0435, the court shall impose a court cost of \$151 against the offender in addition to any other cost or penalty required by law.

Section 51. For the purpose of incorporating the amendments made by this act to sections 775.21, 944.606, and 944.607, Florida Statutes, in references thereto, subsections (3), (4), and (5) of section 943.0435, Florida Statutes, are reenacted to read:

943.0435 Sexual offenders required to register with the department; penalty.—

(3) Within 48 hours after the report required under subsection (2), a sexual offender shall report in person at a driver license office of the Department of Highway Safety and Motor Vehicles, unless a driver license or identification card that complies with the requirements of s. 322.141(3) was previously secured or updated under s. 944.607. At the driver license office the sexual offender shall:

(a) If otherwise qualified, secure a Florida driver license, renew a Florida driver license, or secure an identification card. The sexual offender shall identify himself or herself as a sexual offender who is required to comply with this section and shall provide proof that the sexual offender reported as required in subsection (2). The sexual offender



399382

shall provide any of the information specified in subsection (2), if requested. The sexual offender shall submit to the taking of a photograph for use in issuing a driver license, renewed license, or identification card, and for use by the department in maintaining current records of sexual offenders.

(b) Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver license or identification card as required by this section. The driver license or identification card issued must be in compliance with s. 322.141(3).

(c) Provide, upon request, any additional information necessary to confirm the identity of the sexual offender, including a set of fingerprints.

(4)(a) Each time a sexual offender's driver license or identification card is subject to renewal, and, without regard to the status of the offender's driver license or identification card, within 48 hours after any change in the offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process, the offender shall report in person to a driver license office, and is subject to the requirements specified in subsection (3). The Department of Highway Safety and Motor Vehicles shall forward to the department all photographs and information provided by sexual offenders. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual offenders as provided in this section and ss. 943.043 and 944.606. A sexual



399382

offender who is unable to secure or update a driver license or identification card with the Department of Highway Safety and Motor Vehicles as provided in subsection (3) and this subsection shall also report any change in the sexual offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles.

(b)1. A sexual offender who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual offender shall specify the date upon which he or she intends to or did vacate such residence. The sexual offender must provide or update all of the registration information required under paragraph (2)(b). The sexual offender must provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

2. A sexual offender shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual offender must



399382

provide the addresses and locations where he or she maintains a transient residence. Each sheriff's office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this subparagraph. Reporting to the sheriff's office as required by this subparagraph does not exempt registrants from any reregistration requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this subparagraph. The sheriff's office shall, within 2 business days, electronically submit and update all information provided by the sexual offender to the department.

(c) A sexual offender who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the offender indicated he or she would or did vacate such residence, report in person to the agency to which he or she reported pursuant to paragraph (b) for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under paragraph (b) but fails to make a report as required under this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) The failure of a sexual offender who maintains a transient residence to report in person to the sheriff's office





399382

every 30 days as required in subparagraph (b)2. is punishable as provided in subsection (9).

(e) A sexual offender shall register all electronic mail addresses and Internet identifiers with the department before using such electronic mail addresses and Internet identifiers. The department shall establish an online system through which sexual offenders may securely access and update all electronic mail address and Internet identifier information.

(5) This section does not apply to a sexual offender who is also a sexual predator, as defined in s. 775.21. A sexual predator must register as required under s. 775.21.

Section 52. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (a) of subsection (4) and subsection (9) of section 944.607, Florida Statutes, are reenacted to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

(4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated shall register with the Department of Corrections within 3 business days after sentencing for a registrable offense and otherwise provide information as required by this subsection.

(a) The sexual offender shall provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); all home telephone



399382

numbers and cellular telephone numbers; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is under supervision in this state, including any rural route address or post office box; if no permanent or temporary address, any transient residence within the state; and address, location or description, and dates of any current or known future temporary residence within the state or out of state. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has. The Department of Corrections shall verify the address of each sexual offender in the manner described in ss. 775.21 and 943.0435. The department shall report to the Department of Law Enforcement any failure by a sexual predator or sexual offender to comply with registration requirements.

(9) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register and obtain a distinctive driver license or identification card in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register and obtain a distinctive driver license or identification card as required under s. 775.21. A sexual offender who fails to comply with the requirements of s.



399382

943.0435 is subject to the penalties provided in s. 943.0435(9).

Section 53. For the purpose of incorporating the amendments made by this act to sections 775.21 and 944.607, Florida Statutes, in references thereto, subsection (7) of section 944.608, Florida Statutes, is reenacted to read:

944.608 Notification to Department of Law Enforcement of information on career offenders.—

(7) A career offender who is under the supervision of the department but who is not incarcerated shall, in addition to the registration requirements provided in subsection (3), register in the manner provided in s. 775.261(4)(c), unless the career offender is a sexual predator, in which case he or she shall register as required under s. 775.21, or is a sexual offender, in which case he or she shall register as required in s.

944.607. A career offender who fails to comply with the requirements of s. 775.261(4) is subject to the penalties provided in s. 775.261(8).

Section 54. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in references thereto, subsection (4) of section 944.609, Florida Statutes, is reenacted to read:

944.609 Career offenders; notification upon release.—

(4) The department or any law enforcement agency may notify the community and the public of a career offender's presence in the community. However, with respect to a career offender who has been found to be a sexual predator under s. 775.21, the Department of Law Enforcement or any other law enforcement agency must inform the community and the public of the career offender's presence in the community, as provided in s. 775.21.



399382

Section 55. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (c) of subsection (2) and subsections (10) and (12) of section 947.1405, Florida Statutes, are reenacted to read:

947.1405 Conditional release program.—

(2) Any inmate who:

(c) Is found to be a sexual predator under s. 775.21 or former s. 775.23,

shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions, including payment of the cost of supervision pursuant to s. 948.09. Such supervision shall be applicable to all sentences within the overall term of sentences if an inmate's overall term of sentences includes one or more sentences that are eligible for conditional release supervision as provided herein. Effective July 1, 1994, and applicable for offenses committed on or after that date, the commission may require, as a condition of conditional release, that the releasee make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the releasee while in that detention facility. The commission, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the releasee, the present



399382

1796 and potential future financial needs and earning ability of the  
1797 releasee, and dependents, and other appropriate factors. If any  
1798 inmate placed on conditional release supervision is also subject  
1799 to probation or community control, resulting from a probationary  
1800 or community control split sentence within the overall term of  
1801 sentences, the Department of Corrections shall supervise such  
1802 person according to the conditions imposed by the court and the  
1803 commission shall defer to such supervision. If the court revokes  
1804 probation or community control and resentsences the offender to a  
1805 term of incarceration, such revocation also constitutes a  
1806 sufficient basis for the revocation of the conditional release  
1807 supervision on any nonprobationary or noncommunity control  
1808 sentence without further hearing by the commission. If any such  
1809 supervision on any nonprobationary or noncommunity control  
1810 sentence is revoked, such revocation may result in a forfeiture  
1811 of all gain-time, and the commission may revoke the resulting  
1812 deferred conditional release supervision or take other action it  
1813 considers appropriate. If the term of conditional release  
1814 supervision exceeds that of the probation or community control,  
1815 then, upon expiration of the probation or community control,  
1816 authority for the supervision shall revert to the commission and  
1817 the supervision shall be subject to the conditions imposed by  
1818 the commission. A panel of no fewer than two commissioners shall  
1819 establish the terms and conditions of any such release. If the  
1820 offense was a controlled substance violation, the conditions  
1821 shall include a requirement that the offender submit to random  
1822 substance abuse testing intermittently throughout the term of  
1823 conditional release supervision, upon the direction of the  
1824 correctional probation officer as defined in s. 943.10(3). The



399382

commission shall also determine whether the terms and conditions of such release have been violated and whether such violation warrants revocation of the conditional release.

(10) Effective for a releasee whose crime was committed on or after September 1, 2005, in violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145, and the unlawful activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older or for a releasee who is designated as a sexual predator pursuant to s. 775.21, in addition to any other provision of this section, the commission must order electronic monitoring for the duration of the releasee's supervision.

(12) In addition to all other conditions imposed, for a releasee who is subject to conditional release for a crime that was committed on or after May 26, 2010, and who has been convicted at any time of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s. 943.0435(1)(a)1.a.(I), or a similar offense in another jurisdiction against a victim who was under 18 years of age at the time of the offense, if the releasee has not received a pardon for any felony or similar law of another jurisdiction necessary for the operation of this subsection, if a conviction of a felony or similar law of another jurisdiction necessary for the operation of this subsection has not been set aside in any postconviction proceeding, or if the releasee has not been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354, the commission must impose the following conditions:

(a) A prohibition on visiting schools, child care



399382

facilities, parks, and playgrounds without prior approval from the releasee's supervising officer. The commission may also designate additional prohibited locations to protect a victim. The prohibition ordered under this paragraph does not prohibit the releasee from visiting a school, child care facility, park, or playground for the sole purpose of attending a religious service as defined in s. 775.0861 or picking up or dropping off the releasee's child or grandchild at a child care facility or school.

(b) A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume without prior approval from the commission.

Section 56. For the purpose of incorporating the amendments made by this act to sections 782.04, 775.21, 943.0435, and 944.607, Florida Statutes, in references thereto, subsection (4) and paragraphs (b), (c), and (d) of subsection (8) of section 948.06, Florida Statutes, are reenacted to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(4) Notwithstanding any other provision of this section, a felony probationer or an offender in community control who is arrested for violating his or her probation or community control in a material respect may be taken before the court in the county or circuit in which the probationer or offender was



399382

1883 arrested. That court shall advise him or her of the charge of a  
1884 violation and, if such charge is admitted, shall cause him or  
1885 her to be brought before the court that granted the probation or  
1886 community control. If the violation is not admitted by the  
1887 probationer or offender, the court may commit him or her or  
1888 release him or her with or without bail to await further  
1889 hearing. However, if the probationer or offender is under  
1890 supervision for any criminal offense proscribed in chapter 794,  
1891 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a  
1892 registered sexual predator or a registered sexual offender, or  
1893 is under supervision for a criminal offense for which he or she  
1894 would meet the registration criteria in s. 775.21, s. 943.0435,  
1895 or s. 944.607 but for the effective date of those sections, the  
1896 court must make a finding that the probationer or offender is  
1897 not a danger to the public prior to release with or without  
1898 bail. In determining the danger posed by the offender's or  
1899 probationer's release, the court may consider the nature and  
1900 circumstances of the violation and any new offenses charged; the  
1901 offender's or probationer's past and present conduct, including  
1902 convictions of crimes; any record of arrests without conviction  
1903 for crimes involving violence or sexual crimes; any other  
1904 evidence of allegations of unlawful sexual conduct or the use of  
1905 violence by the offender or probationer; the offender's or  
1906 probationer's family ties, length of residence in the community,  
1907 employment history, and mental condition; his or her history and  
1908 conduct during the probation or community control supervision  
1909 from which the violation arises and any other previous  
1910 supervisions, including disciplinary records of previous  
1911 incarcerations; the likelihood that the offender or probationer





399382

will engage again in a criminal course of conduct; the weight of the evidence against the offender or probationer; and any other facts the court considers relevant. The court, as soon as is practicable, shall give the probationer or offender an opportunity to be fully heard on his or her behalf in person or by counsel. After the hearing, the court shall make findings of fact and forward the findings to the court that granted the probation or community control and to the probationer or offender or his or her attorney. The findings of fact by the hearing court are binding on the court that granted the probation or community control. Upon the probationer or offender being brought before it, the court that granted the probation or community control may revoke, modify, or continue the probation or community control or may place the probationer into community control as provided in this section. However, the probationer or offender shall not be released and shall not be admitted to bail, but shall be brought before the court that granted the probation or community control if any violation of felony probation or community control other than a failure to pay costs or fines or make restitution payments is alleged to have been committed by:

(a) A violent felony offender of special concern, as defined in this section;

(b) A person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense as defined in this section; or

(c) A person who is on felony probation or community control and has previously been found by a court to be a



399382

habitual violent felony offender as defined in s. 775.084(1)(b),  
a three-time violent felony offender as defined in s.  
775.084(1)(c), or a sexual predator under s. 775.21, and who is  
arrested for committing a qualifying offense as defined in this  
section on or after the effective date of this act.

(8)

(b) For purposes of this section and ss. 903.0351, 948.064,  
and 921.0024, the term "violent felony offender of special  
concern" means a person who is on:

1. Felony probation or community control related to the  
commission of a qualifying offense committed on or after the  
effective date of this act;

2. Felony probation or community control for any offense  
committed on or after the effective date of this act, and has  
previously been convicted of a qualifying offense;

3. Felony probation or community control for any offense  
committed on or after the effective date of this act, and is  
found to have violated that probation or community control by  
committing a qualifying offense;

4. Felony probation or community control and has previously  
been found by a court to be a habitual violent felony offender  
as defined in s. 775.084(1)(b) and has committed a qualifying  
offense on or after the effective date of this act;

5. Felony probation or community control and has previously  
been found by a court to be a three-time violent felony offender  
as defined in s. 775.084(1)(c) and has committed a qualifying  
offense on or after the effective date of this act; or

6. Felony probation or community control and has previously  
been found by a court to be a sexual predator under s. 775.21



399382

and has committed a qualifying offense on or after the effective date of this act.

(c) For purposes of this section, the term "qualifying offense" means any of the following:

1. Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), or luring or enticing a child under s. 787.025(2) (b) or (c).

2. Murder or attempted murder under s. 782.04, attempted felony murder under s. 782.051, or manslaughter under s. 782.07.

3. Aggravated battery or attempted aggravated battery under s. 784.045.

4. Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8) (b) or (c).

5. Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), lewd or lascivious molestation under s. 800.04(5) (b) or (c)2., lewd or lascivious conduct under s. 800.04(6) (b), lewd or lascivious exhibition under s. 800.04(7) (b), or lewd or lascivious exhibition on computer under s. 847.0135(5) (b).

6. Robbery or attempted robbery under s. 812.13, carjacking or attempted carjacking under s. 812.133, or home invasion robbery or attempted home invasion robbery under s. 812.135.

7. Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025.

8. Sexual performance by a child or attempted sexual performance by a child under s. 827.071.



399382

1999           9. Computer pornography under s. 847.0135(2) or (3),  
2000 transmission of child pornography under s. 847.0137, or selling  
2001 or buying of minors under s. 847.0145.  
2002           10. Poisoning food or water under s. 859.01.  
2003           11. Abuse of a dead human body under s. 872.06.  
2004           12. Any burglary offense or attempted burglary offense that  
2005 is either a first degree felony or second degree felony under s.  
2006 810.02(2) or (3).  
2007           13. Arson or attempted arson under s. 806.01(1).  
2008           14. Aggravated assault under s. 784.021.  
2009           15. Aggravated stalking under s. 784.048(3), (4), (5), or  
2010 (7).  
2011           16. Aircraft piracy under s. 860.16.  
2012           17. Unlawful throwing, placing, or discharging of a  
2013 destructive device or bomb under s. 790.161(2), (3), or (4).  
2014           18. Treason under s. 876.32.  
2015           19. Any offense committed in another jurisdiction which  
2016 would be an offense listed in this paragraph if that offense had  
2017 been committed in this state.  
2018           (d) In the case of an alleged violation of probation or  
2019 community control other than a failure to pay costs, fines, or  
2020 restitution, the following individuals shall remain in custody  
2021 pending the resolution of the probation or community control  
2022 violation:  
2023           1. A violent felony offender of special concern, as defined  
2024 in this section;  
2025           2. A person who is on felony probation or community control  
2026 for any offense committed on or after the effective date of this  
2027 act and who is arrested for a qualifying offense as defined in



399382

this section; or

3. A person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense as defined in this section on or after the effective date of this act.

The court shall not dismiss the probation or community control violation warrant pending against an offender enumerated in this paragraph without holding a recorded violation-of-probation hearing at which both the state and the offender are represented.

Section 57. For the purpose of incorporating the amendments made by this act to sections 775.21, 943.0435, and 944.607, Florida Statutes, in references thereto, section 948.063, Florida Statutes, is reenacted to read:

948.063 Violations of probation or community control by designated sexual offenders and sexual predators.—

(1) If probation or community control for any felony offense is revoked by the court pursuant to s. 948.06(2)(e) and the offender is designated as a sexual offender pursuant to s. 943.0435 or s. 944.607 or as a sexual predator pursuant to s. 775.21 for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 years of age or older, and if the court imposes a subsequent term of supervision following the revocation of probation or community control, the court must order electronic monitoring as a condition of the



399382

subsequent term of probation or community control.

(2) If the probationer or offender is required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435 or s. 944.607 for unlawful sexual activity involving a victim 15 years of age or younger and the probationer or offender is 18 years of age or older and has violated the conditions of his or her probation or community control, but the court does not revoke the probation or community control, the court shall nevertheless modify the probation or community control to include electronic monitoring for any probationer or offender not then subject to electronic monitoring.

Section 58. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, subsection (4) of section 948.064, Florida Statutes, is reenacted to read:

948.064 Notification of status as a violent felony offender of special concern.—

(4) The state attorney, or the statewide prosecutor if applicable, shall advise the court at each critical stage in the judicial process, at which the state attorney or statewide prosecutor is represented, whether an alleged or convicted offender is a violent felony offender of special concern; a person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense; or a person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony



399382

offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense on or after the effective date of this act.

Section 59. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, subsection (3) of section 948.12, Florida Statutes, is reenacted to read:

948.12 Intensive supervision for postprison release of violent offenders.—It is the finding of the Legislature that the population of violent offenders released from state prison into the community poses the greatest threat to the public safety of the groups of offenders under community supervision. Therefore, for the purpose of enhanced public safety, any offender released from state prison who:

(3) Has been found to be a sexual predator pursuant to s. 775.21,

and who has a term of probation to follow the period of incarceration shall be provided intensive supervision by experienced correctional probation officers. Subject to specific appropriation by the Legislature, caseloads may be restricted to a maximum of 40 offenders per officer to provide for enhanced public safety as well as to effectively monitor conditions of electronic monitoring or curfews, if such was ordered by the court.

Section 60. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (b) of subsection (3) and subsection (4) of section 948.30, Florida Statutes, are



399382

reenacted to read:

948.30 Additional terms and conditions of probation or community control for certain sex offenses.—Conditions imposed pursuant to this section do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in this section.

(3) Effective for a probationer or community controllee whose crime was committed on or after September 1, 2005, and who:

(b) Is designated a sexual predator pursuant to s. 775.21; or

the court must order, in addition to any other provision of this section, mandatory electronic monitoring as a condition of the probation or community control supervision.

(4) In addition to all other conditions imposed, for a probationer or community controllee who is subject to supervision for a crime that was committed on or after May 26, 2010, and who has been convicted at any time of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s. 943.0435(1)(a)1.a.(I), or a similar offense in another jurisdiction, against a victim who was under the age of 18 at the time of the offense; if the offender has not received a pardon for any felony or similar law of another jurisdiction necessary for the operation of this subsection, if a conviction of a felony or similar law of another jurisdiction necessary for the operation of this subsection has not been set aside in any postconviction





399382

proceeding, or if the offender has not been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354, the court must impose the following conditions:

(a) A prohibition on visiting schools, child care facilities, parks, and playgrounds, without prior approval from the offender's supervising officer. The court may also designate additional locations to protect a victim. The prohibition ordered under this paragraph does not prohibit the offender from visiting a school, child care facility, park, or playground for the sole purpose of attending a religious service as defined in s. 775.0861 or picking up or dropping off the offender's children or grandchildren at a child care facility or school.

(b) A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the court.

Section 61. For the purpose of incorporating the amendments made by this act to sections 775.21, 943.0435, 944.606, and 944.607, Florida Statutes, in references thereto, section 948.31, Florida Statutes, is reenacted to read:

948.31 Evaluation and treatment of sexual predators and offenders on probation or community control.—The court may require any probationer or community controllee who is required to register as a sexual predator under s. 775.21 or sexual offender under s. 943.0435, s. 944.606, or s. 944.607 to undergo



399382

an evaluation, at the probationer or community controllee's expense, by a qualified practitioner to determine whether such probationer or community controllee needs sexual offender treatment. If the qualified practitioner determines that sexual offender treatment is needed and recommends treatment, the probationer or community controllee must successfully complete and pay for the treatment. Such treatment must be obtained from a qualified practitioner as defined in s. 948.001. Treatment may not be administered by a qualified practitioner who has been convicted or adjudicated delinquent of committing, or attempting, soliciting, or conspiring to commit, any offense that is listed in s. 943.0435(1)(a)1.a.(I).

Section 62. For the purpose of incorporating the amendments made by this act to sections 775.21, 943.0435, 944.606, and 944.607, Florida Statutes, in references thereto, paragraph (b) of subsection (6) of section 985.04, Florida Statutes, is reenacted to read:

985.04 Oaths; records; confidential information.—

(6)

(b) Sexual offender and predator registration information as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815 is a public record pursuant to s. 119.07(1) and as otherwise provided by law.

Section 63. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, subsection (9) of section 985.4815, Florida Statutes, is reenacted to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—



399382

(9) A sexual offender, as described in this section, who is under the care, jurisdiction, or supervision of the department but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(9).

Section 64. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (b) of subsection (1) of section 92.55, Florida Statutes, is reenacted to read:

92.55 Judicial or other proceedings involving victim or witness under the age of 16, a person who has an intellectual disability, or a sexual offense victim or witness; special protections; use of registered service or therapy animals.—

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

(b) "Sexual offense" means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).

Section 65. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 394.9125, Florida Statutes, is reenacted to read:

394.9125 State attorney; authority to refer a person for civil commitment.—

(2) A state attorney may refer a person to the department for civil commitment proceedings if the person:

(a) Is required to register as a sexual offender pursuant



399382

to s. 943.0435;

Section 66. For the purpose of incorporating the amendments made by this act to sections 943.0435 and 944.607, Florida Statutes, in references thereto, paragraph (d) of subsection (5) and paragraph (c) of subsection (10) of section 775.21, Florida Statutes, are reenacted to read:

775.21 The Florida Sexual Predators Act.—

(5) SEXUAL PREDATOR DESIGNATION.—An offender is designated as a sexual predator as follows:

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such



399382

designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(10) PENALTIES.—

(c) Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, to secure a payment from such a predator or offender; who knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 67. For the purpose of incorporating the amendments made by this act to sections 943.0435, 944.606, and 944.607, Florida Statutes, in references thereto, subsection (2) of section 775.24, Florida Statutes, is reenacted to read:

775.24 Duty of the court to uphold laws governing sexual predators and sexual offenders.—

(2) If a person meets the criteria in this chapter for designation as a sexual predator or meets the criteria in s. 943.0435, s. 944.606, s. 944.607, or any other law for



399382

classification as a sexual offender, the court may not enter an order, for the purpose of approving a plea agreement or for any other reason, which:

(a) Exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders;

(b) Restricts the compiling, reporting, or release of public records information that relates to sexual predators or sexual offenders; or

(c) Prevents any person or entity from performing its duties or operating within its statutorily conferred authority as such duty or authority relates to sexual predators or sexual offenders.

Section 68. For the purpose of incorporating the amendments made by this act to sections 775.21, 943.0435, 944.606 and 944.607, Florida Statutes, in references thereto, subsection (2) of section 943.0436, Florida Statutes, is reenacted to read:

943.0436 Duty of the court to uphold laws governing sexual predators and sexual offenders.—

(2) If a person meets the criteria in chapter 775 for designation as a sexual predator or meets the criteria in s. 943.0435, s. 944.606, s. 944.607, or any other law for classification as a sexual offender, the court may not enter an order, for the purpose of approving a plea agreement or for any other reason, which:

(a) Exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from



399382

such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders;

(b) Restricts the compiling, reporting, or release of public records information that relates to sexual predators or sexual offenders; or

(c) Prevents any person or entity from performing its duties or operating within its statutorily conferred authority as such duty or authority relates to sexual predators or sexual offenders.

Section 69. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, subsection (2) of section 775.0862, Florida Statutes, is reenacted to read:

775.0862 Sexual offenses against students by authority figures; reclassification.—

(2) The felony degree of a violation of an offense listed in s. 943.0435(1)(a)1.a., unless the offense is a violation of s. 794.011(4)(e)7. or s. 810.145(8)(a)2., shall be reclassified as provided in this section if the offense is committed by an authority figure of a school against a student of the school.

Section 70. This act shall take effect October 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 human trafficking; amending s.



399382

2347 39.01, F.S.; revising the definition of the term  
2348 "sexual abuse of a child" to delete a reference to a  
2349 child being arrested or prosecuted for specified  
2350 offenses; amending s. 782.04, F.S.; including human  
2351 trafficking as a predicate offense for felony murder;  
2352 amending s. 787.06, F.S.; creating an increased  
2353 penalty for causing great bodily harm, permanent  
2354 disability, or permanent disfigurement; prohibiting  
2355 permanently branding, or directing the permanent  
2356 branding, of a victim of human trafficking with  
2357 specified intent; amending s. 456.074, F.S.; requiring  
2358 the Department of Health to issue an emergency order  
2359 suspending the license of a massage therapist or  
2360 massage establishment if the therapist or a specified  
2361 person connected to the establishment is convicted of  
2362 owning, establishing, maintaining, or operating a  
2363 place, structure, building, or conveyance for  
2364 lewdness, assignation, or prostitution in conjunction  
2365 with the establishment; correcting a cross-reference;  
2366 amending s. 480.041, F.S.; providing that a licensed  
2367 massage therapist may not receive a new or renewal  
2368 license if the applicant is convicted of owning,  
2369 establishing, maintaining, or operating a place,  
2370 structure, building, or conveyance for lewdness,  
2371 assignation, or prostitution in conjunction with a  
2372 massage establishment; correcting a cross-reference;  
2373 amending s. 480.043, F.S.; providing that a licensed  
2374 massage establishment may not receive a new or renewal  
2375 license if specified persons connected to the





399382

2376 establishment are convicted of owning, establishing,  
2377 maintaining, or operating a place, structure,  
2378 building, or conveyance for lewdness, assignation, or  
2379 prostitution in conjunction with the establishment;  
2380 correcting a cross-reference; amending s. 796.06,  
2381 F.S.; increasing criminal penalties for the offense of  
2382 renting space to be used for lewdness, assignation, or  
2383 prostitution; amending s. 796.07, F.S.; providing that  
2384 minors may not be charged with specified prostitution  
2385 offenses; specifying that certain educational programs  
2386 may be offered by faith-based providers; providing for  
2387 the reclassification of the offense of owning,  
2388 establishing, maintaining, or operating a place,  
2389 structure, building, or conveyance for lewdness,  
2390 assignation, or prostitution if the offense is  
2391 committed in conjunction with a massage establishment;  
2392 amending ss. 775.21 and 943.0435, F.S.; requiring a  
2393 person convicted of specified racketeering offenses to  
2394 register as a sexual predator or sexual offender under  
2395 certain circumstances; amending ss. 944.606 and  
2396 944.607, F.S.; revising the definition of the term  
2397 "sexual offender" for purposes of offender  
2398 notification to include a person convicted of  
2399 specified racketeering offenses if the court makes  
2400 specified findings; reenacting s. 394.495(4)(p), F.S.,  
2401 relating to the child and adolescent mental health  
2402 system of care, s. 409.1678(1)(c) and (6)(a) and (b),  
2403 F.S., relating to specialized residential options for  
2404 children who are victims of sexual exploitation, and



399382

2405 s. 960.065(5), F.S., relating to eligibility for  
2406 awards, to incorporate the amendment made by the act  
2407 to s. 39.01, F.S., in references thereto; reenacting  
2408 s. 39.806(1)(d) and (n), F.S., relating to grounds for  
2409 termination of parental rights, to incorporate the  
2410 amendments made by the act to ss. 775.21 and 782.04,  
2411 F.S., in references thereto; reenacting s.  
2412 63.089(4)(b), F.S., relating to proceedings to  
2413 terminate parental rights pending adoption, to  
2414 incorporate the amendments made by the act to ss.  
2415 775.21 and 782.04, F.S., in references thereto;  
2416 reenacting s. 95.11(10), F.S., relating to limitations  
2417 other than for the recovery of real property, s.  
2418 775.082(1)(b) and (3)(a), (b), and (c), F.S., relating  
2419 to penalties, s. 782.065, F.S., relating to murder of  
2420 specified officers, s. 921.16(1), F.S., relating to  
2421 when sentences should be concurrent and when they  
2422 should be consecutive, s. 948.062(1)(a), F.S.,  
2423 relating to reviewing and reporting serious offenses  
2424 committed by offenders placed on probation or  
2425 community control, s. 985.265(3)(b), F.S., relating to  
2426 detention transfer and release, and s. 1012.315(1)(d),  
2427 F.S., relating to disqualification from employment, to  
2428 incorporate the amendment made by the act to s.  
2429 782.04, F.S., in references thereto; reenacting s.  
2430 1012.467(2)(g), F.S., relating to noninstructional  
2431 contractors who are permitted access to school grounds  
2432 when students are present, to incorporate the  
2433 amendments made by the act to ss. 782.04 and 943.0435,



399382

2434 F.S., in references thereto; reenacting s. 775.0823(1)  
2435 and (2), F.S., relating to violent offenses committed  
2436 against certain officers, attorneys, and judges, s.  
2437 921.0022(3)(i), F.S., relating to the offense severity  
2438 ranking chart, s. 947.146(3)(i), F.S., relating to the  
2439 Control Release Authority, and s. 394.912(9)(a), F.S.,  
2440 relating to definitions relating to involuntary civil  
2441 commitment of sexually violent predators, to  
2442 incorporate the amendment made by the act to s.  
2443 782.04, F.S., in references thereto; reenacting s.  
2444 775.15(19), F.S., relating to time limitations, to  
2445 incorporate the amendment made by the act to s.  
2446 787.06, F.S., in a reference thereto; reenacting s.  
2447 60.05(4), F.S., relating to abatement of nuisances, s.  
2448 775.0877(1)(m), F.S., relating to criminal  
2449 transmission of HIV, s. 796.08(2) and (3), F.S.,  
2450 relating to screening for HIV and sexually  
2451 transmissible diseases, s. 796.09(2), F.S., relating  
2452 to certain civil causes of action, s. 895.02(1)(a),  
2453 F.S., relating to definitions for the Florida RICO  
2454 Act, and s. 948.16(1)(a), F.S., relating to specified  
2455 misdemeanor pretrial intervention programs, to  
2456 incorporate the amendment made by the act to s.  
2457 796.07, F.S., in references thereto; reenacting s.  
2458 39.0139(3)(a), F.S., relating to visitation or other  
2459 contact, s. 39.509(6)(b), F.S., relating to  
2460 grandparents rights, s. 63.092(3), F.S., relating to a  
2461 report to the court of intended placement by an  
2462 adoption entity, to incorporate the amendment made by



399382

2463 the act to s. 775.21, F.S., in references thereto;  
2464 reenacting s. 68.07(3)(i) and (6), F.S., relating to  
2465 change of name, to incorporate the amendments made by  
2466 this act to ss. 775.21 and 943.0435, F.S., in  
2467 references thereto; reenacting s. 322.141(3), F.S.,  
2468 relating to color or markings of certain licenses or  
2469 identification cards, to incorporate the amendments  
2470 made by this act to ss. 775.21, 943.0435, and 944.607,  
2471 F.S., in references thereto; reenacting s.  
2472 397.4872(2)(a) and (c), F.S., relating to exemption  
2473 from disqualification, to incorporate the amendments  
2474 made by this act to ss. 775.21 and 943.0435, F.S., in  
2475 references thereto; reenacting s. 775.13(4)(e) and  
2476 (f), F.S., relating to registration of convicted  
2477 felons, to incorporate the amendments made by this act  
2478 to ss. 775.21, 943.0435, and 944.607, F.S., in  
2479 references thereto; reenacting s. 775.25, F.S.,  
2480 relating to prosecutions for acts or omissions, to  
2481 incorporate the amendments made to this act by ss.  
2482 775.21, 943.0435, 944.606, and 944.607, F.S., in  
2483 references thereto; reenacting s. 775.261(3)(b), F.S.,  
2484 relating to The Florida Career Offender Registration  
2485 Act, to incorporate the amendments made by this act to  
2486 ss. 775.21, 943.0435, and 944.607, F.S., in references  
2487 thereto; reenacting s. 794.075(1), F.S., relating to  
2488 sexual predators and erectile dysfunction drugs, and  
2489 s. 903.0351(1)(c), F.S., relating to restrictions on  
2490 pretrial release pending probation-violation hearing  
2491 or community-control-violation hearing, to incorporate



399382

2492 the amendment made by the act to s. 775.21, F.S., in  
2493 references thereto; reenacting s. 903.046(2)(m), F.S.,  
2494 relating to purpose of and criteria for bail  
2495 determination, to incorporate the amendments made by  
2496 this act to ss. 775.21 and 943.0435, F.S., in  
2497 references thereto; reenacting s. 921.141(5)(o), F.S.,  
2498 relating to sentence of death or life imprisonment for  
2499 capital felonies, to incorporate the amendment made by  
2500 the act to s. 775.21, F.S., in a reference thereto;  
2501 reenacting s. 938.10(1), F.S., relating to additional  
2502 court cost imposed in cases of certain crimes, to  
2503 incorporate the amendments made by this act to ss.  
2504 775.21 and 943.0435, F.S., in references thereto;  
2505 reenacting s. 943.0435(3), (4), and (5), F.S.,  
2506 relating to sexual offenders required to register with  
2507 the department, to incorporate the amendments made by  
2508 this act to ss. 775.21, 944.606, and 944.607, F.S., in  
2509 references thereto; reenacting s. 944.607(4)(a) and  
2510 (9), F.S., relating to notification to the Department  
2511 of Law Enforcement of information on sexual offenders,  
2512 to incorporate the amendments made by this act to ss.  
2513 775.21 and 943.0435, F.S., in references thereto;  
2514 reenacting s. 944.608(7), F.S., relating to  
2515 notification to the Department of Law Enforcement of  
2516 information on career offenders, to incorporate the  
2517 amendments made by this act to ss. 775.21 and 944.607,  
2518 F.S., in references thereto; reenacting s. 944.609(4),  
2519 F.S., relating to career offenders and notification  
2520 upon release, to incorporate the amendment made by the



399382

2521 act to s. 775.21, F.S., in references thereto;  
2522 reenacting s. 947.1405(2)(c), (10), and (12), F.S.,  
2523 relating to the conditional release program, to  
2524 incorporate the amendments made by this act to ss.  
2525 775.21 and 943.0435, F.S., in references thereto;  
2526 reenacting s. 948.06(4) and (8)(b), (c), and (d),  
2527 F.S., relating to violation of probation or community  
2528 control, to incorporate the amendments made by this  
2529 act to ss. 782.04, 775.21, 943.0435, and 944.607,  
2530 F.S., in references thereto; reenacting s. 948.063,  
2531 F.S., relating to violations of probation or community  
2532 control by designated sexual offenders and sexual  
2533 predators, to incorporate the amendments made by this  
2534 act to ss. 775.21, 943.0435, and 944.607, F.S., in  
2535 references thereto; reenacting s. 948.064(4), F.S.,  
2536 relating to notification of status as a violent felony  
2537 offender of special concern, and s. 948.12(3), F.S.,  
2538 relating to intensive supervision for postprison  
2539 release of violent offenders, to incorporate the  
2540 amendment made by the act to s. 775.21, F.S., in  
2541 references thereto; reenacting s. 948.30(3)(b) and  
2542 (4), F.S., relating to additional terms and conditions  
2543 of probation or community control for certain sex  
2544 offenses, to incorporate the amendments made by this  
2545 act to ss. 775.21 and 943.0435, F.S., in references  
2546 thereto; reenacting s. 948.31, F.S., relating to  
2547 evaluation and treatment of sexual predators and  
2548 offenders on probation or community control, and s.  
2549 985.04(6)(b), F.S., relating to oaths, records, and



399382

2550 confidential information, to incorporate the  
2551 amendments made by the act to ss. 775.21, 943.0435,  
2552 944.606, and 944.607, F.S., in references thereto;  
2553 reenacting s. 985.4815(9), F.S., relating to  
2554 notification to the Department of Law Enforcement of  
2555 information on juvenile sexual offenders, to  
2556 incorporate the amendments made by this act to ss.  
2557 775.21 and 943.0435, F.S., in references thereto;  
2558 reenacting s. 92.55(1)(b), F.S., relating to judicial  
2559 or other proceedings involving certain victims,  
2560 witnesses, and persons, to incorporate the amendments  
2561 made by this act to ss. 775.21 and 943.0435, F.S., in  
2562 references thereto; reenacting s. 394.9125(2)(a),  
2563 F.S., relating to state attorney authority to refer a  
2564 person for civil commitment, to incorporate the  
2565 amendment made by the act to s. 943.0435, F.S., in a  
2566 reference thereto; reenacting s. 775.21(5)(d) and  
2567 (10)(c), F.S., relating to the Florida Sexual  
2568 Predators Act, to incorporate the amendments made by  
2569 this act to ss. 943.0435 and 944.607, F.S., in  
2570 references thereto; reenacting s. 775.24(2), F.S.,  
2571 relating to the duty of the court to uphold laws  
2572 governing sexual predators and sexual offenders, to  
2573 incorporate the amendments made by this act to ss.  
2574 943.0435, 944.606, and 944.607, F.S., in references  
2575 thereto; reenacting s. 943.0436(2), F.S., relating to  
2576 the duty of the court to uphold laws governing sexual  
2577 predators and sexual offenders, to incorporate the  
2578 amendments made by this act to ss. 775.21, 943.0435,



399382

2579           944.606, and 944.607, F.S., in references thereto;  
2580           reenacting s. 775.0862(2), F.S., relating to  
2581           reclassification of sexual offenses against students  
2582           by authority figures, to incorporate the amendment  
2583           made by the act to s. 943.0435, F.S., in a reference  
2584           thereto; providing an effective date.



By Senator Flores

37-00336B-16

2016784\_\_

1 A bill to be entitled  
 2 An act relating to human trafficking; amending s.  
 3 480.043, F.S.; providing that a licensed massage  
 4 establishment may not receive a new or renewal license  
 5 if specified persons connected with it are convicted  
 6 of renting space to be used for lewdness, assignation,  
 7 or prostitution; amending s. 787.06, F.S.; deleting  
 8 the definition of the term "coercion"; eliminating  
 9 coercion as an element of certain human trafficking  
 10 offenses; prohibiting the human trafficking of any  
 11 child under the age of 18 for involvement in sexual  
 12 activity; providing criminal penalties; amending s.  
 13 796.06, F.S.; providing enhanced criminal penalties  
 14 for offense of renting space to be used for lewdness,  
 15 assignation, or prostitution if the offense is  
 16 committed in conjunction with a health care profession  
 17 or in a massage establishment; amending s. 796.07,  
 18 F.S.; providing that minors may not be charged with  
 19 specified prostitution offenses; specifying that  
 20 certain education programs may be offered by faith-  
 21 based providers; amending ss. 775.21 and 943.0435,  
 22 F.S.; requiring a person convicted of specified  
 23 racketeering offenses to register as a sexual predator  
 24 or sexual offender under certain circumstances;  
 25 amending ss. 944.606 and 944.607, F.S.; revising the  
 26 definition of the term "sexual offender" for purposes  
 27 of offender notification to include a person convicted  
 28 of specified racketeering offenses where the court has  
 29 made specified findings; amending ss. 39.01305 and

Page 1 of 54

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

37-00336B-16

2016784\_\_

30 921.0022, F.S.; conforming provisions to changes made  
 31 by the act; providing an effective date.  
 32  
 33 Be It Enacted by the Legislature of the State of Florida:  
 34  
 35 Section 1. Paragraphs (l) through (s) of subsection (8) of  
 36 section 480.043, Florida Statutes, are redesignated as  
 37 paragraphs (m) through (t), respectively, and a new paragraph  
 38 (l) is added to that subsection, to read:  
 39 480.043 Massage establishments; requisites; licensure;  
 40 inspection.—  
 41 (8) The department shall deny an application for a new or  
 42 renewal license if a person with an ownership interest in the  
 43 establishment or, for a corporation that has more than \$250,000  
 44 of business assets in this state, the owner, officer, or  
 45 individual directly involved in the management of the  
 46 establishment has been convicted or found guilty of, or entered  
 47 a plea of guilty or nolo contendere to, regardless of  
 48 adjudication, a felony offense under any of the following  
 49 provisions of state law or a similar provision in another  
 50 jurisdiction:  
 51 (l) Section 796.06(2)(b), relating to renting space to be  
 52 used for lewdness, assignation, or prostitution.  
 53 Section 2. Paragraph (a) of subsection (1), paragraph (a)  
 54 of subsection (2), and subsection (3) of section 787.06, Florida  
 55 Statutes, are amended to read:  
 56 787.06 Human trafficking.—  
 57 (1)(a) The Legislature finds that human trafficking is a  
 58 form of modern-day slavery. Victims of human trafficking are

Page 2 of 54

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

37-00336B-16

2016784

59 young children, teenagers, and adults. Thousands of victims are  
 60 trafficked annually across international borders worldwide. Many  
 61 of these victims are trafficked into this state. Victims of  
 62 human trafficking also include citizens of the United States and  
 63 those persons trafficked domestically within the borders of the  
 64 United States. The Legislature finds that victims of human  
 65 trafficking are subjected to force or, fraud, ~~or coercion~~ for  
 66 the purpose of sexual exploitation or forced labor.

67 (2) As used in this section, the term:

68 (a) "Coercion" means:

69 1. Using or threatening to use physical force against any  
 70 person;

71 2. Restraining, isolating, or confining or threatening to  
 72 restrain, isolate, or confine any person without lawful  
 73 authority and against her or his will;

74 3. ~~Using lending or other credit methods to establish a~~  
 75 ~~debt by any person when labor or services are pledged as a~~  
 76 ~~security for the debt, if the value of the labor or services as~~  
 77 ~~reasonably assessed is not applied toward the liquidation of the~~  
 78 ~~debt, the length and nature of the labor or services are not~~  
 79 ~~respectively limited and defined;~~

80 4. ~~Destroying, concealing, removing, confiscating,~~  
 81 ~~withholding, or possessing any actual or purported passport,~~  
 82 ~~visa, or other immigration document, or any other actual or~~  
 83 ~~purported government identification document, of any person;~~

84 5. ~~Causing or threatening to cause financial harm to any~~  
 85 ~~person;~~

86 6. ~~Enticing or luring any person by fraud or deceit; or~~

87 7. ~~Providing a controlled substance as outlined in Schedule~~

37-00336B-16

2016784

88 ~~I or Schedule II of s. 893.03 to any person for the purpose of~~  
 89 ~~exploitation of that person.~~

90 (3) Any person who knowingly, or in reckless disregard of  
 91 the facts, engages in human trafficking, or attempts to engage  
 92 in human trafficking, or benefits financially by receiving  
 93 anything of value from participation in a venture that has  
 94 subjected a person to human trafficking:

95 (a) ~~1-~~ For labor or services of any person ~~child under the~~  
 96 ~~age of 18~~ commits a felony of the first degree, punishable as  
 97 provided in s. 775.082, s. 775.083, or s. 775.084.

98 2. ~~Using coercion for labor or services of an adult commits~~  
 99 ~~a felony of the first degree, punishable as provided in s.~~  
 100 ~~775.082, s. 775.083, or s. 775.084.~~

101 (b) ~~Using coercion~~ For commercial sexual activity of an  
 102 adult commits a felony of the first degree, punishable as  
 103 provided in s. 775.082, s. 775.083, or s. 775.084.

104 (c) ~~1-~~ For labor or services of any person ~~child under the~~  
 105 ~~age of 18~~ who is an unauthorized alien commits a felony of the  
 106 first degree, punishable as provided in s. 775.082, s. 775.083,  
 107 or s. 775.084.

108 2. ~~Using coercion for labor or services of an adult who is~~  
 109 ~~an unauthorized alien commits a felony of the first degree,~~  
 110 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

111 (d) ~~Using coercion~~ For commercial sexual activity of an  
 112 adult who is an unauthorized alien commits a felony of the first  
 113 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 114 775.084.

115 (e) ~~1-~~ For labor or services who does so by the transfer or  
 116 transport of any person ~~child under the age of 18~~ from outside

37-00336B-16

2016784

117 this state to within the state commits a felony of the first  
 118 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 119 775.084.

120 ~~2. Using coercion for labor or services who does so by the~~  
 121 ~~transfer or transport of an adult from outside this state to~~  
 122 ~~within the state commits a felony of the first degree,~~  
 123 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

124 (f) ~~1-~~ For commercial sexual activity who does so by the  
 125 transfer or transport of any person ~~child under the age of 18~~  
 126 from outside this state to within the state commits a felony of  
 127 the first degree, punishable by imprisonment for a term of years  
 128 not exceeding life, or as provided in s. 775.082, s. 775.083, or  
 129 s. 775.084.

130 ~~2. Using coercion For commercial sexual activity who does~~  
 131 ~~so by the transfer or transport of an adult from outside this~~  
 132 ~~state to within the state commits a felony of the first degree,~~  
 133 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

134 (g) For commercial or noncommercial sexual activity in  
 135 which any child under the age of 18, or in which any person who  
 136 is mentally defective or mentally incapacitated as those terms  
 137 are defined in s. 794.011(1), is involved commits a life felony,  
 138 punishable as provided in s. 775.082(3)(a)6., s. 775.083, or s.  
 139 775.084.

140  
 141 For each instance of human trafficking of any individual under  
 142 this subsection, a separate crime is committed and a separate  
 143 punishment is authorized.

144 Section 3. Section 796.06, Florida Statutes, is amended to  
 145 read:

Page 5 of 54

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

37-00336B-16

2016784

146 796.06 Renting space to be used for lewdness, assignation,  
 147 or prostitution.—

148 (1) It is unlawful to let or rent any place, structure, or  
 149 part thereof, trailer or other conveyance, with the knowledge  
 150 that it will be used for the purpose of lewdness, assignation,  
 151 or prostitution.

152 (2) (a) Except as provided in paragraph (b), a person who  
 153 violates this section commits:

154 1. (a) A misdemeanor of the second degree for a first  
 155 violation, punishable as provided in s. 775.082 or s. 775.083.

156 2. (b) A misdemeanor of the first degree for a second or  
 157 subsequent violation, punishable as provided in s. 775.082 or s.  
 158 775.083.

159 (b) A person who violates this section in connection with  
 160 the practice of a health care profession regulated under chapter  
 161 456, while practicing as a health care practitioner as defined  
 162 in s. 456.001, or in a massage establishment required to be  
 163 licensed under s. 480.043 commits a felony of the third degree,  
 164 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

165 Section 4. Paragraph (e) of subsection (2) and paragraph  
 166 (b) of subsection (5) of section 796.07, Florida Statutes, are  
 167 amended to read:

168 796.07 Prohibiting prostitution and related acts.—

169 (2) It is unlawful:

170 (e) For a person 18 years of age or older to offer to  
 171 commit, or to commit, or to engage in, prostitution, lewdness,  
 172 or assignation.

173 (5)

174 (b) In addition to any other penalty imposed, the court

Page 6 of 54

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

37-00336B-16

2016784

shall order a person convicted of a violation of paragraph (2) (f) to:

1. Perform 100 hours of community service; and
2. Pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, including such programs offered by faith-based providers, if such programs exist ~~program exists~~ in the judicial circuit in which the offender is sentenced.

Section 5. Paragraph (a) of subsection (4) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a “sexual predator” under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim’s parent or guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2) (c), where the victim is a minor and the defendant is not the victim’s parent or guardian; s. 787.06(3) (b), (d), (f), or (g); former s. 787.06(3) (h); s. 794.011, excluding s.

Page 7 of 54

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

37-00336B-16

2016784

794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8) (b); s. 825.1025; s. 827.071; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, where the court has made a written finding that the racketeering activity involved at least one sexual offense listed in this subparagraph or at least one offense listed in this subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2) (c), where the victim is a minor and the defendant is not the victim’s parent or guardian; s. 787.06(3) (b), (d), (f), or (g); former s. 787.06(3) (h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, where the court has made a written finding that the racketeering activity involved at least one sexual offense listed in this subparagraph or at least one offense listed in this subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has

Page 8 of 54

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

37-00336B-16

2016784\_\_

not been set aside in any postconviction proceeding.

Section 6. Paragraph (a) of subsection (1) of section 943.0435, Florida Statutes, is amended to read:

943.0435 Sexual offenders required to register with the department; penalty.—

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

(a)1. "Sexual offender" means a person who meets the criteria in sub-subparagraph a., sub-subparagraph b., sub-subparagraph c., or sub-subparagraph d., as follows:

a.(I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, where the court has made a written finding that the racketeering activity involved at least one sexual offense listed in this sub-sub-subparagraph or at least one offense listed in this sub-sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-subparagraph; and

(II) Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described

37-00336B-16

2016784\_\_

in sub-sub-subparagraph (I). For purposes of sub-sub-subparagraph (I), a sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility;

b. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;

c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.

37-00336B-16

2016784\_\_

847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, where the court has made a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph; or

d. On or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense:

(I) Section 794.011, excluding s. 794.011(10);

(II) Section 800.04(4)(a)2. where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;

(III) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals; or

(IV) Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals.

2. For all qualifying offenses listed in sub-subparagraph (1)(a)1.d., the court shall make a written finding of the age of the offender at the time of the offense.

For each violation of a qualifying offense listed in this subsection, except for a violation of s. 794.011, the court shall make a written finding of the age of the victim at the

37-00336B-16

2016784\_\_

time of the offense. For a violation of s. 800.04(4), the court shall also make a written finding indicating whether the offense involved sexual activity and indicating whether the offense involved force or coercion. For a violation of s. 800.04(5), the court shall also make a written finding that the offense did or did not involve unclothed genitals or genital area and that the offense did or did not involve the use of force or coercion.

Section 7. Paragraph (b) of subsection (1) of section 944.606, Florida Statutes, is amended to read:

944.606 Sexual offenders; notification upon release.—

(1) As used in this section:

(b) "Sexual offender" means a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s.

787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, where the court has made a written finding that the racketeering activity involved at least one sexual offense listed in this paragraph or at least one offense listed in this paragraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this

37-00336B-16

2016784\_\_

subsection, when the department has received verified information regarding such conviction; an offender's computerized criminal history record is not, in and of itself, verified information.

Section 8. Paragraph (a) of subsection (1) of section 944.607, Florida Statutes, is amended to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

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

(a) "Sexual offender" means a person who is in the custody or control of, or under the supervision of, the department or is in the custody of a private correctional facility:

1. On or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, where the court has made a written finding that the racketeering activity involved at least one sexual offense listed in this subparagraph or at least one offense listed in this subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been

37-00336B-16

2016784\_\_

redesignated from a former statute number to one of those listed in this paragraph; or

2. Who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard as to whether the person otherwise meets the criteria for registration as a sexual offender.

Section 9. Paragraph (e) of subsection (3) of section 39.01305, Florida Statutes, is amended to read:

39.01305 Appointment of an attorney for a dependent child with certain special needs.—

(3) An attorney shall be appointed for a dependent child who:

(e) Is a victim of human trafficking as defined in s. 787.06 ~~787.06(2)(d)~~.

Section 10. Paragraphs (g), (h), (i), and (j) of subsection (3) of section 921.0022, Florida Statutes, are amended to read: 921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida	Felony	Description
---------	--------	-------------

37-00336B-16 2016784\_\_

Statute	Degree	
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.

37-00336B-16 2016784\_\_

409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.



37-00336B-16

2016784\_\_

421 464.016(1) 3rd Practicing nursing without a  
license.

422 465.015(2) 3rd Practicing pharmacy without a  
license.

423 466.026(1) 3rd Practicing dentistry or dental  
hygiene without a license.

424 467.201 3rd Practicing midwifery without a  
license.

425 468.366 3rd Delivering respiratory care  
services without a license.

426 483.828(1) 3rd Practicing as clinical  
laboratory personnel without a  
license.

427 483.901(9) 3rd Practicing medical physics  
without a license.

428 484.013(1)(c) 3rd Preparing or dispensing optical  
devices without a prescription.

429 484.053 3rd Dispensing hearing aids without  
a license.

430

Page 17 of 54

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

37-00336B-16

2016784\_\_

494.0018(2) 1st Conviction of any violation of  
chapter 494 in which the total  
money and property unlawfully  
obtained exceeded \$50,000 and  
there were five or more  
victims.

431 560.123(8)(b)1. 3rd Failure to report currency or  
payment instruments exceeding  
\$300 but less than \$20,000 by a  
money services business.

432 560.125(5)(a) 3rd Money services business by  
unauthorized person, currency  
or payment instruments  
exceeding \$300 but less than  
\$20,000.

433 655.50(10)(b)1. 3rd Failure to report financial  
transactions exceeding \$300 but  
less than \$20,000 by financial  
institution.

434 775.21(10)(a) 3rd Sexual predator; failure to  
register; failure to renew  
driver license or  
identification card; other  
registration violations.

435

Page 18 of 54

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

	37-00336B-16		2016784__
436	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
437			
	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
438			
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
439			
	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
440			
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

	37-00336B-16		2016784__
441	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
442			
	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
443			
	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
444			
	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
445			
	784.048(7)	3rd	Aggravated stalking; violation of court order.
446			
	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
447			
	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
448			
	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
449			
	784.081(1)	1st	Aggravated battery on specified official or employee.

	37-00336B-16		2016784__
450	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
451	784.083(1)	1st	Aggravated battery on code inspector.
452	<del>787.06(3)(a)2.</del>	<del>1st</del>	<del>Human trafficking using coercion for labor and services of an adult.</del>
453	<del>787.06(3)(c)2.</del>	<del>1st</del>	<del>Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.</del>
454	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
455	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
456	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
457			

	37-00336B-16		2016784__
	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
458	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
459	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
460	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
461	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
462	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
463			

	37-00336B-16		2016784	
	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.	
464	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.	
465	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.	
466	800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.	
467	806.01(2)	2nd	Maliciously damage structure by fire or explosive.	
468	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.	
469	810.02(3)(b)	2nd	Burglary of unoccupied	

Page 23 of 54

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

	37-00336B-16		2016784	
			dwelling; unarmed; no assault or battery.	
470	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.	
471	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.	
472	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.	
473	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.	
474	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.	
475	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.	

Page 24 of 54

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

37-00336B-16

2016784\_\_

476

812.0145(2) (a) 1st Theft from person 65 years of  
age or older; \$50,000 or more.

477

812.019(2) 1st Stolen property; initiates,  
organizes, plans, etc., the  
theft of property and traffics  
in stolen property.

478

812.131(2) (a) 2nd Robbery by sudden snatching.

479

812.133(2) (b) 1st Carjacking; no firearm, deadly  
weapon, or other weapon.

480

817.034(4) (a) 1. 1st Communications fraud, value  
greater than \$50,000.

481

817.234(8) (a) 2nd Solicitation of motor vehicle  
accident victims with intent to  
defraud.

482

817.234(9) 2nd Organizing, planning, or  
participating in an intentional  
motor vehicle collision.

483

817.234(11) (c) 1st Insurance fraud; property value  
\$100,000 or more.

484

817.2341 1st Making false entries of

Page 25 of 54

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

37-00336B-16

2016784\_\_

(2) (b) &amp; (3) (b)

material fact or false  
statements regarding property  
values relating to the solvency  
of an insuring entity which are  
a significant cause of the  
insolvency of that entity.

485

817.535(2) (a) 3rd Filing false lien or other  
unauthorized document.

486

825.102(3) (b) 2nd Neglecting an elderly person or  
disabled adult causing great  
bodily harm, disability, or  
disfigurement.

487

825.103(3) (b) 2nd Exploiting an elderly person or  
disabled adult and property is  
valued at \$10,000 or more, but  
less than \$50,000.

488

827.03(2) (b) 2nd Neglect of a child causing  
great bodily harm, disability,  
or disfigurement.

489

827.04(3) 3rd Impregnation of a child under  
16 years of age by person 21  
years of age or older.

490

837.05(2) 3rd Giving false information about

Page 26 of 54

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

37-00336B-16

2016784\_\_

alleged capital felony to a law  
enforcement officer.

491

838.015 2nd Bribery.

492

838.016 2nd Unlawful compensation or reward  
for official behavior.

493

838.021(3) (a) 2nd Unlawful harm to a public  
servant.

494

838.22 2nd Bid tampering.

495

843.0855(2) 3rd Impersonation of a public  
officer or employee.

496

843.0855(3) 3rd Unlawful simulation of legal  
process.

497

843.0855(4) 3rd Intimidation of a public  
officer or employee.

498

847.0135(3) 3rd Solicitation of a child, via a  
computer service, to commit an  
unlawful sex act.

499

847.0135(4) 2nd Traveling to meet a minor to  
commit an unlawful sex act.

500

Page 27 of 54

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

37-00336B-16

2016784\_\_

872.06 2nd Abuse of a dead human body.

501

874.05(2) (b) 1st Encouraging or recruiting  
person under 13 to join a  
criminal gang; second or  
subsequent offense.

502

874.10 1st,PBL Knowingly initiates, organizes,  
plans, finances, directs,  
manages, or supervises criminal  
gang-related activity.

503

893.13(1) (c)1. 1st Sell, manufacture, or deliver  
cocaine (or other drug  
prohibited under s.  
893.03(1) (a), (1) (b), (1) (d),  
(2) (a), (2) (b), or (2) (c)4.)  
within 1,000 feet of a child  
care facility, school, or  
state, county, or municipal  
park or publicly owned  
recreational facility or  
community center.

504

893.13(1) (e)1. 1st Sell, manufacture, or deliver  
cocaine or other drug  
prohibited under s.  
893.03(1) (a), (1) (b), (1) (d),  
(2) (a), (2) (b), or (2) (c)4.,

Page 28 of 54

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

37-00336B-16

2016784\_\_

within 1,000 feet of property  
used for religious services or  
a specified business site.

505

893.13(4)(a) 1st Deliver to minor cocaine (or  
other s. 893.03(1)(a), (1)(b),  
(1)(d), (2)(a), (2)(b), or  
(2)(c)4. drugs).

506

893.135(1)(a)1. 1st Trafficking in cannabis, more  
than 25 lbs., less than 2,000  
lbs.

507

893.135 1st Trafficking in cocaine, more  
(1)(b)1.a. than 28 grams, less than 200  
grams.

508

893.135 1st Trafficking in illegal drugs,  
(1)(c)1.a. more than 4 grams, less than 14  
grams.

509

893.135 1st Trafficking in hydrocodone, 14  
(1)(c)2.a. grams or more, less than 28  
grams.

510

893.135 1st Trafficking in hydrocodone, 28  
(1)(c)2.b. grams or more, less than 50  
grams.

511

Page 29 of 54

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

37-00336B-16

2016784\_\_

893.135 1st Trafficking in oxycodone, 7  
(1)(c)3.a. grams or more, less than 14  
grams.

512

893.135 1st Trafficking in oxycodone, 14  
(1)(c)3.b. grams or more, less than 25  
grams.

513

893.135(1)(d)1. 1st Trafficking in phencyclidine,  
more than 28 grams, less than  
200 grams.

514

893.135(1)(e)1. 1st Trafficking in methaqualone,  
more than 200 grams, less than  
5 kilograms.

515

893.135(1)(f)1. 1st Trafficking in amphetamine,  
more than 14 grams, less than  
28 grams.

516

893.135 1st Trafficking in flunitrazepam, 4  
(1)(g)1.a. grams or more, less than 14  
grams.

517

893.135 1st Trafficking in gamma-  
(1)(h)1.a. hydroxybutyric acid (GHB), 1  
kilogram or more, less than 5  
kilograms.

518

Page 30 of 54

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

	37-00336B-16		2016784__
519	893.135	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
	(1)(j)1.a.		
520	893.135	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
	(1)(k)2.a.		
521	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
522	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
523	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
524	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent

Page 31 of 54

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

	37-00336B-16		2016784__
525			to leave; failure to comply with reporting requirements.
526	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
527	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
528	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
529	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
530	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or

Page 32 of 54

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



	37-00336B-16	2016784__	conceal a sexual offender.
531	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
532	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
533	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
534	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
535	(h) LEVEL 8		
536	Florida	Felony	Description
537	Statute	Degree	
538			
539			

	37-00336B-16	2016784__	DUI manslaughter.
540	316.193 (3) (c) 3.a.	2nd	
541	316.1935(4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
542	327.35(3) (c) 3.	2nd	Vessel BUI manslaughter.
543	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
544	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
545	560.123(8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
546	560.125(5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
546	655.50(10) (b) 2.	2nd	Failure to report financial

37-00336B-16

2016784\_\_

transactions totaling or  
exceeding \$20,000, but less  
than \$100,000 by financial  
institutions.

547

777.03(2)(a) 1st Accessory after the fact,  
capital felony.

548

782.04(4) 2nd Killing of human without design  
when engaged in act or attempt  
of any felony other than arson,  
sexual battery, robbery,  
burglary, kidnapping,  
aggravated fleeing or eluding  
with serious bodily injury or  
death, aircraft piracy, or  
unlawfully discharging bomb.

549

782.051(2) 1st Attempted felony murder while  
perpetrating or attempting to  
perpetrate a felony not  
enumerated in s. 782.04(3).

550

782.071(1)(b) 1st Committing vehicular homicide  
and failing to render aid or  
give information.

551

782.072(2) 1st Committing vessel homicide and  
failing to render aid or give

Page 35 of 54

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

37-00336B-16

2016784\_\_

information.

552

787.06(3)(a) 1st Human trafficking for labor and  
~~787.06(3)(a)1.~~ services ~~of a child~~.

553

787.06(3)(b) 1st Human trafficking ~~using~~  
~~eccecion~~ for commercial sexual  
activity ~~of an adult~~.

554

787.06(3)(c) 1st Human trafficking ~~using~~  
~~787.06(3)(c)2.~~ ~~eccecion~~ for labor and services  
of an unauthorized alien ~~adult~~.

555

787.06(3)(e) 1st Human trafficking for labor and  
~~787.06(3)(e)1.~~ services by the transfer or  
transport of a person ~~child~~  
from outside Florida to within  
the state.

556

~~787.06(3)(f)2.~~ 1st ~~Human trafficking using~~  
~~eccecion for commercial sexual~~  
~~activity by the transfer or~~  
~~transport of any adult from~~  
~~outside Florida to within the~~  
~~state.~~

557

790.161(3) 1st Discharging a destructive  
device which results in bodily  
harm or property damage.

Page 36 of 54

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

37-00336B-16 2016784\_\_

558 794.011(5)(a) 1st Sexual battery; victim 12 years  
of age or older but younger  
than 18 years; offender 18  
years or older; offender does  
not use physical force likely  
to cause serious injury.

559 794.011(5)(b) 2nd Sexual battery; victim and  
offender 18 years of age or  
older; offender does not use  
physical force likely to cause  
serious injury.

560 794.011(5)(c) 2nd Sexual battery; victim 12 years  
of age or older; offender  
younger than 18 years; offender  
does not use physical force  
likely to cause injury.

561 794.011(5)(d) 1st Sexual battery; victim 12 years  
of age or older; offender does  
not use physical force likely  
to cause serious injury; prior  
conviction for specified sex  
offense.

562 794.08(3) 2nd Female genital mutilation,  
removal of a victim younger

Page 37 of 54

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

37-00336B-16 2016784\_\_

than 18 years of age from this  
state.

563 800.04(4)(b) 2nd Lewd or lascivious battery.

564 800.04(4)(c) 1st Lewd or lascivious battery;  
offender 18 years of age or  
older; prior conviction for  
specified sex offense.

565 806.01(1) 1st Maliciously damage dwelling or  
structure by fire or explosive,  
believing person in structure.

566 810.02(2)(a) 1st,PBL Burglary with assault or  
battery.

567 810.02(2)(b) 1st,PBL Burglary; armed with explosives  
or dangerous weapon.

568 810.02(2)(c) 1st Burglary of a dwelling or  
structure causing structural  
damage or \$1,000 or more  
property damage.

569 812.014(2)(a)2. 1st Property stolen; cargo valued  
at \$50,000 or more, grand theft  
in 1st degree.

570

Page 38 of 54

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

37-00336B-16 2016784\_\_

571 812.13(2)(b) 1st Robbery with a weapon.

812.135(2)(c) 1st Home-invasion robbery, no  
firearm, deadly weapon, or  
other weapon.

572 817.535(2)(b) 2nd Filing false lien or other  
unauthorized document; second  
or subsequent offense.

573 817.535(3)(a) 2nd Filing false lien or other  
unauthorized document; property  
owner is a public officer or  
employee.

574 817.535(4)(a)1. 2nd Filing false lien or other  
unauthorized document;  
defendant is incarcerated or  
under supervision.

575 817.535(5)(a) 2nd Filing false lien or other  
unauthorized document; owner of  
the property incurs financial  
loss as a result of the false  
instrument.

576 817.568(6) 2nd Fraudulent use of personal  
identification information of  
an individual under the age of

Page 39 of 54

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

37-00336B-16 2016784\_\_

18.

577 825.102(2) 1st Aggravated abuse of an elderly  
person or disabled adult.

578 825.1025(2) 2nd Lewd or lascivious battery upon  
an elderly person or disabled  
adult.

579 825.103(3)(a) 1st Exploiting an elderly person or  
disabled adult and property is  
valued at \$50,000 or more.

580 837.02(2) 2nd Perjury in official proceedings  
relating to prosecution of a  
capital felony.

581 837.021(2) 2nd Making contradictory statements  
in official proceedings  
relating to prosecution of a  
capital felony.

582 860.121(2)(c) 1st Shooting at or throwing any  
object in path of railroad  
vehicle resulting in great  
bodily harm.

583 860.16 1st Aircraft piracy.

584

Page 40 of 54

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

37-00336B-16 2016784\_\_

893.13(1)(b) 1st Sell or deliver in excess of 10  
grams of any substance  
specified in s. 893.03(1)(a) or  
(b).

893.13(2)(b) 1st Purchase in excess of 10 grams  
of any substance specified in  
s. 893.03(1)(a) or (b).

893.13(6)(c) 1st Possess in excess of 10 grams  
of any substance specified in  
s. 893.03(1)(a) or (b).

893.135(1)(a)2. 1st Trafficking in cannabis, more  
than 2,000 lbs., less than  
10,000 lbs.

893.135 1st Trafficking in cocaine, more  
(1)(b)1.b. than 200 grams, less than 400  
grams.

893.135 1st Trafficking in illegal drugs,  
(1)(c)1.b. more than 14 grams, less than  
28 grams.

893.135 1st Trafficking in hydrocodone, 50  
(1)(c)2.c. grams or more, less than 200  
grams.

37-00336B-16 2016784\_\_

893.135 1st Trafficking in oxycodone, 25  
(1)(c)3.c. grams or more, less than 100  
grams.

893.135 1st Trafficking in phencyclidine,  
(1)(d)1.b. more than 200 grams, less than  
400 grams.

893.135 1st Trafficking in methaqualone,  
(1)(e)1.b. more than 5 kilograms, less  
than 25 kilograms.

893.135 1st Trafficking in amphetamine,  
(1)(f)1.b. more than 28 grams, less than  
200 grams.

893.135 1st Trafficking in flunitrazepam,  
(1)(g)1.b. 14 grams or more, less than 28  
grams.

893.135 1st Trafficking in gamma-  
(1)(h)1.b. hydroxybutyric acid (GHB), 5  
kilograms or more, less than 10  
kilograms.

893.135 1st Trafficking in 1,4-Butanediol,  
(1)(j)1.b. 5 kilograms or more, less than  
10 kilograms.

37-00336B-16		2016784__	
893.135	1st	Trafficking in Phenethylamines,	
(1) (k) 2.b.		200 grams or more, less than	
		400 grams.	
893.1351(3)	1st	Possession of a place used to	
		manufacture controlled	
		substance when minor is present	
		or resides there.	
895.03(1)	1st	Use or invest proceeds derived	
		from pattern of racketeering	
		activity.	
895.03(2)	1st	Acquire or maintain through	
		racketeering activity any	
		interest in or control of any	
		enterprise or real property.	
895.03(3)	1st	Conduct or participate in any	
		enterprise through pattern of	
		racketeering activity.	
896.101(5) (b)	2nd	Money laundering, financial	
		transactions totaling or	
		exceeding \$20,000, but less	
		than \$100,000.	
896.104(4) (a) 2.	2nd	Structuring transactions to	
		evade reporting or registration	

Page 43 of 54

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

37-00336B-16		2016784__	
		requirements, financial	
		transactions totaling or	
		exceeding \$20,000 but less than	
		\$100,000.	
(i) LEVEL 9			
Florida	Felony	Description	
Statute	Degree		
316.193	1st	DUI manslaughter; failing to	
(3) (c) 3.b.		render aid or give information.	
327.35	1st	BUI manslaughter; failing to	
(3) (c) 3.b.		render aid or give information.	
409.920	1st	Medicaid provider fraud;	
(2) (b) 1.c.		\$50,000 or more.	
499.0051(9)	1st	Knowing sale or purchase of	
		contraband prescription drugs	
		resulting in great bodily harm.	
560.123(8) (b) 3.	1st	Failure to report currency or	
		payment instruments totaling or	
		exceeding \$100,000 by money	
		transmitter.	

Page 44 of 54

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

37-00336B-16 2016784\_\_

560.125(5)(c) 1st Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.

615 655.50(10)(b)3. 1st Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.

616 775.0844 1st Aggravated white collar crime.

617 782.04(1) 1st Attempt, conspire, or solicit to commit premeditated murder.

618 782.04(3) 1st,PBL Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.

619 782.051(1) 1st Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

620 782.07(2) 1st Aggravated manslaughter of an

Page 45 of 54

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

37-00336B-16 2016784\_\_

elderly person or disabled adult.

621 787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or reward or as a shield or hostage.

622 787.01(1)(a)2. 1st,PBL Kidnapping with intent to commit or facilitate commission of any felony.

623 787.01(1)(a)4. 1st,PBL Kidnapping with intent to interfere with performance of any governmental or political function.

624 787.02(3)(a) 1st,PBL False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

625 787.06(3)(c) 1st Human trafficking for labor and services of an unauthorized alien ~~child~~.

626 ~~787.06(3)(c)1.~~ 787.06(3)(d) 1st Human trafficking ~~using~~

Page 46 of 54

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

37-00336B-16

2016784\_\_

~~eeereion~~ for commercial sexual  
activity of an unauthorized  
~~adult~~ alien.

787.06(3)(f)  
~~787.06(3)(f)1-~~

1st, PBL

Human trafficking for  
commercial sexual activity by  
the transfer or transport of  
any person ~~child~~ from outside  
Florida to within the state.

790.161

1st

Attempted capital destructive  
device offense.

790.166(2)

1st, PBL

Possessing, selling, using, or  
attempting to use a weapon of  
mass destruction.

794.011(2)

1st

Attempted sexual battery;  
victim less than 12 years of  
age.

794.011(2)

Life

Sexual battery; offender  
younger than 18 years and  
commits sexual battery on a  
person less than 12 years.

794.011(4)(a)

1st, PBL

Sexual battery, certain  
circumstances; victim 12 years  
of age or older but younger

Page 47 of 54

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

37-00336B-16

2016784\_\_

than 18 years; offender 18  
years or older.

794.011(4)(b)

1st

Sexual battery, certain  
circumstances; victim and  
offender 18 years of age or  
older.

634

794.011(4)(c)

1st

Sexual battery, certain  
circumstances; victim 12 years  
of age or older; offender  
younger than 18 years.

635

794.011(4)(d)

1st, PBL

Sexual battery, certain  
circumstances; victim 12 years  
of age or older; prior  
conviction for specified sex  
offenses.

636

794.011(8)(b)

1st, PBL

Sexual battery; engage in  
sexual conduct with minor 12 to  
18 years by person in familial  
or custodial authority.

637

794.08(2)

1st

Female genital mutilation;  
victim younger than 18 years of  
age.

638

800.04(5)(b)

Life

Lewd or lascivious molestation;

Page 48 of 54

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



37-00336B-16

2016784\_\_

victim less than 12 years;  
offender 18 years or older.

639

812.13(2) (a) 1st, PBL Robbery with firearm or other  
deadly weapon.

640

812.133(2) (a) 1st, PBL Carjacking; firearm or other  
deadly weapon.

641

812.135(2) (b) 1st Home-invasion robbery with  
weapon.

642

817.535(3) (b) 1st Filing false lien or other  
unauthorized document; second  
or subsequent offense; property  
owner is a public officer or  
employee.

643

817.535(4) (a) 2. 1st Filing false claim or other  
unauthorized document;  
defendant is incarcerated or  
under supervision.

644

817.535(5) (b) 1st Filing false lien or other  
unauthorized document; second  
or subsequent offense; owner of  
the property incurs financial  
loss as a result of the false  
instrument.

Page 49 of 54

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

37-00336B-16

2016784\_\_

645

817.568(7) 2nd, PBL Fraudulent use of personal  
identification information of  
an individual under the age of  
18 by his or her parent, legal  
guardian, or person exercising  
custodial authority.

646

827.03(2) (a) 1st Aggravated child abuse.

647

847.0145(1) 1st Selling, or otherwise  
transferring custody or  
control, of a minor.

648

847.0145(2) 1st Purchasing, or otherwise  
obtaining custody or control,  
of a minor.

649

859.01 1st Poisoning or introducing  
bacteria, radioactive  
materials, viruses, or chemical  
compounds into food, drink,  
medicine, or water with intent  
to kill or injure another  
person.

650

893.135 1st Attempted capital trafficking  
offense.

651

Page 50 of 54

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

37-00336B-16 2016784\_\_

893.135(1)(a)3. 1st Trafficking in cannabis, more  
than 10,000 lbs.

893.135 1st Trafficking in cocaine, more  
(1)(b)1.c. than 400 grams, less than 150  
kilograms.

893.135 1st Trafficking in illegal drugs,  
(1)(c)1.c. more than 28 grams, less than  
30 kilograms.

893.135 1st Trafficking in hydrocodone, 200  
(1)(c)2.d. grams or more, less than 30  
kilograms.

893.135 1st Trafficking in oxycodone, 100  
(1)(c)3.d. grams or more, less than 30  
kilograms.

893.135 1st Trafficking in phencyclidine,  
(1)(d)1.c. more than 400 grams.

893.135 1st Trafficking in methaqualone,  
(1)(e)1.c. more than 25 kilograms.

893.135 1st Trafficking in amphetamine,  
(1)(f)1.c. more than 200 grams.

893.135 1st Trafficking in gamma-

Page 51 of 54

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

37-00336B-16 2016784\_\_

(1)(h)1.c. hydroxybutyric acid (GHB), 10  
kilograms or more.

893.135 1st Trafficking in 1,4-Butanediol,  
(1)(j)1.c. 10 kilograms or more.

893.135 1st Trafficking in Phenethylamines,  
(1)(k)2.c. 400 grams or more.

896.101(5)(c) 1st Money laundering, financial  
instruments totaling or  
exceeding \$100,000.

896.104(4)(a)3. 1st Structuring transactions to  
evade reporting or registration  
requirements, financial  
transactions totaling or  
exceeding \$100,000.

(j) LEVEL 10

Florida Statute	Felony Degree	Description
499.0051(10)	1st	Knowing sale or purchase of contraband prescription drugs resulting in death.

Page 52 of 54

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

37-00336B-16 2016784\_\_

782.04(2) 1st,PBL Unlawful killing of human; act  
is homicide, unpremeditated.

782.07(3) 1st Aggravated manslaughter of a  
child.

787.01(1)(a)3. 1st,PBL Kidnapping; inflict bodily harm  
upon or terrorize victim.

787.01(3)(a) Life Kidnapping; child under age 13,  
perpetrator also commits  
aggravated child abuse, sexual  
battery, or lewd or lascivious  
battery, molestation, conduct,  
or exhibition.

787.06(3)(g) Life Human trafficking for  
commercial or noncommercial  
sexual activity of a child  
under the age of 18 or mentally  
defective or incapacitated  
person.

787.06(4)(a) Life Selling or buying of minors  
into human trafficking.

794.011(3) Life Sexual battery; victim 12 years  
or older, offender uses or  
threatens to use deadly weapon

Page 53 of 54

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

37-00336B-16 2016784\_\_

or physical force to cause  
serious injury.

812.135(2)(a) 1st,PBL Home-invasion robbery with  
firearm or other deadly weapon.

876.32 1st Treason against the state.

Section 11. This act shall take effect October 1, 2016.

Page 54 of 54

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** January 15, 2016

---

I respectfully request that **Senate Bill #784**, relating to Human Trafficking, be placed on the:

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

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

---

Senator Anitere Flores  
Florida Senate, District 37

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

784  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Greg Powell

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr  
Street

Phone \_\_\_\_\_

Largo Fla.  
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)

1/25/16  
Meeting Date

784  
Bill Number (if applicable)

Topic HUMAN Trafficking

Amendment Barcode (if applicable)

Name JANET MABRY

Job Title \_\_\_\_\_

Address 2866 Bay Heather Circle  
Street  
Gulf Breeze FL 32563  
City State Zip

Phone 501-2502 (850)  
Email MABRYJF@CS.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Massage 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)

1.29.16

Meeting Date

SB784

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 204 S. Monroe St.

Phone 577.3032

Street

Tall

City

FL

State

32301

Zip

barney@smart

Email 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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

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

---

BILL: CS/SB 912

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Fraudulent Activities Associated with Payment Systems

DATE: January 26, 2016

REVISED: \_\_\_\_\_

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

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 912 addresses fraudulent activity occurring at fuel stations by:

- Increasing from a third degree felony (maximum penalty of 5 years in state prison) to a second degree felony (maximum penalty of 15 years in state prison) for the unlawful conveyance of fuel;
- Requiring a retail petroleum fuel measuring device to have affixed to or installed onto the measuring device at least one security measure described in the bill and authorizing the Florida Department of Agriculture and Consumer Services, under certain circumstances, to prohibit further use of the measuring device until a security measure is installed, replaced, or repaired;
- Punishing trafficking in or attempting to traffic in 5 counterfeit credit cards (current law: 10 cards);
- Indicating that possession of counterfeit cards is unlawful (not specified in current law); and
- Increasing the offense severity level ranking for unlawful conveyance of fuel and trafficking in or possession of counterfeit credit cards (increasing the possibility that the defendant will fall within the sentencing range in which a prison sentence may be imposed).

**II. Present Situation:**

**Fraudulent Activity Occurring at Fuel Stations**

The Florida Department of Agriculture and Consumer Services (FDACS) states:



FDACS is responsible for conducting inspections of the petroleum distribution system and analyzing samples of petroleum products to ensure consumers are being offered quality products at a fair measure. In fulfilling this responsibility, FDACS inspects pumps for devices that steal credit card information from unknowing consumers—commonly called “skimmers.”

Current statutes do not require security measures to be in place to reduce the possibility of placing skimmers into pumps or alerting the consumer that a pump has been opened. The consumer is victimized by credit card theft, while the retailer is victimized by fraudulent fuel purchases. Through elaborate schemes to defraud, a consumers’ information obtained by a skimmer is often used to purchase gasoline fraudulently and subsequently sold on the black market. In some cases, gas stations are losing thousands of dollars a day in the theft of fuel by use of counterfeit/compromised credit cards.

Penalties presently for the theft of fuel depend on the amount stolen as with any other product.<sup>1</sup>

### **Unlawful Conveyance of Fuel**

Section 316.80(1), F.S., provides that it is unlawful for any person to maintain, or possess any conveyance or vehicle that is equipped with, fuel tanks, bladders, drums, or other containers that do not conform to 49 C.F.R. or have not been approved by the United States Department of Transportation for the purpose of hauling, transporting, or conveying motor or diesel fuel over any public highway.

Section 316.80(2), F.S., provides that any person who violates subsection (1) commits a third degree felony, if he or she has attempted to or has fraudulently obtained motor or diesel fuel by:

- Presenting a credit card or a credit card account number in violation of ss. 817.57-817.685, F.S.;<sup>2</sup>
- Using unauthorized access to any computer network in violation of s. 815.06, F.S.; or
- Using a fraudulently scanned or lost or stolen payment access device, whether credit card or contactless device.

The described offense is not currently ranked in the offense severity level ranking chart in s. 931.0022, F.S. A third degree felony that is not ranked in the chart is ranked as a Level 1 offense pursuant to the “default” provisions of s. 921.0023, F.S.

### **Trafficking In or Possession of Counterfeit Cards**

Section 817.611, F.S., provides that it is a second degree felony for a person to traffic in or attempt to traffic in 10 or more counterfeit credit cards, invoices, vouchers, sales drafts, or other

---

<sup>1</sup> Analysis of SB 912 (November 24, 2015), Florida Department of Agriculture and Consumer Services (on file with the Senate Committee on Criminal Justice).

<sup>2</sup> A number of payment card offenses are included in the referenced statutes, including use of a scanning device or reencoder to access and store information on the payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user’s card, or a merchant. Section 817.625, F.S.

representations or manifestations of counterfeit credit cards, or credit card account numbers of another in any 6-month period. Relevant to the bill, this offense does not specifically state that *possession* of counterfeit credit cards is unlawful.

The described offense is not currently ranked in the offense severity level ranking chart in s. 931.0022, F.S. A second degree felony that is not ranked in the chart is ranked as a Level 4 offense pursuant to the “default” provisions of s. 921.0023, F.S.

### III. Effect of Proposed Changes:

The bill, which is effective October 1, 2016, addresses fraudulent activity occurring at fuel stations in the following manner:

- The bill amends s. 316.80(2), F.S., to increase the felony degree for unlawful conveyance of fuel from a third degree felony (maximum penalty of 5 years in state prison)<sup>3</sup> to a second degree felony (maximum penalty of 15 years in state prison).<sup>4</sup>
- The bill also amends s. 921.0022, F.S., to rank the offense of unlawful conveyance of fuel in Level 5 of the offense severity level ranking chart. Currently, this offense is ranked in Level 1. An offender with a Level 1 primary offense would likely score a nonstate prison sanction as the lowest permissible sentence absent significant prior convictions. The possibility of a defendant receiving a prison sentence is greater if the offense is in Level 5 than Level 1. A Level 5 offense accrues more sentence points than a Level 1 offense. A Level 5 offense is considered to be more serious than a Level 1 offense. A defendant with a Level 5 offense would score a lowest permissible sentence that is within the sentencing range in which a court may impose a prison sentence.
- The bill amends s. 525.07, F.S. (powers and duties of the FDACS), to:
  - Require each person who owns or manages a retail petroleum fuel measuring device to have affixed to or installed onto the measuring device at least one listed security measure to restrict the unauthorized access of customer payment card information;
  - Specify security measures;<sup>5</sup>
  - Specify that the owner of a measuring device with a security measure or with an altered or damaged security measure, upon written notice of noncompliance from the FDACS, has 5 calendar days to comply with security measure requirements;
  - Provide that after the fifth day of noncompliance, the FDACS may prohibit further use of the measuring device until a security measure is installed, replaced, or repaired, and that a repeat violation found on the same device will be cause for the FDACS to immediately take the device out of service;
  - Relevant to this new provision, specify that the terms “scanning device” and “payment card” have the same meanings as defined in s. 817.625, F.S.;<sup>6</sup> and

---

<sup>3</sup> Section 775.082, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Security measures include: placement of a pressure-sensitive security tape over the panel opening that leads to the scanning device for the measuring device in a manner that will restrict the unauthorized opening of the panel; a device or system that will render the measuring device or scanning device in the measuring device inoperable if there is an unauthorized opening of the panel; a device or system that encrypts the customer payment card information in the scanning device; or another security measure approved by the FDACS.

<sup>6</sup> “Scanning device” means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card. Section 817.625(1)(a), F.S. “Payment card” means a credit card, charge card, debit card, or any other card that is issued to an

- Provide that this provision only applies to retail petroleum fuel measuring devices that have a scanning device.
- The bill amends s. 817.611, F.S., which currently punishes trafficking in 10 or more counterfeit credit cards, etc., to reduce the number of cards from 10 to 5 and specify that this offense also includes possession, which is not currently specified.

The bill does not change the felony degree of trafficking in or possession of counterfeit cards (second degree felony) but does amend s. 921.0022, F.S., to rank this offense in Level 5 of the offense severity level ranking chart. Currently this offense is a Level 4 offense. The possibility of a defendant receiving a prison sentence is greater if the offense is in Level 5 than Level 4. A Level 5 offense accrues more sentence points than a Level 4 offense. A Level 5 offense is considered to be more serious than a Level 4 offense. A defendant with a Level 5 offense is more likely to score a lowest permissible sentence that is within the sentencing range in which a court may impose a prison sentence.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact of legislation, estimated that the original bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds). Changes to the original bill incorporated in CS/SB 912 do not impact that estimate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.80, 525.07, 817.611, and 921.0022.

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

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

**CS by Criminal Justice on January 25, 2016:**

- Requiring that each person who owns or manages a retail petroleum fuel measuring device have affixed to or installed onto the measuring device a security measure to restrict the unauthorized access of customer payment card information;
- Providing that the security measure must include one or more specified security measures;
- Providing that the owner or manager of a retail petroleum fuel measuring device without a security measure or with an altered or damaged security measure, upon written notice from the department of such noncompliance, shall have 5 calendar days to comply; and
- Providing that after the fifth day of noncompliance, the department may prohibit further use of the retail petroleum fuel measuring device until a security measure is installed, replaced, or repaired.

**B. Amendments:**

None.



854308

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2016	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete lines 43 - 71

and insert:

Section 2. Subsections (3) and (4) of section 525.07, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

525.07 Powers and duties of department; inspections; unlawful acts.—

(3) Each person who owns or manages ~~All persons who own or~~



854308

11 ~~operate~~ a petroleum fuel measuring device shall be responsible  
12 for ensuring accurate measure by the device within the  
13 tolerances defined by the rule. An appropriate security seal  
14 shall be placed on all measuring devices found to be giving  
15 accurate measure within the tolerances defined by the department  
16 in such a way that the metering adjustment cannot be changed  
17 without breaking the seal.

18 (4) A ~~Any~~ measuring device that is found to be operating  
19 outside the tolerances defined by the department shall be deemed  
20 inaccurate and the department, at its discretion, shall either:

21 (a) Give, in writing, the ~~operator or~~ owner or manager of  
22 the measuring device a reasonable time to repair the measuring  
23 device; or

24 (b) Condemn or prohibit the further use of the measuring  
25 device by using an appropriate security seal to obstruct the  
26 mechanism so that it cannot be operated without breaking the  
27 seal. The measuring device shall not be operated in this state  
28 again without the written consent of the department.

29 (10) (a) Each person who owns or manages a retail petroleum  
30 fuel measuring device shall have affixed to or installed onto  
31 the measuring device a security measure to restrict the  
32 unauthorized access of customer payment card information. The  
33 security measure must include one or more of the following:

34 1. The placement of pressure-sensitive security tape over  
35 the panel opening that leads to the scanning device for the  
36 retail petroleum fuel measuring device in a manner that will  
37 restrict the unauthorized opening of the panel.

38 2. A device or system that will render the retail petroleum  
39 fuel measuring device or the scanning device in the measuring



854308

device inoperable if there is an unauthorized opening of the panel.

3. A device or system that encrypts the customer payment card information in the scanning device.

4. Another security measure approved by the department.

(b) The owner or manager of a retail petroleum fuel measuring device without a security measure or with an altered or damaged security measure, upon written notice from the department of such noncompliance, shall have 5 calendar days to comply with this subsection. After the fifth day of noncompliance, the department may prohibit further use of the retail petroleum fuel measuring device until a security measure is installed, replaced, or repaired. A repeat violation found on the same retail petroleum fuel measuring device will be cause for the department to immediately take the measuring device out of service.

(c) For purposes of this subsection, the terms "scanning device" and "payment card" have the same meanings as defined in s. 817.625.

(d) This subsection applies only to retail petroleum fuel measuring devices that have a scanning device.

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

And the title is amended as follows:

Delete line 5

and insert:

conveyance of fuel; amending s. 525.07, F.S.;  
specifying requirements for managers of petroleum fuel  
measuring devices with respect to accurate



854308

69

measurement; requiring



By Senator Flores

37-00674C-16

2016912\_\_

A bill to be entitled

An act relating to fraudulent activities associated with payment systems; amending s. 316.80, F.S.; revising the felony classification for unlawful conveyance of fuel; amending s. 525.07, F.S.; requiring retail petroleum fuel measuring devices fitted with scanning devices to have certain security measures; providing requirements for such measures; requiring the owner or operator of a device to have certain security measures in place within a specified timeframe upon notice from the Department of Agriculture and Consumer Services; authorizing the department, under certain circumstances, to prohibit use of or to remove from service such devices that are noncompliant; defining terms; providing applicability; requiring the Department of Agriculture and Consumer Services to enforce provisions; providing for rulemaking; amending s. 817.611, F.S.; reducing the number of counterfeit credit cards that a person can be in possession of to qualify as unlawful; amending s. 921.0022, F.S.; ranking unlawful conveyance or fraudulent acquisition of fuel as a level 5 offense; ranking trafficking in or possession of counterfeit credit cards as a level 5 offense; providing an effective date.

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

Section 1. Subsection (2) of section 316.80, Florida

Page 1 of 14

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

37-00674C-16

2016912\_\_

Statutes, is amended to read:

316.80 Unlawful conveyance of fuel; obtaining fuel fraudulently.—

(2) ~~A~~ Any person who violates subsection (1) commits a felony of the second ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she has attempted to or has fraudulently obtained motor or diesel fuel by:

(a) Presenting a credit card or a credit card account number in violation of ss. 817.57-817.685;

(b) Using unauthorized access to any computer network in violation of s. 815.06; or

(c) Using a fraudulently scanned or lost or stolen payment access device, whether credit card or contactless device.

Section 2. Subsection (10) is added to section 525.07, Florida Statutes, to read:

525.07 Powers and duties of department; inspections; unlawful acts.—

(10) (a) A person who owns or operates a retail petroleum fuel measuring device shall have affixed to the measuring device a security measure to hinder or prohibit the unauthorized access of customer payment card information. At a minimum, such security measure must include the placement of pressure-sensitive security tape over the panel opening that leads to the scanning device for the retail petroleum fuel measuring device in a manner that will hinder or prohibit the unauthorized opening of the panel. The owner or operator of a device without a security measure, upon notice from the department of such noncompliance, shall have 5 days to comply with this subsection. After the fifth day of noncompliance, the department may

Page 2 of 14

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

37-00674C-16

2016912\_\_

prohibit further use of the retail petroleum fuel measuring device until a security measure is installed. A repeat violation found on the same retail petroleum fuel measuring device will be cause for the department to immediately take the measuring device out of service.

(b) For purposes of this subsection, the terms "scanning device" and "payment card" have the same meanings as defined in s. 817.625.

(c) This subsection only applies to retail petroleum fuel measuring devices that have a scanning device.

(d) The Department of Agriculture and Consumer Services shall enforce, and may adopt rules to implement, this subsection.

Section 3. Section 817.611, Florida Statutes, is amended to read:

817.611 Traffic in or possess counterfeit credit cards.—Any person who traffics in, ~~or~~ attempts to traffic in, or possesses ~~5~~ 10 or more counterfeit credit cards, invoices, vouchers, sales drafts, or other representations or manifestations of counterfeit credit cards, or credit card account numbers of another in any 6-month period is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Paragraph (e) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

Page 3 of 14

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

37-00674C-16

2016912\_\_

Florida Statute	Felony Degree	Description
316.027(2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4) (a)	2nd	Aggravated fleeing or eluding.
<u>316.80(2)</u>	<u>2nd</u>	<u>Unlawful conveyance; obtaining fuel fraudulently.</u>
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.

Page 4 of 14

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

	37-00674C-16		2016912__
97			
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
98			
	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
99			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
100			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
101			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
102			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information

Page 5 of 14

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

	37-00674C-16		2016912__
			with the purpose of avoiding or reducing workers' compensation premiums.
103			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
104			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
105			
	790.01(2)	3rd	Carrying a concealed firearm.
106			
	790.162	2nd	Threat to throw or discharge destructive device.
107			
	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
108			
	790.221(1)	2nd	Possession of short-barreled shotgun or

Page 6 of 14

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

	37-00674C-16		2016912__	machine gun.
109	790.23	2nd		Felons in possession of firearms, ammunition, or electronic weapons or devices.
110	796.05(1)	2nd		Live on earnings of a prostitute; 1st offense.
111	800.04(6)(c)	3rd		Lewd or lascivious conduct; offender less than 18 years of age.
112	800.04(7)(b)	2nd		Lewd or lascivious exhibition; offender 18 years of age or older.
113	806.111(1)	3rd		Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
114	812.0145(2)(b)	2nd		Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
115	812.015(8)	3rd		Retail theft; property

Page 7 of 14

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

	37-00674C-16		2016912__	stolen is valued at \$300 or more and one or more specified acts.
116	812.019(1)	2nd		Stolen property; dealing in or trafficking in.
117	812.131(2)(b)	3rd		Robbery by sudden snatching.
118	812.16(2)	3rd		Owning, operating, or conducting a chop shop.
119	817.034(4)(a)2.	2nd		Communications fraud, value \$20,000 to \$50,000.
120	817.234(11)(b)	2nd		Insurance fraud; property value \$20,000 or more but less than \$100,000.
121	817.2341(1), (2)(a) & (3)(a)	3rd		Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring

Page 8 of 14

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

	37-00674C-16		2016912__
			entity.
122			
123	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
124	<u>817.611</u>	<u>2nd</u>	<u>Traffic in or possess</u> <u>counterfeit credit</u> <u>cards.</u>
125			
126	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
127	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled

Page 9 of 14

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

	37-00674C-16		2016912__
			adult.
128	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
129	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
130	839.13 (2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
131	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
132	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using

Page 10 of 14

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

	37-00674C-16		2016912__	computer; offender 18 years or older.
133	847.0137 (2) & (3)	3rd		Transmission of pornography by electronic device or equipment.
134	847.0138 (2) & (3)	3rd		Transmission of material harmful to minors to a minor by electronic device or equipment.
135	874.05(1) (b)	2nd		Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
136	874.05(2) (a)	2nd		Encouraging or recruiting person under 13 years of age to join a criminal gang.
137	893.13(1) (a)1.	2nd		Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.

Page 11 of 14

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

	37-00674C-16		2016912__	drugs).
138	893.13(1) (c) 2.	2nd		Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
139	893.13(1) (d) 1.	1st		Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs) within 1,000 feet of university.
140	893.13(1) (e) 2.	2nd		Sell, manufacture, or deliver cannabis or other drug prohibited

Page 12 of 14

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

37-00674C-16

2016912\_\_

under s. 893.03(1)(c),  
 (2)(c)1., (2)(c)2.,  
 (2)(c)3., (2)(c)5.,  
 (2)(c)6., (2)(c)7.,  
 (2)(c)8., (2)(c)9., (3),  
 or (4) within 1,000 feet  
 of property used for  
 religious services or a  
 specified business site.

141

893.13(1)(f)1.

1st

Sell, manufacture, or  
 deliver cocaine (or  
 other s. 893.03(1)(a),  
 (1)(b), (1)(d), or  
 (2)(a), (2)(b), or  
 (2)(c)4. drugs) within  
 1,000 feet of public  
 housing facility.

142

893.13(4)(b)

2nd

Deliver to minor  
 cannabis (or other s.  
 893.03(1)(c), (2)(c)1.,  
 (2)(c)2., (2)(c)3.,  
 (2)(c)5., (2)(c)6.,  
 (2)(c)7., (2)(c)8.,  
 (2)(c)9., (3), or (4)  
 drugs).

143

893.1351(1)

3rd

Ownership, lease, or

Page 13 of 14

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

37-00674C-16

2016912\_\_

rental for trafficking  
 in or manufacturing of  
 controlled substance.

144

145

146

Section 5. This act shall take effect October 1, 2016.

Page 14 of 14

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

912  
Bill Number (if applicable)

Topic Credit Card Fund

Amendment Barcode (if applicable)

Name DAVID MICA

Job Title Director

Address 215 S. Monroe  
Street  
Tallahassee FL 32312  
City State Zip

Phone 561-6300

Email MICA.D@API.ORG

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA Petroleum Council

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)

January 25, 2016

Meeting Date

912

Bill Number (if applicable)

Topic Fraudulent Activities Associated with Payment System Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham Drive

Street

Phone 850-219-3631

Tallahassee

City

FL

State

32308

Zip

Email amercer@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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)

11/25/16  
Meeting Date

SB912  
Bill Number (if applicable)

Topic Fraudulent Activities Associated w/ Payment Systems

Amendment Barcode (if applicable)

Name Jennifer Martin

Job Title Dir. of Governmental Affairs

Address 3692 Coolidge Ct.  
Street

Phone 850-558-1050

Tallahassee FL 32311  
City State Zip

Email jennifer.martin@lscu.coop

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Credit Union 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)

1/25/16  
Meeting Date

SB 912  
Bill Number (if applicable)

Topic Fraudulent Activities Associated with Payment Systems Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Street

Tallahassee

City

FL

State

32399

Zip

Phone 850 617-7700

Email Jonathan.Rees@freshfromflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1-25-16

*Meeting Date*

912

*Bill Number (if applicable)*

Topic Fraudulent Activities Associated with Payment Systems

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-274-3599

*Street*

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-25-16

Meeting Date

912

Bill Number (if applicable)

Topic Fraudulent Activities associated w/ Payment System

Amendment Barcode (if applicable)

Name Lori Killinger

Job Title Attorney/lobbyist

Address 315 S. Calhoun St.  
Street

Phone 850 222 5702

Tallahassee  
City

FL  
State

32301  
Zip

Email lkillingr@llw-law.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing RaceTrac

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/14  
Meeting Date

691 912  
Bill Number (if applicable)

Topic SKIMMERS on gas pumps

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title VP Government Affairs

Address 227 S Adams St.  
Street  
Tallahassee FL  
City State Zip

Phone \_\_\_\_\_

Email Melissa@FRF.Org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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)

11/25/16  
Meeting Date

912  
Bill Number (if applicable)

Topic Fraudulent Activities Associated with Payment Systems  
Name Rob Bullara

Amendment Barcode (if applicable)

Job Title MAJOR

Address 2008 E. 8th Avenue  
Street

Phone 813 363 0375

Tampa FL 33605  
City State Zip

Email LBowden@lcsa.tampa.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Hillsborough County Sheriff's Office

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 930

INTRODUCER: Senator Evers

SUBJECT: Trust Funds/State-Operated Institutions Inmate Welfare Trust Fund/DOC

DATE: January 8, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	<b>Favorable</b>
2.			ACJ	
3.			AP	

---

**I. Summary:**

SB 930 creates the State-Operated Institutions Inmate Welfare Trust Fund (Trust Fund) within the Department of Corrections (department). The purpose of the new Trust Fund is for the benefit and welfare of inmates incarcerated in state-operated correctional facilities. In accordance with s. 19(f)(2), Art. III of the State Constitution, the Trust Fund will be terminated on July 1, 2020, unless terminated sooner or renewed.

**II. Present Situation:**

**Inmate Welfare Trust Funds for Public Correctional Facilities**

From 1979 until 2003, s. 945.215, F.S., provided for a trust fund that allowed the department to use revenue from the purchase of inmate canteen items and from inmate telephone calls to fund chapels, education, and wellness programs at publically operated correctional facilities. The source of most the revenue was from family and friends of the inmate. Chapter 2003-179, Laws of Florida, eliminated the former trust fund for public correctional facilities and required the revenue from inmate canteens and telephone usage to go directly into the General Revenue Fund.

According to a January 15, 2015, Auditor General audit of the department's canteen operations (which are outsourced to Keefe Commissary Network, LLC), from July 2012 through February 2014 sales in department institution canteens totaled approximately \$133.31 million and catalog sales totaled \$868,474. In addition, the department received MP3 music program commissions from Keefe totaling \$940,412 relating to MP3 music program sales of approximately \$5.99 million. The department's contract with Keefe expired March 31, 2015.



Canteens operate on a cashless system. Inmates use photo identification cards like bank debit cards. Inmates may make purchases on a weekly basis not to exceed \$100.<sup>1</sup> MP3 sales and catalog items do not count toward the purchase limit.

The chart below shows the department's revenue collections from funding sources for the Inmate Welfare Trust Fund before s. 945.215, F.S., was amended to direct those revenues to the General Revenue Fund:

<b>REVENUE COLLECTION SUMMARY</b> <b>PREVIOUS INMATE WELFARE TRUST FUND SOURCES</b> <b>FY 2010-2011 – FY 2014-2015</b>						
Description	Authorizing Statute	Fiscal Year 2010-2011	Fiscal Year 2011-2012	Fiscal Year 2012-2013	Fiscal Year 2013-2014	Fiscal Year 2014-2015
<b>General Revenue Unallocated (GRU) Collections:</b>						
Subsistence	s. 944.485 FS	6,748,740	7,712,150	8,035,040	8,092,206	5,768,529
Interest Income – ITF	s. 944.516(1)(f) FS	230,677	204,227	204,368	103,669	124,382
ITF Balances < \$1.00	s. 944.516(5) FS	1,194	1,219	1,197	1,211	1,217
Canteen Commissions <sup>2</sup>	s. 945.215(1)(a) FS	31,162,387	30,970,697	30,907,621	31,027,325	34,237,290
Vending Commissions	s. 945.215(1)(e) FS	343,096	357,371	369,591	212,345	475,637
Telephone Commissions	s. 945.215(1)(b) FS	5,205,804	5,156,269	5,334,549	6,142,399	4,975,584
Medical Copay	s. 945.6037 FS	737,410	713,823	661,604	673,325	645,159
<b>Inmate Bank - GR</b>		<b>\$44,429,308</b>	<b>\$45,115,756</b>	<b>\$45,513,970</b>	<b>\$46,252,480</b>	<b>\$46,227,797</b>

### **Inmate Welfare Trust Fund for Privately Operated Institutions**

An Inmate Welfare Trust Fund for private correctional facilities created in 1998 continues to operate.<sup>3</sup> This trust fund is for the benefit and welfare of inmates incarcerated in private correctional facilities under contract with the Department of Management Services (DMS). Net proceeds from inmate canteens, vending machines used primarily by inmates, telephone commissions, and other similar sources of proceeds are deposited in the fund. The DMS compiles an annual report documenting the receipts and expenditures at each private facility. For Fiscal Year 2013-2014, the DMS reported total revenues of \$3,252,201.41. The total expenditures for vocational programs, canine detection training programs, and community service programs was \$1,014,038.88.

### **III. Effect of Proposed Changes:**

The bill creates the State-Operated Institutions Inmate Welfare Trust Fund within the Department of Corrections. The language of the bill closely mirrors the language that was in s. 945.215, F.S., when the former trust fund was originally created. The purpose of the new Trust Fund is for the benefit and welfare of inmates incarcerated in state-operated correctional facilities. The new Trust Fund will terminate on July 1, 2020, unless terminated sooner.

### **IV. Constitutional Issues:**

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

None.

<sup>1</sup> Rule 33-203.101, F.A.C.

<sup>2</sup> Canteen commissions include MP3 music program sales.

<sup>3</sup> Section 944.72, F.S.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the Florida Department of Corrections, the bill will benefit the welfare of inmates incarcerated in State-Operated Correctional Institutions. The revenues deposited will be taken from operating inmate canteens (vending machines used primarily by inmates and visitors, hobby shops, and other such facilities).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 944.73 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.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/25/2016

*Meeting Date*

930

*Bill Number (if applicable)*

Topic Inmate Welfare Trust Fund

*Amendment Barcode (if applicable)*

Name Jim Purdy

Job Title Public Defender, 7th Circuit

Address 251 North Ridgewood Avenue

Phone 386.239.7730

*Street*

Daytona Beach

Florida

32114

*City*

*State*

*Zip*

Email purdy.james@pd7.org

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 932

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Inmate Welfare and Employee Benefit Trust Funds

DATE: February 2, 2016

REVISED: \_\_\_\_\_

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

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 932 establishes the purpose, revenue sources, and uses for the State Operated Institutions Inmate Welfare Trust Fund (trust fund), contingent upon creation of the trust fund by passage of SB 930. The bill provides that the Department of Corrections (DOC) hold this trust fund for the benefit and welfare of inmates incarcerated in correctional facilities operated directly by the department. Deposits into the trust fund are limited to five million dollars in any fiscal year. Revenues in excess of five million dollars during a fiscal year will be deposited into the General Revenue Fund.

**II. Present Situation:**

**Inmate Welfare Trust Fund and Revenue Received from Canteen Sales**

For many years prior to 2003, a trust fund created in s. 945.215, F.S., allowed the department to use revenue from the purchase of inmate canteen items and inmate telephone calls to fund chapels, education, and wellness programs at publicly operated correctional facilities. The source of most of the revenue was family and friends of the inmates. Chapter 2003-179, Laws of Florida, eliminated the trust fund and required the revenue from inmate canteens, telephone usage, and other revenue generators to go directly into the General Revenue Fund. Although s. 945.215, F.S., was amended to eliminate the Inmate Welfare Trust Fund for state operated correctional facilities, the Inmate Welfare Trust Fund for privately operated facilities was maintained in the law. Consequently, under current law, revenue from the purchase of canteen

items and from telephone usage in the department operated institutions is deposited into General Revenue and not earmarked for inmate welfare or betterment programs.

According to a January 15, 2015, Auditor General audit of the department's canteen operations, from July 2012 through February 2014 sales in department institution canteens totaled approximately \$133.31 million and catalog sales totaled \$868,474. The department received MP3 program commissions from Keefe Commissary Network totaling \$940,412 from MP3 program sales totaling \$5.99 million.

The chart below shows the department's revenue collections from funding sources for the Inmate Welfare Trust Fund before s. 945.215, F.S., was amended to direct those revenues to the General Revenue Fund:

<b>REVENUE COLLECTION SUMMARY</b> <b>PREVIOUS INMATE WELFARE TRUST FUND SOURCES</b> <b>FY 2010-2011 – FY 2014-2015</b>						
Description	Authorizing Statute	Fiscal Year 2010-2011	Fiscal Year 2011-2012	Fiscal Year 2012-2013	Fiscal Year 2013-2014	Fiscal Year 2014-2015
<b>General Revenue Unallocated (GRU) Collections:</b>						
Subsistence	s. 944.485 FS	6,748,740	7,712,150	8,035,040	8,092,206	5,768,529
Interest Income – ITF	s. 944.516(1)(f) FS	230,677	204,227	204,368	103,669	124,382
ITF Balances < \$1.00	s. 944.516(5) FS	1,194	1,219	1,197	1,211	1,217
Canteen Commissions <sup>1</sup>	s. 945.215(1)(a) FS	31,162,387	30,970,697	30,907,621	31,027,325	34,237,290
Vending Commissions	s. 945.215(1)(e) FS	343,096	357,371	369,591	212,345	475,637
Telephone Commissions	s. 945.215(1)(b) FS	5,205,804	5,156,269	5,334,549	6,142,399	4,975,584
Medical Copay	s. 945.6037 FS	737,410	713,823	661,604	673,325	645,159
<b>Inmate Bank - GR</b>		<b>\$44,429,308</b>	<b>\$45,115,756</b>	<b>\$45,513,970</b>	<b>\$46,252,480</b>	<b>\$46,227,797</b>

### III. Effect of Proposed Changes:

The bill establishes the purpose, revenue sources, and uses for the State Operated Institutions Inmate Welfare Trust Fund (trust fund), contingent upon creation of the trust fund by passage of SB 930. The bill provides that the department hold this trust fund for the benefit and welfare of inmates incarcerated in correctional facilities operated directly by the department. Deposits into the trust fund are limited to five million dollars in any fiscal year. Revenues in excess of five million dollars during a fiscal year will be deposited into the General Revenue Fund.

The funds in the trust fund must be used exclusively for correctional facilities operated by the department to:

- Provide literacy programs, vocational training programs, and educational programs;
- Operate inmate chapels, faith-based programs, visiting pavilions, visiting services and programs, family services and programs, and libraries;
- Provide inmate substance abuse treatment programs and transition and life skills training programs;
- Provide for the purchase, rental, maintenance or repair of electronic or audio visual equipment and service used by inmates;
- Provide for the purchase, rental, maintenance or repair of recreation and wellness equipment; or

<sup>1</sup> Canteen commissions include MP3 music program sales.

- Provide for the purchase, rental, maintenance, or repair of bicycles used by inmates traveling to and from employment in the work release program.

There is a specific prohibition against using the trust fund to purchase weight-training equipment. Funds in the trust fund may be expended only pursuant to legislative appropriation.

#### **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 Florida Department of Corrections states that the bill will assist in the reduction of recidivism and inmate violence by allowing the department to:

- Fund educational and vocational programs;
- Operate chapels and faith based programs;
- Provide visitation, substance abuse and transitional programs;
- Provide libraries; and
- Purchase, rent and repair wellness equipment, audio visual equipment, and bicycles used by the work release program.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 945.215 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 February 1, 2016:**

The CS authorizes purchase of the service of electronic or audiovisual equipment in areas where free broadcasts might not be available, or if the broadcasting industry does not support free service in the future.

- B. **Amendments:**

None.

---

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

---



836554

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2016	.	
	.	
	.	
	.	

---

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

**Senate Amendment**

Delete lines 108 - 109

and insert:

4. Providing for the purchase, rental, maintenance, or repair of electronic or audiovisual equipment and service used by inmates;



By Senator Evers

2-00375A-16

2016932\_\_

A bill to be entitled

An act relating to inmate welfare and employee benefit trust funds; amending s. 945.215, F.S.; requiring that specified proceeds and funds be deposited in the State-Operated Institutions Inmate Welfare Trust Fund or the General Revenue Fund, rather than only the General Revenue Fund; requiring that the State-Operated Institutions Inmate Welfare Trust Fund be a trust held by the Department of Corrections for the benefit and welfare of certain inmates; prohibiting deposits in the trust fund from exceeding a specified amount per fiscal year; requiring that deposits in excess of that amount be deposited in the General Revenue Fund; requiring that funds from the trust fund be used exclusively for specified purposes at correctional facilities operated by the department; requiring that funds from the trust fund be expended only pursuant to legislative appropriation; requiring the department to annually compile a report, at the statewide and institutional levels, documenting the trust fund's receipts and expenditures; requiring that the report be submitted by a certain date for the previous fiscal year to specified officers of the Legislature and to the Executive Office of the Governor; prohibiting the funds from the trust fund or any other fund from being used for the purchase of weight training equipment; providing an effective date.

Page 1 of 5

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

2-00375A-16

2016932\_\_

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

Section 1. Subsection (1) of section 945.215, Florida Statutes, is amended, present subsections (2) and (3) are redesignated as subsections (3) and (4), respectively, and a new subsection (2) is added to that section, to read:

945.215 Inmate welfare and employee benefit trust funds.—

(1) INMATE PURCHASES; DEPARTMENT OF CORRECTIONS; STATE-OPERATED INSTITUTIONS INMATE WELFARE TRUST FUND.—

(a) ~~From~~ The net proceeds from operating inmate canteens, vending machines used primarily by inmates and visitors, hobby shops, and other such facilities must be deposited in the State-Operated Institutions Inmate Welfare Trust Fund or, as set forth in this section, in the General Revenue Fund; however, funds necessary to purchase items for resale at inmate canteens and vending machines must be deposited into local bank accounts designated by the department.

(b) All proceeds from contracted telephone commissions must be deposited in the State-Operated Institutions Inmate Welfare Trust Fund or, as set forth in this section, in the General Revenue Fund. The department shall develop and update, as necessary, administrative procedures to verify that:

1. Contracted telephone companies accurately record and report all telephone calls made by inmates incarcerated in correctional facilities under the department's jurisdiction;

2. Persons who accept collect calls from inmates are charged the contracted rate; and

3. The department receives the contracted telephone commissions.

Page 2 of 5

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

2-00375A-16

2016932

(c) Any funds that may be assigned by inmates or donated to the department by the general public or an inmate service organization must be deposited in the State-Operated Institutions Inmate Welfare Trust Fund or, as set forth in this section, in the General Revenue Fund; however, the department ~~may shall~~ not accept any donation from, or on behalf of, any individual inmate.

(d) All proceeds from the following sources must be deposited in the State-Operated Institutions Inmate Welfare Trust Fund or, as set forth in this section, in the General Revenue Fund:

1. The confiscation and liquidation of any contraband found upon, or in the possession of, any inmate;
2. Disciplinary fines imposed against inmates;
3. Forfeitures of inmate earnings; and
4. Unexpended balances in individual inmate trust fund accounts of less than \$1.

(e) Items for resale at inmate canteens and vending machines maintained at the correctional facilities shall be priced comparatively with like items for retail sale at fair market prices.

(f) Notwithstanding any other provision of law, inmates with sufficient balances in their individual inmate bank trust fund accounts, after all debts against the account are satisfied, shall be allowed to request a weekly draw of up to an amount set by the Secretary of Corrections, not to exceed \$100, to be expended for personal use on canteen and vending machine items.

(2) STATE-OPERATED INSTITUTIONS INMATE WELFARE TRUST FUND.-

2-00375A-16

2016932

(a) The State-Operated Institutions Inmate Welfare Trust Fund shall be a trust held by the department for the benefit and welfare of inmates incarcerated in correctional facilities operated directly by the department.

(b) Deposits in the State-Operated Institutions Inmate Welfare Trust Fund may not exceed a total of \$5 million in any fiscal year. Any proceeds or funds that would cause deposits in the State-Operated Institutions Inmate Welfare Trust Fund to exceed the restriction shall be deposited in the General Revenue Fund.

(c) Funds in the State-Operated Institutions Inmate Welfare Trust Fund shall be used exclusively for the following purposes at correctional facilities operated by the department:

1. Providing literacy programs, vocational training programs, and educational programs;
2. Operating inmate chapels, faith-based programs, visiting pavilions, visiting services and programs, family services and programs, and libraries;
3. Providing inmate substance abuse treatment programs and transition and life skills training programs;
4. Providing for the purchase, rental, maintenance, or repair of electronic or audiovisual equipment used by inmates;
5. Providing for the purchase, rental, maintenance, or repair of recreation and wellness equipment; or
6. Providing for the purchase, rental, maintenance, or repair of bicycles used by inmates traveling to and from employment in the work-release program authorized in s. 945.091(1)(b).

(d) Funds in the State-Operated Institutions Inmate Welfare

2-00375A-16

2016932\_\_

Trust Fund shall be expended only pursuant to legislative  
appropriation.

(e) The department shall annually compile a report that  
specifically documents the State-Operated Institutions Inmate  
Welfare Trust Fund receipts and expenditures. This report shall  
be compiled at both the statewide and institutional levels. The  
department must submit this report for the previous fiscal year  
by September 1 of each year to the chairs of the appropriate  
substantive and fiscal committees of the Senate and the House of  
Representatives and to the Executive Office of the Governor.

(f) Funds in the State-Operated Institutions Inmate Welfare  
Trust Fund or any other fund may not be used to purchase weight  
training equipment.

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/25/2016

932

*Meeting Date*

*Bill Number (if applicable)*

Topic Inmate Welfare Trust Fund

*Amendment Barcode (if applicable)*

Name Jim Purdy

Job Title Public Defender, 7th Circuit

Address 251 North Ridgewood Avenue

Phone 386.239.7730

*Street*

Daytona Beach

Florida

32114

*City*

*State*

*Zip*

Email purdy.james@pd7.org

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 954

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Electronic Monitoring Devices

DATE: January 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	<b>Fav/CS</b>
2.			ACJ	
3.			FP	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 954 repeals s. 948.11(7), F.S., and moves its provisions into newly created s. 843.23, F.S. This section makes it a third degree felony for a person to intentionally, and without authority remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or an order by the Florida Commission on Offender Review.

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device.

**II. Present Situation:**

Section 948.11, F.S., provides that the Department of Corrections (department) may, at its discretion, electronically monitor an offender sentenced to community control. Any offender who violates the terms of community control and is restored to community control may be supervised by an electronic monitoring device.

Electronic monitoring may also be a condition of a court or commission order for probationers, community controllees, or conditional releasees who have current or prior convictions for violent or sexual offenses. A system that actively monitors and identifies the offender's locations and

timely reports or records the offender's presence near or within a crime scene or in a prohibited area or the offender's departure from specified geographic limitations must be used.<sup>1</sup>

The department may contract with local law enforcement agencies to assist in the location and apprehension of offenders who are in noncompliance as reported by the electronic monitoring system.<sup>2</sup> Any person who intentionally alters, tampers with, damages, or destroys any electronic monitoring equipment pursuant to court or commission order, unless the person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs, commits a third degree felony.<sup>3</sup>

According to the department's December 2015 Monthly Status Report on the Community Supervision Population, there were 4,458 offenders on electronic monitoring.<sup>4</sup>

<b>Offenders Tracked by Electronic Monitoring December 2015</b>			
Supervision Type	Sex Offenders**	Others	Total
Community Control	164	965	1,129
Post Prison	215	149	364
Probation	2,352	613	2,965
Total Active Global Positioning	2,731	1,727	4,458
* Includes Active and Active-Suspense offenders.			
**Based on primary offense.			

### III. Effect of Proposed Changes:

The bill repeals s. 948.11(7), F.S., and moves its provisions into newly created s. 843.23, F.S. This section makes it a third degree felony for a person to knowingly, and without authority remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or pursuant to an order by the Florida Commission on Offender Review.

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device.

The bill provides that "electronic monitoring device" as used in this section includes any device that is used to track the location of a person.

The bill amends s. 948.11(1), F.S., to clarify that the Department of Corrections may electronically monitor offenders sentenced to community control when the court has imposed electronic monitoring as a condition of community control.

<sup>1</sup> Section 948.11(6), F.S.

<sup>2</sup> Section 948.11(6), F.S.

<sup>3</sup> Section 948.11(4), F.S.

<sup>4</sup> <http://www.dc.state.fl.us/pub/spop/2015/12/tab02.html> (last visited January 19, 2016).

The bill has 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 on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the department (an increase of ten or fewer beds).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 843.23 of the Florida Statutes.

This bill repeals section 948.11(7) of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:****CS by Criminal Justice on January 25, 2016:**

The Committee Substitute clarifies that any person who intentionally removes, destroys, alters, tampers with, damages or circumvents the operation of an electronic monitoring device can be prosecuted under the bill.

**B. Amendments:**

None.

---

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

---





813350

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2016	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete lines 33 - 39  
and insert:  
must be worn or used by that person or another person pursuant  
to a court order or pursuant to an order by the Florida  
Commission on Offender Review; or  
(b) Request, authorize, or solicit a person to remove,  
destroy, alter, tamper with, damage, or circumvent the operation  
of an electronic monitoring device required to be worn or used



813350

pursuant to a court order or pursuant to an order by the

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

And the title is amended as follows:

    Delete lines 9 - 10

and insert:

    Commission on Offender Review; prohibiting the  
    request, authorization, or solicitation of a person to  
    perform such an act;

By Senator Simmons

10-00276-16

2016954\_\_

1 A bill to be entitled  
 2 An act relating to electronic monitoring devices;  
 3 creating s. 843.23, F.S.; defining the term  
 4 "electronic monitoring device"; prohibiting a person  
 5 from removing, destroying, altering, tampering with,  
 6 damaging, or circumventing the operation of an  
 7 electronic monitoring device being worn or used  
 8 pursuant to any court order or an order by the Florida  
 9 Commission on Offender Review; prohibiting the request  
 10 or solicitation of a person to perform such an act;  
 11 providing criminal penalties; amending s. 948.11,  
 12 F.S.; specifying that the Department of Corrections  
 13 may electronically monitor an offender sentenced to  
 14 community control when the court has imposed  
 15 electronic monitoring as a condition of community  
 16 control; deleting a provision imposing criminal  
 17 penalties on persons who intentionally alter, tamper  
 18 with, damage, or destroy electronic monitoring  
 19 equipment; providing an effective date.  
 20  
 21 Be It Enacted by the Legislature of the State of Florida:  
 22  
 23 Section 1. Section 843.23, Florida Statutes, is created to  
 24 read:  
 25 843.23 Tampering with an electronic monitoring device.—  
 26 (1) As used in this section, the term "electronic  
 27 monitoring device" includes any device that is used to track the  
 28 location of a person.  
 29 (2) It is unlawful for a person to intentionally and

Page 1 of 2

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

10-00276-16

2016954\_\_

30 without authority:  
 31 (a) Remove, destroy, alter, tamper with, damage, or  
 32 circumvent the operation of an electronic monitoring device that  
 33 the person is required to wear or use pursuant to any court  
 34 order or pursuant to an order by the Florida Commission on  
 35 Offender Review; or  
 36 (b) Request or solicit any other person to remove, destroy,  
 37 alter, tamper with, damage, or circumvent the operation of an  
 38 electronic monitoring device required to be worn or used  
 39 pursuant to any court order or pursuant to an order by the  
 40 Florida Commission on Offender Review.  
 41 (3) A person who violates this section commits a felony of  
 42 the third degree, punishable as provided in s. 775.082, s.  
 43 775.083, or s. 775.084.  
 44 Section 2. Subsections (1) and (7) of section 948.11,  
 45 Florida Statutes, are amended to read:  
 46 948.11 Electronic monitoring devices.—  
 47 (1) The Department of Corrections may, ~~at its discretion,~~  
 48 electronically monitor an offender sentenced to community  
 49 control when the court has imposed electronic monitoring as a  
 50 condition of community control.  
 51 ~~(7) A person who intentionally alters, tampers with,~~  
 52 ~~damages, or destroys any electronic monitoring equipment~~  
 53 ~~pursuant to court or commission order, unless such person is the~~  
 54 ~~owner of the equipment, or an agent of the owner, performing~~  
 55 ~~ordinary maintenance and repairs, commits a felony of the third~~  
 56 ~~degree, punishable as provided in s. 775.082, s. 775.083, or s.~~  
 57 ~~775.084.~~  
 58 Section 3. This act shall take effect October 1, 2016.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** December 16, 2015

---

I respectfully request that **Senate Bill 954**, relating to Electronic Monitoring Devices, be placed on the:

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

Thank you for your consideration.

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

Senator David Simmons  
Florida Senate, District 10

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1.25.15

Meeting Date

954

Bill Number (if applicable)

Topic Electronic Monitoring

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 204 S. Monroe St.

Phone 577-3032

Street

Tall

FL

3230

City

State

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**  
**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 1044

INTRODUCER: Criminal Justice Committee and Senator Brandes and others

SUBJECT: Civil Forfeiture of Contraband

DATE: January 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			ACJ	
3.			FP	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1044 amends the Florida Contraband Forfeiture Act by requiring that the owner of seized property is prosecuted and convicted of or pleads guilty or nolo contendere to a criminal act, without regard to whether adjudication is withheld, before the civil forfeiture of the property becomes final. Until then, the state acquires provisional title to the property upon seizure.

In addition, the bill requires that the property owner be arrested before property may be seized under the act, unless the owner and state agree that the property owner will become an active confidential informant. (Currently, there is no requirement that the owner of the seized property be arrested or convicted of a criminal act before the property may be seized and forfeited.)

Under the bill, if after a diligent effort by the seizing agency, the owner of the seized property cannot be found after 3 months, the property is deemed a contraband article and forfeited pursuant to the provisions of the act. If the owner is found, the agency must return the property to the owner within 5 days after a court finding that the owner has a bona fide security interest, is an innocent owner, or has had the criminal charges dropped or dismissed.

**II. Present Situation:**

The Florida Contraband Forfeiture Act, ss. 932.701-932.706, F.S., prescribes procedures and guidelines for law enforcement agencies to follow when seizing, forfeiting, and disposing of

property under the act.<sup>1</sup> Currently, under s. 932.703, F.S., any contraband article<sup>2</sup>, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the provisions of the act.<sup>3</sup> All rights to, interest in, and title to contraband articles used in violation of the act immediately vest in the seizing law enforcement agency upon seizure.<sup>4</sup>

### **Seizure Process**

Personal property may be seized at the time of the violation or subsequent to the violation based upon a law enforcement officer's determination that probable cause exists to believe the property is being used in violation of the act. The person entitled to notice (the owner, entity, bona fide lienholder, or person in possession of the property)<sup>5</sup> must be given notice, at the time of seizure or within 5 days of the seizure by certified mail, of his or her right to have a court review such determination in a postseizure adversarial preliminary hearing.<sup>6</sup>

When a court review is desired, the person entitled to notice must request it in writing by certified mail. The agency must hold a hearing within 10 days (or as soon as practicable thereafter) after receiving the request. (Unlike personal property, seizure of real property may not occur until the person entitled to notice has the opportunity to attend a preseizure adversarial hearing at which time the court determines whether or not probable cause exists to justify the seizure.)<sup>7</sup> The seizing agency must make a diligent effort to notify persons entitled to notice of the seizure.<sup>8</sup> If after reviewing the evidence at the adversarial preliminary hearing, the court finds probable cause that the property was used in violation of the act, it must authorize the seizure or continued seizure of the contraband article.<sup>9</sup>

### **Forfeiture Proceedings**

If the person entitled to notice does not request an adversarial preliminary hearing, the seizing law enforcement agency must promptly proceed against the contraband article. It does so by filing a complaint in the civil division of the circuit court within 45 days after the seizure, requesting the court to issue a judgment of forfeiture. The Florida Rules of Civil Procedure apply

---

<sup>1</sup> The act provides for civil forfeiture, an action taken against the property or assets, also known as an action in rem. Civil forfeiture, unlike criminal forfeiture, does not require a nexus between the criminal activity of the property owner and the property. The constitutionality of the act was upheld by the Florida Supreme Court in *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991).

<sup>2</sup> "Contraband article" includes but is not limited to any real property or personal property which was used or attempted to be used as an "instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the act." Section 932.701(2)(a)5. and 6., F.S.

<sup>3</sup> Section 932.703(1), F.S.

<sup>4</sup> Section 932.703(1)(c), F.S.

<sup>5</sup> Interests of bona fide lienholders, property held jointly by a husband and wife, interests in property held jointly, and rental cars may not be forfeited under s. 932.703, F.S.

<sup>6</sup> The court review must occur within 15 days after the notice is received. Section 932.703(2), F.S.

<sup>7</sup> The hearing must occur within 10 days of the filing of the lis pendens or as soon as practicable. Section 932.703(2)(b), F.S.

<sup>8</sup> Section 932.703(2), F.S.

<sup>9</sup> Section 932.703(2)(c), F.S.

to forfeiture proceedings under the act.<sup>10</sup> The court must enter an order showing a finding of probable cause before a complaint can be served upon the claimant.<sup>11</sup> A claimant contesting the forfeiture has 20 days after receiving the complaint and the probable cause finding to file any responsive pleadings.<sup>12</sup>

Under the act, the civil forfeiture trial must be decided by a jury unless that right is waived by the claimant.<sup>13</sup> At trial, the seizing agency must prove that the contraband article was being used in violation of the act by clear and convincing evidence. Property may not be forfeited under the act unless the seizing agency shows by the preponderance of the evidence that the owner or any co-owner knew or should have known after reasonable inquiry, that the property was being used in criminal activity. Bona fide lienholders must have actual knowledge. The act also provides that it is an affirmative defense to forfeiture that the nexus between the property and the underlying violation was incidental or entirely accidental.<sup>14</sup>

The act also authorizes the claimant and the seizing law enforcement agency to settle the forfeiture action prior to the conclusion of the forfeiture proceeding. A settlement agreement must be reviewed by the court or a mediator (unless the claimant signs a written waiver). If the claimant is not represented by an attorney, the agreement must specify that the claimant has freely and voluntarily agreed to the settlement without the benefit of counsel.<sup>15</sup>

If the court orders that the property be forfeited to the seizing law enforcement agency, the final order of forfeiture perfects in the agency right, title, and interest in and to the property, subject only to the rights and interests of bona fide lienholders, and relates back to the date of seizure.<sup>16</sup>

The act requires the seizing agency to pay claimants the reasonable loss of value of the property or loss of income when the claimant prevails. It prohibits the agency from assessing fees and costs against a successful claimant. The seizing agency is also required to pay reasonable attorney's fees and costs up to \$1,000 if the claimant prevails at the adversarial preliminary hearing.<sup>17</sup>

### **Guidelines and Training Procedures**

The act also requires the Florida Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, to develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the civil forfeiture law.<sup>18</sup> For instance, each agency that seizes property must periodically review its seizures, settlements, and forfeiture proceedings to determine whether they comply with the act and the adopted guidelines. The determination of

---

<sup>10</sup> Section 932.701(2)(c) and (d), and 932.704(2), F.S.

<sup>11</sup> A "claimant" is any party who has proprietary interest in the seized property who has standing to challenge the forfeiture, including owners, registered owners, bona fide lienholders, and title-holders. Section 932.701(2)(h), F.S.

<sup>12</sup> Section 932.704(5), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 932.703, F.S.

<sup>15</sup> Section 932.704, F.S.

<sup>16</sup> Section 932.704(8), F.S.

<sup>17</sup> Section 932.704(9) and (10), F.S.

<sup>18</sup> Section 932.704(11), F.S.



whether an agency will file a forfeiture action must be the sole responsibility of the head of the agency or his or her designee. The determination of whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible.<sup>19</sup>

Section 932.706, F.S., requires the Criminal Justice Standards and Training Commission to develop a standardized course of training which is designed to develop proficiency in the seizure and forfeiture of property under the act. The curriculum must include racial and ethnic sensitivity, search and seizure case law, the use of drug-courier profiles, and the use of an order to stop based on a pretext.

### **Disposition of Forfeited Property**

Section 932.7055, F.S., provides for the disposition of liens and forfeited property under the act. The seizing agency may do any of the following when a final judgment of forfeiture is granted:

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.<sup>20</sup>

If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.<sup>21</sup>

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund and may be used to fund school resource officers, crime prevention, safe neighborhood, drug abuse education and prevention programs, or other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for law enforcement vehicles, and providing matching funds to obtain federal grants. These proceeds and interest may not be used to meet normal operation expenses.<sup>22</sup>

Additionally, any local law enforcement agency that acquires at least \$15,000 under the act within a fiscal year must expend or donate no less than 15 percent of these proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program. The agency has discretion to determine which program receives the funds.<sup>23</sup>

An agency or organization, other than the seizing agency, that wishes to receive such funds shall apply to the sheriff or chief of police for an appropriation. If the agency or organization receives

---

<sup>19</sup> *Id.*

<sup>20</sup> Section 932.7055(1), F.S.

<sup>21</sup> Sections 932.7055(3) and (4), F.S.

<sup>22</sup> Section 932.7055(5), F.S.

<sup>23</sup> Section 932.7055(5)(c)3., F.S.

funding under the act, it must provide an accounting, indicating that the funds were only used for the above stated purposes.<sup>24</sup>

If the seizing agency is a local law enforcement agency, the proceeds are deposited into a special law enforcement trust fund established by the governing body of a county or municipality. The funds may be appropriated only to the sheriff's office by the board of county commissioners or to the police department by the governing body of the municipality when the sheriff or police chief has certified that the request for funds will be used in compliance with the act.<sup>25</sup>

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund, except that the following agencies have their own forfeiture trust fund:

- FDLE;
- Division of Alcoholic Beverages and Tobacco;
- Department of Highway Safety and Motor Vehicles;
- Fish and Wildlife Conservation Commission;
- State Attorney Offices;
- School Board Security Agencies;
- State University System Police Departments;
- Department of Agriculture and Consumer Services;
- Department of Military Affairs;
- Medicaid Fraud Control Unit of the Department of Legal Affairs;
- Division of State Fire Marshal of the Department of Financial Services; and
- Division of Insurance Fraud of the Department of Financial Services.<sup>26</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 932.703, F.S., by requiring that the owner of seized property is prosecuted and convicted of or pleads guilty or nolo contendere to a criminal act, without regard to whether adjudication is withheld, before the civil forfeiture of the property becomes final. Final forfeiture occurs when title or other indicia of ownership passes to the state. Until then, the state acquires provisional title to the property upon seizure.

In addition, the bill requires the property owner be arrested before property may be seized under the act. (Currently, there is no requirement that the owner of seized property be arrested or convicted of a criminal act before the property may be seized and forfeited.)

Property may also be seized in lieu of an arrest if the property owner agrees with the state to become a confidential informant, actively participating in gathering criminal intelligence or investigative information for an active criminal investigation. If criminal charges are not brought against the property owner, the property must be returned to the owner at the end of the criminal investigation.

---

<sup>24</sup> Section 932.7055(5)(c), F.S.

<sup>25</sup> Section 932.7055(5), F.S.

<sup>26</sup> Section 932.7055(6), F.S.

Under the bill, if after a diligent effort by the seizing agency, the owner of the seized property cannot be found after 3 months, the property is deemed a contraband article and forfeited pursuant to the provisions of the act. If the owner is found, the agency will be required to return the property to the owner within 5 days after one of the following:

- A court finding that the owner has a bona fide security interest in the property;
- A court finding that the owner is an innocent owner;
- An acquittal or dismissal of the owner of the criminal charge that was the basis of the forfeiture proceedings; or
- A disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi.

The bill also provides that the seizing agency is responsible for any damage, storage fee, and related cost applicable to the property.

The bill is effective 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:

Requiring an arrest and criminal conviction under the bill may result in a reduction of property being seized and forfeited by law enforcement agencies.

C. Government Sector Impact:

Seizing law enforcement agencies may be negatively impacted to the extent that the bill reduces the number of seizures and forfeitures under the act because of the criminal nexus requirement.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Office of Program Policy Analysis and Government Accountability (OPPAGA) recently reviewed Florida's current civil asset forfeiture practices by local law enforcement agencies and released its findings in a report entitled *Civil Asset Forfeiture in Florida: Policies and Practices*.<sup>27</sup> Some of the findings in the report included the following:

- There is no current requirement for law enforcement agencies to report seizures and forfeitures under the act and without statewide information, the Legislature does not know the extent of civil asset forfeiture practices in Florida.<sup>28</sup>
- Vehicles and currency were the most commonly seized assets, related primarily to drug offenses.<sup>29</sup>
- An arrest was made in conjunction with most seizures during FY 2013-14.<sup>30</sup>
- Many assets were returned to the owners, either in whole or in part.<sup>31</sup>
- Sixteen percent of seizure actions were contested by an adversarial hearing request, and 1% resulted in a civil trial.<sup>32</sup>
- Responding agencies reported spending over \$12 million in forfeited assets during FY 2013-14.<sup>33</sup>

Also included in the report were the following options that could be considered by the Legislature when making changes to the Florida Contraband Forfeiture Act:

- Require law enforcement agencies to report seizure actions and forfeitures to the state at least annually;<sup>34</sup>
- Require a criminal conviction before forfeiture;<sup>35</sup>
- Increase the evidentiary standard of proof from clear and convincing to beyond a reasonable doubt;<sup>36</sup> and
- Restrict the use of civil asset forfeiture proceeds.<sup>37</sup>

---

<sup>27</sup> Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, Report No. 15-10 (November 2015), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1510rpt.pdf> (last visited Jan. 15, 2016).

<sup>28</sup> *Id.* at 11.

<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Id.* at 5. Responding agencies gave the following examples of when an arrest is not possible to make at the time of seizure: an arrest is premature because the officer was unable to positively identify the owner of the cash and illegal drugs; an arrest is premature during an ongoing economic crime investigation but the seizure of currency is ripe; and an arrest is premature when owners of property subject to seizure are willing to give information on higher level crimes leading to later related arrests.

<sup>31</sup> *Id.* at 7 and 8.

<sup>32</sup> *Id.* at 7.

<sup>33</sup> *Id.* at 9. Responding agencies indicated they used forfeiture money primarily for supporting substance abuse and crime prevention programs, buying additional equipment, defraying costs of complex investigations, providing additional expertise, providing matching funds to obtain federal grants, and buying automatic external defibrillators. *Id.* at 10.

<sup>34</sup> Thirty-three states have some sort of reporting requirement. *Id.* at 11.

<sup>35</sup> Several states, including Minnesota, Montana, Nevada, New Mexico, and North Carolina have this requirement. *Id.* at 12.

<sup>36</sup> Florida is one of 11 states that has a clear and convincing proof standard, which is higher than most other states. Nebraska, North Carolina, and Wisconsin use the criminal standard of proof, beyond a reasonable doubt. *Id.* at 12.

<sup>37</sup> *Id.* at 13.

The bill codifies the option of requiring a criminal conviction before final forfeiture.

**VIII. Statutes Affected:**

This bill substantially amends section 932.703 of the Florida Statutes.

The bill makes technical and conforming changes to the following sections the Florida Statutes: 322.34 and 403.413.

**IX. Additional Information:**

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

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

**CS by Criminal Justice on January 25, 2016:**

- Requires that a property owner be arrested before the property may be seized, unless the owner and state agree that the property owner will become a confidential informant.
- Requires that the property be returned to the confidential informant if charges are not brought against him or her at the conclusion of the criminal investigation.
- Clarifies that forfeiture is final when the property owner is convicted of or pleads guilty or nolo contendere to a criminal offense, without regard to whether adjudication is withheld.

**B. Amendments:**

None.



616254

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/22/2016	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete line 44  
and insert:  
the state acquires provisional title to the seized property.  
Property may not be seized under the Florida Contraband  
Forfeiture Act until the owner of such property is arrested for  
a criminal act that renders the property a contraband article. A

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



616254

11 And the title is amended as follows:  
12       Delete line 5  
13 and insert:  
14       circumstances; prohibiting the seizure of property  
15       under the Florida Contraband Forfeiture Act until the  
16       owner of such property is arrested for a criminal act  
17       that renders the property a contraband article;  
18       prohibiting a forfeiture under the



448030

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/25/2016	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete lines 44 - 49  
and insert:  
the state acquires provisional title to the seized property.  
Property may not be seized under the Florida Contraband  
Forfeiture Act until the owner of such property is arrested for  
a criminal offense that renders the property a contraband  
article. A forfeiture under the Florida Contraband Forfeiture  
Act is not final, and title or other indicia of ownership, other





448030

11 than provisional title, do not pass to the state or jurisdiction  
12 seeking forfeiture until the owner of the seized property is  
13 prosecuted and convicted of or pleads guilty or nolo contendere  
14 to a criminal offense, without regard to whether adjudication is  
15 withheld, that renders the

16  
17 ===== T I T L E   A M E N D M E N T =====

18 And the title is amended as follows:

19       Delete lines 5 - 9

20 and insert:

21       circumstances; prohibiting the seizure of property  
22       under the Florida Contraband Forfeiture Act until the  
23       owner of such property is arrested for a criminal  
24       offense that renders the property a contraband  
25       article; prohibiting a forfeiture under the Florida  
26       Contraband Forfeiture Act from being final until the  
27       owner of the seized property is prosecuted and  
28       convicted of or pleads guilty or nolo contendere to a  
29       criminal offense that renders the



323058

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2016	.	
	.	
	.	
	.	

---

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

**Senate Substitute for Amendment (448030) (with title amendment)**

Delete lines 44 - 49

and insert:

the state acquires provisional title to the seized property.

Property may not be seized under the Florida Contraband

Forfeiture Act until the owner of such property is arrested for

a criminal offense that renders the property a contraband

article. However, property may be seized if the owner of the



323058

property is a confidential informant in lieu of an arrest. The  
confidential informant status must be agreed upon between the  
seizing agency and the property owner, and the property owner  
must actively participate as a confidential informant in  
gathering criminal intelligence or investigative information for  
an active criminal investigation. The seizing agency may not use  
the threat of property seizure or forfeiture when offering the  
property owner the status of confidential informant in lieu of  
an arrest. If charges are not brought against the property  
owner, the property must be returned to the owner at the  
conclusion of the active criminal investigation or the cessation  
of the status of criminal informant. Final forfeiture of  
property may be included as a component of the agreement to  
serve as a confidential informant. A forfeiture under the  
Florida Contraband Forfeiture Act is not final, and title or  
other indicia of ownership, other than provisional title, does  
not pass to the state or jurisdiction seeking forfeiture until  
the owner of the seized property is prosecuted and convicted of  
or pleads guilty or nolo contendere to a criminal offense,  
without regard to whether adjudication is withheld, that renders  
the

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

And the title is amended as follows:

Delete lines 5 - 8

and insert:

circumstances; prohibiting the seizure of property  
under the Florida Contraband Forfeiture Act until the  
owner of such property is arrested for a criminal



323058

offense that renders the property a contraband  
article; providing an exception; prohibiting the  
seizing law enforcement agency from threatening a  
property owner with property seizure or forfeiture  
under certain circumstances; requiring the return of  
property by the seizing law enforcement agency to the  
property owner under certain circumstances;  
prohibiting a forfeiture under the Florida Contraband  
Forfeiture Act from being final until the owner of the  
seized property is prosecuted and convicted of or  
pleads guilty or nolo contendere to a criminal offense  
that renders the

By Senator Brandes

22-00490A-16

20161044

A bill to be entitled

An act relating to forfeiture of contraband; amending s. 932.703, F.S.; providing for the acquisition of the provisional title of seized property under certain circumstances; prohibiting a forfeiture under the Florida Contraband Forfeiture Act from being final until the owner of the seized property is prosecuted and convicted of a criminal act that renders the property a contraband article; providing that the property is deemed a contraband article and forfeited subject to forfeiture proceedings under certain circumstances; specifying circumstances under which the seizing law enforcement agency must return the property to the owner; deleting a provision vesting rights, interests, and title to contraband articles in the seizing law enforcement agency; amending s. 322.34, F.S.; conforming a provision to changes made by the act; reenacting s. 403.413(6)(e), F.S., relating to forfeiture under the Florida Litter Law, to incorporate the amendment made to s. 932.703, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (1) of section 932.703, Florida Statutes, is amended to read:

932.703 Forfeiture of contraband article; exceptions.—

(1)(a) Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in

Page 1 of 4

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

22-00490A-16

20161044

violation of ~~any provision of~~ the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to ~~the provisions of~~ the Florida Contraband Forfeiture Act.

(b) Notwithstanding any other provision of the Florida Contraband Forfeiture Act, except ~~the provisions of~~ paragraph (a), contraband articles set forth in s. 932.701(2)(a)7. used in violation of ~~any provision of~~ the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, shall be seized and shall be forfeited subject to ~~the provisions of~~ the Florida Contraband Forfeiture Act.

(c) At the time of seizure or entry of a restraining order, the state acquires provisional title to the seized property. A forfeiture under the Florida Contraband Forfeiture Act is not final, and title or other indicia of ownership, other than provisional title, do not pass to the state or jurisdiction seeking forfeiture until the owner of the seized property is prosecuted and convicted of a criminal act that renders the property a contraband article. If, after 3 months, the seizing agency cannot find the owner of the seized property after a diligent effort, the seized property is deemed a contraband article and forfeited subject to s. 932.704. However, if the seizing agency finds the owner, the seizing agency shall return the property to the owner within 5 days after:

1. The court finding that the owner had a bona fide security interest;

2. The court finding that the owner was an innocent owner;

Page 2 of 4

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

22-00490A-16

20161044

59 3. The acquittal or dismissal of the owner of the criminal  
 60 charge that was the basis of the forfeiture proceedings; or

61 4. The disposal of the criminal charge that was the basis  
 62 of the forfeiture proceedings by nolle prosequi. The seizing  
 63 agency is responsible for any damage, storage fee, and related  
 64 cost applicable to the property. All rights to, interest in, and  
 65 title to contraband articles used in violation of s. 932.702  
 66 shall immediately vest in the seizing law enforcement agency  
 67 upon seizure.

68 (d) The seizing agency may not use the seized property for  
 69 any purpose until the rights to, interest in, and title to the  
 70 seized property are perfected in accordance with the Florida  
 71 Contraband Forfeiture Act. This section does not prohibit use or  
 72 operation necessary for reasonable maintenance of seized  
 73 property. Reasonable efforts shall be made to maintain seized  
 74 property in such a manner as to minimize loss of value.

75 Section 2. Paragraph (c) of subsection (9) of section  
 76 322.34, Florida Statutes, is amended to read:

77 322.34 Driving while license suspended, revoked, canceled,  
 78 or disqualified.—

79 (9)

80 (c) Notwithstanding ~~s. 932.703(1)(c)~~ or s. 932.7055, when  
 81 the seizing agency obtains a final judgment granting forfeiture  
 82 of the motor vehicle under this section, 30 percent of the net  
 83 proceeds from the sale of the motor vehicle shall be retained by  
 84 the seizing law enforcement agency and 70 percent shall be  
 85 deposited in the General Revenue Fund for use by regional  
 86 workforce boards in providing transportation services for  
 87 participants of the welfare transition program. In a forfeiture

22-00490A-16

20161044

88 proceeding under this section, the court may consider the extent  
 89 that the family of the owner has other public or private means  
 90 of transportation.

91 Section 3. For the purpose of incorporating the amendment  
 92 made by this act to section 932.703, Florida Statutes, in a  
 93 reference thereto, paragraph (e) of subsection (6) of section  
 94 403.413, Florida Statutes, is reenacted to read:

95 403.413 Florida Litter Law.—

96 (6) PENALTIES; ENFORCEMENT.—

97 (e) A motor vehicle, vessel, aircraft, container, crane,  
 98 winch, or machine used to dump litter that exceeds 500 pounds in  
 99 weight or 100 cubic feet in volume is declared contraband and is  
 100 subject to forfeiture in the same manner as provided in ss.  
 101 932.703 and 932.704.

102 Section 4. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request



**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** December 18, 2015

---

I respectfully request that **Senate Bill #1044**, relating to **Forfeiture of Contraband**, be placed on the:

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

A handwritten signature, likely of Senator Jeff Brandes, is written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 22

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

1044  
Bill Number (if applicable)

323058  
Amendment Barcode (if applicable)

Topic Contraband Forfeiture

Name BRADLEY WEISSMAN

Job Title Asst. City Attorney

Address 1300 W. Broward Blvd.  
Street

Phone 9548285626

Fort Lauderdale FL 33312  
City State Zip

Email bweissman@f

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

1044  
Bill Number (if applicable)

448030  
Amendment Barcode (if applicable)

Topic Contraband Forfeiture

Name Bradley Weissman

Job Title Asst. City Attorney

Address 1300 W. Broward Blvd, Phone 9548285626  
Street

Fort Lauderdale, FL 33312 Email bweissman@fortlauderdale.gov  
City State Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/25/2016

*Meeting Date*

1044

*Bill Number (if applicable)*

Topic Forfeiture of Contraband

*Amendment Barcode (if applicable)*

Name Jim Purdy

Job Title Public Defender, 7th Circuit

Address 251 North Ridgewood Avenue

Phone 386.239.7730

*Street*

Daytona Beach

Florida

32114

Email purdy.james@pd7.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

***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)

01/25/16  
Meeting Date

1044  
Bill Number (if applicable)

Topic Civil Forfeiture Reform

Amendment Barcode (if applicable)

Name Justin Pearson

Job Title Managing Attorney, Institute for Justice

Address 999 Brickell Ave, Suite 720

Phone (305) 721-1600

Street

Miami

FL

33131

City

State

Zip

Email JPearson@IJ.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Myself / Institute for 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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/25/16

Meeting Date

SB1044

Bill Number (if applicable)

Topic Contraband Forfeiture

Amendment Barcode (if applicable)

Name Kristen Butler

Job Title Communications Director

Address \_\_\_\_\_  
Street

Phone 850-728-681-0466

City

State

Zip

Email Kristen.Butler@nib.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing National Federation of Independent Business

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.

THE FLORIDA SENATE

APPEARANCE RECORD

1/25/16

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

1044

Meeting Date

Bill Number (if applicable)

Topic CIVIL FORFEITURE

Amendment Barcode (if applicable)

Name Dan Peterson

Job Title Director - Center for Property Rights

Address 100 N. Duval St

Phone 407-758-2491

Street

Tallahassee

City

FL

State

32301

Zip

Email d.peterson@jamesmadison.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing James Madison Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

1044  
Bill Number (if applicable)

Topic Civil Forfeiture

Amendment Barcode (if applicable)

Name Catherine Beer

Job Title Chair

Address 1421 Woodgate Way  
Street

Phone \_\_\_\_\_

Tallahassee FL  
City State Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The Tea Party Network

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

1044  
Bill Number (if applicable)

Topic Forfeiture of Contraband

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850/425-1344  
Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AcLU of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

This form is part of the public record for this meeting

S 001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

SB 1044  
Bill Number (if applicable)

Topic For Feiture

Amendment Barcode (if applicable)

Name Buddy JACOBS

Job Title General Counsel Fla. Prosecuting Attys Association

Address 9668 Gateway Blvd.  
Street

Phone 904-261-3693

Fernandina Bch FL  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing State Attorneys

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.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

1044  
Bill Number (if applicable)

Topic Forfeiture of Contraband

Amendment Barcode (if applicable)

Name Rob Bullara

Job Title MAJOR

Address 2008 E. 8th Avenue  
Street

Phone 813 363-0375

Tampa FL 33605  
City State Zip

Email LBowden@hcs0.tampa  
FL, US

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Hillsborough County Sheriff's Office

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 (10/11/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

January 25, 2016  
Meeting Date

1044

Bill Number (if applicable)

  
Amendment Barcode (if applicable)

Topic Contractual Foreclosure

Name BRADLEY WEISSMAN

Job Title Assistant City Attorney Fort Lauderdale

Address 1300 W. Broward Blvd

Street

Fort Lauderdale

City

FL

State

33312

Zip

Phone 954-828-5626

Email BWEISSMAN@FortLauderdaleFL.gov

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1-25-16

*Meeting Date*

1044

*Bill Number (if applicable)*

Topic Contraband Forfeiture

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-274-3599

*Street*

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

*City*

*State*

*Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**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: Criminal Justice Committee

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

DATE: February 2, 2016

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dugger	Cannon		<b>CJ Submitted as Committee Bill</b>

---

**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.<sup>1</sup>

This exemption is subject to review under the Open Government Sunset Review Act.<sup>2</sup> It will expire on October 2, 2016, unless the Legislature reviews and reenacts it.

The Criminal Justice Committee voted on February 1, 2016, to reenact the exemption but limit it to photographs and video and audio recordings held by an agency that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.<sup>3</sup>

Since the bill narrows the scope of the public records exemption, it does not require a two-thirds vote of each house of the Legislature for passage.

---

<sup>1</sup> Section 406.136, F.S.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Committee members discussed and weighed heavily that the genesis for the exemption's creation was the killing of a police officer during a traffic stop in Tampa that was captured on the patrol car's video camera.

## 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.<sup>4</sup> This applies to the official business 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.<sup>5</sup>

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.<sup>6</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.”<sup>10</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>11</sup>

The Legislature may create an exemption to public records requirements.<sup>12</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>13</sup> 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.<sup>14</sup> A statutory

---

<sup>4</sup> FLA. CONST., art. I, s. 24(a).

<sup>5</sup> FLA. CONST., art. I, s. 24(a).

<sup>6</sup> 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.

<sup>7</sup> Public records laws are found throughout the Florida Statutes.

<sup>8</sup> Section 119.01(1), F.S.

<sup>9</sup> 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.”

<sup>10</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>11</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>12</sup> FLA. CONST., art. I, s. 24(c).

<sup>13</sup> FLA. CONST., art. I, s. 24(c).

<sup>14</sup> FLA. CONST., art. I, s. 24(c).

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>15</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>16</sup> 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.<sup>17</sup>

### **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.<sup>18</sup> 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.<sup>19</sup> 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:<sup>20</sup>

- 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?

---

<sup>15</sup> *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.

<sup>16</sup> 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).

<sup>17</sup> 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).

<sup>18</sup> 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).

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(a), F.S.

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.<sup>21</sup> 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.<sup>22</sup>

### **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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain them.<sup>26</sup>

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.<sup>27</sup>

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.<sup>28</sup>

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.<sup>29</sup> 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.<sup>30</sup>

---

<sup>21</sup> FLA. CONST., art. I, s. 24(c).

<sup>22</sup> Section 119.15(7), F.S.

<sup>23</sup> 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.

<sup>24</sup> Section 406.136(2), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 406.136(3), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Section 406.136(4), F.S.

<sup>29</sup> Section 406.136(5), F.S.

<sup>30</sup> Section 406.136(4)(c), F.S.

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.<sup>31</sup>

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 recording.<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup> 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.<sup>35</sup>

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.<sup>36</sup>

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

---

<sup>31</sup> Section 406.136(6), F.S.

<sup>32</sup> *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.

<sup>33</sup> Section 406.136(7), F.S.

<sup>34</sup> Chapter 2001-1, s. 1, Laws of Fla.

<sup>35</sup> Chapter 2011-115, s. 2, Laws of Fla.

<sup>36</sup> Section 406.136(9), F.S.



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 photographs or recordings subjects the surviving family members to unwarranted trauma and emotional distress and harms the memory of the deceased.<sup>37</sup>

The Senate Criminal Justice Committee voted on February 1, 2016, to reenact the exemption but limit it to photographs and video and audio recordings held by an agency that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.<sup>38</sup>

### **III. Effect of Proposed Changes:**

The bill narrows 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. Under the bill, the exemption will only apply to photographs and video and audio recordings held by an agency that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.

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.

---

<sup>37</sup> 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.

<sup>38</sup> Committee members discussed and weighed heavily that the genesis for the exemption's creation was the killing of a police officer during a traffic stop in Tampa that was captured on the patrol car's video camera.

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

In *Campus Communications, Inc., v. Earnhardt*,<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup>

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.<sup>43</sup> 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.<sup>44</sup>

Since the bill narrows the scope of the public records exemption in s. 406.136, F.S., it 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.

---

<sup>39</sup> *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).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 395.

<sup>42</sup> *Id.* at 394.

<sup>43</sup> *Id.* at 403.

<sup>44</sup> *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).

**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.

**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.



753234

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/01/2016	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 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 law enforcement officer who  
was acting in accordance with his or her official duties a  
person.—



753234

(1) As used in this section, the term "killing of a law enforcement officer who was acting in accordance with his or her official duties" ~~"killing of a person"~~ means all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties ~~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 law enforcement officer who was acting in accordance with his or her official duties ~~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.

(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 law enforcement officer who was acting in accordance with his or her official duties ~~a person~~ and, unless otherwise required in the performance of their duties, the identity of the deceased shall remain confidential and exempt.



753234

(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 law enforcement officer who was acting in accordance with his or her official duties ~~a person~~ or to listen to or copy an audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties ~~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 other handling of a photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties ~~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



753234

video recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties ~~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 law enforcement officer who was acting in accordance with his or her official duties ~~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 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 law enforcement officer



753234

who was acting in accordance with his or her official duties ~~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 law enforcement officer who was acting in accordance with his or her official duties 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.

===== 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 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; narrowing the exemption to depictions or





753234

127        recordings of the killing of a law enforcement officer  
128        who was acting in accordance with his or her official  
129        duties; removing the scheduled repeal of the  
130        exemption; providing an effective date.

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.

Page 1 of 4

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

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

Page 2 of 4

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

591-00875-16

20167022pb

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

20167022pb

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)

1/25/16

Meeting Date

7022

~~1553~~

Bill Number (if applicable)

Topic Video or Audio

Amendment Barcode (if applicable)

Name Greg Powell

Job Title \_\_\_\_\_

Address 9106 Sunrise Dr.

Street

Phone \_\_\_\_\_

Largo

City

Fla.

State

33773

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Families

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)

11/25/14

Meeting Date

7022

Bill Number (if applicable)

Topic 7022

Amendment Barcode (if applicable)

Name Bill Peabler

Job Title

Address PO Box 10930

Street

Phone 566-3829

Ballahenne FL

City

State

Zip

32302

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)



# FLORIDA DEPARTMENT OF JUVENILE JUSTICE

PART OF THE COMMUNITY, PART OF THE SOLUTION

## System Reform and Initiatives

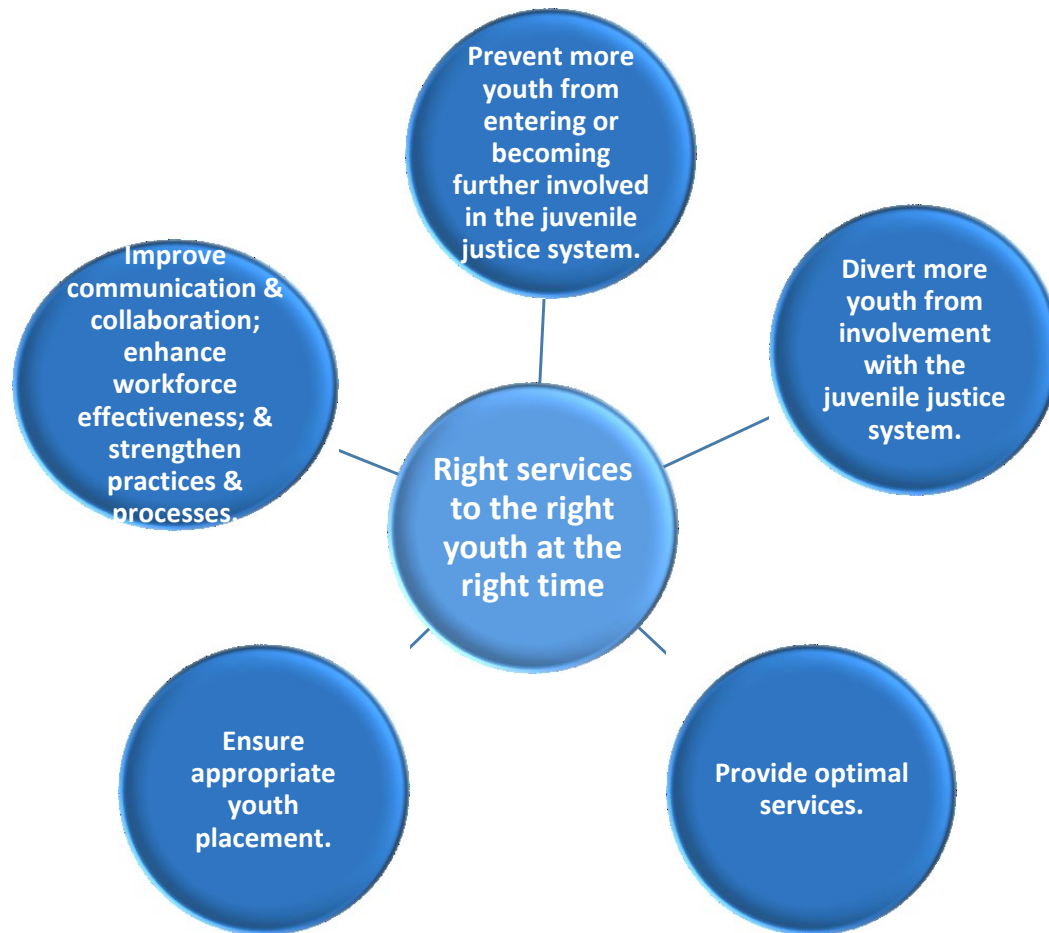
Senate Criminal Justice Committee  
Monday, January 25, 2016

**Rick Scott, Governor**

**Christina K. Daly, Secretary**



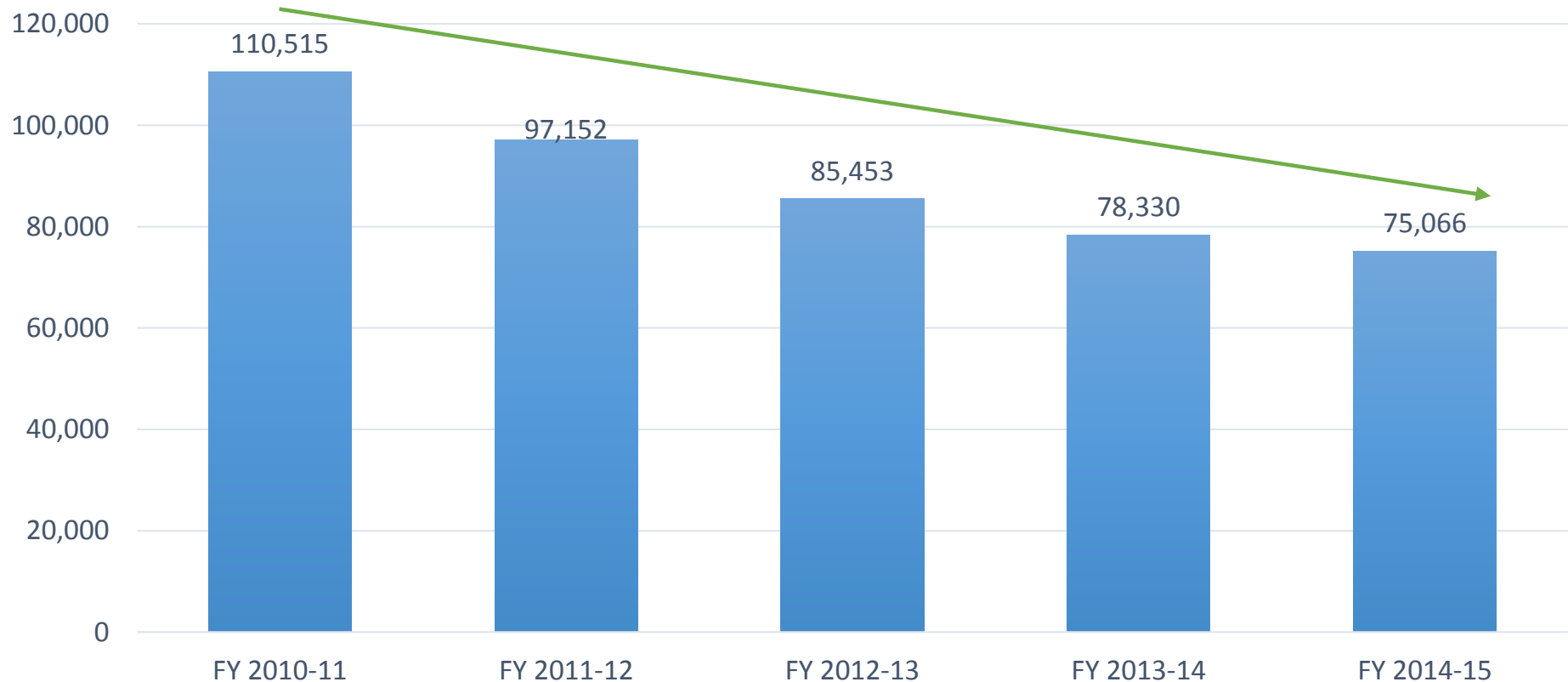
# Roadmap to System Excellence





# Florida Delinquency Declines

## 5-Year Trend: Delinquency Arrests Lowest in 30 years

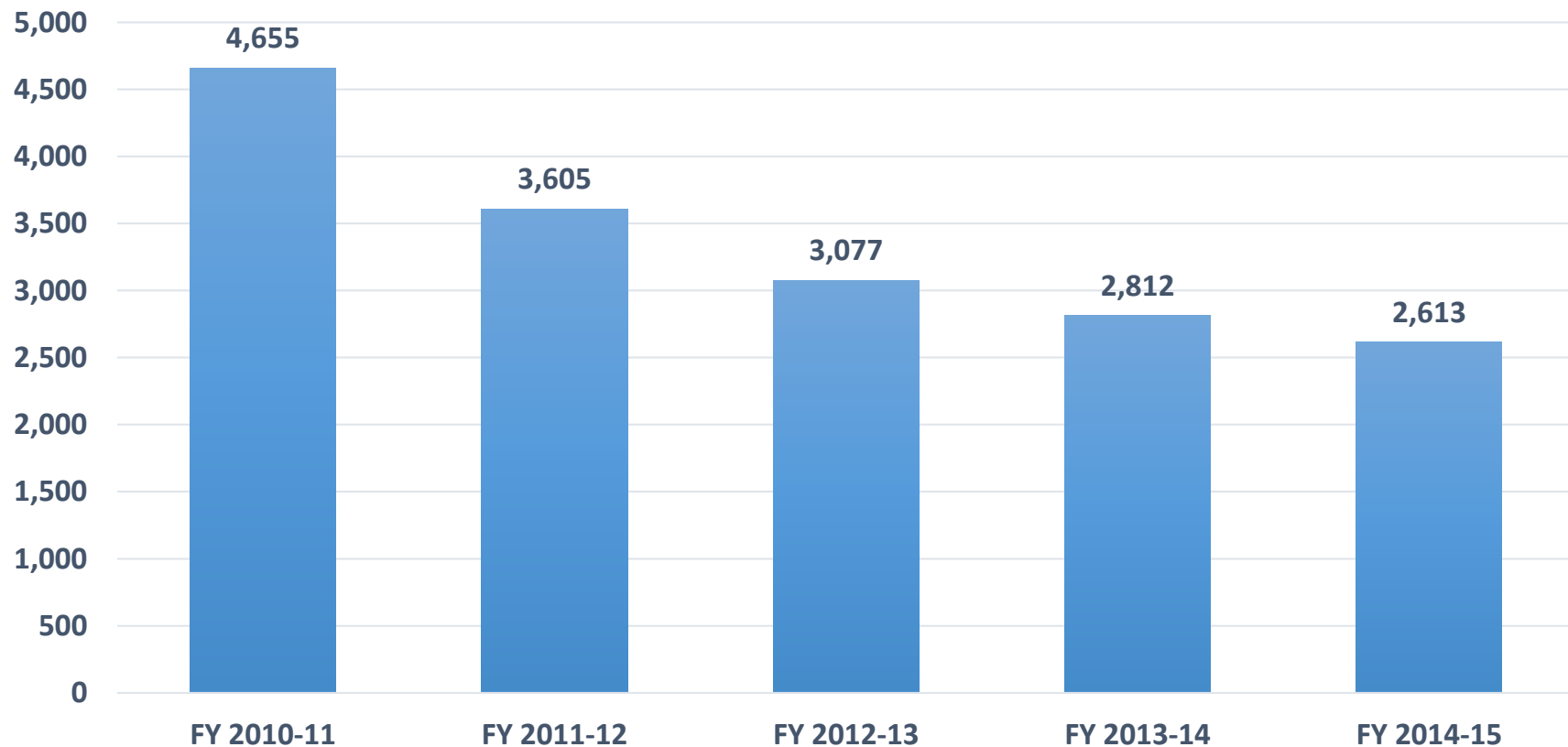






# Management of the At-Risk Youth Population

## 5-Year Trend: Youth Committed to DJJ Residential Programs

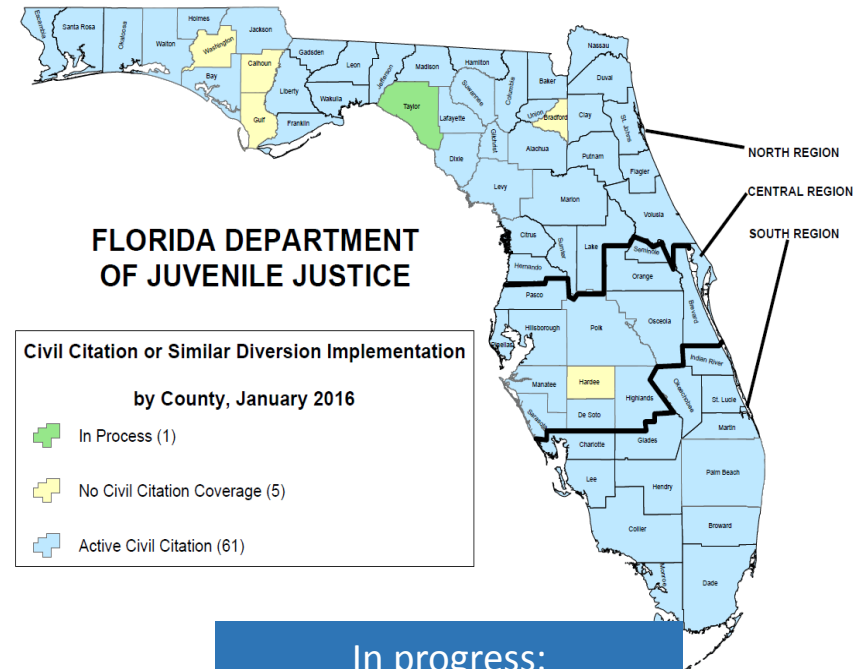
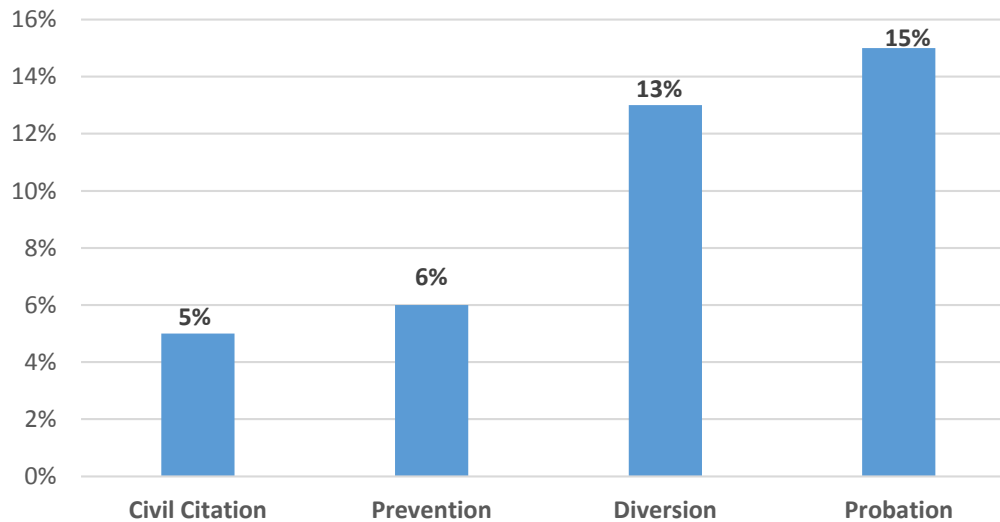




# Civil Citation Process

Civil Citation process increased from 11 to 61 counties since 2011

12-Month Recidivism Rates

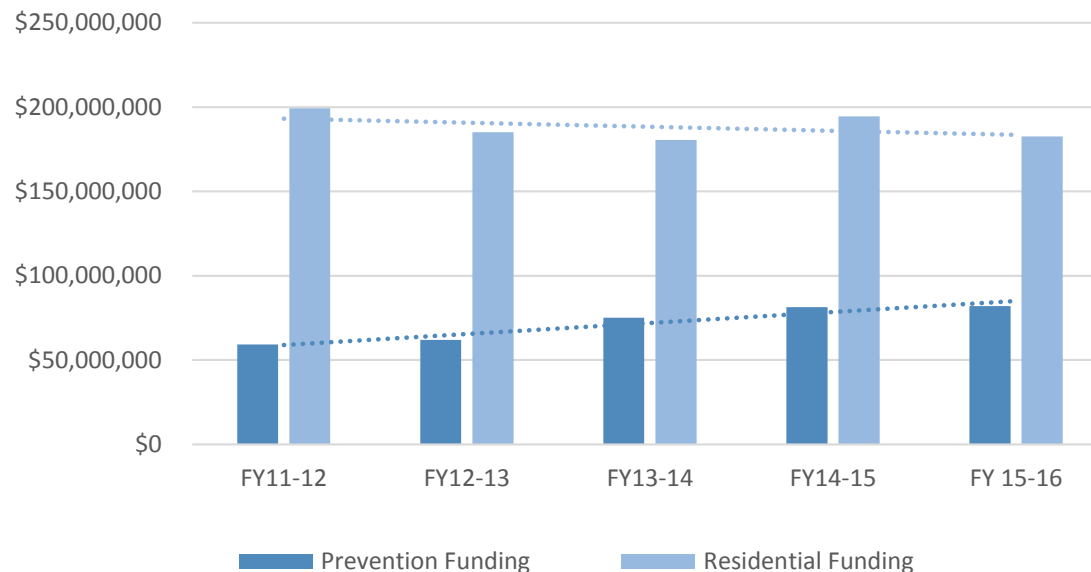


In progress:  
Taylor

No Civil Citation:  
Bradford, Calhoun, Gulf, Hardee, Washington



# Resource Realignment and Increase in Prevention Services

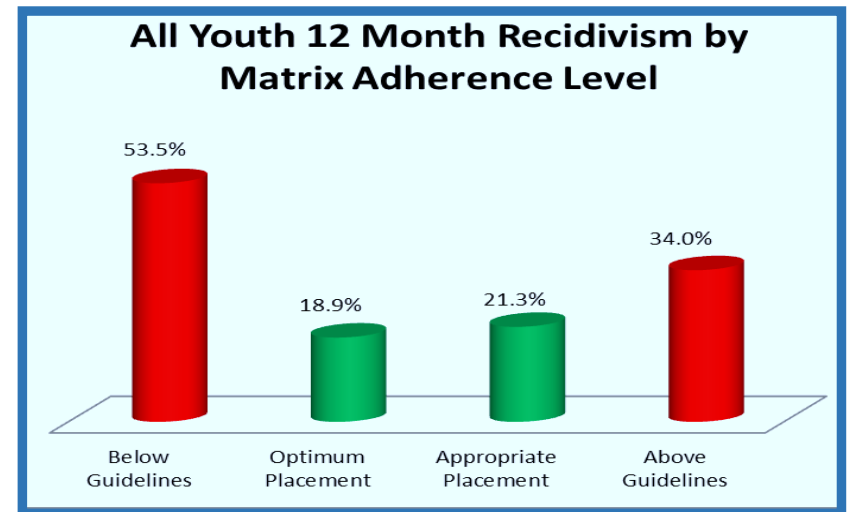


	Prevention Funding	Residential Funding	
<b>FY11-12</b>	\$ 59,213,098	\$ 199,335,353	
<b>FY12-13</b>	\$ 61,938,161	\$ 184,999,720	
<b>FY13-14</b>	\$ 74,982,973	\$ 180,465,618	
<b>FY14-15</b>	\$ 81,432,425	\$ 194,426,507	
<b>FY 15-16</b>	<u>\$ 81,980,003</u>	<u>\$ 182,603,529</u>	July 1 Data
	<b>38%</b>	<b>25%</b>	



# Juvenile Justice System Improvement Project

- In 2014, Florida was one of four states selected by Georgetown University
- Created Framework for implementing system-wide best practices
- Developed and validated a structured decision making tool





# Other Initiatives

- Community Engagement
  - Faith Community Network
  - Circuit Advisory Boards and State Advisory Group
  - Community Conversations
- Trauma Informed Care
  - Juvenile Justice Reform Bill – HB 7055 (2014)
  - Academy and in-service training
  - PAWS for Justice program
  - Therapeutic activities, soft rooms, comfort items
  - Trauma responsive practices
- Culture of Care/ Normalization



# Probation and Community Intervention

- Juvenile Probation Officer (JPO) Transformation
  - Delivering higher levels of service to youth and families
- Effective Practices in Community Supervision (EPICS)
  - Cognitive behavioral model to build relationship skills, address prescribed issues, and provide the youth and family with prescribed dosage of treatment interventions
- Family Engagement
  - Improved strategies by JPOs to involve families in the rehabilitation of youth



# Human Trafficking Screening Tool

- Human trafficking screening tool
  - Developed to be used by both DJJ intake staff and DCF child protective investigators
  - Utilized in all DJJ juvenile assessment and intake centers with youth who have certain risk factors
  - Objectives:
    - Better identify trafficking victims
    - Inform service development within DJJ
    - Gather data on aggregate level



# Procurement and Monitoring

- Procurement Transformation
- Quality Improvement
- Monitoring Prioritization Tool
  - Risk-based assessment
  - Updated quarterly
  - Maximizes monitoring resources
- Governor's Recommended Budget
  - Includes funding to increase contract monitoring





# What's Next?

- Strengthening education in DJJ programs
- Expansion of what's working
- Strengthening workforce
- Workforce partnerships
- Evening reporting centers
- Strengthening family support to enhance successful re-entry
- Transitional housing
- Collaboration with state and national experts



# FLORIDA DEPARTMENT OF JUVENILE JUSTICE

PART OF THE COMMUNITY, PART OF THE SOLUTION

## System Reform and Initiatives

Senate Criminal Justice Committee  
Monday, January 25, 2016

**Rick Scott, Governor**

**Christina K. Daly, Secretary**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

Tab 11

1-25-16

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

Meeting Date

Bill Number (if applicable)

Topic DJ Reform Initiatives

Amendment Barcode (if applicable)

Name Christina K. Daly

Job Title Secretary

Address 2737 Centerview Dr.

Phone 850-413-7313

Street

Tallahassee

FL

32399

City

State

Zip

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

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)



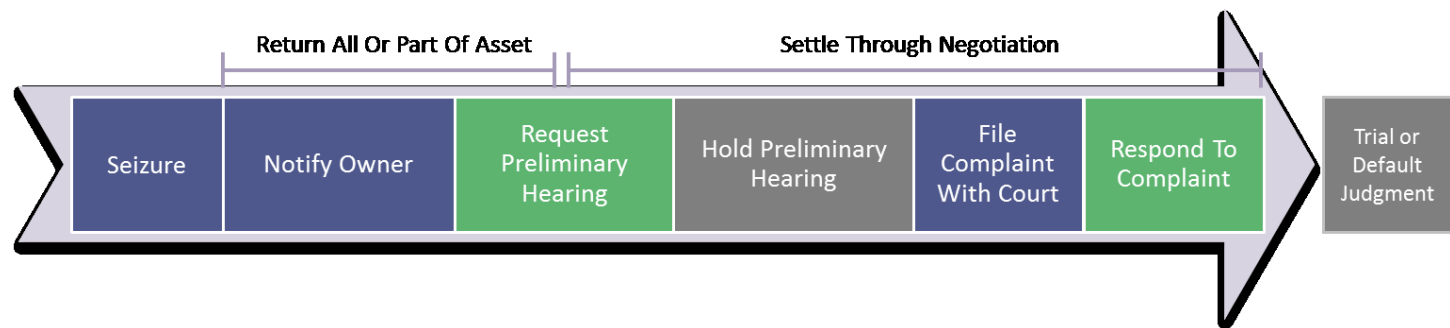
# Civil Asset Forfeiture in Florida: Policies and Practices

**D. Byron Brown, Chief Legislative Analyst**  
*Office of Program Policy Analysis and Government Accountability*

January 25, 2016

# Civil Asset Forfeiture

- Seizure and transfer of ownership of property believed to have been used in criminal activity
  - Governed by federal and state law



Source: Florida Statutes and OPA/ORA survey of local law enforcement agencies.

# Information of Florida Practices

- No current reporting requirements under state law
- OPPAGA focused on the practices of local law enforcement agencies through
  - Interviews
  - Survey Responses
    - ▶ 33 of 67 sheriff's offices
    - ▶ 119 of 223 police departments

# Three Components to Forfeiture

- Seizure Actions
- Forfeiture Process
- Use of Seized Assets

# Seizure Actions

Florida law enforcement agencies make thousands of seizures annually

Fiscal Year <sup>1</sup>	Number of Agencies Reporting	Number of Seizures Reported
2010-11	107	4,315
2011-12	111	3,732
2012-13	112	3,780
2013-14	122	4,210
2014-15 <sup>2</sup>	114	2,829
<b>Total</b>	<b>122</b>	<b>18,866</b>

<sup>1</sup> The fiscal year is October 1 through September 30.

<sup>2</sup> For Fiscal Year 2014-15, we asked for data through June 30, 2015.

Source: OPPAGA survey of local law enforcement agencies.



# Typical Seizure Actions?

- Drug offenses are the most common basis for seizures
- Most seizures occur in conjunction with an arrest
- Vehicles and currency are the most common items seized

# Forfeiture Process

- Agency, City, County, or contracted legal counsel manage the process
- Judicial oversight of the process
- Many seizure actions are not contested
  - Adversarial hearings requested in 16% of seizures
  - Trials occur in about 1% of seizures

# Most Actions End with Some Assets Returned to Owners

Outcome of Seizure Actions From Fiscal Year 2013-14 <sup>1</sup>	Number of Seizure Actions	Percentage of Seizure Actions
All assets returned to owner	567	25%
Assets split; partially returned to owner; partially forfeited	767	34%
All assets forfeited	818	36%
Still pending <sup>2</sup>	107	5%
<b>Total</b>	<b>2,259<sup>3</sup></b>	<b>100%</b>

Source: OPPAGA survey of local law enforcement agencies.

# Use of Seized Assets

- Agencies reported depositing over \$68 million in assets over the last five fiscal years

Fiscal Year <sup>1</sup>	Number of Agencies Reporting	Forfeiture Dollars Deposited
2010-11	113	\$10,901,662
2011-12	115	7,950,532
2012-13	115	10,363,579
2013-14	122	18,871,997
2014-15 <sup>1</sup>	117	20,584,633
<b>Total</b>	<b>122</b>	<b>\$68,672,405</b>

Source: OPPAGA survey of local law enforcement agencies.

# Funds Used for Several Purposes

Use Category	Percentage of Agencies
Substance abuse and crime prevention programs	79%
Purchase additional equipment	63%
Defray cost of investigations	17%
Provide additional expertise	16%
Provide matching funds to obtain federal grants	9%
Purchase automatic external defibrillators	2%

Source: OPA's survey of local law enforcement agencies.

# Other States are Making Changes

- Increased standards of proof for forfeiture
- Increased reporting of seizures and forfeiture
- Requiring conviction prior to forfeiture
- Restrictions on the use of forfeited funds

# Questions?



*oppaga*

THE FLORIDA LEGISLATURE'S OFFICE OF PROGRAM POLICY ANALYSIS & GOVERNMENT ACCOUNTABILITY

OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations.



November 2015

Report No. 15-10

# Civil Asset Forfeiture in Florida: Policies and Practices

## *at a glance*

Civil asset forfeiture is law enforcement's seizure and potential transfer of ownership of real or personal property that is used or attempted to be used in criminal activity. Once assets are seized, a law enforcement agency may file a claim for forfeiture of the assets in civil court, and once forfeited, those assets become the property of the agency.

There is currently no requirement for local law enforcement agencies to report seizures and forfeiture activity under state law. According to survey data obtained from about half of local law enforcement agencies in Florida, these agencies make thousands of seizures annually, mostly related to drug offenses. Vehicles and currency are the most commonly seized assets, with real property rarely seized. While most assets seized under state law are forfeited, many assets are returned to the owners, either in whole or part. Only 16% of the seizure actions are contested by a request for an adversarial hearing, and 1% end in a civil trial.

Assets seized under state law can be used by law enforcement agencies for a variety of law enforcement-related purposes, such as providing additional equipment or expertise. Some forfeited assets are donated to substance abuse and crime prevention programs. Responding agencies reported spending over \$12 million in forfeited assets during Fiscal Year 2013-14. The Legislature may wish to consider revising state law to require law enforcement agencies to report information on the frequency and extent of civil asset forfeiture in Florida. In addition, the Legislature may want to consider reforms that other states have pursued to increase protections for property owners and limit law enforcement use of forfeiture proceeds.

## Scope

As directed by the Legislature, OPPAGA reviewed the current civil asset forfeiture policies and practices of Florida's local law enforcement agencies related to the Florida Contraband Forfeiture Act.<sup>1</sup>

## Background

Civil asset forfeiture is the seizure and potential transfer of ownership of real or personal property that is used or attempted to be used in criminal activity. Forfeiture seeks to deprive criminals of ill-gotten gains, prevent the further illicit use of property, and to deter illegal behavior. This civil remedy is available to law enforcement agencies under both state and federal law. The use of civil asset forfeiture was limited until the 1980s, when Congress amended federal law and greatly expanded the use of the practice as a law enforcement tool to combat the flow of illegal drugs into and around the country. Many states, including Florida, followed suit and enhanced state civil asset forfeiture statutes as a tool for law enforcement agencies within the state.<sup>2</sup>

The Florida Contraband Forfeiture Act sets forth requirements regarding the seizure of contraband by law enforcement agencies, the processes related to the civil forfeiture of those

<sup>1</sup> Sections [932.701-932.706](#), *F.S.*

<sup>2</sup> Florida first enacted civil asset forfeiture in 1974.



assets, and the regulations related to the use of those assets by the seizing agencies. In Florida, as in other states, property can be forfeited either criminally or civilly. However, unlike criminal forfeiture, which is linked to the conviction of the individual in a criminal proceeding, a seizure under the Florida Contraband Forfeiture Act does not require an arrest or conviction, and any related criminal proceedings or determinations are neither relevant nor admissible in a civil forfeiture action.<sup>3</sup> Under the act, law enforcement may seize any contraband article, such as personal property including currency, motor vehicles, or real property that is used, or attempted to be used, in the commission of a felony, or acquired with proceeds gained by a violation of the act.<sup>4,5</sup>

Statute limits law enforcement seizure of real property until a judicial hearing determines that

<sup>3</sup> Civil forfeiture involves an action taken against a person's property or assets, also known as an action in rem. The property owner in a civil asset forfeiture case is not entitled to an attorney if he cannot afford one. Neither the state attorney nor the public defender, who may be involved in the criminal case against the defendant, participate in the civil case against the owner's property.

<sup>4</sup> Real property is defined in Florida statutes as land, buildings, fixtures, and all other improvements to land.

<sup>5</sup> Per s. [932.701\(2\)\(a\)5](#), *F.S.*, forfeiture may also involve the proceeds of illegal activity or items purchased with the proceeds of illegal activity.

probable cause exists to justify the seizure.<sup>6</sup> However, all other property, such as vehicles and currency, can be seized based on law enforcement's determination of probable cause. One example of a seizure occurs when law enforcement, during a traffic stop of a vehicle, becomes suspicious of the driver or occupants, and asks permission to search the vehicle. The officer may discover narcotics or large quantities of cash in the vehicle. If the officer has probable cause or reasonable grounds to believe that the cash came from the sale of narcotics, then that cash is subject to seizure. If the officer has probable cause to believe that the vehicle was used to transport narcotics, then the vehicle is also subject to seizure.<sup>7</sup>

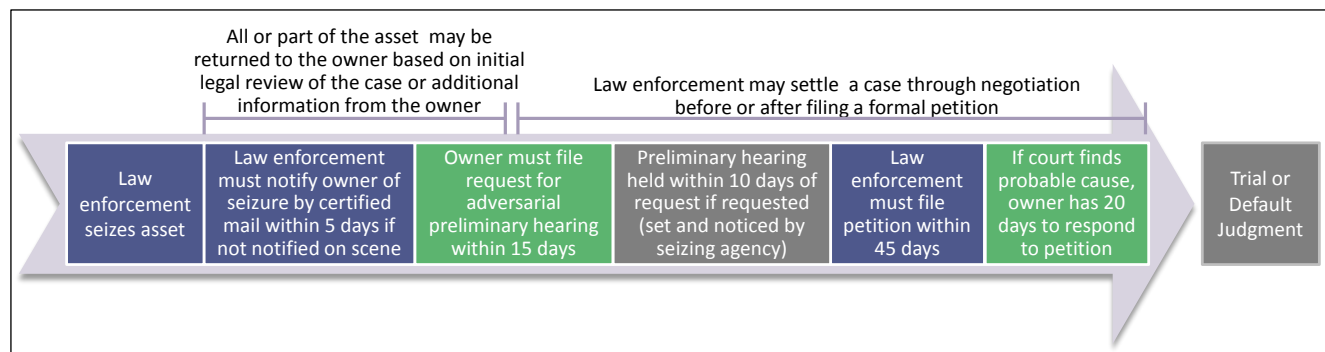
After the seizure, attorneys for the law enforcement agency manage the legal processes related to the civil forfeiture of assets. As shown in Exhibit 1, statutes delineate the process and time frames that law enforcement agencies and property owners must follow. However, there are many points in the process at which the case may be settled without further court proceedings.

<sup>6</sup> Section [932.703\(2\)\(b\)](#), *F.S.*

<sup>7</sup> Contraband seizures can also occur as part of long term investigations of criminal activity. These investigations may lead to search warrants in which law enforcement identifies property or assets that can be subject to seizure.

## Exhibit 1

### Statutes Provide Time Deadlines That Law Enforcement Agencies and Property Owners Must Meet During the Forfeiture Process



Source: Florida statutes and OPPAGA survey of local law enforcement agencies.

After a seizure occurs, the seizing law enforcement agency is required to identify and provide notice of seizure to any owner, entity, bonafide lienholder, or person in possession of the property.<sup>8</sup> This notice informs the owner of his or her right to request an adversarial preliminary hearing before the court to review probable cause. If an adversarial preliminary hearing is held, the court reviews the verified affidavit and any other supporting documents and takes testimony to determine whether there is probable cause to believe that the property was used, is being used, was attempted to be used, or was intended to be used in violation of the Florida Contraband Forfeiture Act. If the court finds probable cause, it will authorize the seizure or continued seizure of the contraband. A copy of the findings of the court is given to any person entitled to notice.

If the owner does not request an adversarial preliminary hearing, the seizing law enforcement agency is required to file a complaint in the civil division of the circuit court within 45 days of the seizure, requesting the court to issue a judgment of forfeiture.<sup>9</sup> Upon receipt of the complaint, the court must make a probable cause determination before the forfeiture complaint can be served on the owner. If the owner contests the seizure, Florida statutes require that any trial on the issue of forfeiture be decided by a jury, unless such right is waived.<sup>10</sup> At trial, the agency must demonstrate by clear and convincing evidence that the seized asset meets the requirements of the Florida Contraband Forfeiture Act.<sup>11</sup>

The law also allows the seizing agency to enter a settlement agreement on the case prior to the conclusion of the forfeiture action. In such

settlement agreements, the seized assets are typically split, with some assets returned to the owner and some forfeited to the law enforcement agency. In a settlement agreement, the owner typically waives their right to contest the forfeiture of the remaining assets.<sup>12</sup>

After the forfeiture of assets is made through a settlement agreement or through final judgment by the court, the seizing law enforcement agency becomes the owner of the assets. It may retain the property for the agency's use; sell the property at a public auction or by sealed bid to the highest bidder; or salvage, trade, or transfer the property to any public or nonprofit organization.<sup>13</sup> Remaining proceeds and interest, after all liens and debts are paid, are deposited into a special law enforcement trust fund established by the law enforcement agency's local governing body, typically a county or city commission.<sup>14</sup> State law allows agencies, with the approval of local governing bodies, to spend or use forfeited assets. However, these assets cannot be used for normal agency operating expenses. In addition, the law requires agencies that acquire over \$15,000 from state seizures within a fiscal year to donate at least 15% of the proceeds to substance abuse and crime prevention programs.

In addition to the state contraband law, agencies can also participate in asset seizures under federal law. Seizures under federal law typically involve cooperative work with federal agencies. When assets are seized under federal law, the federal agency takes responsibility for the forfeiture proceedings. Forfeited assets are then proportionally shared with local agencies that participated in the seizures and deposited

<sup>8</sup> Interests of bona fide lienholders, property held jointly by a husband and wife, interests in property held jointly, and rental cars may not be forfeited under s. [932.703](#), *F.S.*

<sup>9</sup> Section [932.701\(12\)\(c\)-\(d\)](#), *F.S.*

<sup>10</sup> Section [932.704\(3\)](#), *F.S.*

<sup>11</sup> Florida is one of only six states that places the burden of proof in civil asset forfeiture cases with the government. Many states require the owner of the seized asset to prove that the asset was not being used in criminal activity.

<sup>12</sup> If a settlement agreement is reached, s. [932.704\(7\)](#), *F.S.*, requires that the settlement be reviewed by the court, unless such review is waived by owner.

<sup>13</sup> If the property has a lien and is sold, proceeds are distributed in this order: payment of balance due on any lien preserved by the court in the forfeiture proceedings; payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property; and payment of court costs incurred in the forfeiture proceeding.

<sup>14</sup> Section [932.7055](#), *F.S.*

into a local trust fund, which is separate from the law enforcement trust fund for assets seized under state law. Florida's contraband forfeiture law is different from federal contraband forfeiture law in several ways, including the nature of the forfeiture proceeding and the regulations regarding the use of forfeited assets. For more information on the federal program, see Appendix A.

While law enforcement agencies are required to report federal seizure and forfeiture activity, there is currently no reporting requirement for actions taken under the Florida Contraband Forfeiture Act.<sup>15</sup> As a result, there is no existing statewide data on the frequency of seizure actions, the value of assets forfeited, or the use of forfeiture funds. In this review, we surveyed local law enforcement agencies to obtain information on these issues as well as on current policies and practices. Specifically, we asked for information on

- **Seizure actions**—when law enforcement takes possession of assets and provides notice to the owner and interested parties;
- **Forfeiture process**—the legal proceedings that lead to a final order of forfeiture and the transfer of ownership of the property to the government; and
- **Use of seized assets**—how local law enforcement agencies use the assets seized.

We received responses from 152 local law enforcement agencies (33 of 67 sheriff's offices and 119 of 223 police departments), an overall

response rate of 52%.<sup>16</sup> We requested data for the last five years as well as specific detailed data for Fiscal Year 2013-14. However, because agencies are not required to track seizure and forfeiture data in a format that matched our survey, the nature of the responses we received varied. For example, some agencies were able to provide most or all of the data we requested, but in many cases, agencies could answer only a portion of the questions. Also, at our request, some agencies provided estimates in lieu of actual numbers if they were too time consuming to obtain.

As a result, the number of seizure actions and values of forfeited assets presented in this report undercount the extent of civil asset forfeiture in Florida. Despite these limitations, the law enforcement agencies that responded to our survey went to considerable effort to provide information that generally describes current local law enforcement practices related to civil asset forfeiture.

## Seizure Actions

### *Local Law Enforcement Agencies Make Thousands of Seizures Annually*

Local law enforcement agencies responding to our survey conducted almost 19,000 seizure actions over the past five years, with over 4,000 seizures in the most recent fiscal year. Drug offenses were the most common basis for seizure actions. Most agencies said that all seizure actions during the most recent fiscal year were accompanied by an arrest. Vehicles and currency were the most commonly seized assets. Some agencies have established minimum value limits that must exist before they will proceed with a seizure.

<sup>15</sup> Prior to 2006, any agency that seized or forfeited property under the Florida Contraband Forfeiture Act was required to submit semi-annual reports to the Florida Department of Law Enforcement (FDLE) by April 10 and October 10 each year, documenting their receipts and expenditures. These reports required agencies to specify the type of offense, disposition of the property received, and the amount of proceeds received or expended. FDLE was required to submit an annual report to the criminal justice committees of the Legislature, containing a list of agencies that had failed to meet these reporting requirements. Auditor General [Report No. 2005-042](#) determined that the labor-intensive process used by FDLE to compile the annual reports did not include reasonable procedures necessary to verify data submitted by law enforcement agencies and that the reports did not appear to be used by either FDLE or the Legislature. In 2006, the Legislature eliminated the reporting requirement.

<sup>16</sup> We emailed a link to an online survey to all 67 sheriff's offices and to 223 police department members of the Florida Police Chiefs Association. We did not include college and university police departments in our sample. We also did not include state law enforcement agencies that may also seize and forfeit property.

Responding local law enforcement agencies reported over 4,000 seizure actions in the most recent complete fiscal year. Local law enforcement agencies reported taking almost 19,000 seizure actions under the Florida Contraband Forfeiture Act over the last five fiscal years.<sup>17</sup> (See Exhibit 2.) There was wide disparity in terms of the number of seizure actions reported, ranging as high as 938 seizure actions in Fiscal Year 2013-14. Thirty-one of the responding agencies (25%) reported no seizure actions in Fiscal Year 2013-14, and the median number of seizure actions for that year was six.

## Exhibit 2

### Agencies Reported Over 18,000 Seizure Actions Under State Law in the Last Five Years

Fiscal Year <sup>1</sup>	Number of Agencies Reporting	Number of Seizures Reported
2010-11	107	4,315
2011-12	111	3,732
2012-13	112	3,780
2013-14	122	4,210
2014-15 <sup>2</sup>	114	2,829
<b>Total</b>	<b>122</b>	<b>18,866</b>

<sup>1</sup> The fiscal year is October 1 through September 30.

<sup>2</sup> For Fiscal Year 2014-15, we asked for data through June 30, 2015.

Source: OPPAGA survey of local law enforcement agencies.

Drug offenses were the most common basis for a seizure action. Agencies were generally unable to provide a specific breakdown of the number of seizure actions by offense type. However, 86% of responding agencies estimated that most or all of their seizures were based on drug offenses. Most agencies reported that other types of offenses, including traffic offenses, property crimes, violent crimes, and economic crimes were the basis for seizure actions in some or none of their seizures. Travelling to have sex with a minor and illegal gambling offenses were some specific offenses mentioned by multiple agencies as other offenses that also served as the basis for seizure actions.

Agencies reported that most seizures occur in conjunction with an arrest. Although state law gives law enforcement the authority to seize assets without making an arrest, only 16% of the responding agencies reported making any seizures without an accompanying arrest in Fiscal Year 2013-14.

Law enforcement officials cited some instances where making an arrest at the time of asset seizure was not possible or appropriate. For example, law enforcement officers may find cash and illegal narcotics at a crime scene but they cannot positively identify the owner. Another situation occurs in ongoing economic crime investigations where the seizure of property or currency being used in the criminal activity may be warranted before the agency is prepared to make arrests. A third example involves situations where owners caught with property subject to seizure are able and willing to provide information on higher level crimes that can lead to later related arrests.

Vehicles and currency were the most commonly seized assets. Under current state law, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the Florida Contraband Forfeiture Act may be seized.<sup>18</sup> Responding agencies reported that seizure actions were more likely to involve the seizure of vehicles than the seizure of currency or personal property. (See Exhibit 3.) Law enforcement agencies reported that personal property items seized included weapons, jewelry, computer equipment, and property used to make, process, deliver, and import or export drugs, such as boats, planes, materials, products, and equipment. Only two agencies reported seizures of real property.<sup>19</sup>

<sup>18</sup> Section 932.703(1)(a), F.S.

<sup>19</sup> While vehicles, currency, and personal property can be seized based on law enforcement's determination of probable cause, Florida statute limits seizure of real property until a judicial hearing determines that probable cause exists to justify the seizure.

<sup>17</sup> Since most local governments use an October 1 through September 30 fiscal year, we asked agencies to report their data on that basis. For Fiscal Year 2014-15, we asked for data through June 30, 2015. All references to fiscal year in this report use the October 1 through September 30 time frame.

### Exhibit 3 Most Seizure Actions in Fiscal Year 2013-14 Involved Vehicles<sup>1</sup>

Type of Asset	Number of Seizure Actions	Percentage of Seizure Actions <sup>2</sup>
Vehicle	2,786	68%
Currency	1,362	33%
Personal property	150	4%
Real property	2	0% <sup>3</sup>

<sup>1</sup> The fiscal year is October 1 through September 30.

<sup>2</sup> One seizure action may include more than one type of asset. Therefore, the percentages sum to more than 100%.

<sup>3</sup> Real property accounted for 0.05% of seizure actions.

Source: OPPAGA survey of local law enforcement agencies.

The Florida Contraband Forfeiture Act requires that the determination of whether to seize currency be made by law enforcement supervisory personnel.<sup>20</sup> We asked agencies what the lowest rank is that could make this decision, and 61% of the agencies responding to the question reported that it was a sergeant. The answers from other agencies varied, with the police chief identified as the deciding supervisor for six of the agencies. We also asked agencies to specify how the decision to seize currency was made when officers found currency during a traffic stop.<sup>21</sup> More than half of the agencies responding to this question said that a supervisor would be called to the scene to make the seizure decision. An additional 28% said that the supervisor made the determination through phone or radio contact.<sup>22</sup>

Some agencies placed minimum limits on the value of seizures. Forty-five agencies reported that they had established a minimum value for currency, vehicles, or personal property to be seized. These minimum limits ranged from \$500 to \$5,000 for currency, \$500 to \$15,000 for vehicles, and \$1,000 to \$5,000 for personal property. Some agencies reported that if the

costs associated with the forfeiture process exceeded the value of the property being seized they would not proceed with the forfeiture. Costs associated with seizures and forfeitures can include storage and preservation of seized assets, attorney and other staff time, and court filing fees.<sup>23</sup> These limits can influence the decision by law enforcement deputies or officers as to whether to seize certain assets, or they can be applied after property has been seized.

Most agencies provide additional training for deputies and officers on civil asset forfeiture. The Criminal Justice Standards and Training Commission establishes the qualifications and standards for law enforcement officers in Florida and sets the curriculum for basic law enforcement training and certification. State law requires that the commission develop a standardized course of training for basic recruits and continuing education to develop proficiency in proceeding under the Florida Contraband Forfeiture Act.<sup>24</sup> Currently, the basic training curriculum that officers must take to become certified briefly covers the act. In addition, the Criminal Justice Standards and Training Commission has created a 16-hour specialized training course on contraband forfeiture.<sup>25</sup>

We asked agencies if they provided internal training on contraband forfeiture to deputies and officers. Of the agencies that responded, 71% said that they did provide training. Twenty-seven percent of these agencies reported that this training was provided annually.

<sup>23</sup> The cost of filing a petition in circuit court is up to \$399 as established by s. [28.241](#), F.S.

<sup>24</sup> Section [932.706](#), F.S.

<sup>25</sup> Commission-certified training schools and local law enforcement agencies may offer this course. The commission does not maintain records on how frequently this course is offered or the number of officers who participate in the course. Law enforcement officers may take specialized courses to meet the 40-hour continuing education requirement to maintain certification every four years.

<sup>20</sup> Section [932.704 \(11\)\(b\)](#), F.S.

<sup>21</sup> Almost 40% of the agencies responding to our survey estimated that most or all of the seizures in Fiscal Year 2013-14 originated from traffic stops.

<sup>22</sup> Four agencies said that the senior deputy or officer on the scene was authorized to make the decision to seize currency.



## Forfeiture Process —

### *Law Enforcement Agencies Must Follow Legal Requirements for Forfeiture of Seized Assets; Many Cases Are Settled Outside of Court*

The forfeiture process is managed by legal counsel representing the law enforcement agency. Much of the forfeiture process occurs outside the court process and few seizure actions lead to adversarial hearings or trials, with only 1% of forfeitures contested in a civil trial. All seized assets were eventually forfeited to the local law enforcement agencies in more than one-third of seizure actions, and all assets were returned to owners in 25% of the seizure actions.

The forfeiture process is managed by legal counsel for the law enforcement agencies. Once property has been seized, the law enforcement agency must follow statutory guidelines to resolve the forfeiture action for that property. These guidelines include serving notice on the owner of the seizure, if it was not provided at the time of seizure; holding an adversarial preliminary hearing on probable cause, if requested by the owner; entering into settlement negotiations with the owner, if appropriate; and filing a civil forfeiture claim in the circuit court, if the case is not otherwise resolved. Legal counsel for the law enforcement agency typically assumes control of these processes.

Unlike criminal cases, civil asset forfeiture cases are not assigned to the state attorney for prosecution. Legal counsel works on behalf of the law enforcement agency to seek forfeiture of the assets. Forty-six percent of the agencies responding to this question said that city or county attorneys handled the forfeiture cases, while 21% said that contracted counsel handled the cases. Seventeen percent of the agencies said that the agency's in-house counsel managed forfeiture cases.

Many seizure actions are not contested. The forfeiture of seized property occurs at the end of the civil process that can include hearings and trials. Florida law gives owners of seized property two opportunities to have the action heard by a circuit court. Within 15 days of receiving a notice of seizure, owners may request an adversarial preliminary hearing for the court to review whether the law enforcement agency had probable cause to seize the assets. Then, within 20 days after the agency files a complaint for the forfeiture of the property in civil court, owners may contest the complaint, with the option of going to trial.

During the trial, the seizing agency must demonstrate by clear and convincing evidence that the contraband assets were used in violation of the Florida Contraband Forfeiture Act. The trial presents an opportunity for the property owner to challenge the seizing agency's case. The property owner may argue, for example, that there is no connection between the property seized and the criminal activity or that the property seized is not proportional to the crime alleged. The property owner may also argue that he or she had no knowledge that the property was being used in criminal activity.<sup>26</sup>

However, survey respondents indicated that few seizure actions lead to adversarial hearings or trials. Responding agencies reported that adversarial hearings were requested for about 16% of the seizure actions, and about 1% of the seizure actions resulted in forfeiture trials. These numbers suggest that a small number of owners challenge the actions brought against their property and that many owners decide to settle their cases, giving up their right to be heard by a judge and jury. Some property owners may be making these decisions without benefit of counsel since there is no right to representation for those who cannot afford it in civil asset forfeiture cases.

---

<sup>26</sup> Section 932.703(8), F.S., provides that an incidental or entirely accidental relationship between the seized property and the underlying criminal offense is an affirmative defense to forfeiture. The section also provides that proportion of the property's value to any other factors must not be considered in determining an affirmative defense.

Seized assets are returned to owners in more than half of the seizure actions. Seizure actions can ultimately lead to one of three outcomes: (1) the agency keeps all of the seized assets, (2) the agency returns all of the seized assets to the owner, or (3) the assets are split between the agency and the owner. For Fiscal Year 2013-14, agencies reported that all of the assets were forfeited in 36% of the seizure actions. (See Exhibit 4.) All assets were returned to the owner in 25% of the seizure actions. When combined with owners who received a portion of their assets back, almost 60% of seizures resulted in the owner receiving at least a portion of the assets back.

#### Exhibit 4

#### All Assets Were Forfeited in 36% of the Seizure Actions in Fiscal Year 2013-14<sup>1</sup>

Outcome of Seizure Actions	Number of Seizure Actions	Percentage of Seizure Actions
All assets returned to owner	567	25%
Assets split; partially returned to owner; partially forfeited	767	34%
All assets forfeited	818	36%
Still pending <sup>2</sup>	107	5%
<b>Total</b>	<b>2,259<sup>3</sup></b>	<b>100%</b>

<sup>1</sup> The fiscal year is October 1 through September 30.

<sup>2</sup> Outcomes were still pending for these cases at the time the agencies responded to our survey in August and September of 2015.

<sup>3</sup> The total number of seizure actions in this table reflects the number of seizures for the agencies responding to this question and is therefore different from the total reported in Exhibit 2.

Source: OPPAGA survey of local law enforcement agencies.

Several situations may result in the return of all of the seized assets. The agency may determine after the seizure that a vehicle or property does not meet the agency's established minimum value for seizure, or the agency may determine that the costs of proceeding against the asset would outweigh the value. Additionally, law enforcement may determine that the actual owner of the asset did not know or have reason to know that the asset was being used in criminal activity, that there are liens on the property that restrict their ability to obtain a forfeiture, or that the seized asset is not subject to forfeiture. For

example, several law enforcement officials told us that criminals frequently use rental cars when conducting criminal transactions. The law expressly excludes rental cars from forfeiture actions. Therefore, if law enforcement discovers that a seized vehicle is a rental car, it must be returned to the rental agency.

A portion of the seized assets is likely to be returned if the law enforcement agency reaches a settlement with the property owner. The agency may return a portion of the assets in exchange for the owner giving up his or her right to trial. In a settlement agreement, both the agency and the owner forego the expense and uncertainty of taking the case to trial. Some law enforcement officials told us that it is often expedient to enter a settlement agreement that allows the owner to forfeit most of the asset but recover enough of the seized asset to be able to retain an attorney for the owner's criminal prosecution.

## Use of Seized Assets——

### *Assets Seized Under State Law Are Used for a Variety of Law Enforcement-Related Purposes; Some Are Donated to Public Use*

At least \$68 million in assets were forfeited to local law enforcement agencies during the past five years under the Florida Contraband Forfeiture Act. Agencies reported expending over \$12 million in seized assets during Fiscal Year 2013-14. These expenditures were generally approved by the county or city government. A portion of the forfeited assets were donated to substance abuse and crime prevention programs, but agencies varied in the procedures used to distribute funds to these programs. In addition, agencies reported using some of the seized vehicles for temporary use as undercover vehicles or as permanent acquisitions.

When forfeited, assets become the property of the seizing law enforcement agency. Florida statutes provide for the disposition of liens and forfeited property under the Florida

Contraband Forfeiture Act.<sup>27, 28</sup> The seizing agency may

- retain the property for the agency's use;
- sell the property at a public auction or by sealed bid to the highest bidder; or
- salvage, trade, or transfer the property to any public or nonprofit organization.

Law enforcement agencies are required to receive local government approval to spend forfeited funds, and state law requires that they can only be used for non-operating expenses. Forfeiture proceeds are deposited into a special law enforcement trust fund established by the governing body of a county or municipality. The funds may be appropriated only to the sheriff's office by the board of county commissioners or to the police department by the governing body of the municipality when the sheriff or police chief has certified that the request for funds will be used in compliance with the act.<sup>29</sup>

Available data shows reporting agencies deposited over \$68 million in assets acquired through the Florida Contraband Forfeiture Act over the past five years; the amount likely is much higher. Agencies responding to our survey reported or estimated deposits into agency forfeiture funds in excess of \$68 million over the past five years. (See Exhibit 5.) Reported data included some large forfeitures in the last two years. For example, one agency reported receiving a single forfeiture of \$3.4 million in Fiscal Year 2013-14.

## Exhibit 5

### Agencies Reported Depositing Over \$68 Million in Assets Acquired Through the Florida Contraband Forfeiture Act Over the Last Five Fiscal Years

Fiscal Year <sup>1</sup>	Number of Agencies Reporting	Forfeiture Dollars Deposited
2010-11	113	\$10,901,662
2011-12	115	7,950,532
2012-13	115	10,363,579
2013-14	122	18,871,997
2014-15 <sup>2</sup>	117	20,584,633
<b>Total</b>	<b>122</b>	<b>\$68,672,405</b>

<sup>1</sup> The fiscal year is October 1 through September 30.

<sup>2</sup> For Fiscal Year 2014-15, we asked for data through June 30, 2015.

Source: OPPAGA survey of local law enforcement agencies.

This reported data may substantially undercount the amount of forfeiture funds acquired by local law enforcement under state law. About half of the local law enforcement agencies in Florida did not respond to our survey. In addition, several agencies reported that they did not have accurate or complete data for some years. Also, responding agencies may not have been consistent in including or excluding interest earnings in the totals deposited in the forfeiture funds. Finally, some agencies stated that they did not include funds acquired through task force seizures.<sup>30</sup>

Responding agencies reported spending over \$12 million in assets acquired through the Florida Contraband Forfeiture Act in Fiscal Year 2013-14. Florida agencies responding to our survey said that they spent over \$12 million in forfeiture assets in Fiscal Year 2013-14. While the law expressly states that proceeds and interest from forfeitures may not be used to meet the normal operating expenses of a law enforcement agency, it allows a broad range of possible uses.<sup>31</sup> If an agency acquires

<sup>27</sup> Section [932.7055](#), F.S.

<sup>28</sup> If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order: payment of the balance due on any lien preserved by the court in the forfeiture proceedings; payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property; and payment of court costs incurred in the forfeiture proceeding.

<sup>29</sup> Section [932.7055\(5\)\(b\)](#), F.S.

<sup>30</sup> Joint task force operations involving several law enforcement agencies may make seizures. One task force director told us that it was the practice of that task force for the forfeiture to be processed by one of the agencies in the task force, with the forfeited proceeds distributed among all participating agencies. While the funds from these shared forfeitures go into an agency's forfeiture fund, they may not have complete information on the nature of the seizure.

<sup>31</sup> Section [932.7055\(5\)\(a\)](#), F.S.



at least \$15,000 within a fiscal year, the agency is required to expend or donate no less than 15% of those forfeiture proceeds for substance abuse and crime prevention programs, specifically including school resource officer, safe neighborhood, or drug education and prevention programs.<sup>32</sup> Agencies are also authorized to spend the funds for other law enforcement purposes, specifically including

- providing additional equipment or expertise;
- defraying the cost of protracted or complex investigations;
- purchasing automated external defibrillators for use in law enforcement vehicles; and
- providing matching funds to obtain federal grants.

There is currently no requirement for local law enforcement to report how forfeited funds have been used. In our survey, we asked agencies to report if they spent a portion of their funds on the categories specified in law. Almost four out of five agencies that provided information on how forfeiture funds were used identified substance abuse and crime prevention programs as one of the beneficiaries of seized assets during Fiscal Year 2013-14. (See Exhibit 6.)

**Exhibit 6**  
**In Fiscal Year 2013-14, Most Responding Agencies Gave a Portion of Forfeiture Proceeds to Substance Abuse and Crime Prevention Programs<sup>1</sup>**

Use Category	Percentage of Agencies
Substance abuse and crime prevention programs	79%
Purchase additional equipment	63%
Defray cost of investigations	17%
Provide additional expertise	16%
Provide matching funds to obtain federal grants	9%
Purchase automatic external defibrillators	2%

<sup>1</sup> The fiscal year is October 1 through September 30.

Source: OPPAGA survey of local law enforcement agencies.

Purchasing additional equipment was the most common law enforcement purpose served by fund expenditures. Equipment purchases included surveillance equipment, weapons and ammunition, wound kits, camera systems, and bicycles for bike patrols. Other law enforcement uses reported in the survey included training vehicle rentals and purchases; personnel salaries for school resource officers; task force support; the purchase of uniforms and canines; and the construction of facilities, including a tactical operations center.

Agencies used various procedures for determining which substance abuse and crime prevention programs received donated forfeiture assets. Statute gives local law enforcement agencies discretion to determine which programs will receive the designated proceeds. However, an agency or organization that wants to receive funds must apply to the sheriff or police chief for an appropriation and include with its application a written certification that the funds will be used for an authorized purpose. Responding agencies estimated that they donated \$2.6 million in civil asset forfeiture funds to approximately 480 such programs in Fiscal Year 2013-14.

Law enforcement agencies used various strategies to dispense these funds. For example, while some agencies have a grant program to which programs can apply for funds, other agencies indicated that decisions about the distribution of these funds were made by the agency head or an agency committee. In some agencies, the same program may receive the funds each year.

Law enforcement agencies may use some vehicles. Forfeited vehicles may be sold at auction or by closed bids and the proceeds of the sale deposited in the forfeiture fund. Law enforcement agencies can use forfeited vehicles as a temporary vehicle for undercover operations, or the vehicle can be added to the agency's vehicle inventory.<sup>33</sup> Twelve agencies reported using a total of 56 vehicles seized in

<sup>32</sup> We have used the phrase substance abuse and crime prevention programs to refer to this group of statutorily eligible recipients of donated forfeiture funds. There is no requirement in law that these be nonprofit or charitable programs.

<sup>33</sup> Agencies that provided information on the disposition of seized vehicles reported seizing 2,537 vehicles in Fiscal Year 2013-14. Approximately 13% of these vehicles had been forfeited by the time of our survey and another 4% were still pending disposition.

Fiscal Year 2013-14 for temporary undercover work and 23 agencies reported taking permanent ownership of 55 vehicles during that year.

Agencies reported combined balances of over \$79 million at the end of Fiscal Year 2013-14 in forfeiture funds acquired through both state and federal law. Agencies reported spending only a portion of the funds available in forfeiture trust funds. Despite spending over \$12 million in Fiscal Year 2013-14 from the forfeiture funds received under state law, agencies reported a total balance in local funds in excess of \$34 million at the end of the year. (See Exhibit 7.) In addition to these funds, agencies also reported balances of almost \$45 million in trust funds holding the proceeds of federal forfeitures, despite spending \$16 million from these funds during the same period.

#### Exhibit 7

#### Agencies Reported Over \$79 Million in State and Federal Forfeiture Accounts at the End of Fiscal Year 2013-14<sup>1</sup>

Fiscal Year 2013-14	Amount of State Forfeiture Funds	Amount of Federal Forfeiture Funds
Balance as of September 30, 2013	\$29,872,348	\$43,813,757
Deposits	\$17,378,267	\$22,889,010
Expenditures	\$12,158,090	\$16,285,419
Balance as of September 30, 2014	\$34,304,107	\$44,749,883

<sup>1</sup> The fiscal year is October 1 through September 30.

Source: OPPAGA survey of local law enforcement agencies.

The combined assets of over \$79 million in the two types of forfeiture accounts represents a sizable resource for local law enforcement agencies. However, overall, the funds represent a small proportion of agency budgets, with forfeiture fund balances representing only 2.3% of the approximately \$3.3 billion operating budgets of the agencies that responded to our survey.

## Options

### *The Legislature could consider several changes to the civil asset forfeiture law*

Civil asset forfeiture practices in Florida and across the country have recently come under scrutiny as legislatures have tried to balance the rights of property owners with the efforts of law enforcement agencies to apprehend and prevent criminal activity. Without statewide information, the Legislature does not know the extent of civil asset forfeiture practices in Florida, nor can it be assured that the provisions of the Contraband Forfeiture Act are being followed. Law enforcement officials also made suggestions to increase the effectiveness of asset seizure as a tool in reducing criminal activity. However, opponents of civil asset forfeiture have asserted that reforms are needed.

Local law enforcement agencies should be required to report seizure actions and forfeitures to the state at least annually. While agencies are required to follow a number of protocols when seizing assets under Florida state law, there has not been a statewide reporting requirement since 2006. Such a requirement would make the type of information we collected for this report easier to obtain, more consistent, and more reliable. Such data could create a clearer picture of the extent to which Florida law enforcement agencies participate in civil asset forfeiture and provide additional transparency. Specifically, it could potentially identify disparities in the enforcement of the law and help the Legislature determine whether the law is being used to effectively reduce criminal enterprise within the state.

Currently, 33 states have a civil asset forfeiture reporting requirement, although several of those states do not store the information in an easily-accessible centralized location. Seven states report the information to the state attorney general. Other states report the information to the state police, the state auditor, the state treasurer, or other state-level entities. The reported information is available online in eleven states.

In Florida, the Legislature could require local law enforcement agencies to provide an annual web-based report, providing detail on seizure and forfeiture actions, including the nature of the assets seized, the estimated value of those assets, the underlying offense, and whether a related arrest was made. Agencies could also be required to provide information on forfeiture funds expenditures, including information on the substance abuse and crime prevention programs that receive funds.

Law enforcement agencies believe the Florida Contraband Forfeiture Act works well as a tool to fight crime, but some agencies made suggestions for improvements. Our interviews with and survey of law enforcement agencies found general support for civil asset forfeiture. As one survey respondent stated, the law is “clear, concise, and fair,” adding that it “serves as a valuable tool against people committing felonies.” We asked survey respondents to suggest changes to the law and received suggestions from 11 of the 152 respondents. These suggested changes included requiring better record keeping and adjustments to the time deadlines in the process.

Some officials described provisions of law or case law that have limited their ability to use forfeiture laws effectively in fighting crime. These provisions include the statutory prohibition against the forfeiture of rental cars that may have been used in criminal activity without the actual knowledge of the renting entity. Officials said that when drug dealers use rental cars, it reduces law enforcement’s ability to disrupt criminal activity through forfeiture. Officials also said that some recent court decisions have limited the ability of law enforcement to seize substitute assets when criminals have hidden or disposed of the actual assets gained through criminal activity.

Stakeholders have proposed several reforms to increase property owner protections and limit law enforcement use of forfeiture proceeds. Opponents of civil asset forfeiture have asserted that reforms are needed to better protect property owners and to limit law

enforcements’ use of forfeiture proceeds. In addition to increased reporting requirements, we identified three areas in which other states have reformed their civil asset forfeiture laws.

*Require conviction before forfeiture.* One of the most substantial reforms is to require that law enforcement convict the property owner in criminal court before any property can be forfeited. This type of reform essentially eliminates civil asset forfeiture as a process distinct from criminal forfeiture. Four states (Minnesota, Montana, Nevada, and New Mexico) have amended their contraband forfeiture law in the past year to require a conviction prior to forfeiture. North Carolina already had this requirement. Currently, Florida is like the majority of states, which does not require a criminal conviction before forfeiture.

*Increase the standard of proof.* While criminal cases require proof beyond a reasonable doubt, the standard of proof in most states for civil asset forfeiture cases is much lower. This is an important difference since assets can be seized and forfeited whether or not the property owner is convicted of a crime. Currently, some states, including Illinois and South Carolina, require only the lowest standard of proof, probable cause. Florida is 1 of 11 states which uses a clear and convincing evidence standard, which is higher than many other states. However, California uses the higher standard—beyond a reasonable doubt—in real property cases and Nebraska, North Carolina, and Wisconsin use a beyond a reasonable doubt standard in all cases. Michigan recently increased its evidentiary standard from a preponderance of the evidence to clear and convincing evidence, the same standard Florida law requires.

Although Florida’s standard of proof in forfeiture cases is higher than many states, the Legislature could consider further increasing the evidentiary standard in Florida to beyond a reasonable doubt, the standard required in criminal trials.

*Restrict the use of civil asset forfeiture proceeds.* Currently, law enforcement agencies in Florida that seize over \$15,000 during the fiscal year are permitted to keep 85% of the forfeited assets; agencies that do not seize over \$15,000 are allowed to keep 100% of the forfeited assets. However, many states restrict law enforcement to keeping a smaller percentage, and eight states (Indiana, Maine, Maryland, Missouri, New Mexico, North Carolina, North Dakota, and Vermont) do not allow law enforcement to keep any forfeiture proceeds. In these states, law enforcement is required to send the proceeds to a general fund or to a fund for a specific purpose such as education.

To further restrict the use of civil asset forfeiture funds by law enforcement in Florida, the Legislature could reduce the percentage of funds that agencies are allowed to keep, increase the percentages given to substance abuse and crime prevention programs, or designate funds for other purposes. For example, Arkansas requires that 20% of funds be deposited in the state treasury specifically for the crime lab equipment fund. Connecticut

directs 20% of funds to its Department of Mental Health and Addiction Services for substance abuse and tobacco prevention programs.

If the Legislature decides to allow law enforcement agencies to retain civil asset forfeiture proceeds, it may want to consider further restricting the other law enforcement purposes for which civil asset forfeiture proceeds can be used. Currently, the language is broad and allows for any law enforcement purpose that is not a normal operating expense.

## Agency Response ---

In accordance with the provisions of s. 11.51(2), *Florida Statutes*, we submitted a draft of our report to the president of the Florida Sheriffs Association, the executive director of the Florida Police Chiefs Association, and the commissioner of the Florida Department of Law Enforcement for their review and response. Their responses have been reproduced in Appendices B, C, and D, respectively.

## Appendix A

---

# Federal Seizure and Forfeiture Laws Present Different Approaches to Seizing and Forfeiting Assets

In addition to the Florida Contraband Forfeiture Action, law enforcement agencies can participate in civil asset forfeiture actions through collaboration with the federal government. When assets are seized under federal law, the U.S. Department of Justice, the U.S. Department of Treasury, and affiliated federal law enforcement agencies process the forfeiture according to federal rules and share the proceeds with the law enforcement agencies that participated in the investigation associated with the forfeiture through the Equitable Sharing Program. Implemented through the Comprehensive Crime Control Act of 1984, equitable sharing allows state and local law enforcement agencies to transfer assets they seize to federal law enforcement agencies. Federal law enforcement officials can take possession of this property and initiate federal forfeiture actions as long as the conduct giving rise to the seizure is in violation of federal law and where federal law provides for forfeiture.

There have historically been two forms of equitable sharing activities—joint investigative forfeitures and adoptive forfeitures. Joint investigative forfeitures come from cooperative investigations between federal and state or local law enforcement. The percentage of funds shared in these cases depends on the extent of state or local law enforcement involvement in the investigation that led to the seizure. Joint investigative forfeitures are common with task forces that investigate drug trafficking, organized crime, and other multi-jurisdictional crimes. Adoptive forfeitures, on the other hand, happen when state or local law enforcement agencies seize property during the investigation of a state crime that is also a federal crime. State and local law enforcement transfer the seized property to a federal law enforcement agency, which adopted the property for federal forfeiture proceedings. In this type of seizure, state and local entities would receive 80% of the asset value returned to them, while the federal government retains 20% to cover cost of operating the federal funds.

In January 2015, the U.S. attorney general severely limited the practice of adoptive forfeitures. This was done, at least partially, in response to concerns that the practice was giving state law enforcement an incentive to turn seizures over to the federal government because the forfeiture process was perceived as less burdensome than the process under many state laws. In the federal program, certain forfeitures can be pursued through an administrative hearing rather than a trial, and the federal preponderance of the evidence standard of proof is lower than some state standards, including Florida's clear and convincing standard. In some cases, law enforcement agencies could even process forfeitures through the federal government if federal agents had not been involved in the investigation that led to the seizure. With the change to limit adoptive seizures, the federal government may now only take seized assets through its process if federal agents are involved with the investigation leading to the seizure.

There are differences between federal and state civil asset forfeiture. There are three primary differences between the federal program and the Florida Contraband Forfeiture Act.

- *Federal forfeitures can be processed as administrative rather than judicial forfeitures.* All forfeitures under state law in Florida which are not settled must be filed in circuit court. However, the federal agency can process seized assets in one of three ways. If the owner does not file a claim for the asset within 35 days of notice of seizure, the forfeiture can be handled

administratively.<sup>34</sup> If the owner files a claim for the asset, then the government can choose to proceed with a civil case against the asset, similar to Florida forfeiture process, or it can make the asset part of the criminal cases against the defendant so that the forfeiture is dependent upon the outcome of the criminal case. In an administrative forfeiture, the case is reviewed within the federal agency and then presented in an administrative hearing where the declaration of forfeiture can be issued. An administrative forfeiture is a less costly process than pursuing the forfeiture through civil or criminal court.

- *The federal requirements prohibit the use of forfeited assets for non-law enforcement purposes.* Like Florida, the federal government has set forth requirements for the use of forfeiture assets by local law enforcement agencies. Unlike Florida, agencies are required to use the funds for law enforcement purposes only, and there is not a provision in the federal program for donating a portion of the assets to substance abuse and crime prevention programs. Because of the federal requirements governing the use of federal forfeiture funds, agencies cannot co-mingle these funds with other funds, such as proceeds from forfeitures under state law. Therefore, it is necessary for local law enforcement agencies to keep separate funds for the state and federal forfeitures.
- *The federal program requires annual reporting.* Through its equitable sharing agreement and certification program, the federal government provides oversight on the use of forfeited assets. Each year, the local law enforcement agency and local government must provide certification to the federal government that they are complying with these requirements. Agencies that do not provide this certification are not eligible to receive funds. In addition, the federal government requires annual reporting from agencies on the expenditure of funds. These reports can lead to investigations of inappropriate expenditures and can result in a requirement that agencies return funds to the federal trust fund or even to the federal agency, if warranted.<sup>35</sup> While sheriffs and the police chiefs in Florida are required to make a request to local government for expenditure of forfeiture proceeds under the state program accompanied by a certification that the request complies with state law, there is no annual reporting requirement.

Florida law enforcement agencies have received more than \$153 million in forfeiture proceeds over the past five years through the federal Equitable Sharing Program. The U.S. Department of Justice provides an annual report on the amounts of civil asset forfeiture funds distributed to local law enforcement agencies. We reviewed this data for the past five federal fiscal years and found that the amounts of forfeited funds received by all Florida agencies, including state agencies, from the U.S. Department of Justice has varied substantially over the past five years, ranging from a low of \$17 million in the 2014 federal fiscal year to a high of over \$52 million in the 2012 federal fiscal year. (See Exhibit A-1.)

Forty-five law enforcement agencies in Dade and Broward counties received 46% of federal forfeiture funds returned to Florida from the U.S. Department of Justice over the last five federal fiscal years (2010-2014). The Broward Sheriff's Office received \$12.5 million over the last five federal fiscal years, the most of any sheriff's offices in Florida. Over that same five years, six police departments representing populations of less than 100,000 residents each (North Miami Beach, Village of Bal Harbour, Sunny Isles Beach, Sunrise, the Town of Medley, and Homestead) received the highest total equitable sharing funds for police departments, receiving a combined total of \$34.2 million, or 22% of the statewide five-year total.

<sup>34</sup> Real property, cash amounts of more than \$500,000, and complex assets, such as stocks, bonds, licenses, and businesses cannot be processed administratively.

<sup>35</sup> In 2012, as the result of an investigation, the U.S. Department of Justice suspended the Bal Harbour Police Department from participation in the Equitable Sharing Program and required return of \$4.2 million in funds. In 2014, the U.S. Department of Justice's Office of the Inspector General released audit [CR-40-15-003](#), which required the Sunrise Police Department to return more than \$374,000 in unallowable costs paid for civil litigation forfeiture services.

## Exhibit A-1

Florida Law Enforcement Agencies Have Actively Participated in Civil Asset Forfeiture in Partnership With the U.S. Department of Justice<sup>1</sup>

Agencies and Task Forces		Federal Fiscal Year					Total Unique Agencies and Funds Received
		2010	2011	2012	2013	2014	
Local agencies	Number of local agencies receiving funds	115	120	126	125	120	190
	Total funds received	\$17,304,492	\$31,257,530	\$42,876,491	\$19,576,544	\$15,735,599	\$126,750,656
Task forces	Number of task forces receiving funds	2	3	3	3	3	4
	Total funds received	\$4,962,793	\$5,162,404	\$4,064,447	\$2,337,739	\$253,299	\$16,780,682
State agencies (including state attorneys and college and university police departments)	Number of state agencies receiving funds	11	9	9	10	10	17
	Total funds received	\$1,959,380	\$1,010,323	\$5,123,734	\$751,283	\$1,057,014	\$9,901,734
<b>Total all agencies</b>		<b>\$24,226,665</b>	<b>\$37,430,257</b>	<b>\$52,064,672</b>	<b>\$22,665,566</b>	<b>\$17,045,912</b>	<b>\$153,433,072</b>

<sup>1</sup> State law enforcement agencies may also participate in civil asset forfeiture with other federal agencies, such as the U.S. Department of Treasury.

Source: OPPAGA analysis of U.S. Department of Justice data.



## Appendix B



---



Protecting, Leading & Uniting...since 1893

## FLORIDA SHERIFFS ASSOCIATION

2617 Mahan Drive, Tallahassee, Florida 32308  
P.O. Box 12519 • Tallahassee, Florida 32317-2519

p: (850) 877-2165  
f: (850) 878-8665  
[www.flsheriffs.org](http://www.flsheriffs.org)  

November 12, 2015

Mr. Phillip Twogood  
Coordinator  
Office of Program Policy Analysis and Governmental Accountability  
111 West Madison Street  
Claude Pepper Building, Room 312  
Tallahassee, FL 32399-1475

Dear Mr. Twogood:

The Florida Sheriffs Association appreciates this opportunity to review and comment on your draft report, *Civil Asset Forfeiture in Florida: Policies and Practices*.

During the 2015 session, there was significant discussion about Florida's civil asset forfeiture law and whether the current law provided enough protections against improper seizures by law enforcement and utilization of the forfeited dollars by agencies. Florida Sheriffs believe the continued ability to seize and forfeit contraband under the Contraband Forfeiture Act (CFA) is an essential tool for fighting and preventing crime. The Florida Sheriffs Association's position then and now remains that Florida already has a comprehensive CFA that strikes the right balance of providing strong due process protections for claimants, while at the same time providing oversight for the expenditures of funds forfeited pursuant to the Act.

There is much that Florida is doing right. As reflected in the report, Florida is one of only six states that place the burden of proof in civil asset forfeiture cases with the government. Many states require the owner of the seized asset to prove that the asset was not being used in criminal activity. In cases of forfeiting property, Florida uses clear and convincing evidence, a higher level standard of proof than is required in many states in the county.

In addition, Florida has strict time frames that government must follow including that the formal notice of seizure must be provided to notify anyone who potentially has ownership of the property within 5 days of the seizure or it cannot proceed; there is an automatic adversarial preliminary hearing for all real property seizures where the burden to prove the property was used in violation of the law is on the seizing agency; a preliminary hearing is held in front of a circuit judge and he/she must find probable cause of criminal activity for the forfeiture to continue and if the judge determines that there is probable cause, the claimant can make an immediate appeal; a judge can order attorney's fees up to \$1,000 if they find no probable cause; Florida has an innocent owner defense, which means it is the government's burden to prove that the owner is guilty or should have known that the property was used for illegal purposes; and if the court determines that the seizing agency did not proceed in good faith at any time, reasonable attorney's fees and costs will be awarded.



Also, the CFA specifically requires oversight in the expenditures of the dollars requiring either the Board of County Commissioner or City Commission to approve any expenditure and forfeited proceeds can only be used for very specific things outlined by law. Lastly, the law specifically prohibits use of proceeds for normal operating expenses of the agency.

Florida's model is one that is working, however, like all policies, there is always room for improvement. Last session the FSA in conjunction with Senator Bean proposed enhancements to the CFA which are consistent with some of your findings. These enhancements included:

1. A required annual review of seizures of assets made by the agency's law enforcement officers, settlements, and forfeiture proceedings initiated by the agency, to determine whether such seizures, settlements, and forfeitures comply with the Florida Contraband 23 Forfeiture Act and prompt correction of any deficiencies.
2. A requirement that the employment, salary, promotion, or other compensation of any law enforcement officer may not depend on obtaining a quota of seizures.
3. A requirement that all agencies have written policies, procedures and training to ensure compliance with the Act.
4. A requirement that the probable cause supporting the seizure must be promptly reviewed by the supervisory personnel and the agency's legal advisor.
5. A requirement that agencies have written policies promoting the prompt release of property when there is no legitimate basis for holding the property and that all asserted claims of interest are promptly reviewed for potential validity.
6. A requirement that all settlements be consistent with the Act.
7. A requirement that all personnel involved in the seizure of property receive basic training and continuing education required by the Act and must maintain records of such training.
8. A requirement that each agency completes an annual report detailing the seizures and forfeitures for each year and must have that report on file for public access.

Other areas the FSA would support are:

- Increased judicial review
- Increased accountability in settlement agreements
- Increased mandatory contribution to non-profits

Thank you again for your providing a comprehensive overview of the CFA. The Florida Sheriffs Association looks forward to representing the voice of law enforcement on this important topic as it is further discussed by the Legislature.

Sincerely,



Sheriff Sadie Darnell  
Alachua County Sheriff's Office  
President, Florida Sheriffs Association  
SD/tm

## Appendix C

---



## Florida Police Chiefs Association

*Quality Law Enforcement for the Sunshine State*

---

November 13, 2015

R. Philip Twogood, Ph.D.  
Coordinator  
Office of Program Policy Analysis & Government Accountability  
111 West Madison Street, Room #312  
Tallahassee, FL 32399-1475

Dear Dr. Twogood:

Thank you for the opportunity to review the preliminary findings of OPPAGA's report, ***Civil Asset Forfeiture in Florida: Policies and Practices*** and for giving us the opportunity to review the draft.

The Florida Police Chiefs Association believes civil asset forfeiture is a valuable tool for law enforcement agencies and should be used only to remove the ill-gotten gains from organized criminals who perpetrate serious crimes.

We appreciate the opportunity to work with OPPAGA since June 2015 as you began your research and developed your survey. We encouraged participation from our member law enforcement agencies to complete the OPPAGA survey. As you note, you received an overall response rate of 52% from both police departments and sheriff's offices, all of whom went to considerable effort to provide information that generally describes current local law enforcement practices related to civil asset forfeitures. However, this is still a sample. A reinstatement of annual reporting requirements would ensure the Legislature has current data to analyze when making policy decisions.

As you have learned, Florida has some of the strictest oversight standards in the country, and as you report, Florida's standard of proof in forfeiture cases is higher than many states. We do feel that there are opportunities to improve the process, and we look forward to working with the Florida Legislature on this very important issue.

Thank you for the opportunity to provide feedback on OPPAGA's draft report. Please feel free to contact me at 850-219-3631 to discuss.

Sincerely,

A handwritten signature in black ink that reads "Amy Mercer".

Amy Mercer  
Executive Director

cc Chief Brett Railey, President of the FPCA  
Chief Frank Fabrizio, Chair of the FPCA Legislative Committee  
Tim Stanfield, Buchanan, Ingersoll and Rooney (BIR)  
Claire Mazur, Staff Director, OPPAGA  
Byron Brown, Chief Legislative Analyst, OPPAGA

## Appendix D

---



Florida Department of  
Law Enforcement

Richard L. Swearingen  
Commissioner

Office of Executive Director  
Post Office Box 1489  
Tallahassee, Florida 32302-1489  
(850) 410-7001  
www.fdle.state.fl.us

Rick Scott, Governor  
Pam Bondi, Attorney General  
Jeff Atwater, Chief Financial Officer  
Adam Putnam, Commissioner of Agriculture

November 13, 2015

Mr. R. Philip Twogood, Coordinator  
Office of Program Policy Analysis and Government Accountability  
111 West Madison Street, Room 312  
Claude Pepper Building  
Tallahassee, Florida 32399-1475

Dear Mr. Twogood:

The Department is in receipt of your letter dated November 6, 2015, and the preliminary findings of OPPAGA's report entitled "Civil Asset Forfeiture in Florida: Policies and Practices." I appreciate your courtesy in providing FDLE the opportunity to review the draft report and to provide input.

FDLE believes that the civil forfeiture of criminal assets continues to be an important law enforcement tool to combat crime and protect the public. Criminals should be denied the use or enjoyment of the illicit proceeds of their crimes. Similarly, they should not be permitted to keep property used to facilitate crime. Generally speaking, reforms to Florida's forfeiture laws should be approached cautiously to avoid unintended consequences that would benefit and encourage organized criminals.

In reviewing OPPAGA's draft report, we respectfully offer the following observations:

Page 1

*Much of the seizure and forfeiture process occurs outside of court, with only 1% of forfeitures contested in a civil trial.* (This statement is repeated on page 7.) FDLE response: While it is true that few forfeiture cases proceed to a full trial on the merits, all Florida forfeitures must be filed in civil court (unless the asset is held as evidence in a criminal case and it is either unclaimed or forfeited as part of a plea in the companion criminal case).

*The Legislature may wish to consider revising state law to require law enforcement agencies to report information on the frequency and extent of civil asset forfeiture in Florida.* FDLE response: FDLE would not oppose annually reporting its forfeiture activity to the Legislature. FDLE's own forfeiture policy already requires an internal annual review and assessment of its forfeitures.

Page 2

*In Florida, as in other states, property can be forfeited either criminally or civilly.* FDLE response: FDLE is unaware of "criminal" forfeiture, as such, under Florida law. However, FDLE acknowledges that forfeiture has been included as a term in plea agreements between State Attorneys and criminal defendants in the past.

Service • Integrity • Respect • Quality

Mr. Philip Twogood  
November 13, 2015  
Page 2

*...a seizure under the Florida Contraband Forfeiture Act does not require an arrest or conviction, and any related criminal proceedings or determinations are neither relevant nor admissible in a civil forfeiture action. FDLE response: This is not always the case. An adjudication of guilt in the related criminal case may be admitted in the civil forfeiture and create collateral estoppel issues. See: Star Tyme, Inc. v. Cohen, 659 So.2d 1064 (Fla. 1995).*

Page 3

*After a seizure occurs, the seizing law enforcement agency is required to identify and provide notice of seizure to the owner. FDLE response: Pursuant to Sections 932.701(2)(e) and 932.702(2)(a)-(b), Florida Statutes, notice is to be given to "persons entitled to notice." By definition, this means "any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry."*

Page 7

*However, survey respondents indicated that few seizure actions lead to adversarial hearings or trials. FDLE response: FDLE's experience has been that often, assets are seized pursuant to a seizure warrant wherein a judge has already made a probable cause determination. In those instances, the adversarial preliminary hearing has somewhat less significance.*

*These numbers suggest that a small number of owners challenge the actions brought against their property and that many owners decide to settle their cases, giving up their right to be heard by a judge and jury. FDLE response: This has been true in FDLE's experience, and is similar to the resolution in most criminal cases in which defendants elect to resolve the matter by entering a guilty or no contest plea in criminal court in lieu of a trial.*

*Some property owners may be making these decisions without benefit of counsel since there is no right to representation for those who cannot afford it in civil asset forfeiture cases. FDLE response: FDLE's experience has been that in most of its forfeiture cases, the property owners are represented by counsel. Few of FDLE's forfeiture cases involved *pro se* (unrepresented) property owners.*

Page 12

*Require conviction before forfeiture...Currently, Florida is like the majority of states, which does not require a criminal conviction before forfeiture. FDLE response: FDLE would advise against the approach requiring a conviction before forfeiture. Forfeiture is an *in rem* proceeding against the contraband article, not the person. The seizing agency has to prove that the article is contraband and not that the claimant committed a crime. Moreover, not all meritorious criminal cases result in a conviction. For example, a sentencing judge may elect to withhold adjudication of guilt when sentencing a criminal defendant. Although such a defendant may not have been "convicted" of the offense, he or she is still culpable and subject to criminal sanctions. In other cases, the State Attorney may be forced to dismiss a criminal charge because a key witness has died or become unavailable, even though the defendant gave the police a full confession to the*

Mr. Philip Twogood  
November 13, 2015  
Page 3


crime. In these instances, as well as in numerous other examples, the seizing agency should not be barred from proceeding with a civil forfeiture.

*Increase the standard of proof...Although Florida's standard of proof in forfeiture cases is higher than many states, the Legislature could consider further increasing the evidentiary standard in Florida to beyond a reasonable doubt, the standard required in criminal trials.* FDLE response: Under current Florida law, seizing agencies are held to a clear and convincing standard of proof. This standard is higher than a probable cause standard and higher than the preponderance standard applicable in other types of civil litigation. Only the criminal case standard of beyond a reasonable doubt is higher than the clear and convincing standard. As pointed out above, forfeiture cases are civil in nature. A requirement of a criminal standard of proof in a civil case would create a hybrid and a legal anomaly. Such an approach could risk creating legal uncertainty as to the overall nature of civil forfeiture in Florida. In addition, if the objective in raising the standard of proof to beyond a reasonable doubt is to protect property owners from unjust forfeitures, it is important to recall that the standard of proof only becomes an issue if the case proceeds to a trial. As the survey indicated, only a small number of owners challenge the actions brought against their property and many owners elect to settle their cases, giving up their right to be heard by a judge and jury (the draft report indicates that only 1% of forfeitures are contested in a civil trial). Accordingly, this suggests that only a small number of owners would arguably stand to benefit from a higher burden of proof.

Page 13

*Restrict the use of civil asset forfeiture proceeds...the Legislature could reduce the percentage of funds that agencies are allowed to keep, increase the percentages given to substance abuse and crime prevention programs, or designate funds for other purposes...If the Legislature decides to allow law enforcement agencies to retain civil asset forfeiture proceeds, it may want to consider further restricting the other law enforcement purposes for which civil asset forfeiture proceeds can be used.* FDLE response: Changes to laws governing the use of civil asset forfeiture proceeds or the disposition of forfeited property should be made cautiously in light of diminishing resources, to include federal funding, for public safety. Many law enforcement agencies must already strive to do more with less funding. We agree that setting thresholds or designating percentages that should be contributed to non-profits may bring some balance, but we remain concerned that any restrictions placed on the use of these proceeds for investigative purposes could be counterproductive to public safety.

FDLE stands ready, together with our law enforcement partners, to assist in addressing concerns regarding civil forfeiture. We believe that this can be accomplished without weakening one of the most valuable tools law enforcement has in combating serious crime.

Sincerely,  
  
Richard L. Swearingen  
Commissioner



# *The Florida Legislature*

## *Office of Program Policy Analysis and Government Accountability*



---

OPPAGA provides performance and accountability information about Florida government in several ways.

- [Reports](#) deliver program evaluation and policy analysis to assist the Legislature in overseeing government operations, developing policy choices, and making Florida government more efficient and effective.
- [PolicyCasts](#), short narrated slide presentations, provide bottom-line briefings of findings and recommendations for select reports.
- Government Program Summaries (GPS), an online encyclopedia, [www.oppaga.state.fl.us/government](http://www.oppaga.state.fl.us/government), provides descriptive, evaluative, and performance information on more than 200 Florida state government programs.
- [PolicyNotes](#), an electronic newsletter, delivers brief announcements of research reports, conferences, and other resources of interest for Florida's policy research and program evaluation community.
- Visit OPPAGA's website at [www.oppaga.state.fl.us](http://www.oppaga.state.fl.us)

---

OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

**OPPAGA website:** [www.oppaga.state.fl.us](http://www.oppaga.state.fl.us)

Project supervised by Claire K. Mazur (850/717-0575)

Project conducted by D. Byron Brown, Laurie Scott, Matthew Moncrief, and Marina Byrd

R. Philip Twogood, Coordinator

Tab 12

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/25/16  
Meeting Date

\_\_\_\_\_  
Bill Number (if applicable)

Topic CIVIL ASSET FORFEITURE: OPPAGA REPORT

\_\_\_\_\_  
Amendment Barcode (if applicable)

Name BYRON BROWN

Job Title CHIEF LEGISLATIVE ANALYST

Address 111 W MADISON  
Street  
TALLAHASSEE FL 32312  
City State Zip

Phone 717-0569

Email brown.byron@oppaga.fl.gov

Speaking: ☐ For ☐ Against ☒ Information

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

Representing OPPAGA

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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



# CourtSmart Tag Report

Room: LL 37

Caption: Senate Criminal Justice Committee

Case No.:

Judge:

Type:

Started: 1/25/2016 1:06:52 PM

Ends: 1/25/2016 3:28:48 PM

Length: 02:21:57

1:06:52 PM Meeting called to order. Roll Call  
1:07:49 PM Tab 2 - SB 436 by Senator Simpson - Terroristic Threats  
1:08:05 PM Senator Simpson is recognized to explain the bill.  
1:08:43 PM Amendment Barcode 660248  
1:09:08 PM Senator Bradley explains Barcode 660248  
1:10:08 PM Senator Gibson asks a question.  
1:11:50 PM James Mallo, Captain, Pasco County Sheriff's Office  
1:19:52 PM Senator Gibson makes a statement about bill.  
1:20:59 PM Senator Clemens makes a statement about bill.  
1:22:48 PM Roll call for SB 436  
1:23:15 PM Tab 3 - SB 636 by Senator Benacquisto - Evidence Collected in Sexual Assault Investi  
1:23:40 PM Senator Benacquisto is recognized to explain the bill.  
1:25:09 PM Amendment Barcode 320858  
1:25:21 PM Senator Clemens asks a question to Senator Benacquisto.  
1:28:02 PM Roll Call for SB 636  
1:29:18 PM Tab 8 - SB 954 by Senator Simmons - Electronic Monitoring Devices  
1:30:39 PM Amendment Barcode 813350  
1:30:58 PM Senator Bradley explains Barcodd 813350.  
1:32:12 PM Roll call for SB 954  
1:32:56 PM Tab 10 - SPB 7022 by Criminal Justice - OGSR/Agency Photograph, Video, or Audio Recording  
1:33:03 PM Donna Dugger explains the bill.  
1:38:05 PM Senator Clemens makes a comment regarding the Press.  
1:40:10 PM Senator Bradley asks a question.  
1:40:43 PM Donna explains the question.  
1:45:58 PM Vice Chair Gibson ask a question about being a relative.  
1:46:44 PM Donna answers the question.  
1:52:19 PM Bill Peeples  
1:54:00 PM Greg Pound, Florida Families  
1:55:47 PM Senator Bradley moves to TP SPB 7022  
1:56:32 PM Tab 4 - SB 784 by Senator Flores - Human Trafficking  
1:56:46 PM Senator Flores is recognized to explain the bill.  
1:58:32 PM Amendment Barcode 399382  
1:58:58 PM Senator Bradley explains Barcode 399382.  
1:59:36 PM Greg Pound speaks on bill.  
2:02:52 PM Senator Flores closes on SB 784.  
2:04:39 PM Roll call for SB 784  
2:05:07 PM Tab 5 - SB 912 by Senator Flores - Fraudulent Activities Associated with Payment Sys  
2:05:20 PM Senator Flores is recognized to explain the bill.  
2:07:12 PM Amendment Barcode 854308  
2:07:37 PM Senator Flores explains Barcode 854308.  
2:07:57 PM Senator Clemens asked a question to Senator Flores.  
2:10:04 PM Senator Gibson asks a question to Senator Flores about time period for complying.  
2:11:26 PM Senator Evers asks a question about security with small businesses.  
2:13:06 PM Roll call for SB 912  
2:13:54 PM Senator Gibson makes an announcement about her soriety.  
2:15:05 PM Tab 12 - Presentation by Bryon Brown, OPPAGA on "Civil Asset Forfeiture in Florida:  
2:26:18 PM Senator Brandes asked question of Mr. Brown.  
2:30:49 PM Tab 1 - SB 220 by Senator Bean - Contraband Forfeiture  
2:31:03 PM Senator Bean is recognized to explain the bill.  
2:32:35 PM Amendment Barcode 914898  
2:33:04 PM Senator Bean explains Barcode 914898.  
2:36:21 PM Senator Bradley asks Buddy Jacobs, State Attorney's office a question on civil forfeiture.

**2:37:50 PM** Monica Hofheinz, Assistant State Attorney, FPAA  
**2:41:04 PM** Greg Pound, Saving Families  
**2:43:37 PM** Senator Bean closes on SB 220.  
**2:44:00 PM** Roll call for SB 220  
**2:45:14 PM** Tab 9 - SB 1044 by Senator Brandes - Forfeiture of Contraband  
**2:45:50 PM** Senator Brandes is recognized to explain the bill.  
**2:46:12 PM** Amendment Barcode  
**2:47:15 PM** Senator Gibson asks a question.  
**2:48:06 PM** Senator Brandes responds to question.  
**2:49:04 PM** Matt Dunagan, Deputy Director, Florida Sheriffs Association  
**2:52:43 PM** Senator Bradley asks Matt Dunagan some questions.  
**2:53:11 PM** Mr. Dunagan responds to the questions.  
**2:56:39 PM** Bradley Weissman, Florida Police Chiefs Association.  
**2:58:57 PM** Senator Bradley asks Mr. Weissman a question about probable cause.  
**2:59:21 PM** Mr. Weissman responds to question.  
**3:02:00 PM** Senator Gibson asks a question of Mr. Weissman.  
**3:02:44 PM** Mr. Weissman responds to question.  
**3:11:31 PM** Senator Bradley asks a question about double jeopardy.  
**3:11:49 PM** Mr. Weissman responds to question.  
**3:15:27 PM** Dan Peterson, Director, Center for Property Rights.  
**3:17:51 PM** Senator Bradley asks a question.  
**3:20:26 PM** Justin Pearson, Attorney, Institute for Justice.  
**3:23:26 PM** Senator Gibson asks a question about \$1,000.  
**3:23:49 PM** Mr. Pearson responds to the question.  
**3:25:56 PM** Jim Purdy, Public Defender, 7th Circuit.  
**3:26:32 PM** Senator Brandes closes on SB 1044  
**3:27:29 PM** Roll call for SB 1044  
**3:28:38 PM** Meeting adjourned