

<b>Tab 1 SB 260 by Steube; (Compare to CS/H 00575) Threats to Kill or Do Bodily Injury</b>							
767692	D	S	RS	CJ, Steube	Delete everything after	03/27	05:33 PM
131814	SD	S	RCS	CJ, Steube	Delete everything after	03/27	05:33 PM
<b>Tab 2 SB 548 by Bracy; (Similar to H 00985) Comprehensive Case Information System</b>							
881540	A	S	RCS	CJ, Bracy	Delete L.32:	03/27	05:33 PM
<b>Tab 3 SB 552 by Bracy; (Compare to CS/H 00313) Child Support</b>							
<del>675038</del>	D	S	WD	CJ, Bracy	Delete everything after	03/27	03:13 PM
924974	D	S	RCS	CJ, Bracy	Delete everything after	03/27	05:33 PM
<b>Tab 4 SB 1002 by Perry (CO-INTRODUCERS) Rouson, Bradley; (Similar to CS/H 00505) Controlled Substances</b>							
491230	A	S	RCS	CJ, Perry	btw L.66 - 67:	03/27	05:33 PM
<b>Tab 5 SB 1068 by Brandes; (Similar to CS/H 00157) Sentencing</b>							
925088	A	S	RCS	CJ, Bracy	btw L.76 - 77:	03/27	05:33 PM
<b>Tab 6 SB 1102 by Rouson; (Similar to H 00693) Criminal Offenses</b>							
<b>Tab 7 SB 1194 by Bracy; Sentencing</b>							
<b>Tab 8 SM 1322 by Braynon; (Identical to H 00171) Firearm Violence Awareness Month</b>							
<b>Tab 9 SB 1486 by Rouson; (Identical to H 01157) Public Safety Coordinating Councils</b>							
<b>Tab 10 SB 1626 by Bradley; (Similar to CS/H 01379) Department of Legal Affairs</b>							
214888	A	S	RCS	CJ, Bradley	Delete L.102 - 210:	03/27	05:33 PM
<b>Tab 11 SB 1670 by Latvala; (Similar to H 07059) Juvenile Justice</b>							

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

**CRIMINAL JUSTICE**  
**Senator Bracy, Chair**  
**Senator Baxley, Vice Chair**

**MEETING DATE:** Monday, March 27, 2017  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

**MEMBERS:** Senator Bracy, Chair; Senator Baxley, Vice Chair; Senators Bean, Bradley, Brandes, Clemens, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 260</b> Steube (Compare CS/H 575)	Threats to Kill or Do Bodily Injury; Prohibiting a person from making a threat to kill or do bodily injury in a writing or other record and transmitting that threat in any manner; deleting requirements that a threat be sent to a specific recipient to be prohibited, etc.  CJ      03/27/2017 Fav/CS ACJ AP RC	Fav/CS Yeas 7 Nays 0
2	<b>SB 548</b> Bracy (Similar H 985)	Comprehensive Case Information System; Requiring that the Comprehensive Case Information System be developed, operated, and maintained by the Florida Association of Court Clerks and Comptrollers, Inc., as agent of the clerks of the circuit court; authorizing the association to transfer ownership and operation of the system to an intergovernmental authority created by the clerks of the circuit court pursuant to a specified act, etc.  CJ      03/21/2017 Temporarily Postponed CJ      03/27/2017 Fav/CS JU ACJ AP	Fav/CS Yeas 7 Nays 0
3	<b>SB 552</b> Bracy (Compare CS/H 313)	Child Support; Citing this act as the "Florida Responsible Parent Act"; providing additional circumstances under which an obligor who fails to pay child support may avoid suspension of his or her driver license and motor vehicle registration; requiring a court to deny an order for contempt if an obligor demonstrates that he or she is unable to pay child support due to specified circumstances, etc.  CJ      03/06/2017 Temporarily Postponed CJ      03/27/2017 Fav/CS CF AP	Fav/CS Yeas 5 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, March 27, 2017, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1002</b> Perry (Similar CS/H 505)	Controlled Substances; Adding ioflupane as an excepted substance to Schedule II of the standards and schedules of controlled substances, etc.  CJ 03/27/2017 Fav/CS JU AP	Fav/CS Yeas 5 Nays 0
5	<b>SB 1068</b> Brandes (Similar CS/H 157)	Sentencing; Authorizing a court to sentence certain offenders to a county jail for up to 24 months if the offender meets specified criteria and if the county has a contract with the Department of Corrections, etc.  CJ 03/27/2017 Fav/CS ACJ AP	Fav/CS Yeas 7 Nays 0
6	<b>SB 1102</b> Rouson (Similar H 693, Compare CS/S 608)	Criminal Offenses; Revising threshold amounts for failure to remit taxes offenses, retail theft, dealing in stolen property by use of the Internet offenses, stopping payment offenses, offenses involving giving worthless checks, drafts, and debit card orders, and offenses involving payments to the Department of Revenue, etc.  CJ 03/27/2017 Favorable ACJ AP	Favorable Yeas 4 Nays 2
7	<b>SB 1194</b> Bracy	Sentencing; Specifying requirements for sentencing and appeals of sentences for offenses committed on or after a certain date; creating requirements for permissible sentences for nonstate prison sanctions and state prison sanctions; authorizing a defendant to appeal a sentence outside a specified range, etc.  CJ 03/27/2017 Favorable JU AP	Favorable Yeas 5 Nays 0
8	<b>SM 1322</b> Braynon (Identical HM 171)	Firearm Violence Awareness Month; Urging Congress to designate the month of September 2017 as "Firearm Violence Awareness Month", etc.  CJ 03/27/2017 Favorable JU RC	Favorable Yeas 3 Nays 2

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, March 27, 2017, 1:30—3:30 p.m.

---

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>SB 1486</b> Rouson (Identical H 1157)	Public Safety Coordinating Councils; Specifying an additional member for public safety coordinating councils, etc.  CJ      03/27/2017 Favorable CA RC	Favorable Yeas 6 Nays 0
10	<b>SB 1626</b> Bradley (Similar CS/H 1379, Compare CS/H 481, CS/S 1554)	Department of Legal Affairs; Authorizing the Statewide Council on Human Trafficking to apply for and accept funds, grants, gifts, and services from various governmental entities or any other public or private source for a specified purpose; providing that the Attorney General has standing to assert the rights of certain qualified beneficiaries in judicial proceedings; revising the conditions under which a trustee may amend the governing instrument of a specified charitable trust to comply with specified provisions of ch. 736, F.S., etc.  CJ      03/27/2017 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0
11	<b>SB 1670</b> Latvala (Similar H 7059)	Juvenile Justice; Revising requirements for placement of a child in detention care; providing that a child who is designated a prolific juvenile offender does not require a risk assessment to be placed in detention care; providing that a child meeting specified criteria shall be placed in secure detention care until the child's detention hearing, etc.  CJ      03/27/2017 Favorable ACJ AP	Favorable Yeas 7 Nays 0

---

Other Related Meeting Documents

---

An electronic copy of the Appearance Request form is available to download from any Senate Committee page on the Senate's website, [www.flsenate.gov](http://www.flsenate.gov).

---

**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 260

INTRODUCER: Criminal Justice Committee and Senator Steube

SUBJECT: Threats to Kill or Do Bodily Injury

DATE: March 28, 2017

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 260 amends s. 836.10, F.S., to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

The bill:

- Reorganizes the elements of the offense so that s. 836.10(1)(b), F.S., clearly provides for a violation of the statute if a threat is posted or transmitted in a manner that would allow *any* person to view the threat (emphasis added). This clarifies that a more general threat is included within the acts that would violate s. 836.10, F.S.
- Creates a definition for the term “electronic record.”
- Provides that a juvenile who violates s. 836.10, F.S., commits a first degree misdemeanor (rather than the existing second degree felony).
- Adds a new exception, for a violation of s. 836.10, F.S., to the general rule that a misdemeanor must be committed in a law enforcement officer’s presence in order for a warrantless arrest to occur.

This bill makes s. 836.10, F.S., applicable under circumstances where a person transmits a threat to kill or do bodily injury to another in a more public forum than the current law contemplates.

## II. Present Situation:

When s. 836.10, F.S., was enacted in 1913, social media was limited to the “pen and paper” written word, the newspaper, and possibly the radio.

Having been amended in 2010<sup>1</sup> to add “electronic communication,” s. 836.10, F.S., currently prohibits a person from:

- Writing or composing and sending to any person:
  - A letter,
  - Inscribed communication, or
  - Electronic communication,
- Containing a threat to kill or do bodily injury to:
  - The person to whom the letter or communication was sent, or
  - Any member of the person’s family.<sup>2</sup>

The act of “sending” under the statute requires two events – sending the communication to a particular person *and* receipt of the communication by the person being threatened.<sup>3</sup>

When the target of the threat is not necessarily a particular individual, but more random in nature, it is then that the application of the statute breaks down, particularly as related to social media.

### Social Media

Studies indicate that social media sites and other apps are widely used to communicate with other people and to find information. For example, recent publications by the Pew Research Center report that:

- 86 percent of Americans use the internet;<sup>4</sup>
- Of the surveyed 1,520 adults in one study, 79 percent use Facebook, 32 percent use Instagram, 31 percent use Pinterest, 29 percent use LinkedIn, and 24 percent use Twitter;<sup>5</sup> and
- In a survey of 1,060 teens ages 13-17 and their parent or guardian, when asked about the use of specific sites, 89 percent of all teens reported the use of at least one of the sites and 71 percent used 2 or more of the sites.<sup>6</sup>

---

<sup>1</sup> Chapter 2010-51, Laws of Florida.

<sup>2</sup> A violation of s. 836.10, F.S., is a second degree felony, punishable by up to 15 years in prison and a fine of up to \$10,000. ss. 775.082, 775.083, and 775.084, F.S.

<sup>3</sup> *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016) citing *State v. Wise*, 664 So.2d 1028, 1030 (Fla. 2nd DCA 1995).

<sup>4</sup> Pew Research Center, November 2016, “Social Media Update,” pages 1-2.

<sup>5</sup> Pew Research Center, November 2016, “Social Media Update,” pages 1-2.

<sup>6</sup> Pew Research Center, April 2015, “Teen, Social Media and Technology Overview 2015,” pages 7 and 25.

## Examples of Random School Threats Using E-Mail

In late 2015, there was a rash of e-mailed hoax threats against schools across the country that began in New York City and Los Angeles.<sup>7</sup> The New York and Los Angeles threats were nearly identically worded, threatening the use of bombs, nerve gas, and rifles, and routed through a server in Frankfurt, Germany, apparently by the same person.<sup>8</sup> A few days later, similar threats were directed at schools in Florida.<sup>9</sup> Social media and other electronic forms of communication were used in at least 35 percent of the violent threats to schools in one recent study covering half the 2013-14 school year in 43 states.<sup>10</sup>

## Case Law Applying Current Statute

In a 2016 court decision, a juvenile's disposition under s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter<sup>11</sup> was reversed.<sup>12</sup> The juvenile made a series of public posts on Twitter over the span of several days threatening to "shoot up" his school.<sup>13</sup> The tweets were discovered by an out-of-state watchdog group who reported the threats to local police. Local police later contacted the juvenile's school officials informing them of the threats.

The Second District Court of Appeals found that because the juvenile publicly posted the tweets, rather than directly sending them to any student or school official, the receipt of the threats by school officials through local police was too far removed to support a conviction under s. 836.10, F.S.

The court specifically discussed the difficulty of applying the current statute to modern forms of communication, recognizing that many threats made on social media fall outside the narrow scope of the law, which requires the threatening communication to be sent directly to a specific person who receives the threat.<sup>14</sup>

---

<sup>7</sup> "Los Angeles and New York Differ in Their Responses to a Terrorism Threat," The New York Times, December 15, 2015, available at <https://www.nytimes.com/2015/12/16/us/los-angeles-schools-bomb-threat.html> (last visited March 13, 2017).

<sup>8</sup> Id.

<sup>9</sup> "Miami-Dade, Broward Schools Receive Threats: Officials," Krista Deans, NBC News 6, December 17, 2015, <http://www.nbcmiami.com/news/local/Miami-Dade-School-System-Receives-Threat-Officials-362740851.html> (last visited March 20, 2016). See also, "Frustration over 5 school bomb threats in 2 days, False calls frustrate law enforcement, but must be taken seriously, police say," Crystal Moyer, WJXT News 4 Jacksonville, December 9, 2015, available at <http://www.news4jax.com/news/bomb-scare-forces-evacuation-of-southside-business> (last visited March 20, 2016).

<sup>10</sup> "Schools face new wave of violent threats sent by social media and other electronic means," National School Safety and Security Services, February 25, 2014, (reporting on 315 documented school bomb threats, shooting threats, hoaxes, and acts of violence between August 2013 and January 2014), available at <http://www.schoolsecurity.org/2014/02/schools-face-new-wave-violent-threats-sent-social-media-electronic-means-study-says/> (last visited March 13, 2017).

<sup>11</sup> "Twitter allows users to send 'updates' (or 'tweets': text based posts, up to 140 characters long) to [the] Twitter website via short message service (e.g. on a cell phone), instant messaging, from their computer at home or work, or through a third-party application." GNATED, "What Is Twitter and How Does It Work- Beginner's Guide," February 9, 2009, available at <http://gnated.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited March 13, 2017).

<sup>12</sup> *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

<sup>13</sup> The following tweets were posted: "can't WAIT to shoot up my school," "it's time," "My mom and dad think I'm serious about shooting up my school I'm dying"; "school getting shot up on a Tuesday," "night f[\*\*\*]king sucked can't wait to shoot up my school soon"; and "I sincerely apologize to anyone who took me seriously. I love my high school and honestly own no weapons to want to harm anyone in any way." *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

<sup>14</sup> *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

### **Warrantless Arrest**

Section 901.15, F.S., provides that a law enforcement officer may arrest a person without a warrant when:

- The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit.
- A felony has been committed and he or she reasonably believes that the person committed it.
- He or she reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- A warrant for the arrest has been issued and is held by another officer for execution.

The principal components of a determination of reasonable suspicion or probable cause are the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.<sup>15</sup>

The general rule is that an officer must witness a misdemeanor occurring in order to make a warrantless arrest, however, currently there are statutory exemptions from this requirement in s. 901.15, F.S.<sup>16</sup>

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

The bill amends s. 836.10, F.S., to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

The bill prohibits more modern communication circumstances in the context of threats to kill or do bodily injury to another than the statute as currently written.

The bill amends the statute to prohibit a person from making a threat to kill or injure another:

- In writing or other record, including an electronic record; or
- By posting or transmitting the threat, or procuring the posting or transmission, in a manner that would allow any person to view the threat.

The term “electronic record” is defined by the bill as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.”

---

<sup>15</sup> *State v. Cuomo*, 43 So. 3d 838 (Fla.1st DCA, 2010); see also *Ornelas v. United States*, 517 U.S. 690, 696-97 (1996).

<sup>16</sup> For example, s. 901.15(9), F.S., provides that the officer may make an arrest without a warrant when there is probable cause to believe that the person has committed: Any battery upon another person, as defined in s. 784.03, F.S.; an act of criminal mischief or a graffiti-related offense as described in s. 806.13, F.S.; or a violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as described in s. 327.461, F.S.



The bill amends s. 901.15, F.S., to include a violation of s. 836.10, F.S., as the basis for a lawful arrest by an officer without a warrant, if the officer has probable cause to believe a person has committed the offense.

The current second degree felony penalties remain in the statute for adult offenders. The bill amends s. 836.10, F.S., to create a first degree misdemeanor applicable to juvenile offenders.

The bill reenacts ss. 794.056, 921.0022, and 938.085, F.S., to incorporate the changes made by the bill to s. 836.10, F.S.

The bill is effective October 1, 2017.

#### **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 Judicial Administrative Commission submitted a “no impact” memorandum dated January 11, 2017, indicating that there is no expected fiscal impact to the agency related to this bill.<sup>17</sup>

On March 2, 2017, the Criminal Justice Impact Conference considered HB 575, the substantive provisions of which were identical to SB 260 in its original form. The Conference adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that although there may be additional costs to the Department of

---

<sup>17</sup> Memorandum No. 002-17, Exec., Justice Administrative Commission.

Corrections resulting from this bill, the costs are unquantifiable (unquantifiable increase in prison beds).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 836.10 and 901.15.

This bill reenacts the following sections of the Florida Statutes: 794.056, 921.0022, and 938.085.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Criminal Justice on March 27, 2017:**

The committee substitute:

- Reorganizes the elements of the offense so that s. 836.10(1)(b), F.S., clearly provides for a violation of the statute if a threat is posted or transmitted in a manner that would allow *any* person to view the threat (emphasis added). This clarifies that a more general threat is included within the acts that would violate s. 836.10, F.S.
- Creates a definition for the term “electronic record.”
- Provides that a juvenile who violates s. 836.10, F.S., commits a first degree misdemeanor (rather than the existing second degree felony).
- Adds a new exception, for a violation of s. 836.10, F.S., to the general rule that a misdemeanor must be committed in a law enforcement officer’s presence in order for a warrantless arrest to occur.

**B. Amendments:**

None.



767692

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/27/2017	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 836.10, Florida Statutes, is amended to  
read:

836.10 Written threats to kill or do bodily injury;  
punishment.—

(1) It is unlawful for a Any person to make ~~who writes or  
composes and also sends or procures the sending of any letter,~~



767692

11 ~~inscribed communication, or electronic communication, whether~~  
12 ~~such letter or communication be signed or anonymous, to any~~  
13 ~~person, containing a threat to kill or to do bodily injury to~~  
14 another the person:

15 (a) In a writing or other record, including an electronic  
16 record; or

17 (b) By posting or transmitting, or procuring the posting or  
18 transmission, in a manner that would allow any person to view  
19 the threat.

20 (2) A person who violates paragraph (1)(a) to whom such  
21 ~~letter or communication is sent, or a threat to kill or do~~  
22 ~~bodily injury to any member of the family of the person to whom~~  
23 ~~such letter or communication is sent~~ commits a felony of the  
24 second degree, punishable as provided in s. 775.082, s. 775.083,  
25 or s. 775.084.

26 (3) A person who violates paragraph (1)(b) commits a  
27 misdemeanor of the first degree, punishable as provided in s.  
28 775.082 or s. 775.083.

29 (4) For purposes of this section, the term "electronic  
30 record" means relating to technology having electrical, digital,  
31 magnetic, wireless, optical, electromagnetic, or similar  
32 capabilities.

33 Section 2. For the purpose of incorporating the amendment  
34 made by this act to section 836.10, Florida Statutes, in a  
35 reference thereto, subsection (1) of section 794.056, Florida  
36 Statutes, is reenacted to read:

37 794.056 Rape Crisis Program Trust Fund.—

38 (1) The Rape Crisis Program Trust Fund is created within  
39 the Department of Health for the purpose of providing funds for



767692

40 rape crisis centers in this state. Trust fund moneys shall be  
41 used exclusively for the purpose of providing services for  
42 victims of sexual assault. Funds credited to the trust fund  
43 consist of those funds collected as an additional court  
44 assessment in each case in which a defendant pleads guilty or  
45 nolo contendere to, or is found guilty of, regardless of  
46 adjudication, an offense provided in s. 775.21(6) and (10)(a),  
47 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.  
48 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.  
49 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.  
50 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;  
51 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.  
52 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.  
53 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.  
54 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.  
55 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),  
56 (13), and (14)(c); or s. 985.701(1). Funds credited to the trust  
57 fund also shall include revenues provided by law, moneys  
58 appropriated by the Legislature, and grants from public or  
59 private entities.

60 Section 3. Subsection (17) is added to section 901.15,  
61 Florida Statutes, to read:

62 901.15 When arrest by officer without warrant is lawful.—A  
63 law enforcement officer may arrest a person without a warrant  
64 when:

65 (17) There is probable cause to believe that the person has  
66 committed a criminal act of threat to kill or do bodily injury  
67 as described in s. 836.10(1)(b).

68 Section 4. Paragraph (f) of subsection (3) of section



767692

69 921.0022, Florida Statutes, is amended to read:  
70 921.0022 Criminal Punishment Code; offense severity ranking  
71 chart.—

72 (3) OFFENSE SEVERITY RANKING CHART

73 (f) LEVEL 6

74  
75

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.

76  
77  
78  
79  
80



767692

81	499.0051 (4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
82	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
83	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
84	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
85	784.041	3rd	Felony battery; domestic battery by strangulation.
86	784.048 (3)	3rd	Aggravated stalking; credible threat.
87	784.048 (5)	3rd	Aggravated stalking of person under 16.
88	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
89	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.



767692

90	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
91	784.081 (2)	2nd	Aggravated assault on specified official or employee.
92	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
93	784.083 (2)	2nd	Aggravated assault on code inspector.
94	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
95	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
96	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
97	790.164 (1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or







unarmed; no assault or battery.

105

810.145(8)(b) 2nd Video voyeurism; certain minor  
victims; 2nd or subsequent  
offense.

106

812.014(2)(b)1. 2nd Property stolen \$20,000 or  
more, but less than \$100,000,  
grand theft in 2nd degree.

107

812.014(6) 2nd Theft; property stolen \$3,000  
or more; coordination of  
others.

108

812.015(9)(a) 2nd Retail theft; property stolen  
\$300 or more; second or  
subsequent conviction.

109

812.015(9)(b) 2nd Retail theft; property stolen  
\$3,000 or more; coordination of  
others.

110

812.13(2)(c) 2nd Robbery, no firearm or other  
weapon (strong-arm robbery).

111

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

112



767692

113	825.102 (1)	3rd	Abuse of an elderly person or disabled adult.
114	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.
115	825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
116	825.103 (3) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
117	827.03 (2) (c)	3rd	Abuse of a child.
118	827.03 (2) (d)	3rd	Neglect of a child.
119	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
120	836.05	2nd	Threats; extortion.
121	<u>836.10 (1) (a)</u> <del>836.10</del>	2nd	Written threats to kill or do bodily injury.
	843.12	3rd	Aids or assists person to escape.



767692

122	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
123	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
124	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
125	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
126	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
127	944.40	2nd	Escapes.
128	944.46	3rd	Harboring, concealing, aiding escaped prisoners.



767692

129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151

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

951.22(1)                           3rd      Intoxicating drug, firearm, or  
  weapon introduced into county  
  facility.

Section 5. For the purpose of incorporating the amendment  
made by this act to section 836.10, Florida Statutes, in a  
reference thereto, section 938.085, Florida Statutes, is  
reenacted to read:

938.085 Additional cost to fund rape crisis centers.—In  
addition to any sanction imposed when a person pleads guilty or  
nolo contendere to, or is found guilty of, regardless of  
adjudication, a violation of s. 775.21(6) and (10)(a), (b), and  
(g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;  
s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.  
784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.  
787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.  
796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.  
796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.  
810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.  
827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.  
847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and  
(14)(c); or s. 985.701(1), the court shall impose a surcharge of  
\$151. Payment of the surcharge shall be a condition of



767692

152 probation, community control, or any other court-ordered  
153 supervision. The sum of \$150 of the surcharge shall be deposited  
154 into the Rape Crisis Program Trust Fund established within the  
155 Department of Health by chapter 2003-140, Laws of Florida. The  
156 clerk of the court shall retain \$1 of each surcharge that the  
157 clerk of the court collects as a service charge of the clerk's  
158 office.

159 Section 6. This act shall take effect October 1, 2017.

160  
161 ===== T I T L E A M E N D M E N T =====

162 And the title is amended as follows:

163 Delete everything before the enacting clause  
164 and insert:

165 A bill to be entitled  
166 An act relating to threats to kill or do bodily  
167 injury; amending s. 836.10, F.S.; prohibiting a person  
168 from making a threat to kill or do bodily injury in a  
169 writing or other record and posting or transmitting  
170 the threat in a specified manner; deleting  
171 requirements that a threat be sent to a specific  
172 recipient to be prohibited; providing a penalty;  
173 reenacting s. 794.056(1), F.S., relating to the Rape  
174 Crisis Program Trust Fund, to incorporate the  
175 amendments made by the act; amending s. 901.15; F.S.;  
176 providing for arrest without a warrant for committing  
177 a criminal act of threat to kill or do bodily injury  
178 in a posting or transmitting the threat in a specified  
179 manner; amending s. 921.0022(3)(f), F.S.; updating a  
180 cross-reference in the offense severity ranking chart



767692

181 of the Criminal Punishment Code; reenacting s.  
182 938.085, F.S., relating to additional costs to fund  
183 rape crisis centers to incorporate the amendments made  
184 by the act; providing an effective date.



131814

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

---

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

1       **Senate Substitute for Amendment (767692) (with title**  
2 **amendment)**

3  
4       Delete everything after the enacting clause  
5 and insert:

6       Section 1. Section 836.10, Florida Statutes, is amended to  
7 read:

8       836.10 Written threats to kill or do bodily injury;  
9 punishment.—

10       (1) It is unlawful for a Any person to make ~~who writes or~~





131814

11 ~~composes and also sends or procures the sending of any letter,~~  
12 ~~inscribed communication, or electronic communication, whether~~  
13 ~~such letter or communication be signed or anonymous, to any~~  
14 ~~person, containing a threat to kill or to do bodily injury to~~  
15 ~~another the person:~~

16 (a) In a writing or other record, including an electronic  
17 record; or

18 (b) By posting or transmitting, or procuring the posting or  
19 transmission, in a manner that would allow any person to view  
20 the threat.

21 (2) A person who is 18 years of age or older and who  
22 violates this section to whom such letter or communication is  
23 sent, or a threat to kill or do bodily injury to any member of  
24 the family of the person to whom such letter or communication is  
25 sent commits a felony of the second degree, punishable as  
26 provided in s. 775.082, s. 775.083, or s. 775.084.

27 (3) A person who is under the age of 18 and who violates  
28 this section commits a misdemeanor of the first degree,  
29 punishable as provided in s. 775.082 or s. 775.083.

30 (4) For purposes of this section, the term "electronic  
31 record" means relating to technology having electrical, digital,  
32 magnetic, wireless, optical, electromagnetic, or similar  
33 capabilities.

34 Section 2. For the purpose of incorporating the amendment  
35 made by this act to section 836.10, Florida Statutes, in a  
36 reference thereto, subsection (1) of section 794.056, Florida  
37 Statutes, is reenacted to read:

38 794.056 Rape Crisis Program Trust Fund.—

39 (1) The Rape Crisis Program Trust Fund is created within



131814

40 the Department of Health for the purpose of providing funds for  
41 rape crisis centers in this state. Trust fund moneys shall be  
42 used exclusively for the purpose of providing services for  
43 victims of sexual assault. Funds credited to the trust fund  
44 consist of those funds collected as an additional court  
45 assessment in each case in which a defendant pleads guilty or  
46 nolo contendere to, or is found guilty of, regardless of  
47 adjudication, an offense provided in s. 775.21(6) and (10)(a),  
48 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.  
49 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.  
50 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.  
51 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;  
52 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.  
53 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.  
54 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.  
55 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.  
56 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),  
57 (13), and (14)(c); or s. 985.701(1). Funds credited to the trust  
58 fund also shall include revenues provided by law, moneys  
59 appropriated by the Legislature, and grants from public or  
60 private entities.

61 Section 3. Subsection (17) is added to section 901.15,  
62 Florida Statutes, to read:

63 901.15 When arrest by officer without warrant is lawful.—A  
64 law enforcement officer may arrest a person without a warrant  
65 when:

66 (17) There is probable cause to believe that the person has  
67 committed a criminal act of threat to kill or do bodily injury  
68 as described in s. 836.10.



131814

69 Section 4. For the purpose of incorporating the amendment  
70 made by this act to section 836.10, Florida Statutes, in a  
71 reference thereto, paragraph (f) of subsection (3) of section  
72 921.0022, Florida Statutes, is reenacted to read:

73 921.0022 Criminal Punishment Code; offense severity ranking  
74 chart.—

75 (3) OFFENSE SEVERITY RANKING CHART

76 (f) LEVEL 6

77  
78

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.

83



131814

84	499.0051 (3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
85	499.0051 (4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
86	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
87	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
88	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
89	784.041	3rd	Felony battery; domestic battery by strangulation.
90	784.048 (3)	3rd	Aggravated stalking; credible threat.
91	784.048 (5)	3rd	Aggravated stalking of person under 16.
92	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.



131814

93	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
94	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
95	784.081 (2)	2nd	Aggravated assault on specified official or employee.
96	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
97	784.083 (2)	2nd	Aggravated assault on code inspector.
98	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
99	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
100	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.



131814

101	790.164 (1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
102	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
103	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
104	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
105	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
106	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any



131814

other person.

107

810.02 (3) (c)            2nd    Burglary of occupied structure;  
unarmed; no assault or battery.

108

810.145 (8) (b)        2nd    Video voyeurism; certain minor  
victims; 2nd or subsequent  
offense.

109

812.014 (2) (b) 1.     2nd    Property stolen \$20,000 or  
more, but less than \$100,000,  
grand theft in 2nd degree.

110

812.014 (6)            2nd    Theft; property stolen \$3,000  
or more; coordination of  
others.

111

812.015 (9) (a)        2nd    Retail theft; property stolen  
\$300 or more; second or  
subsequent conviction.

112

812.015 (9) (b)        2nd    Retail theft; property stolen  
\$3,000 or more; coordination of  
others.

113

812.13 (2) (c)        2nd    Robbery, no firearm or other  
weapon (strong-arm robbery).

114

817.4821 (5)           2nd    Possess cloning paraphernalia



131814

with intent to create cloned  
cellular telephones.

115

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

116

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

117

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

118

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

119

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

120

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

121

827.071(2) & (3) 2nd Use or induce a child in a  
sexual performance, or promote  
or direct such performance.

122

836.05 2nd Threats; extortion.

123

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





131814

124	843.12	3rd	Aids or assists person to escape.
125	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
126	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
127	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
128	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
129	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
130	944.40	2nd	Escapes.



131

944.46                   3rd     Harboring, concealing, aiding  
  escaped prisoners.

132

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

133

951.22(1)               3rd     Intoxicating drug, firearm, or  
  weapon introduced into county  
  facility.

134

135

136

137

Section 5. For the purpose of incorporating the amendment  
made by this act to section 836.10, Florida Statutes, in a  
reference thereto, section 938.085, Florida Statutes, is  
reenacted to read:

141

938.085 Additional cost to fund rape crisis centers.—In  
addition to any sanction imposed when a person pleads guilty or  
nolo contendere to, or is found guilty of, regardless of  
adjudication, a violation of s. 775.21(6) and (10)(a), (b), and  
(g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;  
s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.  
784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.  
787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.  
796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.  
796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.  
810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.

151



131814

152 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.  
153 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and  
154 (14)(c); or s. 985.701(1), the court shall impose a surcharge of  
155 \$151. Payment of the surcharge shall be a condition of  
156 probation, community control, or any other court-ordered  
157 supervision. The sum of \$150 of the surcharge shall be deposited  
158 into the Rape Crisis Program Trust Fund established within the  
159 Department of Health by chapter 2003-140, Laws of Florida. The  
160 clerk of the court shall retain \$1 of each surcharge that the  
161 clerk of the court collects as a service charge of the clerk's  
162 office.

163 Section 6. This act shall take effect October 1, 2017.

164  
165 ===== T I T L E A M E N D M E N T =====

166 And the title is amended as follows:

167 Delete everything before the enacting clause  
168 and insert:

169 A bill to be entitled  
170 An act relating to threats to kill or do bodily  
171 injury; amending s. 836.10, F.S.; prohibiting a person  
172 from making a threat to kill or do bodily injury in a  
173 writing or other record and posting or transmitting  
174 the threat in a specified manner; deleting  
175 requirements that a threat be sent to a specific  
176 recipient to be prohibited; providing separate  
177 penalties for juveniles and adults; reenacting s.  
178 794.056(1), F.S., relating to the Rape Crisis Program  
179 Trust Fund, to incorporate the amendments made by the  
180 act; amending s. 901.15; F.S.; providing for arrest



131814

181 without a warrant for committing a criminal act of  
182 threat to kill or do bodily injury in a posting or  
183 transmitting the threat in a specified manner;  
184 reenacting ss. 938.085 and 921.0022(3)(f), F.S.,  
185 relating to additional costs to fund rape crisis  
186 centers and the offense severity ranking chart of the  
187 Criminal Punishment Code, respectively, to incorporate  
188 the amendments made by the act; providing an effective  
189 date.

By Senator Steube

23-00471-17

2017260\_\_

1                   A bill to be entitled  
2       An act relating to threats to kill or do bodily  
3       injury; amending s. 836.10, F.S.; prohibiting a person  
4       from making a threat to kill or do bodily injury in a  
5       writing or other record and transmitting that threat  
6       in any manner; deleting requirements that a threat be  
7       sent to a specific recipient to be prohibited;  
8       providing a penalty; providing an effective date.  
9

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

11  
12       Section 1. Section 836.10, Florida Statutes, is amended to  
13   read:

14       836.10 Written threats to kill or do bodily injury;  
15   punishment.—A Any person who makes a threat in a writing or  
16   other record, including an electronic record, writes or composes  
17   ~~and also sends or procures the sending of any letter, inscribed~~  
18   ~~communication, or electronic communication, whether such letter~~  
19   ~~or communication be signed or anonymous, to any person,~~  
20   ~~containing a threat to kill or to do bodily injury to another~~  
21   ~~the person and posts or transmits the threat in any manner to~~  
22   ~~whom such letter or communication is sent, or a threat to kill~~  
23   ~~or do bodily injury to any member of the family of the person to~~  
24   ~~whom such letter or communication is sent~~ commits a felony of  
25   the second degree, punishable as provided in s. 775.082, s.  
26   775.083, or s. 775.084.

27       Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/17  
Meeting Date

53260  
Bill Number (if applicable)

Topic THREATS Bill

Amendment Barcode (if applicable)

Name Sheep Jay L. Jennings

Job Title Sheep

Address 2500 West Colonial Dr

Phone 321-436-6064

Street

Del  
City

Fl  
State

32804  
Zip

Email dennis.strange@ocfl.net

Speaking:  For  Against  Information

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

Representing Orange County Sheep'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.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Judiciary, *Chair*  
Banking and Insurance, *Vice Chair*  
Agriculture  
Appropriations Subcommittee on Finance and Tax  
Regulated Industries

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

**SENATOR GREG STEUBE**

23rd District

January 12, 2017

The Honorable Randolph Bracy  
Florida Senate  
213 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Senator Bracy,

I am writing this letter because my bill, SB 260 Threats to Kill or Do Bodily Injury, has been referred to the Senate Criminal Justice Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in grey ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

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

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

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

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

---

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

---

BILL: CS/SB 548

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Comprehensive Case Information System

DATE: March 28, 2017

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

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

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

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

CS/SB 548 clarifies the role of the Florida Association of Court Clerks and Comptrollers, Inc. (association), regarding the Comprehensive Case Information System (CCIS), a secure data hub providing access to court case data from all 67 counties. The bill also:

- Specifies that the association develops, operates, and maintains the CCIS, and in this role is an agent of the clerks of the circuit court;
- Describes the CCIS as a system that serves as a secure, single point of access for searching statewide court information, provides access to court records, and contains electronic case data, and any other data necessary to support the state court system;
- Specifies that records accessed through the CCIS are official court records, and that a clerk of the circuit court is the official custodian of, and is responsible for, the court records and other data submitted by his or her office to the CCIS; and
- Authorizes the association to transfer ownership and operation of the CCIS to an intergovernmental authority created by the clerks of the circuit court.

According to the association, the bill will not have a fiscal impact on clerks of the circuit court, counties, municipalities, or the state. The development, maintenance, and operation of the CCIS are fully supported by funding from a statutorily-authorized document service charge. There is no cost to authorized users to use the system.



## II. Present Situation:

### Comprehensive Case Information System (CCIS)

The Florida Association of Court Clerks and Comptrollers, Inc.<sup>1</sup> (association), states that the CCIS was established in 2002 “as an initiative to view court case information across county and circuit lines,” and was developed by the clerks pursuant to s. 28.24(12)(e), F.S., which provides for funding of the CCIS.<sup>2</sup> (See Section V. Fiscal Impact.) Further, s. 28.2405, F.S., requires all clerks of the circuit court to participate in the CCIS of the association and submit electronic case data to the system based on the case types designated by the Florida Supreme Court.

The CCIS, which is a secure data hub providing access to court case data from all 67 counties,<sup>3</sup> is owned and operated by the association and the Florida Association of Court Clerks Services Group.<sup>4</sup> The CCIS provides read-only access to this statewide court data which originates and is stored locally in the respective clerk’s system.<sup>5</sup> According to the association, there are currently more than 36,000 federal, state, and local government users, representing 19 Florida government agencies, and 134 million cases involving 400 million parties throughout the state.<sup>6</sup>

### Intergovernmental Authority

An intergovernmental authority is a governmental entity that is created through an interlocal agreement among two or more municipalities or counties. Section 163.01, F.S., the “Florida Interlocal Cooperation Act of 1969,” is intended to allow local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis

---

<sup>1</sup> The Florida Association of Court Clerks and Comptrollers, Inc., is a nonprofit corporation comprised of the 67 elected clerks of the circuit court and the one elected county comptroller from Orange County. E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (February 28, 2017) (on file with the Senate Committee on Criminal Justice). The association acts as an agent of the individual clerks of the court in partial performance of the clerks’ court-related records maintenance function. In that role, the association is subject to all statutes, court rules, and Florida Supreme Court administrative orders applicable to the clerks in performance of that function. Analysis of SB 548 (February 10, 2017), Florida Association of Court Clerks and Comptrollers, Inc. (on file with the Senate Committee on Criminal Justice). This analysis is further referenced as “Association Analysis.”

<sup>2</sup> Association Analysis.

<sup>3</sup> *Id.* The CCIS contains case data and provides access to court records. To avoid duplication of records, the CCIS does not contain copies of court records, but provides a single, statewide access point to the original court records maintained by the clerks. E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (February 28, 2017) (on file with the Senate Committee on Criminal Justice).

<sup>4</sup> E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (March 9, 2017) (on file with the Senate Committee on Criminal Justice). The association states that the Florida Association of Court Clerks Service Group is a wholly owned subsidiary of the Florida Association of Court Clerks and Comptrollers, Inc., and was “established to provide enterprise services, including information technology, to the clerks in order to meet legislative directives and serve the public in the most efficient manner.” E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (February 28, 2017) (on file with the Senate Committee on Criminal Justice).

<sup>5</sup> Association Analysis.

<sup>6</sup> Association Analysis. Judges and circuit court administration have unrestricted read-only access to statewide court data. *Id.* Based on restrictions contained in court rules at the time CCIS was developed, the CCIS was only accessible by governmental agencies; however, since that time the Florida Supreme Court has adopted an access security matrix, which now provides for attorneys and the public to have limited access. Clerks are in the process of implementing the access provided by this new matrix. Implementation is expected to be completed by the end of 2017. E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (February 28, 2017) (on file with the Senate Committee on Criminal Justice).

of mutual advantage.<sup>7</sup> The statute provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.<sup>8</sup> Under such an agreement, the local governmental units may create a separate legal or administrative entity “to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.”<sup>9</sup> A separate entity created by an interlocal agreement possesses the authority specified in the agreement.<sup>10</sup>

### III. Effect of Proposed Changes:

The bill amends s. 28.2405, F.S., to clarify the role of the Florida Association of Court Clerks and Comptrollers, Inc. (association), regarding the Comprehensive Case Information System (CCIS), a secure data hub providing access to court case data from all 67 counties. The bill also:

- Specifies that the association develops, operates, and maintains the CCIS, and in this role is an agent of the clerks of the circuit court;
- Describes the CCIS as a system that serves as a secure, single point of access for searching statewide court information, provides access to court records, and contains electronic case data, and any other data necessary to support the state court system;
- Specifies that records accessed through the CCIS are official court records, and that a clerk of the circuit court is the official custodian of, and is responsible for, the court records and other data submitted by his or her office to the CCIS; and
- Authorizes the association to transfer ownership and operation of the CCIS to an intergovernmental authority created by the clerks of the circuit court.<sup>11</sup>

The bill takes effect July 1, 2017.

### IV. Constitutional Issues:

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

None.

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

None.

<sup>7</sup> Section 163.01(2), F.S. For example, one benefit of creating an intergovernmental authority may be operational improvements (e.g., combining resources, eliminating duplication of efforts, streamlining organizational structure, clarifying or improving allocation of functional responsibilities, and enhancing delivery of services).

<sup>8</sup> Section 163.01(5), F.S.

<sup>9</sup> Section 163.01(2), F.S.

<sup>10</sup> Section 163.01(7)(b), F.S.

<sup>11</sup> The association states that if the intergovernmental authority were to be implemented, such authority would still contract with the association and the Florida Association of Court Clerks Services Group to operate the CCIS in the same manner as done today. E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (March 9, 2017) (on file with the Senate Committee on Criminal Justice). The association also states that an intergovernmental authority “provides governance as a public body that is subject to the transparencies and accountabilities required of such bodies. Also[,] it better facilitates collaboration among stakeholders.” E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (March 15, 2017) (on file with the Senate Committee on Criminal Justice).

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 Association of Court Clerks and Comptrollers, Inc. (association), the bill will not have a fiscal impact on clerks of the court, counties, municipalities, or the state.<sup>12</sup> The development, maintenance, and operation of the CCIS are fully supported by funding from a statutorily-authorized document service charge. Pursuant to s. 28.24(12)(e)1., F.S., 10 cents from the \$4 recording service charge authorized in s. 28.24(12)(e), F.S.,<sup>13</sup> is distributed to the association for the cost of development, implementation, operation, and maintenance of the CCIS. The association also received a federal grant, administered through the Florida Department of Law Enforcement, of \$1.79 million in September of 2014, which has allowed for recent upgrades to the system. There is no cost to authorized users to utilize the system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 28.2405 of the Florida Statutes.

---

<sup>12</sup> E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (February 10, 2017) (on file with the Senate Committee on Criminal Justice). All information regarding government sector impact of the bill is from this source.

<sup>13</sup> Section 28.24(12)(e), F.S., provides, with some exceptions, that an additional service charge of \$4 per page shall be paid to the clerk of the circuit court for each instrument listed in s. 28.222, F.S. (e.g., deeds, leases, bills of sale, judgments, and certified copies of death certificates).

**IX. Additional Information:**

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

**CS by Criminal Justice on March 27, 2017:**

The CS deletes reference to the CCIS containing courts records; the CCIS does not contain court records.

- B. **Amendments:**

None.



881540

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

---

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

**Senate Amendment**

Delete line 32  
and insert:  
electronic case data, and any other data

By Senator Bracy

11-00616A-17

2017548\_\_

1 A bill to be entitled  
 2 An act relating to the Comprehensive Case Information  
 3 System; amending s. 28.2405, F.S.; requiring that the  
 4 Comprehensive Case Information System be developed,  
 5 operated, and maintained by the Florida Association of  
 6 Court Clerks and Comptrollers, Inc., as agent of the  
 7 clerks of the circuit court; specifying the purpose of  
 8 the system; providing that records obtained from a  
 9 clerk of the circuit court or accessed through the  
 10 system are official court records; specifying that  
 11 clerks of the circuit court remain the official  
 12 custodians of, and are responsible for, court records  
 13 and other data submitted to the system by their  
 14 respective offices; authorizing the association to  
 15 transfer ownership and operation of the system to an  
 16 intergovernmental authority created by the clerks of  
 17 the circuit court pursuant to a specified act;  
 18 providing an effective date.

19  
 20 Be It Enacted by the Legislature of the State of Florida:

21  
 22 Section 1. Section 28.2405, Florida Statutes, is amended to  
 23 read:

24 28.2405 Comprehensive Case Information System.—

25 (1) The ~~All~~ clerks of the circuit court shall participate  
 26 in the Comprehensive Case Information System, which shall be  
 27 developed, operated, and maintained by ~~of~~ the Florida  
 28 Association of Court Clerks and Comptrollers, Inc., as agent of  
 29 the clerks of the circuit court. The system serves as a secure,  
 30 single point of access for searching statewide court  
 31 information, provides access to court records, and contains  
 32 court records, electronic case data, and any other data

Page 1 of 2

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

11-00616A-17

2017548\_\_

33 necessary to support the state court system. The clerks of the  
 34 circuit court ~~and~~ shall submit electronic case data to the  
 35 system based on the case types designated by the Supreme Court.

36 (2) Records accessed through the system are official court  
 37 records. A clerk of the circuit court is the official custodian  
 38 of, and is responsible for, the court records and other data  
 39 submitted by his or her office to the Comprehensive Case  
 40 Information System.

41 (3) Ownership and operation of the Comprehensive Case  
 42 Information System may be transferred by the Florida Association  
 43 of Court Clerks and Comptrollers, Inc., to an intergovernmental  
 44 authority created by the clerks of the circuit court pursuant to  
 45 chapter 163.

46 Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

**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)

3/27/2017

*Meeting Date*

548  
SB 528

*Bill Number (if applicable)*

Topic Comprehensive Case Information System

*Amendment Barcode (if applicable)*

Name Fred Baggett

Job Title Chairman, Greenberg Traurig Tallahassee

Address 101 E. College Avenue

Phone 850-222-6891

*Street*

Tallahassee

FL

32308

*City*

*State*

*Zip*

Email baggettf@gtlaw.com

Speaking:  For  Against  Information

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

Representing Florida Court Clerks and Comptrollers

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)

3/27/17

Meeting Date

548

Bill Number (if applicable)

Topic Comprehensive Case Information System

Amendment Barcode (if applicable)

Name Judge Robert Roundtree

Job Title Circuit Judge, Eighth Judicial Circuit

Address 201 E. University Ave., Room 415

Phone 352-374-3644

Street

Gainesville

City

FL

State

32601

Zip

Email

Speaking:  For  Against  Information

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

Representing State Courts System

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 552  
**INTRODUCER:** Criminal Justice Committee and Senator Bracy  
**SUBJECT:** Child Support  
**DATE:** March 28, 2017      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CJ	Fav/CS
2.	_____	_____	CF	_____
3.	_____	_____	AP	_____

---

**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 552 adds a new ground to those already allowed for an obligor to contest a notice of delinquency in support payments issued by the Department of Revenue in circuit court. The obligor may show that he or she has no ability to make payments towards the delinquency due to circumstances that include, but are not limited to:

- Temporary interruption in employment due to a natural disaster.
- Incapacitation as a result of an illness or temporary medical condition.
- Temporary, unexpected involuntary unemployment.

**II. Present Situation:**

**Support**

Parents have a duty to support<sup>1</sup> their child until the child turns 18 years of age.<sup>2</sup> “Public policy favors imposing on parents an obligation to contribute to the child’s support.”<sup>3</sup> The obligation

---

<sup>1</sup> Section 61.046(22), F.S., defines “support” as child support when the Department of Revenue is not enforcing the support obligation and it includes spousal support or alimony for the person with whom the child is living when the Department of Revenue is enforcing the support obligation. The definition applies to the use of the term throughout ch. 61, F.S.

<sup>2</sup> Section 61.29, F.S. See generally ss. 744.301 and 744.361, F.S. See also 2-33 Florida Family Law s. 33.01 (Parents’ Duty to Support Child).

<sup>3</sup> *Mitchell v. Mitchell*, 841 So. 2d 564 570, (Fla. 2nd DCA 2003). In fact, s. 856.04, F.S., provides that it is a third degree felony for a parent to desert his or her child or to withhold from the child the means of support.

exists even if the parents are not married, and can exist when the parents are married, but the child is not the biological child of the husband or if a person contractually agrees to support the child.<sup>4</sup>

A parent caring for a child can seek a court order for support either through dissolution of marriage or through an order for alimony and support of the child without seeking a dissolution of marriage.<sup>5</sup> Section 61.30, F.S., sets forth guidelines to determine the appropriate amount of support to be provided. A court is permitted to deviate from the guideline amount “after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent,” but the deviation must be part of a written finding in the support order explaining why the guideline amount is unjust or inappropriate.<sup>6</sup>

### **Failure to Pay Support**

There are several options to enforce a support order, including both civil and criminal remedies. In an enforcement action, “the court must determine whether a valid support order exists, the terms of payment contained in the order, and whether the obligor<sup>7</sup> has complied with its terms. If a court determines that arrearages are due under a support order, it may also inquire into the reasons why the payments were not made and whether nonpayment can be legally excused.”<sup>8</sup>

Civil remedies include garnishment of the obligor’s wages,<sup>9</sup> an order for income deduction,<sup>10</sup> suspension or denial of certain business and professional licenses and certificates,<sup>11</sup> suspension of the person’s driver license and motor vehicle registration,<sup>12</sup> and an order to seek employment or job training.<sup>13</sup>

Specifically related to suspension of a driver license, if an obligor is 15 days delinquent in making a support payment, then the Department of Revenue (DOR) can provide notice to the obligor of the delinquency. The notice must state that the DOR will request the Department of Highway Safety and Motor Vehicles to suspend the driver license within 20 days of the date of the notice from the DOR. There are several ways for an obligor to stop suspension of his or her license, including:

- Paying the delinquency in full;
- Contesting the delinquency notice by filing a petition in circuit court;
- Demonstrating that he or she is on reemployment assistance (unemployment compensation);
- Demonstrating that he or she receives temporary cash assistance; or

---

<sup>4</sup> See 2-33 Florida Family Law s. 33.01 (Parents’ Duty to Support Child) for a discussion on situations where the duty of providing support arises.

<sup>5</sup> Section 61.09, F.S.

<sup>6</sup> Section 61.30(1)(a), F.S.

<sup>7</sup> Section 61.046(13), F.S., defines “obligor” to mean “a person responsible for making payments pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.”

<sup>8</sup> 4-70 Florida Family Law s. 70.23 (Complaint for Enforcement).

<sup>9</sup> Section 61.12, F.S.

<sup>10</sup> Section 61.1301, F.S.

<sup>11</sup> Section 61.13015, F.S.

<sup>12</sup> Section 61.13016, F.S.

<sup>13</sup> Section 61.14(5)(b), F.S.

- Demonstrating that he or she is disabled and incapable of self-support.<sup>14</sup>

If the obligor chooses to contest the delinquency notice in circuit court, the grounds for the petition must be mistake of fact regarding the existence of delinquency or the identity of the obligor. The petition has to be served on the DOR. The court must hear a timely filed petition within 15 days and enter an order resolving the petition within 10 days of the hearing. A timely filed petition stays the notice of delinquency by the DOR until the court enters an order resolving the matter.

The obligor can also petition a court to direct the Department of Highway Safety and Motor Vehicles to issue a license for driving privileges restricted to business purposes only.<sup>15</sup>

### III. Effect of Proposed Changes:

Section 61.13016, F.S., allows the DOR to request the Department of Highway Safety and Motor Vehicles to suspend an obligor's driver license within 20 days of the date of the notice from the DOR that the obligor is delinquent in making support payments. The bill amends s. 61.13016, F.S., to add additional grounds for an obligor to petition the circuit court to contest the notice of delinquency. The obligor can contest the notice by showing that he or she has no ability to make payments towards the delinquency in support payments due to circumstances that include, but are not limited to:

- Temporary interruption in employment due to a natural disaster.
- Incapacitation as a result of an illness or temporary medical condition.
- Temporary, unexpected involuntary unemployment.

The bill is effective July 1, 2017.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

---

<sup>14</sup> Section 61.13016(1), F.S.

<sup>15</sup> Section 61.13016(2), F.S. The term "a driving privilege restricted to business purposes only" means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes. Section 322.271(1)(c)1., F.S.

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

None.

**B. Private Sector Impact:**

An obligor who fails to pay child support and is able to show the circumstances provided in the bill will benefit by being able to retain his or her driver license.

**C. Government Sector Impact:**

The DOR indicates that the bill will have an insignificant fiscal impact on department expenditures.<sup>16</sup>

Any impact on the state court system is unknown at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 61.13016 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 27, 2017:**

The committee substitute substantially rewrote the bill. The CS added grounds for an obligor to petition a circuit court to contest a notice of delinquency in support payments. It removed the following provisions:

- Allowing an obligor to demonstrate to the DOR certain conditions in order to stop suspension of his or her driver license.
- Allowing an obligor to avoid being held in contempt of court by demonstrating certain conditions.
- Allowing a court to order an obligor to work release or supervised home confinement without electronic monitoring under certain conditions.
- Requiring the Department of Economic Opportunity to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be

<sup>16</sup> DOR, 2017 Agency Legislative Bill Analysis CS/HB 313, March 24, 2017.

placed in work release programs or supervised home confinement without electronic monitoring.

**B. Amendments:**

None.

---

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

---



675038

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/27/2017	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. This act may be cited as the "Florida  
Responsible Parent Act."

Section 2. Paragraph (c) of subsection (1) and subsection  
(3) of section 61.13016, Florida Statutes, are amended to read:

61.13016 Suspension of driver licenses and motor vehicle  
registrations.—



675038

11           (1) The driver license and motor vehicle registration of a  
12 support obligor who is delinquent in payment or who has failed  
13 to comply with subpoenas or a similar order to appear or show  
14 cause relating to paternity or support proceedings may be  
15 suspended. When an obligor is 15 days delinquent making a  
16 payment in support or failure to comply with a subpoena, order  
17 to appear, order to show cause, or similar order in IV-D cases,  
18 the Title IV-D agency may provide notice to the obligor of the  
19 delinquency or failure to comply with a subpoena, order to  
20 appear, order to show cause, or similar order and the intent to  
21 suspend by regular United States mail that is posted to the  
22 obligor's last address of record with the Department of Highway  
23 Safety and Motor Vehicles. When an obligor is 15 days delinquent  
24 in making a payment in support in non-IV-D cases, and upon the  
25 request of the obligee, the depository or the clerk of the court  
26 must provide notice to the obligor of the delinquency and the  
27 intent to suspend by regular United States mail that is posted  
28 to the obligor's last address of record with the Department of  
29 Highway Safety and Motor Vehicles. In either case, the notice  
30 must state:

31           (c) That notification will be given to the Department of  
32 Highway Safety and Motor Vehicles to suspend the obligor's  
33 driver license and motor vehicle registration unless, within 20  
34 days after the date that the notice is mailed, the obligor:

35           1.a. Pays the delinquency in full and any other costs and  
36 fees accrued between the date of the notice and the date the  
37 delinquency is paid;

38           b. Enters into a written agreement for payment with the  
39 obligee in non-IV-D cases or with the Title IV-D agency in IV-D



675038

40 cases; or in IV-D cases, complies with a subpoena or order to  
41 appear, order to show cause, or a similar order;

42 c. Files a petition with the circuit court to contest the  
43 delinquency action;

44 d. Demonstrates that he or she receives reemployment  
45 assistance or unemployment compensation pursuant to chapter 443;

46 e. Demonstrates that he or she is disabled and incapable of  
47 self-support or that he or she receives benefits under the  
48 federal Supplemental Security Income program or Social Security  
49 Disability Insurance program;

50 f. Demonstrates that he or she receives temporary cash  
51 assistance pursuant to chapter 414; ~~or~~

52 g. Demonstrates that he or she is unable to pay support due  
53 to an act of God, his or her own medical emergency, or sudden  
54 involuntary unemployment beyond his or her control. For purposes  
55 of this sub-subparagraph, the term "act of God" means an  
56 unforeseeable act exclusively occasioned by the violence of  
57 nature without the interference of any human agency; or

58 h.~~g.~~ Demonstrates that he or she is making payments in  
59 accordance with a confirmed bankruptcy plan under chapter 11,  
60 chapter 12, or chapter 13 of the United States Bankruptcy Code,  
61 11 U.S.C. ss. 101 et seq.; and

62 2. Pays any applicable delinquency fees.

63

64 If an obligor in a non-IV-D case enters into a written agreement  
65 for payment before the expiration of the 20-day period, the  
66 obligor must provide a copy of the signed written agreement to  
67 the depository or the clerk of the court. If an obligor seeks to  
68 satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-





675038

69 subparagraph 1.f., ~~or~~ sub-subparagraph 1.g., or sub-subparagraph  
70 1.h. before expiration of the 20-day period, the obligor must  
71 provide the applicable documentation or proof to the depository  
72 or the clerk of the court.

73 (3) If the obligor does not, within 20 days after the  
74 mailing date on the notice, pay the delinquency; enter into a  
75 written agreement; comply with the subpoena, order to appear,  
76 order to show cause, or other similar order; file a motion to  
77 contest; or satisfy subparagraph (1)(c)1.d., sub-  
78 subparagraph (1)(c)1.e., subparagraph (1)(c)1.f., ~~or~~ sub-  
79 subparagraph (1)(c)1.g., or sub-subparagraph (1)(c)1.h., the  
80 Title IV-D agency in IV-D cases, or the depository or clerk of  
81 the court in non-IV-D cases, may file the notice with the  
82 Department of Highway Safety and Motor Vehicles and request the  
83 suspension of the obligor's driver license and motor vehicle  
84 registration in accordance with s. 322.058.

85 Section 3. Paragraph (a) of subsection (5) of section  
86 61.14, Florida Statutes, is amended to read:

87 61.14 Enforcement and modification of support, maintenance,  
88 or alimony agreements or orders.—

89 (5) (a) When a court of competent jurisdiction enters an  
90 order for the payment of alimony or child support or both, the  
91 court shall make a finding of the obligor's imputed or actual  
92 present ability to comply with the order. If the obligor  
93 subsequently fails to pay alimony or support and a contempt  
94 hearing is held, the original order of the court creates a  
95 presumption that the obligor has the present ability to pay the  
96 alimony or support and to purge himself or herself from the  
97 contempt. At the contempt hearing, the obligor shall have the



675038

98 burden of proof to show that he or she lacks the ability to  
99 purge himself or herself from the contempt. This presumption is  
100 adopted as a presumption under s. 90.302(2) to implement the  
101 public policy of this state that children shall be maintained  
102 from the resources of their parents and as provided for in s.  
103 409.2551, and that spouses be maintained as provided for in s.  
104 61.08. The court shall state in its order the reasons for  
105 granting or denying the contempt. The court shall deny the  
106 contempt if the obligor demonstrates that he or she is unable to  
107 pay support due to an act of God, his or her own medical  
108 emergency, or sudden involuntary unemployment beyond his or her  
109 control. For purposes of this paragraph, the term "act of God"  
110 means an unforeseeable act exclusively occasioned by the  
111 violence of nature without the interference of any human agency.

112 Section 4. This act shall take effect July 1, 2017.

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

115 And the title is amended as follows:

116 Delete everything before the enacting clause  
117 and insert:

118 A bill to be entitled

119 An act relating to child support; creating the  
120 "Florida Responsible Parent Act"; amending s.  
121 61.13016, F.S.; providing additional circumstances  
122 under which an obligor who fails to pay child support  
123 may avoid suspension of his or her driver license and  
124 motor vehicle registration; amending s. 61.14, F.S.;  
125 requiring a court to deny an order for contempt if an  
126 obligor demonstrates that he or she is unable to pay



675038

127  
128

child support due to specified circumstances;  
providing an effective date.



924974

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. This act may be cited as the "Florida  
Responsible Parent Act."

Section 2. Subsections (1) and (4) of section 61.13016,  
Florida Statutes, are amended to read:

61.13016 Suspension of driver licenses and motor vehicle  
registrations.—



924974

11           (1) The driver license and motor vehicle registration of a  
12 support obligor who is delinquent in payment or who has failed  
13 to comply with subpoenas or a similar order to appear or show  
14 cause relating to paternity or support proceedings may be  
15 suspended. When an obligor is 15 days delinquent making a  
16 payment in support or failure to comply with a subpoena, order  
17 to appear, order to show cause, or similar order in IV-D cases,  
18 the Title IV-D agency may provide notice to the obligor of the  
19 delinquency or failure to comply with a subpoena, order to  
20 appear, order to show cause, or similar order and the intent to  
21 suspend by regular United States mail that is posted to the  
22 obligor's last address of record with the Department of Highway  
23 Safety and Motor Vehicles. When an obligor is 15 days delinquent  
24 in making a payment in support in non-IV-D cases, and upon the  
25 request of the obligee, the depository or the clerk of the court  
26 must provide notice to the obligor of the delinquency and the  
27 intent to suspend by regular United States mail that is posted  
28 to the obligor's last address of record with the Department of  
29 Highway Safety and Motor Vehicles. In either case, the notice  
30 must state:

31           (a) The terms of the order creating the support obligation;

32           (b) The period of the delinquency and the total amount of  
33 the delinquency as of the date of the notice or describe the  
34 subpoena, order to appear, order to show cause, or other similar  
35 order that has not been complied with;

36           (c) That notification will be given to the Department of  
37 Highway Safety and Motor Vehicles to suspend the obligor's  
38 driver license and motor vehicle registration unless, within 20  
39 days after the date that the notice is mailed, the obligor:



924974

40           1.a. Pays the delinquency in full and any other costs and  
41 fees accrued between the date of the notice and the date the  
42 delinquency is paid;

43           b. Enters into a written agreement for payment with the  
44 obligee in non-IV-D cases or with the Title IV-D agency in IV-D  
45 cases; or in IV-D cases, complies with a subpoena or order to  
46 appear, order to show cause, or a similar order;

47           c. Files a petition with the circuit court to contest the  
48 delinquency action as provided in subsection (4);

49           d. Demonstrates that he or she receives reemployment  
50 assistance or unemployment compensation pursuant to chapter 443;

51           e. Demonstrates that he or she is disabled and incapable of  
52 self-support or that he or she receives benefits under the  
53 federal Supplemental Security Income program or Social Security  
54 Disability Insurance program;

55           f. Demonstrates that he or she receives temporary cash  
56 assistance pursuant to chapter 414; or

57           g. Demonstrates that he or she is making payments in  
58 accordance with a confirmed bankruptcy plan under chapter 11,  
59 chapter 12, or chapter 13 of the United States Bankruptcy Code,  
60 11 U.S.C. ss. 101 et seq.; and

61           2. Pays any applicable delinquency fees.

62

63 If an obligor in a non-IV-D case enters into a written agreement  
64 for payment before the expiration of the 20-day period, the  
65 obligor must provide a copy of the signed written agreement to  
66 the depository or the clerk of the court. If an obligor seeks to  
67 satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-  
68 subparagraph 1.f., or sub-subparagraph 1.g. before expiration of



924974

69 the 20-day period, the obligor must provide the applicable  
70 documentation or proof to the depository or the clerk of the  
71 court.

72 (4) (a) The obligor may, within 20 days after the mailing  
73 date on the notice of delinquency or noncompliance and intent to  
74 suspend, file in the circuit court a petition to contest the  
75 notice of delinquency or noncompliance and intent to suspend on  
76 the ground of:

77 1. Mistake of fact regarding the existence of a  
78 delinquency; ~~or~~

79 2. Mistake of fact regarding the identity of the obligor;  
80 or

81 3. No ability to make payments toward the delinquency due  
82 to circumstances including, but not limited to, temporary  
83 interruption in employment as the result of a natural disaster,  
84 incapacitation as the result of an illness or temporary medical  
85 condition, or temporary unexpected involuntary unemployment.

86 (b) The obligor must serve a copy of the petition on the  
87 Title IV-D agency in IV-D cases or depository or clerk of the  
88 court in non-IV-D cases. When an obligor timely files a petition  
89 to contest, the court must hear the matter within 15 days after  
90 the petition is filed. The court must enter an order resolving  
91 the matter within 10 days after the hearing, and a copy of the  
92 order must be served on the parties. The timely filing of a  
93 petition to contest stays the notice of delinquency and intent  
94 to suspend until the entry of a court order resolving the  
95 matter.

96 Section 3. This act shall take effect July 1, 2017.

97



924974

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

99 And the title is amended as follows:

100 Delete everything before the enacting clause

101 and insert:

102 A bill to be entitled

103 An act relating to child support; creating the

104 "Florida Responsible Parent Act"; amending s.

105 61.13016, F.S.; providing additional circumstances

106 under which an obligor who fails to pay child support

107 may avoid suspension of his or her driver license and

108 motor vehicle registration; providing an effective

109 date.



By Senator Bracy

11-00926-17

2017552\_\_

1 A bill to be entitled  
 2 An act relating to child support; creating the  
 3 "Florida Responsible Parent Act"; amending s.  
 4 61.13016, F.S.; providing additional circumstances  
 5 under which an obligor who fails to pay child support  
 6 may avoid suspension of his or her driver license and  
 7 motor vehicle registration; amending s. 61.14, F.S.;  
 8 requiring a court to deny an order for contempt if an  
 9 obligor demonstrates that he or she is unable to pay  
 10 child support due to specified circumstances;  
 11 authorizing the court to order an obligor to be placed  
 12 in a work-release program or under supervised home  
 13 confinement without electronic monitoring for failure  
 14 to pay child support due to any of such circumstances;  
 15 requiring the Department of Economic Opportunity to  
 16 develop and administer a tax credit program for  
 17 business entities that employ such obligors; requiring  
 18 the department to adopt rules; providing an effective  
 19 date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. This act may be cited as the "Florida  
 24 Responsible Parent Act."

25 Section 2. Paragraph (c) of subsection (1) and subsection  
 26 (3) of section 61.13016, Florida Statutes, are amended to read:  
 27 61.13016 Suspension of driver licenses and motor vehicle  
 28 registrations.-

29 (1) The driver license and motor vehicle registration of a  
 30 support obligor who is delinquent in payment or who has failed  
 31 to comply with subpoenas or a similar order to appear or show  
 32 cause relating to paternity or support proceedings may be

Page 1 of 5

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

11-00926-17

2017552\_\_

33 suspended. When an obligor is 15 days delinquent making a  
 34 payment in support or failure to comply with a subpoena, order  
 35 to appear, order to show cause, or similar order in IV-D cases,  
 36 the Title IV-D agency may provide notice to the obligor of the  
 37 delinquency or failure to comply with a subpoena, order to  
 38 appear, order to show cause, or similar order and the intent to  
 39 suspend by regular United States mail that is posted to the  
 40 obligor's last address of record with the Department of Highway  
 41 Safety and Motor Vehicles. When an obligor is 15 days delinquent  
 42 in making a payment in support in non-IV-D cases, and upon the  
 43 request of the obligee, the depository or the clerk of the court  
 44 must provide notice to the obligor of the delinquency and the  
 45 intent to suspend by regular United States mail that is posted  
 46 to the obligor's last address of record with the Department of  
 47 Highway Safety and Motor Vehicles. In either case, the notice  
 48 must state:

49 (c) That notification will be given to the Department of  
 50 Highway Safety and Motor Vehicles to suspend the obligor's  
 51 driver license and motor vehicle registration unless, within 20  
 52 days after the date that the notice is mailed, the obligor:

53 1.a. Pays the delinquency in full and any other costs and  
 54 fees accrued between the date of the notice and the date the  
 55 delinquency is paid;

56 b. Enters into a written agreement for payment with the  
 57 obligee in non-IV-D cases or with the Title IV-D agency in IV-D  
 58 cases; or in IV-D cases, complies with a subpoena or order to  
 59 appear, order to show cause, or a similar order;

60 c. Files a petition with the circuit court to contest the  
 61 delinquency action;

Page 2 of 5

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

11-00926-17

2017552\_\_

62 d. Demonstrates that he or she receives reemployment  
63 assistance or unemployment compensation pursuant to chapter 443;

64 e. Demonstrates that he or she is disabled and incapable of  
65 self-support or that he or she receives benefits under the  
66 federal Supplemental Security Income program or Social Security  
67 Disability Insurance program;

68 f. Demonstrates that he or she receives temporary cash  
69 assistance pursuant to chapter 414; ~~or~~

70 g. Demonstrates that he or she is unable to pay support due  
71 to an act of God, a medical emergency involving him or her, or  
72 sudden involuntary unemployment beyond his or her control;

73 h. Demonstrates that he or she has been ordered by the  
74 court to be placed in a work-release program or under supervised  
75 home confinement without electronic monitoring for failure to  
76 pay support pursuant to s. 61.14(5)(a); or

77 ~~i.~~ Demonstrates that he or she is making payments in  
78 accordance with a confirmed bankruptcy plan under chapter 11,  
79 chapter 12, or chapter 13 of the United States Bankruptcy Code,  
80 11 U.S.C. ss. 101 et seq.; and

81 2. Pays any applicable delinquency fees.

82  
83 If an obligor in a non-IV-D case enters into a written agreement  
84 for payment before the expiration of the 20-day period, the  
85 obligor must provide a copy of the signed written agreement to  
86 the depository or the clerk of the court. If an obligor seeks to  
87 satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-  
88 subparagraph 1.f., ~~or~~ sub-subparagraph 1.g., sub-subparagraph  
89 1.h., or sub-subparagraph 1.i. before expiration of the 20-day  
90 period, the obligor must provide the applicable documentation or

11-00926-17

2017552\_\_

91 proof to the depository or the clerk of the court.

92 (3) If the obligor does not, within 20 days after the  
93 mailing date on the notice, pay the delinquency; enter into a  
94 written agreement; comply with the subpoena, order to appear,  
95 order to show cause, or other similar order; file a motion to  
96 contest; or satisfy sub-subparagraph (1)(c)1.d., sub-  
97 subparagraph (1)(c)1.e., sub-subparagraph (1)(c)1.f., ~~or~~ sub-  
98 subparagraph (1)(c)1.g., sub-subparagraph (1)(c)1.h., or sub-  
99 subparagraph (1)(c)1.i., the Title IV-D agency in IV-D cases, or  
100 the depository or clerk of the court in non-IV-D cases, may file  
101 the notice with the Department of Highway Safety and Motor  
102 Vehicles and request the suspension of the obligor's driver  
103 license and motor vehicle registration in accordance with s.  
104 322.058.

105 Section 3. Paragraph (a) of subsection (5) of section  
106 61.14, Florida Statutes, is amended to read:

107 61.14 Enforcement and modification of support, maintenance,  
108 or alimony agreements or orders.—

109 (5) (a) When a court of competent jurisdiction enters an  
110 order for the payment of alimony or child support or both, the  
111 court shall make a finding of the obligor's imputed or actual  
112 present ability to comply with the order. If the obligor  
113 subsequently fails to pay alimony or support and a contempt  
114 hearing is held, the original order of the court creates a  
115 presumption that the obligor has the present ability to pay the  
116 alimony or support and to purge himself or herself from the  
117 contempt. At the contempt hearing, the obligor shall have the  
118 burden of proof to show that he or she lacks the ability to  
119 purge himself or herself from the contempt. This presumption is

11-00926-17

2017552\_\_

120 adopted as a presumption under s. 90.302(2) to implement the  
121 public policy of this state that children shall be maintained  
122 from the resources of their parents and as provided for in s.  
123 409.2551, and that spouses be maintained as provided for in s.  
124 61.08. The court shall state in its order the reasons for  
125 granting or denying the contempt. The court shall deny the  
126 contempt if the obligor demonstrates that he or she is unable to  
127 pay child support due to an act of God, a medical emergency  
128 involving him or her, or sudden involuntary unemployment beyond  
129 his or her control. If the court finds that the obligor has  
130 failed to pay child support due to any of such circumstances,  
131 the court may order the obligor to be placed in a work-release  
132 program or under supervised home confinement without electronic  
133 monitoring.

134 Section 4. The Department of Economic Opportunity shall  
135 develop and administer a program to provide tax credits to any  
136 business entity that employs an obligor who is ordered to be  
137 placed in a work-release program or under supervised home  
138 confinement without electronic monitoring pursuant to s.  
139 61.14(5), Florida Statutes. The department shall adopt rules to  
140 administer this section.

141 Section 5. This act shall take effect July 1, 2017.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-27-17

Meeting Date

#552

Bill Number (if applicable)

Topic Child Support

Amendment Barcode (if applicable)

Name Andrea Reid

Job Title Lawyer

Address 2300 Glades Rd. St 203E

Phone 561 361 8300

Street

Boca Raton FL 33484

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLORIDA BAR Family Law section

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)

Mar 17  
Meeting Date

552  
Bill Number (if applicable)

Topic Child Support

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe  
Street

Phone 850.510.9922

Tall 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 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 1002

INTRODUCER: Criminal Justice Committee and Senator Perry and others

SUBJECT: Controlled Substances

DATE: March 27, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	<b>Fav/CS</b>
2.			JU	
3.			AP	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1002 amends Florida's controlled substance schedules to provide that ioflupane (123I)<sup>1</sup> is not included as a Schedule II controlled substance.

Currently, ioflupane (123I) is a Schedule II controlled substance in Florida because of its derivation from cocaine via ecgonine, both of which are Schedule II substances. Prior to September 2015, ioflupane (123I) was also a Schedule II controlled substance under the federal Controlled Substances Act. However, effective September 11, 2015, the U.S. Drug Enforcement Administration removed ioflupane (123I) from that schedule because the drug is not subject to abuse and currently has a medically acceptable use in DaTscan, a drug product used to visualize striatal dopamine transporters in the brains of adult patients with suspected Parkinsonian syndromes.

The bill provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act.

---

<sup>1</sup> The bill refers to the substance as "Ioflupane (123I)." An analysis of the bill by the Florida Department of Law Enforcement refers to the substance as "Ioflupane I 123." 2017 FDLE Legislative Bill Analysis (SB 1002) (January 26, 2017), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). However, FDLE's analysis does not indicate that the chemical nomenclature used in the bill to describe this substance is incorrect. This bill analysis uses the nomenclature used in the bill.

The Criminal Justice Impact Conference estimates that the bill will not have a prison bed impact.

## II. Present Situation:

### Florida's Controlled Substance Schedules and Scheduling of Ioflupane (123I)

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the statute. The most important factors in determining which schedule may apply to a substance is the “potential for abuse”<sup>2</sup> of the substance and whether there is a currently accepted medical use for the substance.<sup>3</sup> The controlled substance schedules are described as follows:

- Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States. This schedule includes substances such as cannabis and heroin.<sup>4</sup>
- Schedule II substances have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States. This schedule includes substances such as raw opium, cocaine, and codeine.<sup>5</sup>
- Schedule III substances have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States. This schedule includes substances such as stimulants and anabolic steroids.<sup>6</sup>
- Schedule IV substances have a low potential for abuse relative to the substances in Schedule III and have a currently accepted medical use in the United States. This schedule includes substances such as benzodiazepines and barbiturates.<sup>7</sup>
- Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States. This schedule includes substances such as mixtures that contain small quantities of opiates and codeine.<sup>8</sup>

The majority of provisions criminalizing behavior relating to controlled substances are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on the schedule in which the substance is listed.<sup>9</sup> Other factors, such as the quantity of controlled substances involved in a crime or the location where the violation occurs can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

Ioflupane (123I) is a Schedule II controlled substance because it is derived from cocaine via ecgonine, both of which are Schedule II controlled substances. The substance falls under

---

<sup>2</sup> Pursuant to s. 893.035(3)(a), F.S., “potential for abuse” means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user’s health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user’s own initiative rather than on the basis of professional medical advice.

<sup>3</sup> See s. 893.03, F.S.

<sup>4</sup> Section 893.03(1), F.S.

<sup>5</sup> Section 893.03(2), F.S.

<sup>6</sup> Section 893.03(3), F.S.

<sup>7</sup> Section 893.03(4), F.S.

<sup>8</sup> Section 893.03(5), F.S.

<sup>9</sup> See, e.g., s. 893.13(1)(a) and (c), F.S.

s. 893.03(2)(a)(4), F.S., (cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine).

### Federal Controlled Substance Schedules

The federal Controlled Substances Act<sup>10</sup> also classifies certain substances into schedules based on potential for abuse of the substance and whether there is a currently accepted medical use for it. Until 2015, federal law recognized ioflupane (123I) as a Schedule II controlled substance because of its derivation from cocaine via ecgonine, both of which are Schedule II controlled substances.<sup>11</sup>

Ioflupane (123I) is the active pharmaceutical ingredient in the drug product DaTscan.<sup>12</sup> The U.S. Food and Drug Administration (FDA) approved the New Drug Application for DaTscan, for the indication of visualizing striatal dopamine transporters in the brains of adult patients with suspected Parkinsonian syndromes.<sup>13</sup>

In 2010, the U.S. Department of Health and Human Services recommended to the U.S. Drug Enforcement Administration (DEA) that ioflupane (123I) be removed from the list of Schedule II substances.<sup>14</sup> In response, the DEA completed a review of FDA-approved diagnostic products containing ioflupane (123I), which at the time was only DaTscan.<sup>15</sup> The DEA agreed to remove ioflupane (123I) from the federal Controlled Substances Act based on the following:

- There is no data demonstrating that individuals are administering quantities of DaTscan sufficient to create a hazard to their health or to the safety of other individuals or to the community. Approximately 6,000 vials of DaTscan would be required to produce a subjective “high” in humans from exposure to ioflupane (123I). The volume of 6,000 vials is about 15 liters of fluid, an amount that would be lethal if administered intravenously.
- Over 168,000 doses of DaTscan were administered to patients worldwide and there was no clinical evidence of pharmacological effects.
- Meaningful extraction of ioflupane (123I) from DaTscan would be impossible due to its limited production and availability and because extraction is technically complex and would require advanced equipment not available to the general public.
- There have been no reports of abuse of ioflupane (123I) or seizures as a result of ioflupane (123I).
- Because of the limited amounts of manufactured DaTscan, the low concentration of ioflupane (123I) per vial, and the existence of stringent regulatory controls on the manufacturing and handling of DaTscan, abuse of DaTscan is not possible as a practical matter.
- There was no psychic or physiological dependence potential of FDA-approved diagnostic products containing ioflupane (123I).

---

<sup>10</sup> 21 U.S.C. section 812.

<sup>11</sup> “Schedules of Controlled Substances: Removal of [123I] Ioflupane I 123 from Schedule II of the Controlled Substances Act,” FR 2015-13455, U.S. Drug Enforcement Administration, *available at* [https://www.deadiversion.usdoj.gov/fed\\_regs/rules/2015/fr0603.htm](https://www.deadiversion.usdoj.gov/fed_regs/rules/2015/fr0603.htm) (last visited on March 14, 2017).

<sup>12</sup> *Id.*

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

<sup>14</sup> *Id.*

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



- Ioflupane (123I) is not an immediate precursor of a substance already controlled under the federal Controlled Substances Act.<sup>16</sup>

Accordingly, ioflupane (123I) was removed from the schedule of the federal Controlled Substances Act on September 11, 2015.<sup>17</sup>

### III. Effect of Proposed Changes:

The bill provides that ioflupane (123I) is not included as a Schedule II controlled substance under s. 890.03(2)(a)4., F.S., (cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine).

The bill provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act.<sup>18</sup>

The bill takes effect July 1, 2017.

### 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.

---

<sup>16</sup> *Id.*

<sup>17</sup> “Schedules of Controlled Substances: Removal of [123I] Ioflupane from Schedule II of the Controlled Substances Act,” FR 2015-22919, U.S. Drug Enforcement Administration, *available at* [https://www.deadiversion.usdoj.gov/fed\\_regs/rules/2015/fr0911.htm](https://www.deadiversion.usdoj.gov/fed_regs/rules/2015/fr0911.htm) (last visited on March 14, 2017).

<sup>18</sup> “Legislative enactments frequently incorporate portions of the Florida Statutes by reference. A cross-reference to a general body of law (without reference to a specific statute) incorporates the referenced law and any subsequent amendments to or repeal of the referenced law.” Preface to the Official 2016 Florida Statutes, p. viii (case citations omitted). “In contrast, as a general rule, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.” *Id.* To avoid the necessity of reenacting specific references to sections within certain chapters of law, the Legislature has codified provisions that allow for all specific references to sections of law within certain chapters to automatically incorporate all subsequent amendments.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will not have a prison bed impact.<sup>19</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 893.03 of the Florida Statutes.

This bill creates section 893.015 of the Florida Statutes

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

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

**CS by Criminal Justice on March 27, 2017:**

The CS provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act.

**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>19</sup> Impact information was provided by staff of the Office of Economic and Demographic Research on March 6, 2017, via e-mail (on file with the Senate Committee on Criminal Justice).



491230

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Between lines 66 and 67

insert:

Section 2. Section 893.015, Florida Statutes, is created to read:

893.015 Statutory References.—The purpose of this chapter is to comprehensively address drug abuse prevention and control in this state. To this end, unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter



491230

11 893 or to any section or portion of a section of chapter 893  
12 includes all subsequent amendments to chapter 893 or to the  
13 referenced section or portion of a section.

14  
15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17       Delete lines 2 - 6

18 and insert:

19       An act relating to the Florida Comprehensive Drug  
20       Abuse Prevention and Control Act; amending s. 893.03,  
21       F.S.; specifying that ioflupane I 123 is not included  
22       in Schedule II; creating s. 893.015, F.S.; specifying  
23       the chapter's purpose; providing that a reference to  
24       ch. 893, F.S., or to any section or portion thereof,  
25       includes all subsequent amendments; providing an  
26       effective date.

By Senator Perry

8-01311-17

20171002\_\_

1 A bill to be entitled  
 2 An act relating to controlled substances; amending s.  
 3 893.03, F.S.; adding ioflupane as an excepted  
 4 substance to Schedule II of the standards and  
 5 schedules of controlled substances; providing an  
 6 effective date.  
 7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9  
 10 Section 1. Paragraph (a) of subsection (2) of section  
 11 893.03, Florida Statutes, is amended to read:  
 12 893.03 Standards and schedules.—The substances enumerated  
 13 in this section are controlled by this chapter. The controlled  
 14 substances listed or to be listed in Schedules I, II, III, IV,  
 15 and V are included by whatever official, common, usual,  
 16 chemical, trade name, or class designated. The provisions of  
 17 this section shall not be construed to include within any of the  
 18 schedules contained in this section any excluded drugs listed  
 19 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
 20 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
 21 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
 22 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
 23 Anabolic Steroid Products."  
 24 (2) SCHEDULE II.—A substance in Schedule II has a high  
 25 potential for abuse and has a currently accepted but severely  
 26 restricted medical use in treatment in the United States, and  
 27 abuse of the substance may lead to severe psychological or  
 28 physical dependence. The following substances are controlled in  
 29 Schedule II:

Page 1 of 3

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

8-01311-17

20171002\_\_

30 (a) Unless specifically excepted or unless listed in  
 31 another schedule, any of the following substances, whether  
 32 produced directly or indirectly by extraction from substances of  
 33 vegetable origin or independently by means of chemical  
 34 synthesis:  
 35 1. Opium and any salt, compound, derivative, or preparation  
 36 of opium, except nalmeferne or isoquinoline alkaloids of opium,  
 37 including, but not limited to the following:  
 38 a. Raw opium.  
 39 b. Opium extracts.  
 40 c. Opium fluid extracts.  
 41 d. Powdered opium.  
 42 e. Granulated opium.  
 43 f. Tincture of opium.  
 44 g. Codeine.  
 45 h. Ethylmorphine.  
 46 i. Etorphine hydrochloride.  
 47 j. Hydrocodone.  
 48 k. Hydromorphone.  
 49 1. Levo-alphaacetylmethadol (also known as levo-alpha-  
 50 acetylmethadol, levomethadyl acetate, or LAAM).  
 51 m. Metopon (methyldihydromorphanone).  
 52 n. Morphine.  
 53 o. Oxycodone.  
 54 p. Oxymorphone.  
 55 q. Thebaine.  
 56 2. Any salt, compound, derivative, or preparation of a  
 57 substance which is chemically equivalent to or identical with  
 58 any of the substances referred to in subparagraph 1., except

Page 2 of 3

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

8-01311-17

20171002\_\_

59 that these substances ~~may shall~~ not include the isoquinoline  
60 alkaloids of opium.

61 3. Any part of the plant of the species *Papaver somniferum*,  
62 *L.*

63 4. Cocaine or ecgonine, including any of their  
64 stereoisomers, and any salt, compound, derivative, or  
65 preparation of cocaine or ecgonine, except that these substances  
66 may not include ioflupane (123I).

67 Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Mch 17

Meeting Date

1002

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe  
Street

Phone 850.510.9922

Tall FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

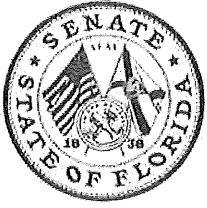
Representing Fla. Smart Justice Alliance

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.



The Florida Senate

## Committee Agenda Request

**To:** Senator Randolph Bracy, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 2, 2017

---

I respectfully request that **Senate Bill #1002**, relating to Controlled Substances, be placed on the:

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

*W. Keith Perry*

---

Senator Keith Perry  
Florida Senate, District 8



**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 1068

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Sentencing

DATE: March 28, 2017

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

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

---

**I. Summary:**

CS/SB 1068 authorizes a court to sentence an offender to a term in the county jail in the county where the offense was committed for up to 24 months if the offender meets the following criteria:

- The offender’s total sentence points are more than 44 points, but no more than 60 points;
- The offender’s primary offense is not a forcible felony, except that an offender whose primary offense is a third degree felony burglary or trespass offense is eligible to be sentenced to a county jail; or
- The offender’s primary offense is not punishable by a minimum mandatory sentence exceeding 24 months.

The court may only sentence an offender to a county jail under the bill if there is a contractual agreement between the chief correctional officer of the county and the Department of Corrections (DOC). The DOC must enter into such contract upon the request of a chief correctional officer. Contracts are to be awarded by the DOC on a first-come, first-served basis. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county’s most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

The bill also amends the Criminal Punishment Code (Code) to create upward departure sentencing for noncapital felony offenses committed on or after October 1, 2017. An upward departure sentence is a sentence that exceeds a specified permissible sentencing range. In order to impose an upward departure sentence, the court must provide a written statement specifying the reasons for the departure. The bill lists a number of “aggravating circumstances” for which an upward departure sentence is reasonably justified. The defendant and the state may appeal a sentence outside the permissible sentencing range.

Regarding the provisions of the bill involving county jail, all contracts are contingent upon a specific appropriation in the General Appropriations Act. The Auditor General and the Department of Corrections may experience significant expenditures to implement the bill.

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed the provisions of the bill amending the Code. A preliminary estimate by the Legislature's Office of Economic and Demographic Research is that the bill will have a "negative indeterminate impact" (an unquantifiable decrease in prison beds). See Section V. Fiscal Impact Statement.

## **II. Present Situation:**

### **The Criminal Punishment Code and Sentencing**

In 1997, the Legislature enacted the Criminal Punishment Code<sup>1</sup> (Code) as Florida's "primary sentencing policy."<sup>2</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>3</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>4</sup> Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury.

The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. Absent mitigation,<sup>5</sup> the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>6</sup>

### **Upward Departure Sentences under the Former Sentencing Guidelines**

Under the former (pre-Code) sentencing guidelines, a recommended sentence was scored and the court was authorized to sentence within permitted sentencing ranges (based upon scored total

---

<sup>1</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

<sup>2</sup> Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) (Executive Summary), Florida Department of Corrections, available at [http://www.dc.state.fl.us/pub/sg\\_annual/1213/executives.html](http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html) (last visited on March 23, 2017).

<sup>3</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>4</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>5</sup> The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

<sup>6</sup> If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.

sentence points).<sup>7</sup> If the court wished to impose a prison sentence that varied upward by more than 25 percent from the recommended guidelines prison sentence, the court had to provide a written statement delineating the reasons for the departure.<sup>8</sup> This type of sentence was often referred to as an “upward departure” sentence. The Legislature provided a list of some reasons for which a departure was reasonably justified. These departure reasons were referred to as “aggravating circumstances.”<sup>9</sup> An upward departure sentence had to be within any relevant maximum sentence provided by s. 775.082, F.S.<sup>10</sup>

Under the former sentencing guidelines, the failure of a trial court to impose a sentence within the sentencing guidelines was subject to appellate review under ch. 924, F.S., but the extent of departure from a guidelines sentence was not subject to appellate review.<sup>11</sup> Under ch. 924, F.S., a defendant and the state were authorized to appeal a sentence imposed outside the range permitted by the guidelines authorized under ch. 921, F.S.<sup>12</sup> In contrast, currently under the Code, only a downward departure sentence may be appealed and only the state may appeal this departure.<sup>13</sup> With few exceptions,<sup>14</sup> a Code sentence within the range of the lowest permissible sentence up to and including the statutory maximum penalty is not appealable: “As to the sentence itself, ‘the general rule in Florida is that when a sentence is *within statutory limits*, it is not subject to *review* by an appellate court.’”<sup>15</sup>

<sup>7</sup> Sections 921.0014(1)(b) and 921.0016(1)(b), F.S. (1997). If total sentence points were less than or equal to 40, the recommended sentence was a nonstate prison sanction, but the court could increase total sentence points by up to, and including, 15 percent. Section 921.0014(2), F.S. (1997). If total sentence points were greater than 40 and less than or equal to 52, the court could impose a state prison sentence. *Id.* If total sentence points were greater than 52, the court was required to impose a prison sentence calculated by total sentence points. *Id.* Recommended sentence length in state prison months could be increased by up to, and including, 25 percent, but could not be increased if total sentence points had been increased by up to, and including, 15 percent. *Id.*

<sup>8</sup> Section 921.0016(1)(c), F.S. (1997). The statement had to be filed within 7 days after the date of sentencing. *Id.* A written transcription of orally stated reasons for departure from the guidelines at sentencing was permissible if it was filed within 7 days after the date of sentencing. *Id.*

<sup>9</sup> Section 921.0016(3), F.S. (1997).

<sup>10</sup> Section 921.0016(1)(e), F.S. (1997). Section 775.082(3), F.S., provides the maximum sentences for felonies. The maximum sentences for noncapital felonies are: 5 years imprisonment for a third degree felony; 15 years imprisonment for a second degree felony; generally 30 years imprisonment for a first degree felony; and generally life imprisonment or imprisonment for a term of years not exceeding life imprisonment for a life felony. *Id.*

<sup>11</sup> Section 921.0016(2), F.S. (1997).

<sup>12</sup> Section 924.06(1)(e), F.S. (1997), authorized this appeal by a defendant. Section 924.07(1)(i), F.S. (1997), authorized this appeal by the state.

<sup>13</sup> Section 924.06, F.S., does not address an appeal by a defendant of a downward departure sentence. Section 924.07(1)(i), F.S., authorizes the state to appeal a downward departure sentence. The extent of downward departure is not subject to appellate review. Section 921.0026(1), F.S.

<sup>14</sup> An exception is fundamental error. A defendant challenging a sentencing error must generally file a motion under Fla. R. Crim. P. 3.800(b) in order to raise fundamental error on appeal. *Nawaz v. State*, 28 So.3d 122, 124 (Fla. 1st DCA 2010). A defendant is not required to file a motion under this rule in order to appeal fundamental error in the sentencing process. *Id.* Fundamental error in the sentencing process is error “basic to the judicial decision under review and equivalent to a denial of due process.” *State v. Johnson*, 616 So.2d 1, 3 (Fla. 1993). A sentence may be within statutory limits but if the trial court considered “constitutionally impermissible factors” in imposing the sentence, then the court committed fundamental error. *Nawaz*, 28 So.3d at 124. For example, it is fundamental error if a court considered “charges of which an accused has been acquitted in passing sentence.” *Epprecht v. State*, 488 So.2d 129, 131 (Fla. 3d DCA 1986).

<sup>15</sup> *Charles v. State*, 204 So.3d 63, 66 (Fla. 4th DCA 2016), quoting *Howard v. State*, 820 So.2d 337, 339 (Fla. 4th DCA 2002) (emphasis provided by the court). A defendant may appeal a Code sentence that exceeds the statutory maximum penalty under s. 775.082, F.S., unless otherwise provided by law. Section 924.06(1)(e), F.S.

## Length of Stay

According to a recent study of the operations of the Department of Corrections (DOC), length of stay (LOS) in Florida correctional facilities exceeds the national LOS average (30 months). LOS has consistently increased in Florida “from just under 30 months on average in 2008 to almost 40 months by 2015.”<sup>16</sup> According to the study’s authors, the longer average LOS in Florida “explains to a large degree Florida’s significantly higher incarceration rate of 522 per 100,000 population versus the U.S. state incarceration rate of 416 per 100,000.”<sup>17</sup>

## Departure from a Code Sentence When Total Sentencing Points are 22 Points or Fewer

An exception to typical Code sentencing is found in s. 775.082(10), F.S. Under this subsection, if a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony,<sup>18</sup> 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. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility.

## Alternative Sentencing

An offender with a sentence in excess of one year typically serves his or her sentence in a state correctional facility operated by the Department of Corrections (DOC);<sup>19</sup> however, other options are statutorily authorized and sometimes available. These include placement in a:

- Prison diversion program for offenders who meet certain criteria, including a requirement to have no more than 54 total sentence points.<sup>20</sup>
- Local detention facility if the offender’s sentence is between 366 days and 22 months and there is a contract between the DOC and the chief correctional officer for the applicable county.<sup>21</sup>
- Imprisonment in county jail if the total of the prisoner’s cumulative sentences is not more than one year.<sup>22</sup>
- County work camps operated under a county/state contractual arrangement.<sup>23</sup>
- County or municipal facility pursuant to a contract between the DOC and such facility. Section 944.171, F.S., authorizes the DOC to contract with county or municipal facilities for

---

<sup>16</sup> Study of Operations of the Florida Department of Corrections (prepared by Carter Goble Associates, LLC), Report No. 15-FDC (November 2015), Office of Program Policy Analysis and Government Accountability, Florida Legislature, p. 80 (footnote omitted). This study is available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=15-FDC> (last visited on March 23, 2017).

<sup>17</sup> *Id.*

<sup>18</sup> Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>19</sup> Section 921.0024(2), F.S.

<sup>20</sup> Section 921.00241, F.S. The court may sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a prison diversion program of the DOC.

<sup>21</sup> Section 921.188, F.S.

<sup>22</sup> Section 922.051, F.S.

<sup>23</sup> Section 950.002, F.S.

the purpose of housing inmates. The DOC indicates that such contractual arrangements have been used as recently as FY 2011-2012, with Franklin, Washington, and Lafayette Counties.<sup>24</sup>

### III. Effect of Proposed Changes:

#### Sentencing of Offenders to County Jail

Effective July 1, 2017, the bill, (Section 6), authorizes a court to sentence an offender to a term in the county jail in the county where the offense was committed for up to 24 months if the offender meets all of the following criteria:

- The offender's total sentence points on the Code worksheet are more than 44 points, but no more than 60 points.
- The offender's primary offense is not a forcible felony as defined in s. 776.08, F.S., except that an offender whose primary offense is a third degree felony under ch. 810, F.S., entitled "Burglary and Trespass," is eligible to be sentenced to a county jail.
- The offender's primary offense is not punishable by a minimum mandatory sentence in excess of 24 months.

The bill provides that the court may only sentence an offender meeting the above-referenced criteria to county jail if there is a contract for the applicable county between the county's chief correctional officer and the DOC.

The DOC must enter into a contract with a county when requested by the county's chief correctional officer. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates not to exceed \$60 per inmate. All contractual per diem rates must be validated by the Auditor General before payments are made.

A contract is contingent upon a specific appropriation in the General Appropriations Act. Contracts must be awarded by the DOC on a first-come, first-served basis up to the maximum appropriation. The maximum appropriation allowable consists of funds appropriated in or transferred to the specific appropriation category created by the bill entitled "Inmates Sentenced to County Jail" (ISCJ).

In addition to an appropriation, the bill authorizes the DOC to transfer funds into the ISCJ specific appropriation category to fulfill DOC's contractual per diem obligation that may not exceed the DOC's average male or female total per diem published for the preceding fiscal year. This allows the DOC flexibility in the amount it must transfer into this specific category because the number of counties that will request contracts to have offenders sentenced to their jails is unknown. The maximum appropriation allowable would be the appropriated funds plus any funds that are transferred from other DOC categories to fulfill DOC's contractual per diem

---

<sup>24</sup> Department of Corrections, *Senate Bill 1068 Analysis* (March 23, 2017) (on file with the Senate Committee on Criminal Justice).

obligation. All contractual per diem rates as well as per diem rates used by the DOC must be validated by the Auditor General.

### **Criminal Punishment Code Sentencing**

The bill amends the Criminal Punishment Code (Code) to create upward departure sentencing for noncapital felony offenses committed on or after October 1, 2017. An upward departure sentence is a sentence that exceeds a specified permissible sentencing range.

The bill amends s. 921.002, F.S., (Section 1), which provides principles and requirements regarding the Code and appeals of Code sentencing. New provisions are added relating to upward departure sentencing under the Code (see descriptions of sections 2 and 3 of the bill), which are applicable to any noncapital felony offense committed on or after October 1, 2017. These provisions:

- Require that reasons for an upward departure sentence be articulated in writing;
- Specify the level of proof (preponderance of the evidence) necessary to establish facts supporting the departure;
- Provide that an upward departure sentence will be upheld when at least one circumstance supports the departure (even if there is a circumstance found that does not justify the departure); and
- Authorize an appeal by a defendant and the state of a sentence outside the permissible sentencing range.

The bill amends s. 921.0024, F.S., (Section 2), the Code worksheet, to create a new subsection (3), which applies to any noncapital felony offense committed on or after October 1, 2017. New subsection (3) tracks current law relating to Code sentencing as follows:

- Adheres to the current method for calculating total sentence points and the lowest permissible sentence in prison months (when total sentence points exceed 44 points);
- Authorizes concurrent or consecutive sentencing;
- Requires that the lowest permissible sentence in prison months be imposed if this sentence exceeds the statutory maximum sentence provided in s. 775.082, F.S.;
- Authorizes life imprisonment if total sentence points are greater than or equal to 363;
- Prohibits an offender sentenced to life imprisonment from any form of discretionary early release, except executive clemency or conditional medical release; and
- Adheres to any requirement under s. 921.0024(1), F.S., to impose a statutory maximum sentence.<sup>25</sup>

Sentencing under new subsection (3) also differs substantially from sentencing under the current Code.

---

<sup>25</sup> Section 921.0024(1)(b), F.S., provides for sentence point multipliers for an offense related to a criminal gang and for an adult-on-minor sex offense. If application of either multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under ch. 775, F.S., the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

Sentencing under the current Code:

- If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, unless the court determines that a sentence up to the statutory maximum is appropriate.
- If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated. Generally, the permissible sentencing range is the scored lowest permissible sentence in prison months up to and including the statutory maximum under s. 775.082, F.S. However, if the calculated lowest permissible sentence exceeds the statutory maximum under s. 775.082, F.S., the lowest permissible sentence is imposed.

Sentencing under the bill:

- Under new paragraph (3)(c), if total sentence points equal or are less than 44 points, the court may impose a nonstate prison sanction or the court may increase the total sentence points by up to, and including, 25 percent.
- Under new paragraph (3)(c), if total sentence points exceed 44 points as a result of this “up to 25 percent increase,” the court may not impose a state prison sentence that is longer than the scored lowest permissible sentence in prison months (calculated under new paragraph (3)(d)).
- Paragraph (3)(d), specifies how the lowest permissible sentence in prison months is calculated (when total sentence points exceed 44 points). The calculation is identical to the current Code. It also follows the current Code in providing that if the calculated lowest permissible sentence exceeds the statutory maximum under s. 775.082, F.S., the lowest permissible sentence is imposed.
- New paragraph (3)(e) applies to the defendant whose total sentence points exceed 44 points. The defendant’s lowest permissible sentence in prison months is calculated under new paragraph (3)(d). Once calculated, the court is permitted under new paragraph (3)(e) to impose a state prison sentence that does not vary upward by more than 25 percent from the scored lowest permissible sentence in prison months. This sentence may not exceed the statutory maximum sentence provided in s. 775.082, F.S.
- New paragraph (3)(f) specifies that, except as provided in s. 921.00261, F.S. (upward departure sentencing), the trial court may not impose a prison sentence that varies upward by more than 25 percent from the scored lowest permissible sentence in prison months. The permissible range for sentencing for an upward departure sentence imposed by the court pursuant to s. 921.00261, F.S., is the lowest permissible sentence up to and including the statutory maximum sentence provided in s. 775.082, F.S.

The bill creates s. 921.00261, F.S., (Section 3), which explains what sentence constitutes an upward departure sentence and what requirements must be met by the trial court to impose this departure sentence:

- A sentence pursuant to s. 921.0024(3)(d) or (e), F.S., is not an upward departure sentence. An upward departure sentence is a state prison sentence that varies upward by *more* than 25 percent from the lowest permissible sentence in prison months calculated pursuant to s. 921.0024(3)(d), F.S.
- The trial court may impose an upward departure sentence only if the sentence is accompanied by a written statement from the court specifying the reasons for the departure, filed within 7 days after the date of sentencing. A written transcription of orally stated reasons for this departure is permissible if it is filed by the court within 7 days after the date of sentencing.

- The imposition of a split sentence of incarceration followed by community control or probation does not by itself constitute an upward departure. For the purpose of determining the maximum sentence authorized by law, any community control portion of a split sentence does not constitute a term of imprisonment.
- An upward departure sentence must be within any relevant maximum sentence limitations provided by s. 775.082, F.S.
- An upward departure sentence is discouraged unless there are circumstances or factors that reasonably justify the departure. The failure of the trial court to impose a sentence within the range authorized by s. 921.0024(3), F.S., is subject to appellate review under ch. 924, F.S., but the extent of the departure from such range is not subject to appellate review.

Aggravating circumstances to be considered include, but are not limited to, the following.

- The departure results from a legitimate, uncoerced plea bargain.
- The offense was one of violence and was committed in a manner that was especially heinous, atrocious, or cruel.
- The offenses before the court for sentencing arose out of separate episodes, the primary offense is scored at offense level 4 or higher, and the defendant has committed five or more offenses within a 180-day period which have resulted in convictions.
- The primary offense is scored at offense level 3, and the defendant has committed eight or more offenses within a 180-day period which have resulted in convictions.
- The offense before the court for disposition was committed within 6 months after the defendant was discharged from probation, community control, or pretrial intervention or diversion or released from state prison, whichever is later.
- The defendant occupied a leadership role in a criminal organization.
- The offense was committed by a public official under color of office.
- The defendant knew the victim was a law enforcement officer at the time of the offense, the offense was a violent offense, and that status is not an element of the primary offense.
- The offense created a substantial risk of death or great bodily harm to many persons or to one or more children.
- The victim was especially vulnerable due to age or physical or mental disability.
- The offense was motivated by prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, or national origin of the victim.
- The victim suffered extraordinary physical or emotional trauma or permanent physical injury or was treated with particular cruelty.
- The victim was physically attacked by the defendant in the presence of one or more members of the victim's family.
- The offense resulted in substantial economic hardship to the victim and consisted of an illegal act or acts committed by means of concealment, guile, or fraud to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage, when two or more of the following circumstances were present:
  - The offense involved multiple victims or multiple incidents per victim.
  - The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time.
  - The defendant used position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationship; or



- The defendant was in the past involved in other conduct similar to that involved in the current offense.
- The offense was committed in order to prevent or avoid arrest, to impede or prevent prosecution for the conduct underlying the offense, or to effect an escape from custody.
- The defendant is not amenable to rehabilitation or supervision, as evidenced by an escalating pattern of criminal conduct, which is a progression from nonviolent to violent crimes, a progression of increasingly violent crimes, or a pattern of increasingly serious criminal activity.
- The defendant induced a minor to participate in any of the offenses pending before the court for disposition.
- The primary offense is scored at offense level 7 or higher, and the defendant has been convicted of an additional offense that scored, or would have scored, at an offense level 8 or higher.
- The defendant has an extensive unscorable juvenile record.
- The defendant committed an offense involving sexual contact or sexual penetration, and, as a direct result of the offense, the victim contracted a sexually transmissible disease.

Most of the provisions of s. 921.00261, F.S., including the listed aggravating circumstances, mirror provisions of prior law relating to the pre-Code sentencing guidelines.<sup>26</sup>

The bill amends s. 924.06, F.S., (Section 4), to authorize a defendant to appeal a sentence imposed outside the range authorized by s. 921.0024(3), F.S. The bill also amends s. 924.07, F.S., (Section 5), to authorize the state to appeal a sentence imposed outside the range authorized by s. 921.0024(3), F.S.

### **Reenactments**

The bill reenacts s. 958.04, F.S., (Section 7). This reenactment is to incorporate amendments made by the bill to ss. 924.06 and 924.07, F.S.

### **Effective Date**

The bill is effective July 1, 2017, (Section 8).

## **IV. Constitutional Issues:**

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

None.

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

None.

---

<sup>26</sup> See s. 921.0016, F.S. (1997).

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DOC states that the bill may result in the elimination of privately operated community release center contracts if the DOC is required to contract with the sheriffs for the inmates currently served by these contracts.

C. Government Sector Impact:

**Sentencing of Offenders to County Jail**

The Auditor General states additional staff would be needed to meet the bill's requirements of validating per diem rates used by the Department of Corrections.<sup>27</sup>

Based on inmate admissions for Fiscal Year 2015-16, the DOC found that there were approximately 4,200 inmates that met criteria in the bill. The loss of this number of inmates could impact bed space usage (custody), inmate work squads, community release programs, institutional inmate work, and program assignments.<sup>28</sup>

For Fiscal Year 2015-2016 the per diem for all DOC facilities excluding private facilities is \$53.49. This is an average of the adult male per diem of \$48.28 and female per diem of \$57.06. The per diem accounts for the operation of a full facility including expenditures for security, and other support staff, utilities, maintenance, insurance, medical, and education.<sup>29</sup>

The bill provides for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates, not to exceed \$60 per inmate. The DOC provided the following fiscal information for potential funding consideration when the population would warrant the various operating per diems.<sup>30</sup>

---

<sup>27</sup> Auditor General, *HB 157 Analysis* (January 23, 2017) (on file with the Senate Committee on Criminal Justice).

<sup>28</sup> Department of Corrections, *Senate Bill 1068* (March 23, 2017) (on file with the Senate Committee on Criminal Justice).

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

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

<b>Fiscal Based on 730 Days (24 months)</b>				
<b>% Inmates</b>	<b>ADP<sup>31</sup></b>	<b>FDC Cost</b>	<b>Additional Cost Incurred to Implement</b>	<b>Total Cost to Implement</b>
75%	3150	\$123,000,255	\$14,969,745	\$137,970,000
50%	2100	\$82,000,170	\$9,979,830	\$91,980,000
25%	1050	\$24,420,690	\$21,569,310	\$45,990,000
20%	840	\$9,756,012	\$27,035,988	\$36,792,000
15%	630	\$7,317,009	\$20,276,991	\$27,594,000
10%	420	\$4,878,006	\$13,517,994	\$18,396,000
5%	210	\$2,439,003	\$6,758,997	\$9,198,000

<b>Fiscal Based on 547 Days (18 months)</b>				
<b>% Inmates</b>	<b>ADP</b>	<b>FDC Cost</b>	<b>Additional Cost Incurred to Implement</b>	<b>Total Cost to Implement</b>
75%	3150	\$92,165,945	\$11,217,056	\$103,383,000
50%	2100	\$61,443,963	\$7,478,037	\$68,922,000
25%	1050	\$18,298,791	\$16,162,209	\$34,461,000
20%	840	\$7,310,327	\$20,258,473	\$27,568,800
15%	630	\$5,482,745	\$15,193,855	\$20,676,600
10%	420	\$3,655,163	\$10,129,237	\$13,784,400
5%	210	\$1,827,582	\$5,064,618	\$6,892,200

<b>Fiscal Based on 365 Days (12 months)</b>				
<b>% Inmates</b>	<b>ADP</b>	<b>FDC Cost</b>	<b>Additional Cost Incurred to Implement</b>	<b>Total Cost to Implement</b>
75%	3150	\$61,500,128	\$7,484,873	\$68,985,000
50%	2100	\$41,000,085	\$4,989,915	\$45,990,000
25%	1050	\$12,210,345	\$10,784,655	\$22,995,000
20%	840	\$4,878,006	\$13,517,994	\$18,396,000
15%	630	\$3,658,505	\$10,138,496	\$13,797,000
10%	420	\$2,439,003	\$6,758,997	\$9,198,000
5%	210	\$1,219,502	\$3,379,499	\$4,599,000

<sup>31</sup> ADP is average daily population.

<b>Fiscal Based on 182 Days (6 months)</b>				
<b>% Inmates</b>	<b>ADP</b>	<b>FDC Cost</b>	<b>Additional Cost Incurred to Implement</b>	<b>Total Cost to Implement</b>
75%	3150	\$30,665,817	\$3,732,183	\$34,398,000
50%	2100	\$20,443,878	\$2,488,122	\$22,932,000
25%	1050	\$6,088,446	\$5,377,554	11,466,000
20%	840	\$2,432,321	\$6,740,479	9,172,800
15%	630	\$1,824,241	\$5,055,359	6,879,600
10%	420	\$1,216,160	\$3,370,240	4,586,400
5%	210	\$608,080	\$1,685,120	2,293,200

**Criminal Punishment Code Sentencing**

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed the bill. A preliminary estimate by the Legislature’s Office of Economic and Demographic Research (EDR) is that the bill will have a “negative indeterminate impact” (an unquantifiable decrease in prison beds). The EDR notes: “It is not known how current court discretion will be impacted by these changes to sentencing under the Code, especially the creation of upward departure sentencing. Furthermore, since upward departure sentencing does not currently exist under the Code (generally, the sentencing range is the lowest permissible sentence up to the statutory maximum), the prison bed impact of sentencing as proposed in the bill cannot be ascertained from DOC data on sentencing.”<sup>32</sup>

**VI. Technical Deficiencies:**

The bill does not specify if the inmates sentenced to county jail will be required to serve 85 percent of the sentence. Without this provision, the bill could result in inmates sentenced to county jails serving less than 85 percent of the sentence imposed. Section 951.21, F.S., provides counties the discretion to reduce the time an inmate must serve by the award of gain time.

The DOC states that because of the discretionary authority afforded the county, the actual percentage of a sentence an inmate will serve may vary depending on local policies and interpretations of the statute. The DOC further explains that it is clear that the maximum amount of a sentence that could be satisfied by gain time is 25 percent, meaning the inmate would serve 75 percent of the sentence.<sup>33</sup>

Section 951.21(1), F.S., authorizes the county to grant up to 5 days per month for the first 2 years of a sentence “when no charge of misconduct has been sustained against a county prisoner.” Section 951.21(3), F.S., authorizes “an extra good-time allowance for meritorious conduct or exceptional industry not to exceed 5 days per month.” If an inmate earns the maximum allowable

<sup>32</sup> Impact information was provided by staff of the Office of Economic and Demographic Research on March 6, 2017 via e-mail (on file with the Senate Committee on Criminal Justice).

<sup>33</sup> Department of Corrections, *Senate Bill 1068 Analysis* (March 23, 2017) (on file with the Senate Committee on Criminal Justice).

award under these statutes of 10 days per month, the sentence could be reduced by up to 25 percent by virtue of the application of gain time.<sup>34</sup>

## VII. Related Issues:

It appears that any contract between the DOC and a county would be limited to one year; however, inmates under this section could be sentenced to up to 24 months. “The bill does not address what would happen to the inmate’s sentence or confinement if a contract is revised or cancelled and the inmate’s service of sentence is still active after the contract cancellation.”<sup>35</sup>

The DOC also notes that “the bill states that the court will ‘sentence’ the offender to county jail, which means that the court will impose a sentence and also determine where the offender will serve the sentence. The bill language creates confusion as to whether the offender is being committed to the Department and housed in the county jail, or whether the offender is being committed to the county.”<sup>36</sup>

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.002, 921.0024, 924.06, and 924.07.

This bill creates sections 921.00261 and 950.021 of the Florida Statutes.

This bill reenacts section 958.04 of the Florida Statutes. This reenactment is to incorporate amendments made by the bill to ss. 924.06 and 924.07, F.S.

## IX. Additional Information:

### A. Committee Substitute – Statement of Changes:

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

#### **CS by Criminal Justice on March 27, 2017:**

The CS:

- Specifies what sentencing under the Code is permitted without a written reason for sentencing.
- Provides that sentencing that exceeds a permitted range is an upward departure sentence and requires a written reason to justify the departure.
- Lists a number of “aggravating circumstances” for which an upward departure sentence is reasonably justified.
- Authorizes the defendant and the state to appeal a sentence outside the permissible sentencing range.

---

<sup>34</sup> *Id.*

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

<sup>36</sup> *Id.*

B. Amendments:

None.

---

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

---



925088

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Between lines 76 and 77

insert:

Section 2. Present paragraphs (g), (h), and (i) of subsection (1) of section 921.002, Florida Statutes, are redesignated as paragraphs (h), (i), and (k), respectively, new paragraphs (g) and (j) are added to that subsection, present paragraphs (g) and (h) of that subsection are amended, present subsection (4) of that section is redesignated as subsection



925088

11 (5), and a new subsection (4) is added to that section, to read:  
12 921.002 The Criminal Punishment Code.—The Criminal  
13 Punishment Code shall apply to all felony offenses, except  
14 capital felonies, committed on or after October 1, 1998.

15 (1) The provision of criminal penalties and of limitations  
16 upon the application of such penalties is a matter of  
17 predominantly substantive law and, as such, is a matter properly  
18 addressed by the Legislature. The Legislature, in the exercise  
19 of its authority and responsibility to establish sentencing  
20 criteria, to provide for the imposition of criminal penalties,  
21 and to make the best use of state prisons so that violent  
22 criminal offenders are appropriately incarcerated, has  
23 determined that it is in the best interest of the state to  
24 develop, implement, and revise a sentencing policy. The Criminal  
25 Punishment Code embodies the principles that:

26 (g) An upward departure sentence, as defined in s.  
27 921.00261, must be articulated in writing by the trial court  
28 judge and made only when circumstances or factors reasonably  
29 justify such sentence. The level of proof necessary to establish  
30 facts that support an upward departure sentence is a  
31 preponderance of the evidence.

32 (h) ~~(g)~~ Except as provided in s. 921.0024(3), the trial  
33 court judge may impose a sentence up to and including the  
34 statutory maximum for any offense, including an offense that is  
35 before the court due to a violation of probation or community  
36 control.

37 (i) ~~(h)~~ A sentence for an offense committed on or after  
38 October 1, 1998, but before October 1, 2017, may be appealed on  
39 the basis that it departs from the Criminal Punishment Code only





925088

40 if the sentence is below the lowest permissible sentence or as  
41 enumerated in s. 924.06(1).

42 (j) A sentence for an offense committed on or after October  
43 1, 2017, may be appealed on the basis that it departs from the  
44 Criminal Punishment Code if the sentence is below the lowest  
45 permissible sentence provided in s. 921.0024(3); is outside the  
46 range authorized by s. 921.0024(3); or is as enumerated in s.  
47 924.06(1).

48 (4) As provided in s. 921.00261, a court may impose an  
49 upward departure sentence based upon circumstances or factors  
50 that reasonably justify the aggravation of the sentence. The  
51 level of proof necessary to establish facts supporting an upward  
52 departure sentence is a preponderance of the evidence. When  
53 multiple reasons exist to support an upward departure sentence,  
54 such sentence shall be upheld when at least one circumstance or  
55 factor justifies such sentence regardless of the presence of  
56 other circumstances or factors found not to justify such  
57 sentence. Any upward departure sentence must be explained in  
58 writing by the trial court judge.

59 Section 3. Present subsections (3) through (7) of section  
60 921.0024, Florida Statutes, are redesignated as subsections (4)  
61 through (8), respectively, and a new subsection (3) is added to  
62 that section, to read:

63 921.0024 Criminal Punishment Code; worksheet computations;  
64 scoresheets.-

65 (3) (a) This subsection applies to any felony offense,  
66 except a capital felony, committed on or after October 1, 2017.

67 (b) The lowest permissible sentence is the minimum sentence  
68 that may be imposed by the trial court, absent a valid reason



925088

69 for departure.

70 (c) The lowest permissible sentence is any nonstate prison  
71 sanction in which the total sentence points equal or are less  
72 than 44 points. The trial court may increase the total sentence  
73 points by up to, and including, 25 percent. If the total  
74 sentence points exceed 44 points as a result of this increase,  
75 the court may not impose a state prison sentence that is longer  
76 than the lowest permissible sentence in prison months calculated  
77 pursuant to paragraph (d).

78 (d) If the total sentence points exceed 44 points, the  
79 lowest permissible sentence in prison months shall be calculated  
80 by subtracting 28 points from the total sentence points and  
81 decreasing the remaining total by 25 percent. The total sentence  
82 points shall be calculated only as a means of determining the  
83 lowest permissible sentence. The trial court may impose  
84 sentences under this subsection or s. 921.00261 concurrently or  
85 consecutively. However, any sentence to state prison must exceed  
86 1 year. If the lowest permissible sentence in prison months  
87 exceeds the statutory maximum sentence as provided in s.  
88 775.082, the lowest permissible sentence in prison months must  
89 be imposed. If the total sentence points are greater than or  
90 equal to 363, the court may sentence the offender to life  
91 imprisonment. An offender sentenced to life imprisonment under  
92 this subsection is not eligible for any form of discretionary  
93 early release, except executive clemency or conditional medical  
94 release under s. 947.149. This subsection does not supersede any  
95 requirement in subsection (1) to impose a statutory maximum  
96 sentence.

97 (e) The trial court may impose a state prison sentence that



925088

98 does not vary upward by more than 25 percent from the lowest  
99 permissible sentence in prison months calculated pursuant to  
100 paragraph (d). However, no sentence imposed pursuant to this  
101 paragraph may exceed the statutory maximum sentence as provided  
102 in s. 775.082.

103 (f) Except as provided in s. 921.00261, the trial court may  
104 not impose a sentence that varies upward by more than 25 percent  
105 from the lowest permissible sentence in prison months calculated  
106 pursuant to paragraph (d). The permissible range for sentencing  
107 for an upward departure sentence imposed by the court pursuant  
108 to s. 921.00261 is the lowest permissible sentence up to and  
109 including the statutory maximum, as provided in s. 775.082, for  
110 the primary offense and any additional offense before the court  
111 for sentencing.

112 Section 4. Section 921.00261, Florida Statutes, is created  
113 to read:

114 921.00261 Upward departure sentence; aggravating  
115 circumstances.—

116 (1) (a) This section applies to any felony offense, except a  
117 capital felony, committed on or after October 1, 2017.

118 (b) The sentence imposed pursuant to s. 921.0024(3) (d) or  
119 (3) (e) is assumed to be appropriate for the offender. A sentence  
120 that the trial court is authorized to impose pursuant to s.  
121 921.0024(3) is not an upward departure sentence. As used in this  
122 section, the term "upward departure sentence" means a state  
123 prison sentence that varies upward by more than 25 percent from  
124 the lowest permissible sentence in prison months calculated  
125 pursuant to s. 921.0024(3) (d).

126 (c) The trial court may impose an upward departure sentence



925088

127 only if the sentence is accompanied by a written statement from  
128 the court specifying the reasons for the departure, filed within  
129 7 days after the date of sentencing. A written transcription of  
130 orally stated reasons for this departure is permissible if it is  
131 filed by the court within 7 days after the date of sentencing.

132 (d) The imposition of a split sentence of incarceration  
133 followed by community control or probation does not by itself  
134 constitute an upward departure. For the purpose of determining  
135 the maximum sentence authorized by law, any community control  
136 portion of a split sentence does not constitute a term of  
137 imprisonment.

138 (e) An upward departure sentence must be within any  
139 relevant maximum sentence limitations provided by s. 775.082.

140 (2) An upward departure sentence is discouraged unless  
141 there are circumstances or factors that reasonably justify the  
142 departure. Aggravating circumstances to be considered include,  
143 but are not limited to, those listed in subsection (3). The  
144 failure of the trial court to impose a sentence within the range  
145 authorized by s. 921.0024(3) is subject to appellate review  
146 under chapter 924, but the extent of the departure from such  
147 range is not subject to appellate review.

148 (3) Aggravating circumstances under which an upward  
149 departure sentence is reasonably justified include, but are not  
150 limited to:

151 (a) The departure results from a legitimate, uncoerced plea  
152 bargain.

153 (b) The offense was one of violence and was committed in a  
154 manner that was especially heinous, atrocious, or cruel.

155 (c) The offenses before the court for sentencing arose out



925088

156 of separate episodes, the primary offense is scored at offense  
157 level 4 or higher, and the defendant has committed five or more  
158 offenses within a 180-day period which have resulted in  
159 convictions.

160 (d) The primary offense is scored at offense level 3, and  
161 the defendant has committed eight or more offenses within a 180-  
162 day period which have resulted in convictions.

163 (e) The offense before the court for disposition was  
164 committed within 6 months after the defendant was discharged  
165 from probation, community control, or pretrial intervention or  
166 diversion or released from state prison, whichever is later.

167 (f) The defendant occupied a leadership role in a criminal  
168 organization.

169 (g) The offense was committed by a public official under  
170 color of office.

171 (h) The defendant knew the victim was a law enforcement  
172 officer at the time of the offense, the offense was a violent  
173 offense, and that status is not an element of the primary  
174 offense.

175 (i) The offense created a substantial risk of death or  
176 great bodily harm to many persons or to one or more children.

177 (j) The victim was especially vulnerable due to age or  
178 physical or mental disability.

179 (k) The offense was motivated by prejudice based on race,  
180 color, ancestry, ethnicity, religion, sexual orientation, or  
181 national origin of the victim.

182 (l) The victim suffered extraordinary physical or emotional  
183 trauma or permanent physical injury or was treated with  
184 particular cruelty.



925088

185 (m) The victim was physically attacked by the defendant in  
186 the presence of one or more members of the victim's family.

187 (n) The offense resulted in substantial economic hardship  
188 to the victim and consisted of an illegal act or acts committed  
189 by means of concealment, guile, or fraud to obtain money or  
190 property, to avoid payment or loss of money or property, or to  
191 obtain business or professional advantage, when two or more of  
192 the following circumstances were present:

193 1. The offense involved multiple victims or multiple  
194 incidents per victim;

195 2. The offense involved a high degree of sophistication or  
196 planning or occurred over a lengthy period of time;

197 3. The defendant used position or status to facilitate the  
198 commission of the offense, including positions of trust,  
199 confidence, or fiduciary relationship; or

200 4. The defendant was in the past involved in other conduct  
201 similar to that involved in the current offense.

202 (o) The offense was committed in order to prevent or avoid  
203 arrest, to impede or prevent prosecution for the conduct  
204 underlying the offense, or to effect an escape from custody.

205 (p) The defendant is not amenable to rehabilitation or  
206 supervision, as evidenced by an escalating pattern of criminal  
207 conduct, which is a progression from nonviolent to violent  
208 crimes, a progression of increasingly violent crimes, or a  
209 pattern of increasingly serious criminal activity.

210 (q) The defendant induced a minor to participate in any of  
211 the offenses pending before the court for disposition.

212 (r) The primary offense is scored at offense level 7 or  
213 higher, and the defendant has been convicted of one more offense



925088

214 that scored, or would have scored, at an offense level 8 or  
215 higher.

216 (s) The defendant has an extensive unscorable juvenile  
217 record.

218 (t) The defendant committed an offense involving sexual  
219 contact or sexual penetration, and, as a direct result of the  
220 offense, the victim contracted a sexually transmissible disease.

221 Section 5. Subsection (1) of section 924.06, Florida  
222 Statutes, is amended to read:

223 924.06 Appeal by defendant.—

224 (1) A defendant may appeal any of the following ~~from~~:

225 (a) A final judgment of conviction when probation has not  
226 been granted under chapter 948, except as provided in subsection

227 (3) ~~.~~

228 (b) An order granting probation under chapter 948 ~~.~~

229 (c) An order revoking probation under chapter 948 ~~.~~

230 (d) A sentence, on the ground that it is illegal ~~.~~ ~~or~~

231 (e) A sentence imposed under s. 921.0024 of the Criminal  
232 Punishment Code which exceeds the statutory maximum penalty  
233 provided in s. 775.082 for an offense at conviction, or the  
234 consecutive statutory maximums for offenses at conviction,  
235 unless otherwise provided by law.

236 (f) A sentence imposed outside the range authorized by s.  
237 921.0024(3).

238 Section 6. Subsection (1) of section 924.07, Florida  
239 Statutes, is amended to read:

240 924.07 Appeal by state.—

241 (1) The state may appeal any of the following ~~from~~:

242 (a) An order dismissing an indictment or information or any



925088

243 count thereof or dismissing an affidavit charging the commission  
244 of a criminal offense, the violation of probation, the violation  
245 of community control, or the violation of any supervised  
246 correctional release.

247 (b) An order granting a new trial.

248 (c) An order arresting judgment.

249 (d) A ruling on a question of law when the defendant is  
250 convicted and appeals from the judgment. Once the state's cross-  
251 appeal is instituted, the appellate court shall review and rule  
252 upon the question raised by the state regardless of the  
253 disposition of the defendant's appeal.

254 (e) The sentence, on the ground that it is illegal.

255 (f) A judgment discharging a prisoner on habeas corpus.

256 (g) An order adjudicating a defendant insane under the  
257 Florida Rules of Criminal Procedure.

258 (h) All other pretrial orders, except that it may not take  
259 more than one appeal under this subsection in any case.

260 (i) A sentence imposed below the lowest permissible  
261 sentence established by the Criminal Punishment Code under  
262 chapter 921.

263 (j) A ruling granting a motion for judgment of acquittal  
264 after a jury verdict.

265 (k) An order denying restitution under s. 775.089.

266 (l) An order or ruling suppressing evidence or evidence in  
267 limine at trial.

268 (m) An order withholding adjudication of guilt in violation  
269 of s. 775.08435.

270 (n) A sentence imposed outside the range authorized by s.  
271 921.0024(3).





925088

272 Section 7. For the purpose of incorporating the amendments  
273 made by this act to sections 924.06 and 924.07, Florida  
274 Statutes, in references thereto, subsection (3) of section  
275 958.04, Florida Statutes, is reenacted to read:

276 958.04 Judicial disposition of youthful offenders.—

277 (3) The provisions of this section shall not be used to  
278 impose a greater sentence than the permissible sentence range as  
279 established by the Criminal Punishment Code pursuant to chapter  
280 921 unless reasons are explained in writing by the trial court  
281 judge which reasonably justify departure. A sentence imposed  
282 outside of the code is subject to appeal pursuant to s. 924.06  
283 or s. 924.07.

284  
285 ===== T I T L E A M E N D M E N T =====

286 And the title is amended as follows:

287 Delete line 9

288 and insert:

289 requiring validation of per diem rates; amending s.  
290 921.002, F.S.; specifying requirements for sentencing  
291 and appeals of sentences for offenses committed on or  
292 after a certain date; authorizing upward departures of  
293 sentences under certain circumstances; amending s.  
294 921.0024, F.S.; providing applicability; creating  
295 requirements for permissible sentences for nonstate  
296 prison sanctions and state prison sanctions;  
297 authorizing a judge to depart from the guidelines  
298 under certain circumstances; prohibiting departure  
299 sentences under certain circumstances; creating s.  
300 921.00261, F.S.; providing applicability; defining the



925088

301 term "upward departure sentence"; specifying  
302 requirements for imposing an upward departure  
303 sentence; providing a circumstance under which a  
304 sentence is subject to appellate review; providing  
305 aggravating circumstances under which an upward  
306 departure sentence is reasonably justified; amending  
307 s. 924.06, F.S.; authorizing a defendant to appeal a  
308 sentence outside a specified range; amending s.  
309 924.07, F.S.; authorizing the state to appeal a  
310 sentence outside a specified range; reenacting s.  
311 958.04(3), F.S., relating to judicial disposition of  
312 youthful offenders, to incorporate the amendments made  
313 to ss. 924.06 and 924.07, F.S, in references thereto;  
314 providing an

By Senator Brandes

24-00545-17

20171068\_\_

A bill to be entitled

An act relating to sentencing; creating s. 950.021, F.S.; authorizing a court to sentence certain offenders to a county jail for up to 24 months if the offender meets specified criteria and if the county has a contract with the Department of Corrections; providing contractual requirements; requiring specific appropriations; providing for such appropriations; requiring validation of per diem rates; providing an effective date.

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

Section 1. Section 950.021, Florida Statutes, is created to read:

950.021 Sentencing of offenders to county jail.-

(1) Notwithstanding s. 921.0024 or any other provision of law, and effective for offenses committed on or after July 1, 2017, a court may sentence an offender to a term in the county jail in the county where the offense was committed for up to 24 months if the offender meets all of the following criteria:

(a) The offender's total sentence points score, as provided in s. 921.0024, is more than 44 points but no more than 60 points.

(b) The offender's primary offense is not a forcible felony as defined in s. 776.08; however, an offender whose primary offense is a third degree felony under chapter 810 is eligible to be sentenced to a county jail under this paragraph.

(c) The offender's primary offense is not punishable by a

Page 1 of 3

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

24-00545-17

20171068\_\_

minimum mandatory sentence of more than 24 months.

(2) (a) The court may only sentence an offender to a county jail pursuant to this section if there is a contractual agreement between the chief correctional officer of that county and the Department of Corrections.

(b) If the chief correctional officer of a county requests the Department of Corrections to enter into a contract that allows offenders to be sentenced to the county jail pursuant to subsection (1), subject to the restrictions of this paragraph and subsections (3) and (6), the Department of Corrections must enter into such a contract. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates, not to exceed \$60 per inmate.

(3) A contract under this section is contingent upon a specific appropriation in the General Appropriations Act. Contracts shall be awarded by the Department of Corrections on a first-come, first-served basis up to the maximum appropriation allowable in the General Appropriations Act for this purpose. The maximum appropriation allowable consists of funds appropriated in or transferred to the specific appropriation in the Inmates Sentenced to County Jail appropriation category. Prior to any transferred appropriation under this section, the Inmates Sentenced to County Jail appropriation category provides for an estimated incremental appropriation for county jail beds contracted under this section in excess of the Department of Corrections' per diem for adult male and female inmates.

Page 2 of 3

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

24-00545-17

20171068\_\_

59       (4) The Department of Corrections shall transfer funds  
60 pursuant to s. 216.177 from other appropriation categories  
61 within the Adult Male Custody Operations or Adult and Youthful  
62 Offender Female Custody Operations budget entities to the  
63 Inmates Sentenced to County Jail appropriation category in an  
64 amount necessary to satisfy the requirements of each executed  
65 contract, but not to exceed the Department of Corrections'  
66 average total per diem published for the preceding fiscal year  
67 for adult male custody or adult and youthful offender female  
68 custody inmates for each county jail bed contracted.

69       (5) The Department of Corrections shall assume maximum  
70 annual value of each contract when determining the full use of  
71 funds appropriated and must ensure that the maximum  
72 appropriation allowable is not exceeded.

73       (6) All contractual per diem rates under this section as  
74 well as the per diem rates used by the Department of Corrections  
75 must be validated by the Auditor General before payments are  
76 made.

77       Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/27/17.  
Meeting Date

1068.  
Bill Number (if applicable)

Topic Sentencing.

Amendment Barcode (if applicable)

Name Chelsea Murphy.

Job Title State Director

Address 824 N. Duval St  
Street

Phone 954 557 0016

Tallahassee. FL 32303  
City State Zip

Email

Speaking:  For  Against  Information

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

Representing Right on Crime.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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)

3/27/2017

*Meeting Date*

1068

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Sheriff Bob Gualtieri

Job Title Sheriff

Address 10750 Ulmerton Road

Phone 727-582-6200

*Street*

Largo

FL

33778

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

3/27/17

Meeting Date

SB 1068

Bill Number (if applicable)

Topic Sentencing Co. Jail ↑ to 24 Months

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St. Ste. 401

Phone (850) 606-1014

Tallahassee FL 32301  
City State Zip

Email andy.thomas@flpd2.com

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Randolph Bracy,  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 7th, 2017

---

I respectfully request that **Senate Bill #1068**, relating to **Sentencing**, be placed on the:

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

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

Senator Jeff Brandes  
Florida Senate, District 24



**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 1102

INTRODUCER: Senator Rouson

SUBJECT: Criminal Offenses

DATE: March 24, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CJ	<b>Favorable</b>
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____

---

**I. Summary:**

SB 1102 increases the minimum threshold values for several theft provisions in the Florida Statutes from:

- \$300 or more to \$1,000 or more for felony theft of state sales taxes;
- \$100 or more to \$300 or more for second degree petit theft of property;
- \$100 or more, but less than \$300, to \$300 or more, but less than \$1,000 for first degree petit theft of property and for third degree grand theft of property from a dwelling or its unenclosed curtilage;
- \$300 or more to \$1,000 or more for third degree grand theft of property and for second degree grand theft of emergency medical equipment or law enforcement equipment;
- \$300 or more to \$500 or more for third degree felony retail theft and for third degree felony dealing in stolen property over the Internet; and
- \$150 or more to \$500 or more for the third degree felonies of stopping payment on a check with intent to defraud producer of farm or grove products; stopping payment on a check with intent to defraud any person for goods or services; worthless checks, drafts, or debit card orders; and worthless checks, drafts, or debit card orders or electronic funds transfers to remit taxes.

The Criminal Justice Impact Conference (CJIC) determined that the overall prison bed impact of the bill will be “negative significant” (result in a decrease of more than 25 prison beds). See Section V. Fiscal Impact Statement.

## II. Present Situation:

There are approximately 7,700 people currently incarcerated and 38,800 on supervision for a theft crime in Florida.<sup>1</sup> Since 2005, at least 26 states have increased the threshold dollar amounts for felony theft crimes.<sup>2</sup> These states had various reasons for increasing the thresholds, including ensuring that the “amounts keep pace with inflation and the increase in the price of consumer goods.”<sup>3</sup> Such increases ensure that associated “criminal sentences don’t become more severe over time simply because of natural increases in the prices of consumer goods.”<sup>4</sup> “Raising felony thresholds also complements state reforms designed to focus prison beds on the most serious offenders, rather than relatively low-level ones.”<sup>5</sup>

The majority of states (30 states) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between \$500 and \$950, and five states, including Florida, have thresholds below \$500.<sup>6</sup>

### Theft of State Sales Taxes

Chapter 212, F.S., levies a 6 percent sales and use tax on most sales of tangible personal property.<sup>7</sup> Any person who fails to remit collected sales and use tax with the intent to defraud the state commits a theft of state funds.<sup>8</sup> The punishment for the offense is based upon the value, or amount, of state taxes that were not remitted:

- If the total amount was less than \$300, the offense is a second degree misdemeanor.<sup>9</sup>
- If the total amount was \$300 or more, but less than \$20,000, the offense is a third degree felony.<sup>10</sup>
- If the total amount was \$20,000 or more, but less than \$100,000, the offense is a second degree felony.<sup>11</sup>
- If the total amount was \$100,000 or more, the offense is a first degree felony.<sup>12</sup>

<sup>1</sup> Department of Corrections, *2015-2016 Agency Statistics: Inmate Population and Community Supervision Population*, data of population by primary offenses, as of June 30, 2016, available at [http://www.dc.state.fl.us/pub/annual/1516/stats/ip\\_primary.html](http://www.dc.state.fl.us/pub/annual/1516/stats/ip_primary.html) and [http://www.dc.state.fl.us/pub/annual/1516/stats/csp\\_primary.html](http://www.dc.state.fl.us/pub/annual/1516/stats/csp_primary.html) (last visited March 22, 2017).

<sup>2</sup> Lawrence, Alison, *Making Sense of Sentencing: State Systems and Policies* (June 2015), p. 2, National Conference of State Legislatures, available at <http://www.ncsl.org/documents/cj/sentencing.pdf> (last visited March 22, 2017).

<sup>3</sup> *Id.*

<sup>4</sup> Gramlich, John, and Zafft, Katie, *Updating State Theft Laws Can Bring Less Incarceration – and Less Crime* (March 31, 2016), Stateline, Pew Charitable Trusts, available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/31/updating-state-theft-laws-can-bring-less-incarceration-and-less-crime> (last visited March 22, 2017).

<sup>5</sup> See footnote 2.

<sup>6</sup> *Id.* See also Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (February 2016), available at [http://www.pewtrusts.org/~media/assets/2016/02/the\\_effects\\_of\\_changing\\_state\\_theft\\_penalties.pdf?la=en](http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en) (last visited March 22, 2017).

<sup>7</sup> Section 212.05, F.S.

<sup>8</sup> Section 212.15, F.S.

<sup>9</sup> A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>10</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. *Id.*

<sup>11</sup> A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. *Id.*

<sup>12</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. *Id.*

These amounts were set in 1993.<sup>13</sup>

### Property Theft

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the defendant, the defendant's history of theft convictions or, in some cases, the type of property taken. A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.<sup>14</sup>

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than \$100.<sup>15</sup> First degree petit theft, a first degree misdemeanor,<sup>16</sup> is theft of property valued at \$100 or more but less than \$300.<sup>17</sup> Petit theft incurs greater penalties if there is a prior theft conviction: a first degree misdemeanor if there is a prior conviction,<sup>18</sup> and a third degree felony if there are two or more prior convictions.<sup>19</sup>

Third degree grand theft, a third degree felony, is theft of:

- Property valued at \$300 or more, but less than \$20,000.
- Specified property (e.g., a firearm or fire extinguisher).<sup>20</sup>
- Property from a dwelling or its unenclosed curtilage if the property is valued at \$100 or more, but less than \$300.<sup>21</sup>

Second degree grand theft, a second degree felony, is theft of:

- Property valued at \$20,000 or more, but less than \$100,000;
- Cargo valued at less than \$50,000 in specified circumstances; or
- Emergency medical equipment or law enforcement equipment valued at \$300 or more in specified circumstances.<sup>22</sup>

---

<sup>13</sup> Chapter 93-233, s. 13, L.O.F.

<sup>14</sup> Section 812.014(1), F.S.

<sup>15</sup> Section 812.014(3)(a), F.S.

<sup>16</sup> A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>17</sup> Section 812.014(2)(e), F.S.

<sup>18</sup> Section 812.014(3)(b), F.S.

<sup>19</sup> Section 812.014(3)(c), F.S.

<sup>20</sup> Section 812.014(2)(c), F.S.

<sup>21</sup> Section 812.014(3)(d), F.S.

<sup>22</sup> Section 812.014(2)(b), F.S. However, this theft is reclassified from a second degree felony to a first degree felony if the theft occurs within a county subject to a state of emergency declared by the Governor, is committed after the declaration is made, and is facilitated by conditions arising from the emergency.

First degree grand theft, a first degree felony, is theft of:

- Property valued at \$100,000 or more;
- A semitrailer deployed by a law enforcement officer;
- Cargo valued at \$50,000 or more in specified circumstances; or

First degree grand theft also includes any grand theft in which, in the course of committing the offense, a motor vehicle is used as specified or the offender causes damage to the real or personal property of another in excess of \$1,000.<sup>23</sup>

The last time the Legislature increased the minimum threshold property value for third degree grand theft was in 1986.<sup>24</sup> The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996.<sup>25</sup> The second degree grand theft provisions related to emergency medical equipment were added in 2001, and law enforcement equipment in 2007.<sup>26</sup> The petit theft provisions were amended, including the thresholds, in 1996.<sup>27</sup>

### **Retail Theft**

Section 812.015(1)(d), F.S., defines retail theft as:

- The taking possession of or carrying away of merchandise, property, money, or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

Theft defined as retail theft is punishable under s. 812.014, F.S., and like any other type of theft, must meet the elements of the applicable theft offense under that statute. However, s. 812.015, F.S., also provides that retail theft is a third degree felony if the theft involves property valued at \$300 or more and the person commits the theft in a specified manner (e.g., commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen).<sup>28</sup>

Retail theft is a second degree felony if the person has previously been convicted of third degree felony retail theft or individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of \$3,000.<sup>29</sup> The statute also requires a fine of not less than \$50 and no more than \$1,000 for a second or subsequent conviction for petit theft from a merchant<sup>30</sup> and provides that it is a third degree felony to possess, or use or attempt to use, any

---

<sup>23</sup> Section 812.014(2)(a), F.S.

<sup>24</sup> Chapter 86-161, s. 1, L.O.F.

<sup>25</sup> Chapter 96-388, s. 49, L.O.F.

<sup>26</sup> Chapters 2001-115, s. 2, and 2007-115, s. 2, L.O.F.

<sup>27</sup> Chapter 96-388, s. 49, L.O.F.

<sup>28</sup> Section 812.015(8), F.S.

<sup>29</sup> Section 812.015(9), F.S.

<sup>30</sup> Section 812.015(2), F.S.

antishoplifting or inventory control device countermeasure within any premises used for the retail purchase or sale of any merchandise.<sup>31</sup>

The thresholds for third degree felony retail theft were created and set by the Legislature in 2001.<sup>32</sup>

### **Dealing in Stolen Property Over the Internet**

It is a crime for any person to use the Internet to sell or offer for sale property that the person knows or has a reasonable cause to believe that the property is stolen. The punishment for the offense is based upon the value of the stolen property:

- If the total value was less than \$300, the offense is a second degree misdemeanor.
- If the total value was \$300 or more, the offense is a third degree felony.<sup>33</sup>

This crime was created in 2001.<sup>34</sup>

### **Checks Fraud**

#### ***Stopping Payment on a Check with Intent to Defraud Producer of Farm or Grove Products***

It is a crime for a person to make, draw, utter, deliver, or give a check, draft, or written order to a producer of farm or grove products with the intent to defraud such producer by stopping payment on the check, draft, or written order. The punishment for the offense is based upon the value of the farm or grove products:

- If the total value was less than \$150, the offense is a second degree misdemeanor.
- If the total value was \$150 or more, the offense is a first degree misdemeanor.<sup>35</sup>

The last time the Legislature increased the minimum threshold product value for this offense was in 1986.<sup>36</sup>

#### ***Stopping Payment on a Check with Intent to Defraud Any Person for Goods or Services***

It is a crime for a person to make, draw, utter, deliver, or give a check, draft, or written order to any person for goods or services with the intent to defraud such person by stopping payment on the check, draft, or written order. The punishment for the offense is based upon the value of the goods or services:

- If the total value was less than \$150, the offense is a second degree misdemeanor.
- If the total value was \$150 or more, the offense is a third degree felony.<sup>37</sup>

---

<sup>31</sup> Section 812.014(7), F.S.

<sup>32</sup> Chapter 2001-115, s. 3, L.O.F.

<sup>33</sup> Section 812.0195, F.S.

<sup>34</sup> Chapter 2001-115, s. 6, L.O.F.

<sup>35</sup> Section 832.04, F.S.

<sup>36</sup> Chapter 86-161, s. 7, L.O.F.

<sup>37</sup> Section 832.041, F.S.

The last time the Legislature increased the minimum threshold goods or services value for this offense was in 1986.<sup>38</sup>

***Worthless Checks, Drafts, or Debit Card Orders***

It is unlawful to draft or issue a check, draft, or debit card order, knowing there are insufficient funds or credit.<sup>39</sup> The punishment for violating this is a first degree misdemeanor. However, the violation is a third degree felony if the check, draft, or debit card order was for \$150 or more and the payee receives something of value.

It is also unlawful to receive anything of value by means of a worthless check or draft knowing there are insufficient funds or credit<sup>40</sup> and to use a debit card to obtain anything of value knowing there are insufficient funds or credit.<sup>41</sup> The punishment for violating either of these provisions is based upon value:

- If the check, draft, or debit card order was less than \$150, the offense is a first degree misdemeanor.
- If the check, draft, or debit card order was \$150 or more, the offense is a third degree felony.<sup>42</sup>

The last time the Legislature increased the minimum threshold values for this offense was in 1986.<sup>43</sup>

***Worthless Checks, Drafts, or Debit Card Orders or Electronic Funds Transfers to Remit Taxes***

It is unlawful to draft or issue to the Department of Revenue any check or draft, or to use a debit card, to make any electronic funds transfer for the payment of any taxes, penalties, interest, fees, or associated amounts administered by the department, knowing that there are insufficient funds or credit.<sup>44</sup> The punishment for violating either of these provisions is based upon value:

- If the check, draft, debit card order, or electronic funds transfer was less than \$150, the offense is a second degree misdemeanor.
- If the check, draft, or debit card order was \$150 or more, the offense is a third degree felony.<sup>45</sup>

This crime was created in 1987.<sup>46</sup>

---

<sup>38</sup> Chapter 86-161, s. 8, L.O.F.

<sup>39</sup> Section 832.05(2)(a), F.S.

<sup>40</sup> Section 832.05(4)(a), F.S.

<sup>41</sup> Section 832.05(4)(b), F.S.

<sup>42</sup> Section 832.05(4)(c), F.S.

<sup>43</sup> Chapter 86-161, s. 9, L.O.F.

<sup>44</sup> Section 832.062(1), F.S.

<sup>45</sup> Section 832.062(2), F.S.

<sup>46</sup> Chapter 87-102, s. 11, L.O.F.

### III. Effect of Proposed Changes:

The bill increases the minimum threshold values for several theft provisions in the Florida Statutes.

#### Theft of State Sales Taxes (Section 1)

The bill amends s. 212.15, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total amount is less than \$1,000, instead of \$300, the offense is a second degree misdemeanor.
- If the total amount is \$1,000 or more, instead of \$300 or more, but is less than \$20,000, the offense is a third degree felony.<sup>47</sup>

The remaining punishments are unchanged by the bill.

Sections 202.28 and 202.33, F.S., related to communication services tax, and s. 206.56, F.S., related to motor and other fuel taxes, contain similar provisions to s. 212.15, F.S., related to theft of state taxes. The bill does not change these provisions, and thus *creates a discrepancy in tax administration*.

#### Property Theft (Section 2)

The bill amends the following property theft provisions in s. 812.014, F.S., to increase the values that are the basis for the punishment for the offenses:

- Second degree petit theft of property valued at less than \$300, instead of \$100.
- First degree petit theft of property valued at \$300 or more, but less than \$1,000, instead of \$100 or more, but less than \$300.<sup>48</sup>
- Third degree grand theft of property valued at \$1,000 or more, instead of \$300 or more, but less than \$20,000.<sup>49</sup>
- Third degree grand theft of property from a dwelling or its unenclosed curtilage if the property is valued at \$300 or more, but less than \$1,000, instead of \$100 or more, but less than \$300.<sup>50</sup>
- Second degree grand theft of emergency medical equipment or law enforcement equipment valued at \$1,000 or more, instead of \$300 or more, in specified circumstances.<sup>51</sup>

<sup>47</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 1993 has the same buying power as \$505.75 in 2017 dollars. CPI Inflation Calculator available at [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited March 23, 2017). "The CPI inflation calculator uses the Consumer Price Index for All Urban Consumers (CPI-U) U.S. city average series for all items, not seasonally adjusted. This data represents changes in the prices of all goods and services purchased for consumption by urban households. For the current year, the most recently published monthly index value is used."

<sup>48</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 1996 has the same buying power as \$465.78 in 2017 dollars.

<sup>49</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 1986 has the same buying power as \$666.80 in 2017 dollars.

<sup>50</sup> See footnote 48.

<sup>51</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 2001 has the same buying power as \$412.65 in 2017 dollars, and \$300 in 2007 has the same buying power as \$352.47 in 2017 dollars.

### **Retail Theft (Section 3)**

The bill amends s. 812.015, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total amount is less than \$500, instead of less than \$300, the offense would be punishable as provided in s. 812.014, F.S.
- If the total amount is \$500 or more, instead of \$300 or more, the offense is a third degree felony.<sup>52</sup>

It appears that more crimes may be found to be second degree petit theft:

- Under current law, retail theft of an amount *less than \$300* would likely be:
  - First degree petit theft (theft of property valued at \$100 or more, but less than \$300); or
  - Second degree petit theft (theft of property valued at less than \$100).
- Under the bill, retail theft of an amount *less than \$500* would likely be:
  - First degree petit theft (theft of property valued at \$300 or more, but less than \$1,000); or
  - Second degree petit theft (theft of property valued at less than \$300).

Additionally, the bill appears to *create a discrepancy in the punishment of crimes*:

- Under current law:
  - Retail theft of an amount \$300 or greater is a third degree felony; and
  - Property theft of an amount \$300 or greater is a third degree felony as third degree grand theft.
- Under the bill:
  - Retail theft of an amount \$500 or greater is a third degree felony; and
  - Property theft of an amount \$1,000 or greater is a third degree felony as third degree grand theft.

### **Dealing in Stolen Property Over the Internet (Section 4)**

The bill amends s. 812.0195, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total value is less than \$500, instead of less than \$300, the offense is a second degree misdemeanor.
- If the total value is \$500 or more, instead of \$300 or more, the offense is a third degree felony.<sup>53</sup>

---

<sup>52</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 2001 has the same buying power as \$412.65 in 2017 dollars.

<sup>53</sup> *Id.*



## Checks Fraud

### *Stopping Payment on a Check with Intent to Defraud Producer of Farm or Grove Products (Section 5)*

The bill amends s. 832.04, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total value is less than \$500, instead of less than \$150, the offense is a second degree misdemeanor.
- If the total value is \$500 or more, instead of \$150 or more, the offense is a first degree misdemeanor.<sup>54</sup>

### *Stopping Payment on a Check with Intent to Defraud Any Person for Goods or Services (Section 6)*

The bill amends s. 832.041, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total value is less than \$500, instead of less than \$150, the offense is a second degree misdemeanor.
- If the total value is \$500 or more, instead of \$150 or more, the offense is a third degree felony.<sup>55</sup>

### *Worthless Checks, Drafts, or Debit Card Orders (Section 7)*

The bill amends s. 832.05, F.S., to increase the values that are the basis for the punishment for the offenses provided in the statute.

For violations of drafting or issuing a check, draft, or debit card order, knowing there are insufficient funds or credit, the bill increases the values that are the basis for the punishment:

- If the check, draft, or debit card order is for less than \$500, instead of less than \$150, the offense is a first degree misdemeanor.
- If the check, draft, or debit card order is for \$500 or more, instead of \$150 or more, and the payee receives something of value, the offense is a third degree felony.<sup>56</sup>

For violations of receiving anything of value by means of a worthless check or draft knowing there are insufficient funds or credit and using a debit card to obtain anything of value knowing there are insufficient funds or credit, the bill increases the values that are the basis for the punishments:

- If the check, draft, or debit card order is less than \$500, instead of less than \$150, the offense is a first degree misdemeanor.
- If the check, draft, or debit card order is \$500 or more, instead of \$150 or more, the offense is a third degree felony.<sup>57</sup>

---

<sup>54</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$150 in 1986 has the same buying power as \$333.40 in 2017 dollars.

<sup>55</sup> *Id.*

<sup>56</sup> See footnote 49.

<sup>57</sup> *Id.*

***Worthless Checks, Drafts, or Debit Card Orders or Electronic Funds Transfers to Remit Taxes (Section 8)***

The bill amends s. 832.062, F.S., to increase the values that are the basis for the punishment for the offense:

- If the check, draft, debit card order, or electronic funds transfer is less than \$500, instead of less than \$150, the offense is a second degree misdemeanor.
- If the check, draft, or debit card order is \$500 or more, instead of \$150 or more, the offense is a third degree felony.<sup>58</sup>

**Other**

The bill amends s. 921.0022, F.S., (Section 9), to make conforming changes to the Criminal Punishment Code severity ranking chart to changes made by the bill.

The bill reenacts ss. 634.319, 634.421, 636.238, 642.038, 705.102, 812.0155, 985.11, and 985.557, F.S., (Sections 10 – 17), to incorporate the changes made by the bill.

The bill is effective July 1, 2017 (Section 18).

**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.

---

<sup>58</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$150 in 1987 has the same buying power as \$321.66 in 2017 dollars.

### C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official prison bed impact, if any, reviewed the bill, and determined that the overall prison bed impact of the bill will be “negative significant” (result in a decrease of more than 25 prison beds).<sup>59</sup>

#### **Theft of State Sales Taxes (Section 1)**

A person who commits petit theft of state sales taxes (under the bill, revenue stolen at a value of less than \$1,000), and who has previously been convicted of such theft commits a first degree misdemeanor, or who has previously been convicted two or more times of such theft commits a third degree felony.<sup>60</sup>

The CJIC estimated that “[n]o offenders should be impacted who are currently charged for a third or subsequent offense below the \$300 threshold, but a proportion between \$300 and \$1,000, which currently face a 3rd degree felony, would not be charged with a felony until their third offense.”

Per the Department of Corrections (DOC), in Fiscal Year 2015-2016, one offender was sentenced for a third or subsequent offense under the \$300 threshold, and that offender did not receive a prison sentence. For those committing an offense between \$300 and \$20,000, 25 (adj.)<sup>61</sup> offenders were sentenced, and none of these offenders received a prison sentence. The number of offenders that currently fall within the proposed changes to this threshold cannot be differentiated from the current thresholds.

The CJIC estimated that prison bed impact of section 1 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

#### **Property Theft (Section 2)**

Per the DOC, in Fiscal Year 2015-2016, no offenders were sentenced for the offenses in ss. 812.014(2)(b)3. (stealing certain emergency medical equipment) and (2)(b)4., F.S. (stealing certain law enforcement equipment). The CJIC estimated that prison bed impact of these provisions of section 2 would be negative insignificant (result in a decrease of 10 or fewer prison beds).

A person who commits petit theft (under the bill, property stolen at a value of less than \$1,000), and who has previously been convicted of any theft commits a first degree

---

<sup>59</sup> Criminal Justice Impact Conference, Office of Economic and Demographic Research, *Narrative Analysis of Adopted Impacts: HB 693 – Criminal Offenses (Identical to SB 1102)*, March 2, 2017, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB693.pdf> (last visited March 23, 2017). All further CJIC estimate information is from this source.

<sup>60</sup> Section 812.15(2)(a), F.S.

<sup>61</sup> The abbreviation “adj.” means “adjusted.” The abbreviation “unadj.” means “unadjusted.” Sentencing data from the DOC is incomplete, which means that the numbers the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

misdeemeanor, or who has previously been convicted two or more times of any theft commits a third degree felony.<sup>62</sup>

Per the DOC, in Fiscal Year 2015-2016, there were:

- 11,028 (adj.) offenders sentenced under s. 812.014(2)(c)1., F.S., (third degree grand theft) with 1,273 (adj.) of these offenders sentenced to prison (mean sentence length = 25.9 months, incarceration rate: 11.5% adj-11.5% unadj).
- 174 (adj.) offenders sentenced under s. 812.014(2)(d), F.S., (third degree grand theft from a dwelling or its curtilage) with 36 (adj.) of these offenders sentenced to prison (mean sentence length = 23.7 months, incarceration rate: 20.7% adj-20.7% unadj).
- 3,951 (adj.) offenders sentenced under s. 812.014(3)(c), F.S., (convicted of petit theft two or more times previously) with 547 (adj.) of these offenders sentenced to prison (mean sentence length = 24.7 months, incarceration rate: 13.8% adj-13.8% unadj).

The number of offenders that currently fall within the proposed changes to the s. 812.014(2)(c)(1), F.S., thresholds cannot be differentiated from the current thresholds. However, 36 offenders were sentenced to prison under s. 812.014(2)(d), F.S., and 547 offenders were sentenced to prison under s. 812.014(3)(c), F.S. (\$100 to \$300), which would not include these offenders within the parameters of the current bill (\$300 to \$1,000). That change alone would be a significant effect. However, a certain number of offenders currently charged with third degree grand theft will now fall into the new thresholds for these two penalties. Although that number cannot be quantified, there is expected to be a significant overall effect on prison beds.

The CJIC estimated that prison bed impact of these provisions of section 2 would be “negative significant” (result in an increase of more than 25 prison beds).

### **Retail Theft (Section 3)**

Per the DOC, in Fiscal Year 2015-2016, there were 394 (adj.) offenders sentenced under s. 812.015(8), F.S., with 84 (adj.) of these offenders sentenced to prison (mean sentence length = 28.3 months, incarceration rate: 21.3% adj-21.3% unadj). It is unknown how many of these offenders committed retail theft in the range between \$300 and \$500.

The CJIC estimated that prison bed impact of section 3 would be “negative indeterminate” (result in an unquantifiable increase in prison beds).

### **Dealing in Stolen Property Over the Internet (Section 4)**

Per the DOC, in Fiscal Year 2015-2016, there were 4 (adj.) offenders sentenced under s. 812.0195, F.S., with 1 (adj.) offender sentenced to prison (mean sentence length = 15.0

---

<sup>62</sup> Section 812.014(3)(b) and (c), F.S.

months, incarceration rate: 25.0% adj-33.3% unadj). It is unknown how many of the offenders who committed this offense were in the range between \$300 and \$500.

The CJIC estimated that prison bed impact of section 4 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

### **Checks Fraud**

#### ***Stopping Payment on a Check with Intent to Defraud Any Person for Goods or Services (Section 6)***

Per the DOC, in Fiscal Year 2015-2016, there were no offenders sentenced under s. 832.041, F.S.

The CJIC estimated that prison bed impact of section 6 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

#### ***Worthless Checks, Drafts, or Debit Card Orders (Section 7)***

Per the DOC, in Fiscal Year 2015-2016, there were 157 (adj.) offenders sentenced for offenses related to worthless checks, with 11 (adj.) offenders sentenced to prison (mean sentence length = 29.3 months, incarceration rate: 7.0% adj-6.9% unadj). The number of offenders who committed offenses under these particular subsections is unknown because the DOC does not have specific codes for these offenses. Additionally, how many of the offenders who committed this offense were in the range between \$150 and \$500 is unknown.

The CJIC estimated that prison bed impact of section 7 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

#### ***Worthless Checks, Drafts, or Debit Card Orders or Electronic Funds Transfers to Remit Taxes (Section 8)***

Per the DOC, in Fiscal Year 2015-2016, there were no offenders sentenced under s. 832.062, F.S.

The CJIC estimated that prison bed impact of section 8 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

## **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

A study by the Pew Charitable Trusts evaluated 23 states that had changed their felony theft thresholds between 2001 and 2011 and made the following findings:

- Raising the felony theft threshold had no impact on the states' overall property crime or larceny rates.
- States that increased their thresholds reported roughly the same average decrease in crime as the 27 states that did not change their theft laws.
- The amount of a state's felony theft threshold was not correlated with the state's property crime and larceny rates.<sup>63</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 212.15, 812.014, 812.015, 812.0195, 832.04, 832.041, 832.05, 832.062, and 921.0022.

This bill reenacts the following sections of the Florida Statutes: 634.319, 634.421, 636.238, 642.038, 705.102, 812.0155, 985.11, and 985.557.

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

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

None.

**B. Amendments:**

None.

---

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

---

<sup>63</sup> Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (February 2016), available at [http://www.pewtrusts.org/~media/assets/2016/02/the\\_effects\\_of\\_changing\\_state\\_theft\\_penalties.pdf?la=en](http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en) (last visited March 22, 2017).

By Senator Rouson

19-01126-17

20171102\_\_

1 A bill to be entitled  
 2 An act relating to criminal offenses; amending s.  
 3 212.15, F.S.; revising threshold amounts for failure  
 4 to remit taxes offenses; amending s. 812.014, F.S.;  
 5 revising threshold amounts for theft offenses;  
 6 amending s. 812.015, F.S.; revising threshold amounts  
 7 for retail theft; amending s. 812.0195, F.S.; revising  
 8 threshold amounts for dealing in stolen property by  
 9 use of the Internet offenses; amending ss. 832.04 and  
 10 832.041, F.S.; revising threshold amounts for stopping  
 11 payment offenses; amending s. 832.05, F.S.; revising  
 12 threshold amounts for offenses involving giving  
 13 worthless checks, drafts, and debit card orders;  
 14 amending s. 832.062, F.S.; revising threshold amounts  
 15 for offenses involving payments to the Department of  
 16 Revenue; amending s. 921.0022, F.S.; conforming  
 17 provisions to changes made by the act; reenacting ss.  
 18 634.319, 634.421, 636.238(3), 642.038(2), 705.102(4),  
 19 812.0155(1), 985.11(1)(b), and 985.557(1)(a), F.S.,  
 20 relating to reporting and accounting for funds by  
 21 insurance sales representatives, reporting and  
 22 accounting for funds by insurance sales  
 23 representatives or agents, penalties for certain  
 24 violations involving discount medical plans, reporting  
 25 and accounting for funds, reporting lost or abandoned  
 26 property, suspension of a driver license following an  
 27 adjudication of guilt for theft, fingerprinting and  
 28 photographing of juveniles, and direct filing of an  
 29 information against a juvenile, respectively, to

Page 1 of 43

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

19-01126-17

20171102\_\_

30 incorporate the amendments made by the act in cross-  
 31 references to amended provisions; providing an  
 32 effective date.  
 33

34 Be It Enacted by the Legislature of the State of Florida:  
 35

36 Section 1. Paragraphs (a) and (b) of subsection (2) of  
 37 section 212.15, Florida Statutes, are amended to read:

38 212.15 Taxes declared state funds; penalties for failure to  
 39 remit taxes; due and delinquent dates; judicial review.—

40 (2) Any person who, with intent to unlawfully deprive or  
 41 defraud the state of its moneys or the use or benefit thereof,  
 42 fails to remit taxes collected under this chapter commits ~~is~~  
 43 ~~guilty of~~ theft of state funds, punishable as follows:

44 (a) If the total amount of stolen revenue is less than  
 45 \$1,000 ~~\$300~~, the offense is a misdemeanor of the second degree,  
 46 punishable as provided in s. 775.082 or s. 775.083. Upon a  
 47 second conviction, the offender commits ~~is guilty of~~ a  
 48 misdemeanor of the first degree, punishable as provided in s.  
 49 775.082 or s. 775.083. Upon a third or subsequent conviction,  
 50 the offender commits ~~is guilty of~~ a felony of the third degree,  
 51 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

52 (b) If the total amount of stolen revenue is \$1,000 ~~\$300~~ or  
 53 more, but less than \$20,000, the offense is a felony of the  
 54 third degree, punishable as provided in s. 775.082, s. 775.083,  
 55 or s. 775.084.

56 Section 2. Subsection (2) of section 812.014, Florida  
 57 Statutes, is amended to read:

58 812.014 Theft.—

Page 2 of 43

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

19-01126-17

20171102\_\_

59 (2)(a)1. If the property stolen is valued at \$100,000 or  
 60 more or is a semitrailer that was deployed by a law enforcement  
 61 officer; or  
 62 2. If the property stolen is cargo valued at \$50,000 or  
 63 more that has entered the stream of interstate or intrastate  
 64 commerce from the shipper's loading platform to the consignee's  
 65 receiving dock; or  
 66 3. If the offender commits any grand theft and:  
 67 a. In the course of committing the offense the offender  
 68 uses a motor vehicle as an instrumentality, other than merely as  
 69 a getaway vehicle, to assist in committing the offense and  
 70 thereby damages the real property of another; or  
 71 b. In the course of committing the offense the offender  
 72 causes damage to the real or personal property of another in  
 73 excess of \$1,000,  
 74  
 75 the offender commits grand theft in the first degree, punishable  
 76 as a felony of the first degree, as provided in s. 775.082, s.  
 77 775.083, or s. 775.084.  
 78 (b)1. If the property stolen is valued at \$20,000 or more,  
 79 but less than \$100,000;  
 80 2. The property stolen is cargo valued at less than \$50,000  
 81 that has entered the stream of interstate or intrastate commerce  
 82 from the shipper's loading platform to the consignee's receiving  
 83 dock;  
 84 3. The property stolen is emergency medical equipment,  
 85 valued at \$1,000 ~~\$300~~ or more, that is taken from a facility  
 86 licensed under chapter 395 or from an aircraft or vehicle  
 87 permitted under chapter 401; or

Page 3 of 43

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

19-01126-17

20171102\_\_

88 4. The property stolen is law enforcement equipment, valued  
 89 at \$1,000 ~~\$300~~ or more, that is taken from an authorized  
 90 emergency vehicle, as defined in s. 316.003,  
 91  
 92 the offender commits grand theft in the second degree,  
 93 punishable as a felony of the second degree, as provided in s.  
 94 775.082, s. 775.083, or s. 775.084. Emergency medical equipment  
 95 means mechanical or electronic apparatus used to provide  
 96 emergency services and care as defined in s. 395.002(9) or to  
 97 treat medical emergencies. Law enforcement equipment means any  
 98 property, device, or apparatus used by any law enforcement  
 99 officer as defined in s. 943.10 in the officer's official  
 100 business. However, if the property is stolen within a county  
 101 that is subject to a state of emergency declared by the Governor  
 102 under chapter 252, the theft is committed after the declaration  
 103 of emergency is made, and the perpetration of the theft is  
 104 facilitated by conditions arising from the emergency, the theft  
 105 is a felony of the first degree, punishable as provided in s.  
 106 775.082, s. 775.083, or s. 775.084. As used in this paragraph,  
 107 the term "conditions arising from the emergency" means civil  
 108 unrest, power outages, curfews, voluntary or mandatory  
 109 evacuations, or a reduction in the presence of or response time  
 110 for first responders or homeland security personnel. For  
 111 purposes of sentencing under chapter 921, a felony offense that  
 112 is reclassified under this paragraph is ranked one level above  
 113 the ranking under s. 921.0022 or s. 921.0023 of the offense  
 114 committed.  
 115 (c) It is grand theft of the third degree and a felony of  
 116 the third degree, punishable as provided in s. 775.082, s.

Page 4 of 43

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



19-01126-17

20171102\_\_

117 775.083, or s. 775.084, if the property stolen is:

118 1. Valued at \$1,000 ~~\$300~~ or more, but less than \$5,000.

119 2. Valued at \$5,000 or more, but less than \$10,000.

120 3. Valued at \$10,000 or more, but less than \$20,000.

121 4. A will, codicil, or other testamentary instrument.

122 5. A firearm.

123 6. A motor vehicle, except as provided in paragraph (a).

124 7. Any commercially farmed animal, including any animal of

125 the equine, bovine, or swine class or other grazing animal; a

126 bee colony of a registered beekeeper; and aquaculture species

127 raised at a certified aquaculture facility. If the property

128 stolen is aquaculture species raised at a certified aquaculture

129 facility, then a \$10,000 fine shall be imposed.

130 8. Any fire extinguisher.

131 9. Any amount of citrus fruit consisting of 2,000 or more

132 individual pieces of fruit.

133 10. Taken from a designated construction site identified by

134 the posting of a sign as provided for in s. 810.09(2)(d).

135 11. Any stop sign.

136 12. Anhydrous ammonia.

137 13. Any amount of a controlled substance as defined in s.

138 893.02. Notwithstanding any other law, separate judgments and

139 sentences for theft of a controlled substance under this

140 subparagraph and for any applicable possession of controlled

141 substance offense under s. 893.13 or trafficking in controlled

142 substance offense under s. 893.135 may be imposed when all such

143 offenses involve the same amount or amounts of a controlled

144 substance.

145

19-01126-17

20171102\_\_

146 However, if the property is stolen within a county that is

147 subject to a state of emergency declared by the Governor under

148 chapter 252, the property is stolen after the declaration of

149 emergency is made, and the perpetration of the theft is

150 facilitated by conditions arising from the emergency, the

151 offender commits a felony of the second degree, punishable as

152 provided in s. 775.082, s. 775.083, or s. 775.084, if the

153 property is valued at \$5,000 or more, but less than \$10,000, as

154 provided under subparagraph 2., or if the property is valued at

155 \$10,000 or more, but less than \$20,000, as provided under

156 subparagraph 3. As used in this paragraph, the term "conditions

157 arising from the emergency" means civil unrest, power outages,

158 curfews, voluntary or mandatory evacuations, or a reduction in

159 the presence of or the response time for first responders or

160 homeland security personnel. For purposes of sentencing under

161 chapter 921, a felony offense that is reclassified under this

162 paragraph is ranked one level above the ranking under s.

163 921.0022 or s. 921.0023 of the offense committed.

164 (d) It is grand theft of the third degree and a felony of

165 the third degree, punishable as provided in s. 775.082, s.

166 775.083, or s. 775.084, if the property stolen is valued at \$300

167 ~~\$100~~ or more, but less than \$1,000 ~~\$300~~, and is taken from a

168 dwelling as defined in s. 810.011(2) or from the unenclosed

169 curtilage of a dwelling pursuant to s. 810.09(1).

170 (e) Except as provided in paragraph (d), if the property

171 stolen is valued at \$300 ~~\$100~~ or more, but less than \$1,000

172 ~~\$300~~, the offender commits petit theft of the first degree,

173 punishable as a misdemeanor of the first degree, as provided in

174 s. 775.082 or s. 775.083.

19-01126-17

20171102\_\_

175 Section 3. Subsection (8) of section 812.015, Florida  
 176 Statutes, is amended to read:  
 177 812.015 Retail and farm theft; transit fare evasion;  
 178 mandatory fine; alternative punishment; detention and arrest;  
 179 exemption from liability for false arrest; resisting arrest;  
 180 penalties.-  
 181 (8) Except as provided in subsection (9), a person who  
 182 commits retail theft commits a felony of the third degree,  
 183 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
 184 if the property stolen is valued at \$500 ~~300~~ or more, and the  
 185 person:  
 186 (a) Individually, or in concert with one or more other  
 187 persons, coordinates the activities of one or more individuals  
 188 in committing the offense, in which case the amount of each  
 189 individual theft is aggregated to determine the value of the  
 190 property stolen;  
 191 (b) Commits theft from more than one location within a 48-  
 192 hour period, in which case the amount of each individual theft  
 193 is aggregated to determine the value of the property stolen;  
 194 (c) Acts in concert with one or more other individuals  
 195 within one or more establishments to distract the merchant,  
 196 merchant's employee, or law enforcement officer in order to  
 197 carry out the offense, or acts in other ways to coordinate  
 198 efforts to carry out the offense; or  
 199 (d) Commits the offense through the purchase of merchandise  
 200 in a package or box that contains merchandise other than, or in  
 201 addition to, the merchandise purported to be contained in the  
 202 package or box.  
 203 Section 4. Section 812.0195, Florida Statutes, is amended

Page 7 of 43

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

19-01126-17

20171102\_\_

204 to read:  
 205 812.0195 Dealing in stolen property by use of the  
 206 Internet.-Any person in this state who uses the Internet to sell  
 207 or offer for sale any merchandise or other property that the  
 208 person knows, or has reasonable cause to believe, is stolen  
 209 commits:  
 210 (1) A misdemeanor of the second degree, punishable as  
 211 provided in s. 775.082 or s. 775.083, if the value of the  
 212 property is less than \$500 ~~300~~; or  
 213 (2) A felony of the third degree, punishable as provided in  
 214 s. 775.082, s. 775.083, or s. 775.084, if the value of the  
 215 property is \$500 ~~300~~ or more.  
 216 Section 5. Subsection (1) of section 832.04, Florida  
 217 Statutes, is amended to read:  
 218 832.04 Stopping payment; purchase of farm or grove  
 219 products.-  
 220 (1) Whoever, with intent to defraud any producer of farm or  
 221 grove products or product of such products or product shall, in  
 222 person or by agent, make, draw, utter, deliver, or give to such  
 223 producer any check, draft, or written order for the payment of  
 224 money upon any bank, person, or corporation and secure from such  
 225 producer such products or product for or on account of such  
 226 check, draft, or written order, whether such products or product  
 227 are valued at the amount of such check, draft, or written order  
 228 or at a greater or lesser value, and who shall, pursuant to and  
 229 in furtherance of such intent to defraud, stop payment on such  
 230 check, draft, or written order, commits ~~shall be deemed to be~~  
 231 ~~guilty of~~ a misdemeanor of the first degree, punishable as  
 232 provided in s. 775.082 or s. 775.083, if the value of the

Page 8 of 43

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

19-01126-17 20171102\_\_

233 products or product secured for or on account of such check,  
 234 draft, or written order is \$500 ~~\$150~~ or more; and if the value  
 235 of the products or product secured for or on account of such  
 236 check, draft, or written order is less than \$500 ~~\$150~~, he or she  
 237 ~~commits shall be guilty of~~ a misdemeanor of the second degree,  
 238 punishable as provided in s. 775.082 or s. 775.083.

239 Section 6. Subsection (1) of section 832.041, Florida  
 240 Statutes, is amended to read:

241 832.041 Stopping payment with intent to defraud.—

242 (1) Whoever, with intent to defraud any person shall, in  
 243 person or by agent, make, draw, utter, deliver, or give any  
 244 check, draft, or written order for the payment of money upon any  
 245 bank, person, or corporation and secure from such person goods  
 246 or services for or on account of such check, draft, or written  
 247 order, whether such goods or services are valued at the amount  
 248 of such check, draft, or written order or at a greater or lesser  
 249 value, and who shall, pursuant to and in furtherance of such  
 250 intent to defraud, stop payment on such check, draft, or written  
 251 order, ~~commits shall be deemed to be guilty of~~ a felony of the  
 252 third degree, punishable as provided in s. 775.082, s. 775.083,  
 253 or s. 775.084, if the value of the goods or services secured for  
 254 or on account of such check, draft, or written order is \$500  
 255 ~~\$150~~ or more; and if the value of the goods or services secured  
 256 for or on account of such check, draft, or written order is less  
 257 than \$500 ~~\$150~~, he or she ~~commits shall be guilty of~~ a  
 258 misdemeanor of the second degree, punishable as provided in s.  
 259 775.082 or s. 775.083.

260 Section 7. Paragraph (b) of subsection (2) and paragraph  
 261 (c) of subsection (4) of section 832.05, Florida Statutes, are

19-01126-17 20171102\_\_

262 amended to read:

263 832.05 Giving worthless checks, drafts, and debit card  
 264 orders; penalty; duty of drawee; evidence; costs; complaint  
 265 form.—

266 (2) WORTHLESS CHECKS, DRAFTS, OR DEBIT CARD ORDERS;  
 267 PENALTY.—

268 (b) A violation of the provisions of this subsection  
 269 constitutes a misdemeanor of the first degree, punishable as  
 270 provided in s. 775.082 or s. 775.083, unless the check, draft,  
 271 debit card order, or other written order drawn, made, uttered,  
 272 issued, or delivered is in the amount of \$500 ~~\$150~~, or its  
 273 equivalent, or more and the payee or a subsequent holder thereof  
 274 receives something of value therefor. In that event, the  
 275 violation constitutes a felony of the third degree, punishable  
 276 as provided in s. 775.082, s. 775.083, or s. 775.084.

277 (4) OBTAINING PROPERTY OR SERVICES IN RETURN FOR WORTHLESS  
 278 CHECKS, DRAFTS, OR DEBIT CARD ORDERS; PENALTY.—

279 (c) A violation of the provisions of this subsection, if  
 280 the check, draft, other written order, or debit card order is  
 281 for an amount less than \$500 ~~\$150~~ or its equivalent, constitutes  
 282 a misdemeanor of the first degree, punishable as provided in s.  
 283 775.082 or s. 775.083. A violation of the provisions of this  
 284 subsection, if the check, draft, other written order, or debit  
 285 card order is in the amount of \$500 ~~\$150~~, or its equivalent, or  
 286 more, constitutes a felony of the third degree, punishable as  
 287 provided in s. 775.082, s. 775.083, or s. 775.084.

288 Section 8. Subsection (2) of section 832.062, Florida  
 289 Statutes, is amended, and subsection (1) of that section is  
 290 republished, to read:

19-01126-17 20171102\_\_

291 832.062 Prosecution for worthless checks, drafts, debit  
 292 card orders, or electronic funds transfers made to pay any tax  
 293 or associated amount administered by the Department of Revenue.-  
 294 (1) It is unlawful for any person, firm, or corporation to  
 295 draw, make, utter, issue, or deliver to the Department of  
 296 Revenue any check, draft, or other written order on any bank or  
 297 depository, to use a debit card, to make, send, instruct, order,  
 298 or initiate any electronic funds transfer, or to cause or direct  
 299 the making, sending, instructing, ordering, or initiating of any  
 300 electronic funds transfer, for the payment of any taxes,  
 301 penalties, interest, fees, or associated amounts administered by  
 302 the Department of Revenue, knowing at the time of the drawing,  
 303 making, uttering, issuing, or delivering such check, draft, or  
 304 other written order, at the time of using such debit card, at  
 305 the time of making, sending, instructing, ordering, or  
 306 initiating any electronic funds transfer, or at the time of  
 307 causing or directing the making, sending, instructing, ordering,  
 308 initiating, or executing of any electronic funds transfer, that  
 309 the maker, drawer, sender, or receiver thereof has not  
 310 sufficient funds on deposit in or credit with such bank or  
 311 depository with which to pay the same on presentation. This  
 312 section does not apply to any check or electronic funds transfer  
 313 when the Department of Revenue knows or has been expressly  
 314 notified prior to the drawing or uttering of the check or the  
 315 sending or initiating of the electronic funds transfer, or has  
 316 reason to believe, that the drawer, sender, or receiver did not  
 317 have on deposit or to the drawer's, sender's, or receiver's  
 318 credit with the drawee or receiving bank or depository  
 319 sufficient funds to ensure payment as aforesaid, and this

19-01126-17 20171102\_\_

320 section does not apply to any postdated check.  
 321 (2) A violation of this section constitutes a misdemeanor  
 322 of the second degree, punishable as provided in s. 775.082 or s.  
 323 775.083, unless the check, draft, debit card order, or other  
 324 written order drawn, made, uttered, issued, or delivered, or  
 325 electronic funds transfer made, sent, instructed, ordered, or  
 326 initiated, or caused or directed to be made, sent, instructed,  
 327 ordered, or initiated is in the amount of \$500 ~~\$150~~ or more. In  
 328 that event, the violation constitutes a felony of the third  
 329 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 330 775.084.  
 331 Section 9. Paragraphs (a), (b), (d), and (e) of subsection  
 332 (3) of section 921.0022, Florida Statutes, are amended to read:  
 333 921.0022 Criminal Punishment Code; offense severity ranking  
 334 chart.-  
 335 (3) OFFENSE SEVERITY RANKING CHART  
 336 (a) LEVEL 1  
 337  
 338

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.

339  
 340  
 341

	19-01126-17		20171102__	
	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than <u>\$1,000</u> <del>\$300</del> but less than \$20,000.	
342				
	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.	
343				
	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.	
344				
	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.	
345				
	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.	
346				
	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.	
347				
	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.	
348				
	322.212(5)(a)	3rd	False application for driver	

Page 13 of 43

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

	19-01126-17		20171102__	
			license or identification card.	
349				
	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.	
350				
	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.	
351				
	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.	
352				
	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.	
353				
	562.27(1)	3rd	Possess still or still apparatus.	
354				
	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.	
355				
	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not	

Page 14 of 43

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

19-01126-17 20171102\_\_  
 specified in subsection (2).  
 356 812.081(2) 3rd Unlawfully makes or causes to  
 be made a reproduction of a  
 trade secret.  
 357 815.04(5)(a) 3rd Offense against intellectual  
 property (i.e., computer  
 programs, data).  
 358 817.52(2) 3rd Hiring with intent to defraud,  
 motor vehicle services.  
 359 817.569(2) 3rd Use of public record or public  
 records information or  
 providing false information to  
 facilitate commission of a  
 felony.  
 360 826.01 3rd Bigamy.  
 361 828.122(3) 3rd Fighting or baiting animals.  
 362 831.04(1) 3rd Any erasure, alteration, etc.,  
 of any replacement deed, map,  
 plat, or other document listed  
 in s. 92.28.  
 363 831.31(1)(a) 3rd Sell, deliver, or possess

Page 15 of 43

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

19-01126-17 20171102\_\_  
 counterfeit controlled  
 substances, all but s.  
 893.03(5) drugs.  
 364 832.041(1) 3rd Stopping payment with intent to  
 defraud \$500 ~~\$150~~ or more.  
 365 832.05(2)(b) & 3rd Knowing, making, issuing  
 (4)(c) worthless checks \$500 ~~\$150~~ or  
 more or obtaining property in  
 return for worthless check \$500  
~~\$150~~ or more.  
 366 838.15(2) 3rd Commercial bribe receiving.  
 367 838.16 3rd Commercial bribery.  
 368 843.18 3rd Fleeing by boat to elude a law  
 enforcement officer.  
 369 847.011(1)(a) 3rd Sell, distribute, etc.,  
 obscene, lewd, etc., material  
 (2nd conviction).  
 370 849.01 3rd Keeping gambling house.  
 371 849.09(1)(a)-(d) 3rd Lottery; set up, promote, etc.,  
 or assist therein, conduct or  
 advertise drawing for prizes,

Page 16 of 43

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

	19-01126-17		20171102__	
				or dispose of property or money by means of lottery.
372	849.23	3rd		Gambling-related machines; "common offender" as to property rights.
373	849.25(2)	3rd		Engaging in bookmaking.
374	860.08	3rd		Interfere with a railroad signal.
375	860.13(1) (a)	3rd		Operate aircraft while under the influence.
376	893.13(2) (a)2.	3rd		Purchase of cannabis.
377	893.13(6) (a)	3rd		Possession of cannabis (more than 20 grams).
378	934.03(1) (a)	3rd		Intercepts, or procures any other person to intercept, any wire or oral communication.
379				
380	(b) LEVEL 2			
381				
382				
	Florida Statute	Felony Degree		Description

	19-01126-17		20171102__	
383	379.2431 (1) (e)3.	3rd		Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
384	379.2431 (1) (e)4.	3rd		Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
385	403.413(6) (c)	3rd		Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
386	517.07(2)	3rd		Failure to furnish a prospectus meeting requirements.
387	590.28(1)	3rd		Intentional burning of lands.
388	784.05(3)	3rd		Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
389	787.04(1)	3rd		In violation of court order, take, entice, etc., minor

19-01126-17 20171102\_\_  
 beyond state limits.

390 806.13(1)(b)3. 3rd Criminal mischief; damage  
 \$1,000 or more to public  
 communication or any other  
 public service.

391 810.061(2) 3rd Impairing or impeding telephone  
 or power to a dwelling;  
 facilitating or furthering  
 burglary.

392 810.09(2)(e) 3rd Trespassing on posted  
 commercial horticulture  
 property.

393 812.014(2)(c)1. 3rd Grand theft, 3rd degree; \$1,000  
~~300~~ or more but less than  
 \$5,000.

394 812.014(2)(d) 3rd Grand theft, 3rd degree; \$300  
~~100~~ or more but less than  
\$1,000 ~~300~~, taken from  
 unenclosed curtilage of  
 dwelling.

395 812.015(7) 3rd Possession, use, or attempted  
 use of an antishoplifting or  
 inventory control device

19-01126-17 20171102\_\_  
 countermeasure.

396 817.234(1)(a)2. 3rd False statement in support of  
 insurance claim.

397 817.481(3)(a) 3rd Obtain credit or purchase with  
 false, expired, counterfeit,  
 etc., credit card, value over  
 \$300.

398 817.52(3) 3rd Failure to redeliver hired  
 vehicle.

399 817.54 3rd With intent to defraud, obtain  
 mortgage note, etc., by false  
 representation.

400 817.60(5) 3rd Dealing in credit cards of  
 another.

401 817.60(6)(a) 3rd Forgery; purchase goods,  
 services with false card.

402 817.61 3rd Fraudulent use of credit cards  
 over \$100 or more within 6  
 months.

403 826.04 3rd Knowingly marries or has sexual  
 intercourse with person to whom



19-01126-17 20171102\_\_

related.

404 831.01 3rd Forgery.

405 831.02 3rd Uttering forged instrument;  
utters or publishes alteration  
with intent to defraud.

406 831.07 3rd Forging bank bills, checks,  
drafts, or promissory notes.

407 831.08 3rd Possessing 10 or more forged  
notes, bills, checks, or  
drafts.

408 831.09 3rd Uttering forged notes, bills,  
checks, drafts, or promissory  
notes.

409 831.11 3rd Bringing into the state forged  
bank bills, checks, drafts, or  
notes.

410 832.05(3) (a) 3rd Cashing or depositing item with  
intent to defraud.

411 843.08 3rd False personation.

412 893.13(2) (a)2. 3rd Purchase of any s.

19-01126-17 20171102\_\_

893.03(1) (c), (2) (c)1.,  
(2) (c)2., (2) (c)3., (2) (c)5.,  
(2) (c)6., (2) (c)7., (2) (c)8.,  
(2) (c)9., (3), or (4) drugs  
other than cannabis.

413 893.147(2) 3rd Manufacture or delivery of drug  
paraphernalia.

414 (d) LEVEL 4

415

416

417

Florida Statute	Felony Degree	Description
418 316.1935(3) (a)	2nd	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.
419 499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
420 499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell,

	19-01126-17		20171102__	
				contraband prescription drugs.
421	517.07(1)	3rd		Failure to register securities.
422	517.12(1)	3rd		Failure of dealer, associated person, or issuer of securities to register.
423	784.07(2)(b)	3rd		Battery of law enforcement officer, firefighter, etc.
424	784.074(1)(c)	3rd		Battery of sexually violent predators facility staff.
425	784.075	3rd		Battery on detention or commitment facility staff.
426	784.078	3rd		Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
427	784.08(2)(c)	3rd		Battery on a person 65 years of age or older.
428	784.081(3)	3rd		Battery on specified official or employee.
429	784.082(3)	3rd		Battery by detained person on visitor or other detainee.

Page 23 of 43

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

	19-01126-17		20171102__	
430	784.083(3)	3rd		Battery on code inspector.
431	784.085	3rd		Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
432	787.03(1)	3rd		Interference with custody; wrongly takes minor from appointed guardian.
433	787.04(2)	3rd		Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
434	787.04(3)	3rd		Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
435	787.07	3rd		Human smuggling.
436	790.115(1)	3rd		Exhibiting firearm or weapon within 1,000 feet of a school.
437	790.115(2)(b)	3rd		Possessing electric weapon or

Page 24 of 43

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

19-01126-17 20171102\_\_  
 device, destructive device, or  
 other weapon on school  
 property.  
 438 790.115(2)(c) 3rd Possessing firearm on school  
 property.  
 439 800.04(7)(c) 3rd Lewd or lascivious exhibition;  
 offender less than 18 years.  
 440 810.02(4)(a) 3rd Burglary, or attempted  
 burglary, of an unoccupied  
 structure; unarmed; no assault  
 or battery.  
 441 810.02(4)(b) 3rd Burglary, or attempted  
 burglary, of an unoccupied  
 conveyance; unarmed; no assault  
 or battery.  
 442 810.06 3rd Burglary; possession of tools.  
 443 810.08(2)(c) 3rd Trespass on property, armed  
 with firearm or dangerous  
 weapon.  
 444 812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000  
 or more but less than \$20,000.  
 445

19-01126-17 20171102\_\_  
 812.014 3rd Grand theft, 3rd degree, a  
 (2)(c)4.-10. will, firearm, motor vehicle,  
 livestock, etc.  
 446 812.0195(2) 3rd Dealing in stolen property by  
 use of the Internet; property  
 stolen \$500 ~~\$300~~ or more.  
 447 817.563(1) 3rd Sell or deliver substance other  
 than controlled substance  
 agreed upon, excluding s.  
 893.03(5) drugs.  
 448 817.568(2)(a) 3rd Fraudulent use of personal  
 identification information.  
 449 817.625(2)(a) 3rd Fraudulent use of scanning  
 device or reencoder.  
 450 828.125(1) 2nd Kill, maim, or cause great  
 bodily harm or permanent  
 breeding disability to any  
 registered horse or cattle.  
 451 837.02(1) 3rd Perjury in official  
 proceedings.  
 452 837.021(1) 3rd Make contradictory statements  
 in official proceedings.

	19-01126-17		20171102__
453	838.022	3rd	Official misconduct.
454	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
455	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
456	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
457	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
458	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
459	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
460	874.05(1)(a)	3rd	Encouraging or recruiting

	19-01126-17		20171102__
			another to join a criminal gang.
461	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
462	914.14(2)	3rd	Witnesses accepting bribes.
463	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
464	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
465	918.12	3rd	Tampering with jurors.
466	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
467			
468	(e) LEVEL 5		
469			
470	Florida	Felony	Description
	Statute	Degree	
471			

	19-01126-17		20171102__
	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
472			
	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
473			
	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
474			
	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
475			
	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
476			
	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or

Page 29 of 43

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

	19-01126-17		20171102__
			reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
477			
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
478			
	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
479			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
480			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
481			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
482			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers'

Page 30 of 43

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

19-01126-17 20171102\_\_  
 compensation premiums.

483 624.401(4)(b)2. 2nd Transacting insurance without a  
 certificate or authority;  
 premium collected \$20,000 or  
 484 more but less than \$100,000.

626.902(1)(c) 2nd Representing an unauthorized  
 485 insurer; repeat offender.

790.01(2) 3rd Carrying a concealed firearm.

486 790.162 2nd Threat to throw or discharge  
 destructive device.

487 790.163(1) 2nd False report of bomb,  
 explosive, weapon of mass  
 488 destruction, or use of firearms  
 in violent manner.

790.221(1) 2nd Possession of short-barreled  
 489 shotgun or machine gun.

790.23 2nd Felons in possession of  
 firearms, ammunition, or  
 490 electronic weapons or devices.

796.05(1) 2nd Live on earnings of a  
 prostitute; 1st offense.

Page 31 of 43

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

19-01126-17 20171102\_\_

491 800.04(6)(c) 3rd Lewd or lascivious conduct;  
 offender less than 18 years of  
 age.

492 800.04(7)(b) 2nd Lewd or lascivious exhibition;  
 offender 18 years of age or  
 493 older.

806.111(1) 3rd Possess, manufacture, or  
 dispense fire bomb with intent  
 to damage any structure or  
 494 property.

812.0145(2)(b) 2nd Theft from person 65 years of  
 age or older; \$10,000 or more  
 but less than \$50,000.

495 812.015(8) 3rd Retail theft; property stolen  
 is valued at \$500 ~~\$300~~ or more  
 and one or more specified acts.

496 812.019(1) 2nd Stolen property; dealing in or  
 trafficking in.

497 812.131(2)(b) 3rd Robbery by sudden snatching.

498 812.16(2) 3rd Owning, operating, or  
 conducting a chop shop.

Page 32 of 43

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

	19-01126-17		20171102__
499	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
500	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
501	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 entity.
502	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.
503	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
504			

Page 33 of 43

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

	19-01126-17		20171102__
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
505	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
506	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
507	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
508	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.
509	843.01	3rd	Resist officer with violence to person; resist arrest with violence.

Page 34 of 43

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

19-01126-17 20171102\_\_

510 847.0135(5)(b) 2nd Lewd or lascivious exhibition  
using computer; offender 18  
years or older.

511 847.0137 3rd Transmission of pornography by  
(2) & (3) electronic device or equipment.

512 847.0138 3rd Transmission of material  
(2) & (3) harmful to minors to a minor by  
electronic device or equipment.

513 874.05(1)(b) 2nd Encouraging or recruiting  
another to join a criminal  
gang; second or subsequent  
offense.

514 874.05(2)(a) 2nd Encouraging or recruiting  
person under 13 years of age to  
join a criminal gang.

515 893.13(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.  
drugs).

516 893.13(1)(c)2. 2nd Sell, manufacture, or deliver  
cannabis (or other s.

19-01126-17 20171102\_\_

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.

517 893.13(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.

518 893.13(1)(e)2. 2nd Sell, manufacture, or deliver  
cannabis or other drug  
prohibited 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.

519



19-01126-17 20171102\_\_

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.

893.13(4)(b) 2nd Use or hire of minor; deliver to minor other controlled substance.

893.1351(1) 3rd Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Section 10. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, section 634.319, Florida Statutes, is reenacted to read:

634.319 Reporting and accounting for funds.—

(1) All funds belonging to insurers, home warranty associations, or others received by a sales representative in transactions under her or his license and appointment are trust funds so received by the sales representative in a fiduciary capacity; and the sales representative, in the applicable regular course of business, shall account for and pay such funds to the insurer, association, warranty holder, or other person entitled thereto.

(2) Any sales representative who, not being entitled

19-01126-17 20171102\_\_

thereto, diverts or appropriates such funds or any portion thereof to her or his own use is, upon conviction, guilty of theft, punishable as provided in s. 812.014.

Section 11. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, section 634.421, Florida Statutes, is reenacted to read:

634.421 Reporting and accounting for funds.—

(1) All funds belonging to insurers, service warranty associations, or others received by a sales representative in transactions under her or his license or appointment are trust funds so received by the sales representative or agent in a fiduciary capacity; and the sales representative or agent, in the applicable regular course of business, shall account for and pay such funds to the insurer, association, warranty holder, or other person entitled thereto.

(2) Any sales representative who, not being entitled thereto, diverts or appropriates funds or any portion thereof to her or his own use commits theft as provided in s. 812.014.

Section 12. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (3) of section 636.238, Florida Statutes, is reenacted to read:

636.238 Penalties for violation of this part.—

(3) A person who collects fees for purported membership in a discount medical plan but purposefully fails to provide the promised benefits commits a theft, punishable as provided in s. 812.014.

Section 13. For the purpose of incorporating the amendment

19-01126-17 20171102\_\_

566 made by this act to section 812.014, Florida Statutes, in a  
 567 reference thereto, subsection (2) of section 642.038, Florida  
 568 Statutes, is reenacted to read:  
 569 642.038 Reporting and accounting for funds.—  
 570 (2) Any sales representative who, not being entitled  
 571 thereto, diverts or appropriates such funds or any portion  
 572 thereof to his or her own use commits theft as provided in s.  
 573 812.014.

574 Section 14. For the purpose of incorporating the amendment  
 575 made by this act to section 812.014, Florida Statutes, in a  
 576 reference thereto, subsection (4) of section 705.102, Florida  
 577 Statutes, is reenacted to read:  
 578 705.102 Reporting lost or abandoned property.—  
 579 (4) Any person who unlawfully appropriates such lost or  
 580 abandoned property to his or her own use or refuses to deliver  
 581 such property when required commits theft as defined in s.  
 582 812.014, punishable as provided in s. 775.082, s. 775.083, or s.  
 583 775.084.

584 Section 15. For the purpose of incorporating the amendment  
 585 made by this act to section 812.014, Florida Statutes, in a  
 586 reference thereto, subsection (1) of section 812.0155, Florida  
 587 Statutes, is reenacted to read:  
 588 812.0155 Suspension of driver license following an  
 589 adjudication of guilt for theft.—  
 590 (1) Except as provided in subsections (2) and (3), the  
 591 court may order the suspension of the driver license of each  
 592 person adjudicated guilty of any misdemeanor violation of s.  
 593 812.014 or s. 812.015, regardless of the value of the property  
 594 stolen. Upon ordering the suspension of the driver license of

19-01126-17 20171102\_\_

595 the person adjudicated guilty, the court shall forward the  
 596 driver license of the person adjudicated guilty to the  
 597 Department of Highway Safety and Motor Vehicles in accordance  
 598 with s. 322.25.

599 (a) The first suspension of a driver license under this  
 600 subsection shall be for a period of up to 6 months.

601 (b) A second or subsequent suspension of a driver license  
 602 under this subsection shall be for 1 year.

603 Section 16. For the purpose of incorporating the amendment  
 604 made by this act to section 812.014, Florida Statutes, in a  
 605 reference thereto, paragraph (b) of subsection (1) of section  
 606 985.11, Florida Statutes, is reenacted to read:  
 607 985.11 Fingerprinting and photographing.—  
 608 (1)  
 609 (b) Unless the child is issued a civil citation or is  
 610 participating in a similar diversion program pursuant to s.  
 611 985.12, a child who is charged with or found to have committed  
 612 one of the following offenses shall be fingerprinted, and the  
 613 fingerprints shall be submitted to the Department of Law  
 614 Enforcement as provided in s. 943.051(3)(b):  
 615 1. Assault, as defined in s. 784.011.  
 616 2. Battery, as defined in s. 784.03.  
 617 3. Carrying a concealed weapon, as defined in s. 790.01(1).  
 618 4. Unlawful use of destructive devices or bombs, as defined  
 619 in s. 790.1615(1).  
 620 5. Neglect of a child, as defined in s. 827.03(1)(e).  
 621 6. Assault on a law enforcement officer, a firefighter, or  
 622 other specified officers, as defined in s. 784.07(2)(a).  
 623 7. Open carrying of a weapon, as defined in s. 790.053.

19-01126-17 20171102\_\_

624 8. Exposure of sexual organs, as defined in s. 800.03.  
 625 9. Unlawful possession of a firearm, as defined in s.  
 626 790.22(5).  
 627 10. Petit theft, as defined in s. 812.014.  
 628 11. Cruelty to animals, as defined in s. 828.12(1).  
 629 12. Arson, resulting in bodily harm to a firefighter, as  
 630 defined in s. 806.031(1).  
 631 13. Unlawful possession or discharge of a weapon or firearm  
 632 at a school-sponsored event or on school property as defined in  
 633 s. 790.115.  
 634  
 635 A law enforcement agency may fingerprint and photograph a child  
 636 taken into custody upon probable cause that such child has  
 637 committed any other violation of law, as the agency deems  
 638 appropriate. Such fingerprint records and photographs shall be  
 639 retained by the law enforcement agency in a separate file, and  
 640 these records and all copies thereof must be marked "Juvenile  
 641 Confidential." These records are not available for public  
 642 disclosure and inspection under s. 119.07(1) except as provided  
 643 in ss. 943.053 and 985.04(2), but shall be available to other  
 644 law enforcement agencies, criminal justice agencies, state  
 645 attorneys, the courts, the child, the parents or legal  
 646 custodians of the child, their attorneys, and any other person  
 647 authorized by the court to have access to such records. In  
 648 addition, such records may be submitted to the Department of Law  
 649 Enforcement for inclusion in the state criminal history records  
 650 and used by criminal justice agencies for criminal justice  
 651 purposes. These records may, in the discretion of the court, be  
 652 open to inspection by anyone upon a showing of cause. The

19-01126-17 20171102\_\_

653 fingerprint and photograph records shall be produced in the  
 654 court whenever directed by the court. Any photograph taken  
 655 pursuant to this section may be shown by a law enforcement  
 656 officer to any victim or witness of a crime for the purpose of  
 657 identifying the person who committed such crime.  
 658 Section 17. For the purpose of incorporating the amendment  
 659 made by this act to section 812.014, Florida Statutes, in a  
 660 reference thereto, paragraph (a) of subsection (1) of section  
 661 985.557, Florida Statutes, is reenacted to read:  
 662 985.557 Direct filing of an information; discretionary and  
 663 mandatory criteria.—  
 664 (1) DISCRETIONARY DIRECT FILE.—  
 665 (a) With respect to any child who was 14 or 15 years of age  
 666 at the time the alleged offense was committed, the state  
 667 attorney may file an information when in the state attorney's  
 668 judgment and discretion the public interest requires that adult  
 669 sanctions be considered or imposed and when the offense charged  
 670 is for the commission of, attempt to commit, or conspiracy to  
 671 commit:  
 672 1. Arson;  
 673 2. Sexual battery;  
 674 3. Robbery;  
 675 4. Kidnapping;  
 676 5. Aggravated child abuse;  
 677 6. Aggravated assault;  
 678 7. Aggravated stalking;  
 679 8. Murder;  
 680 9. Manslaughter;  
 681 10. Unlawful throwing, placing, or discharging of a

19-01126-17

20171102\_\_

682 destructive device or bomb;

683 11. Armed burglary in violation of s. 810.02(2)(b) or

684 specified burglary of a dwelling or structure in violation of s.

685 810.02(2)(c), or burglary with an assault or battery in

686 violation of s. 810.02(2)(a);

687 12. Aggravated battery;

688 13. Any lewd or lascivious offense committed upon or in the

689 presence of a person less than 16 years of age;

690 14. Carrying, displaying, using, threatening, or attempting

691 to use a weapon or firearm during the commission of a felony;

692 15. Grand theft in violation of s. 812.014(2)(a);

693 16. Possessing or discharging any weapon or firearm on

694 school property in violation of s. 790.115;

695 17. Home invasion robbery;

696 18. Carjacking; or

697 19. Grand theft of a motor vehicle in violation of s.

698 812.014(2)(c)6. or grand theft of a motor vehicle valued at

699 \$20,000 or more in violation of s. 812.014(2)(b) if the child

700 has a previous adjudication for grand theft of a motor vehicle

701 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

702 Section 18. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.27.17

Meeting Date

1102

Bill Number (if applicable)

Topic Criminal Offense

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Constituency Services

Address 401 S Magnolia DR #4

Phone 850-425-2600

Street

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 Children's Campaign

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17

Meeting Date

SB 1102

Bill Number (if applicable)

Topic Theft Offenses

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St. Ste 401

Phone (850) 606-1014

Street

Tallahassee FL 32301

City

State

Zip

Email andy.thomas@fpd2.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] 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)

3/27/17  
Meeting Date

1102  
Bill Number (if applicable)

Topic Criminal offenses

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 824 N. DUNN ST.

Phone 9045570016

Street

TAMMANSSEE FL 32303

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing RIGHT ON CRIME

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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)

March 27, 2017

*Meeting Date*

1102

*Bill Number (if applicable)*

Topic Criminal Justice Reform

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address PO Box 10788

Phone 850-521-3042

*Street*

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Southern Poverty Law Center

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)

3/27/17

Meeting Date

1102

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Sheriff Bob Gualtieri

Job Title Sheriff

Address 10750 Ulmerton Rd  
Street

Phone 7275826200

Largo FL 33778  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Sheriffs Assoc.

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)

Mch 17  
Meeting Date

1102  
Bill Number (if applicable)

Topic Criminal offenses

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone 850.510.9922

Street

Tall

FL

32301

Email

City

State

Zip

Speaking:  For  Against  Information

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

Representing 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.



The Florida Senate

## Committee Agenda Request

**To:** Senator Randolph Bracy, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 9, 2017



---

I respectfully request that **Senate Bill #1102**, relating to Criminal Offenses, be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Rouson".

---

Senator Darryl Rouson  
Florida Senate, District 19

CC: Sen. Dennis Braxley, VC; Jennifer Hrdlucka, SD; Sue Arnold AA

File signed original with committee office

S-020 (03/2004)

**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 1194

INTRODUCER: Senator Bracy

SUBJECT: Sentencing

DATE: March 24, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	<b>Favorable</b>
2.			JU	
3.			AP	

---

## I. Summary:

SB 1194 amends the Criminal Punishment Code (Code) to create upward departure sentencing for noncapital felony offenses committed on or after October 1, 2017. An upward departure sentence is a sentence that exceeds a specified permissible sentencing range. In order to impose an upward departure sentence, the court must provide a written statement specifying the reasons for the departure. The bill lists a number of “aggravating circumstances” for which an upward departure sentence is reasonably justified. The defendant and the state may appeal a sentence outside the permissible sentencing range.

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed the bill. A preliminary estimate by the Legislature’s Office of Economic and Demographic Research is that the bill will have a “negative indeterminate impact” (an unquantifiable decrease in prison beds). See Section V. Fiscal Impact.

## II. Present Situation:

### Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code<sup>1</sup> (Code) as Florida’s “primary sentencing policy.”<sup>2</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>3</sup> Points are assigned and accrue based upon the level ranking

---

<sup>1</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

<sup>2</sup> *Florida’s Criminal Punishment Code: A Comparative Assessment (FY 2012-2013)* (Executive Summary), Florida Department of Corrections, available at [http://www.dc.state.fl.us/pub/sg\\_annual/1213/executives.html](http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html) (last visited on March 9, 2017).

<sup>3</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

assigned to the primary offense, additional offenses, and prior offenses.<sup>4</sup> Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

Absent mitigation,<sup>5</sup> the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to, and including, the maximum sentence provided in s. 775.082, F.S.<sup>6</sup> However, if the offender's offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.<sup>7</sup> Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.<sup>8</sup>

### **Upward Departure Sentences under the Former Sentencing Guidelines**

Under the former (pre-Code) sentencing guidelines, a recommended sentence was scored and the court was authorized to sentence within permitted sentencing ranges (based upon scored total sentence points).<sup>9</sup> If the court wished to impose a prison sentence that varied upward by more than 25 percent from the recommended guidelines prison sentence, the court had to provide a written statement delineating the reasons for the departure.<sup>10</sup> This type of sentence was often referred to as an "upward departure" sentence. The Legislature provided a list of some reasons for which a departure was reasonably justified. These departure reasons were referred to as

---

<sup>4</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>5</sup> The court may "mitigate" (reduce) the scored lowest permissible sentence if the court finds a mitigating circumstance. Sections 921.002(1)(g) and (3), 921.0026(1), and 921.00265(1) and (2), F.S. Section 921.0026(2), F.S., provides a list of mitigating circumstances. This type of sentence is often referred to as a "downward departure" sentence.

<sup>6</sup> Sections 921.002(1)(g) and 921.0024(2), F.S. The sentencing court may impose sentences concurrently or consecutively. Section 921.0024(2), F.S. A prison sentence must exceed one year. *Id.* If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. *Id.* If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. *Id.*

<sup>7</sup> Fla. R. Crim. P. 3.704(d)(26).

<sup>8</sup> *See e.g.*, s. 775.082(10), F.S. (diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections' prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).

<sup>9</sup> Sections 921.0014(1)(b) and 921.0016(1)(b), F.S. (1997). If total sentence points were less than or equal to 40, the recommended sentence was a nonstate prison sanction, but the court could increase total sentence points by up to, and including, 15 percent. Section 921.0014(2), F.S. (1997). If total sentence points were greater than 40 and less than or equal to 52, the court could impose a state prison sentence. *Id.* If total sentence points were greater than 52, the court was required to impose a prison sentence calculated by total sentence points. *Id.* Recommended sentence length in state prison months could be increased by up to, and including, 25 percent, but could not be increased if total sentence points had been increased by up to, and including, 15 percent. *Id.*

<sup>10</sup> Section 921.0016(1)(c), F.S. (1997). The statement had to be filed within 7 days after the date of sentencing. *Id.* A written transcription of orally stated reasons for departure from the guidelines at sentencing was permissible if it was filed within 7 days after the date of sentencing. *Id.*

“aggravating circumstances.”<sup>11</sup> An upward departure sentence had to be within any relevant maximum sentence provided by s. 775.082, F.S.<sup>12</sup>

Under the former sentencing guidelines, the failure of a trial court to impose a sentence within the sentencing guidelines was subject to appellate review under ch. 924, F.S., but the extent of departure from a guidelines sentence was not subject to appellate review.<sup>13</sup> Under ch. 924, F.S., a defendant and the state were authorized to appeal a sentence imposed outside the range permitted by the guidelines authorized under ch. 921, F.S.<sup>14</sup> In contrast, currently under the Code, only a downward departure sentence may be appealed and only the state may appeal this departure.<sup>15</sup> With few exceptions,<sup>16</sup> a Code sentence within the range of the lowest permissible sentence up to and including the statutory maximum penalty is not appealable: “As to the sentence itself, ‘the general rule in Florida is that when a sentence is *within statutory limits*, it is not subject to review by an appellate court.’”<sup>17</sup>

### III. Effect of Proposed Changes:

The bill amends the Criminal Punishment Code (Code) to create upward departure sentencing for noncapital felony offenses committed on or after October 1, 2017. An upward departure sentence is a sentence that exceeds a specified permissible sentencing range. Provided below is a section-by-section analysis of the bill:

**Section 1** of the bill amends s. 921.002, F.S., which provides principles and requirements regarding the Code and appeals of Code sentencing. New provisions are added relating to upward departure sentencing under the Code (see descriptions of sections 2 and 3 of the bill), which are applicable to any noncapital felony offense committed on or after October 1, 2017. These provisions:

- Require that reasons for an upward departure sentence be articulated in writing;

<sup>11</sup> Section 921.0016(3), F.S. (1997).

<sup>12</sup> Section 921.0016(1)(e), F.S. (1997). Section 775.082(3), F.S., provides the maximum sentences for felonies. The maximum sentences for noncapital felonies are: 5 years imprisonment for a third degree felony; 15 years imprisonment for a second degree felony; generally 30 years imprisonment for a first degree felony; and generally life imprisonment or imprisonment for a term of years not exceeding life imprisonment for a life felony. *Id.*

<sup>13</sup> Section 921.0016(2), F.S. (1997).

<sup>14</sup> Section 924.06(1)(e), F.S. (1997), authorized this appeal by a defendant. Section 924.07(1)(i), F.S. (1997), authorized this appeal by the state.

<sup>15</sup> Section 924.06, F.S., does not address an appeal by a defendant of a downward departure sentence. Section 924.07(1)(i), F.S., authorizes the state to appeal a downward departure sentence. The extent of downward departure is not subject to appellate review. Section 921.0026(1), F.S.

<sup>16</sup> An exception is fundamental error. A defendant challenging a sentencing error must generally file a motion under Fla. R. Crim. P. 3.800(b) in order to raise fundamental error on appeal. *Nawaz v. State*, 28 So.3d 122, 124 (Fla. 1st DCA 2010). A defendant is not required to file a motion under this rule in order to appeal fundamental error in the sentencing process. *Id.* Fundamental error in the sentencing process is error “basic to the judicial decision under review and equivalent to a denial of due process.” *State v. Johnson*, 616 So.2d 1, 3 (Fla. 1993). A sentence may be within statutory limits but if the trial court considered “constitutionally impermissible factors” in imposing the sentence, then the court committed fundamental error. *Nawaz*, 28 So.3d at 124. For example, it is fundamental error if a court considered “charges of which an accused has been acquitted in passing sentence.” *Epprecht v. State*, 488 So.2d 129, 131 (Fla. 3d DCA 1986).

<sup>17</sup> *Charles v. State*, 204 So.3d 63, 66 (Fla. 4th DCA 2016), quoting *Howard v. State*, 820 So.2d 337, 339 (Fla. 4th DCA 2002) (emphasis provided by the court). A defendant may appeal a Code sentence that exceeds the statutory maximum penalty under s. 775.082, F.S., unless otherwise provided by law. Section 924.06(1)(e), F.S.

- Specify the level of proof (preponderance of the evidence) necessary to establish facts supporting the departure;
- Provide that an upward departure sentence will be upheld when at least one circumstance supports the departure (even if there is a circumstance found that does not justify the departure); and
- Authorize an appeal by a defendant and the state of a sentence outside the permissible sentencing range.

**Section 2** of the bill amends s. 921.0024, F.S., the Code worksheet, to create a new subsection (3), which applies to any noncapital felony offense committed on or after October 1, 2017. New subsection (3) tracks current law relating to Code sentencing as follows:

- Adheres to the current method for calculating total sentence points and the lowest permissible sentence in prison months (when total sentence points exceed 44 points);
- Authorizes concurrent or consecutive sentencing;
- Requires that the lowest permissible sentence in prison months be imposed if this sentence exceeds the statutory maximum sentence provided in s. 775.082, F.S.;
- Authorizes life imprisonment if total sentence points are greater than or equal to 363;
- Prohibits an offender sentenced to life imprisonment from any form of discretionary early release, except executive clemency or conditional medical release; and
- Adheres to any requirement under s. 921.0024(1), F.S., to impose a statutory maximum sentence.<sup>18</sup>

Sentencing under new subsection (3) also differs substantially from sentencing under the current Code.

Sentencing under the current Code:

- If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, unless the court determines that a sentence up to the statutory maximum is appropriate.
- If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated. Generally, the permissible sentencing range is the scored lowest permissible sentence in prison months up to and including the statutory maximum under s. 775.082, F.S. However, if the calculated lowest permissible sentence exceeds the statutory maximum under s. 775.082, F.S., the lowest permissible sentence is imposed.

Sentencing under the bill:

- Under new paragraph (3)(c), if total sentence points equal or are less than 44 points, the court may impose a nonstate prison sanction or the court may increase the total sentence points by up to, and including, 25 percent.
- Under new paragraph (3)(c), if total sentence points exceed 44 points as a result of this “up to 25 percent increase,” the court may not impose a state prison sentence that is longer than the scored lowest permissible sentence in prison months (calculated under new paragraph (3)(d)).

<sup>18</sup> Section 921.0024(1)(b), F.S., provides for sentence point multipliers for an offense related to a criminal gang and for an adult-on-minor sex offense. If application of either multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under ch. 775, F.S., the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

- Paragraph (3)(d), specifies how the lowest permissible sentence in prison months is calculated (when total sentence points exceed 44 points). The calculation is identical to the current Code. It also follows the current Code in providing that if the calculated lowest permissible sentence exceeds the statutory maximum under s. 775.082, F.S., the lowest permissible sentence is imposed.
- New paragraph (3)(e) applies to the defendant whose total sentence points exceed 44 points. The defendant's lowest permissible sentence in prison months is calculated under new paragraph (3)(d). Once calculated, the court is permitted under new paragraph (3)(e) to impose a state prison sentence that does not vary upward by more than 25 percent from the scored lowest permissible sentence in prison months. This sentence may not exceed the statutory maximum sentence provided in s. 775.082, F.S.
- New paragraph (3)(f) specifies that, except as provided in s. 921.00261, F.S. (upward departure sentencing), the trial court may not impose a prison sentence that varies upward by more than 25 percent from the scored lowest permissible sentence in prison months. The permissible range for sentencing for an upward departure sentence imposed by the court pursuant to s. 921.00261, F.S., is the lowest permissible sentence up to and including the statutory maximum sentence provided in s. 775.082, F.S.

**Section 3** of the bill creates s. 921.00261, F.S., which explains what sentence constitutes an upward departure sentence and what requirements must be met by the trial court to impose this departure sentence:

- A sentence pursuant to s. 921.0024(3)(d) or (e), F.S., is not an upward departure sentence. An upward departure sentence is a state prison sentence that varies upward by *more* than 25 percent from the lowest permissible sentence in prison months calculated pursuant to s. 921.0024(3)(d), F.S.
- The trial court may impose an upward departure sentence only if the sentence is accompanied by a written statement from the court specifying the reasons for the departure, filed within 7 days after the date of sentencing. A written transcription of orally stated reasons for this departure is permissible if it is filed by the court within 7 days after the date of sentencing.
- The imposition of a split sentence of incarceration followed by community control or probation does not by itself constitute an upward departure. For the purpose of determining the maximum sentence authorized by law, any community control portion of a split sentence does not constitute a term of imprisonment.
- An upward departure sentence must be within any relevant maximum sentence limitations provided by s. 775.082, F.S.
- An upward departure sentence is discouraged unless there are circumstances or factors that reasonably justify the departure. The failure of the trial court to impose a sentence within the range authorized by s. 921.0024(3), F.S., is subject to appellate review under ch. 924, F.S., but the extent of the departure from such range is not subject to appellate review.

Aggravating circumstances to be considered include, but are not limited to, the following.

- The departure results from a legitimate, uncoerced plea bargain.
- The offense was one of violence and was committed in a manner that was especially heinous, atrocious, or cruel.



- The offenses before the court for sentencing arose out of separate episodes, the primary offense is scored at offense level 4 or higher, and the defendant has committed five or more offenses within a 180-day period which have resulted in convictions.
- The primary offense is scored at offense level 3, and the defendant has committed eight or more offenses within a 180-day period which have resulted in convictions.
- The offense before the court for disposition was committed within 6 months after the defendant was discharged from probation, community control, or pretrial intervention or diversion or released from state prison, whichever is later.
- The defendant occupied a leadership role in a criminal organization.
- The offense was committed by a public official under color of office.
- The defendant knew the victim was a law enforcement officer at the time of the offense, the offense was a violent offense, and that status is not an element of the primary offense.
- The offense created a substantial risk of death or great bodily harm to many persons or to one or more children.
- The victim was especially vulnerable due to age or physical or mental disability.
- The offense was motivated by prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, or national origin of the victim.
- The victim suffered extraordinary physical or emotional trauma or permanent physical injury or was treated with particular cruelty.
- The victim was physically attacked by the defendant in the presence of one or more members of the victim's family.
- The offense resulted in substantial economic hardship to the victim and consisted of an illegal act or acts committed by means of concealment, guile, or fraud to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage, when two or more of the following circumstances were present:
  - The offense involved multiple victims or multiple incidents per victim.
  - The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time.
  - The defendant used position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationship; or
  - The defendant was in the past involved in other conduct similar to that involved in the current offense.
- The offense was committed in order to prevent or avoid arrest, to impede or prevent prosecution for the conduct underlying the offense, or to effect an escape from custody.
- The defendant is not amenable to rehabilitation or supervision, as evidenced by an escalating pattern of criminal conduct, which is a progression from nonviolent to violent crimes, a progression of increasingly violent crimes, or a pattern of increasingly serious criminal activity.
- The defendant induced a minor to participate in any of the offenses pending before the court for disposition.
- The primary offense is scored at offense level 7 or higher, and the defendant has been convicted of one more offense that scored, or would have scored, at an offense level 8 or higher.
- The defendant has an extensive unscorable juvenile record.
- The defendant committed an offense involving sexual contact or sexual penetration, and, as a direct result of the offense, the victim contracted a sexually transmissible disease.

Most of the provisions of s. 921.00261, F.S., including the listed aggravating circumstances, mirror provisions of prior law relating to the pre-Code sentencing guidelines.<sup>19</sup>

**Section 4** amends s. 924.06, F.S., to authorize a defendant to appeal a sentence imposed outside the range authorized by s. 921.0024(3), F.S.

**Section 5** amends s. 924.07, F.S. to authorize the state to appeal a sentence imposed outside the range authorized by s. 921.0024(3), F.S.

**Section 6** reenacts s. 958.04, F.S. This reenactment is to incorporate amendments made by the bill to ss. 924.06 and 924.07, F.S.

**Section 7** provides that the bill takes effect October 1, 2017.

#### **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 prison bed impact, if any, of legislation has not yet reviewed the bill. A preliminary estimate by the Legislature's Office of Economic and Demographic Research (EDR) is that the bill will have a "negative indeterminate impact" (an unquantifiable decrease in prison beds). The EDR notes: "It is not known how current court discretion will be impacted by these changes to sentencing under the Code, especially the creation of upward departure

---

<sup>19</sup> See s. 921.0016, F.S. (1997).

sentencing. Furthermore, since upward departure sentencing does not currently exist under the Code (generally, the sentencing range is the lowest permissible sentence up to the statutory maximum), the prison bed impact of sentencing as proposed in the bill cannot be ascertained from DOC data on sentencing.”<sup>20</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 921.002, 921.0024, 924.06, and 924.07.

This bill creates section 921.00261 of the Florida Statutes.

This bill reenacts section 958.04 of the Florida Statutes. This reenactment is to incorporate amendments made by the bill to ss. 924.06 and 924.07, F.S.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

---

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

---

---

<sup>20</sup> Impact information was provided by staff of the Office of Economic and Demographic Research on March 6, 2017 via e-mail (on file with the Senate Committee on Criminal Justice).

By Senator Bracy

11-01088-17

20171194\_\_

1 A bill to be entitled  
 2 An act relating to sentencing; amending s. 921.002,  
 3 F.S.; specifying requirements for sentencing and  
 4 appeals of sentences for offenses committed on or  
 5 after a certain date; authorizing upward departures of  
 6 sentences under certain circumstances; amending s.  
 7 921.0024, F.S.; providing applicability; creating  
 8 requirements for permissible sentences for nonstate  
 9 prison sanctions and state prison sanctions;  
 10 authorizing a judge to depart from the guidelines  
 11 under certain circumstances; prohibiting departure  
 12 sentences under certain circumstances; creating s.  
 13 921.00261, F.S.; providing applicability; defining the  
 14 term "upward departure sentence"; specifying  
 15 requirements for imposing an upward departure  
 16 sentence; providing a circumstance under which a  
 17 sentence is subject to appellate review; providing  
 18 aggravating circumstances under which an upward  
 19 departure sentence is reasonably justified; amending  
 20 s. 924.06, F.S.; authorizing a defendant to appeal a  
 21 sentence outside a specified range; amending s.  
 22 924.07, F.S.; authorizing the state to appeal a  
 23 sentence outside a specified range; reenacting s.  
 24 958.04(3), F.S., relating to judicial disposition of  
 25 youthful offenders, to incorporate the amendments made  
 26 to ss. 924.06 and 924.07, F.S, in references thereto;  
 27 providing an effective date.  
 28  
 29 Be It Enacted by the Legislature of the State of Florida:

Page 1 of 11

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

11-01088-17

20171194\_\_

30  
 31 Section 1. Present paragraphs (g), (h), and (i) of  
 32 subsection (1) of section 921.002, Florida Statutes, are  
 33 redesignated as paragraphs (h), (i), and (k), respectively, new  
 34 paragraphs (g) and (j) are added to that subsection, present  
 35 paragraphs (g) and (h) of that subsection are amended, present  
 36 subsection (4) of that section is redesignated as subsection  
 37 (5), and a new subsection (4) is added to that section, to read:  
 38 921.002 The Criminal Punishment Code.—The Criminal  
 39 Punishment Code shall apply to all felony offenses, except  
 40 capital felonies, committed on or after October 1, 1998.  
 41 (1) The provision of criminal penalties and of limitations  
 42 upon the application of such penalties is a matter of  
 43 predominantly substantive law and, as such, is a matter properly  
 44 addressed by the Legislature. The Legislature, in the exercise  
 45 of its authority and responsibility to establish sentencing  
 46 criteria, to provide for the imposition of criminal penalties,  
 47 and to make the best use of state prisons so that violent  
 48 criminal offenders are appropriately incarcerated, has  
 49 determined that it is in the best interest of the state to  
 50 develop, implement, and revise a sentencing policy. The Criminal  
 51 Punishment Code embodies the principles that:  
 52 (g) An upward departure sentence, as defined in s.  
 53 921.00261, must be articulated in writing by the trial court  
 54 judge and made only when circumstances or factors reasonably  
 55 justify such sentence. The level of proof necessary to establish  
 56 facts that support an upward departure sentence is a  
 57 preponderance of the evidence.  
 58 (h)(g) Except as provided in s. 921.0024(3), the trial

Page 2 of 11

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

11-01088-17 20171194\_\_

59 court judge may impose a sentence up to and including the  
60 statutory maximum for any offense, including an offense that is  
61 before the court due to a violation of probation or community  
62 control.

63 (i) ~~(h)~~ A sentence for an offense committed on or after  
64 October 1, 1998, but before October 1, 2017, may be appealed on  
65 the basis that it departs from the Criminal Punishment Code only  
66 if the sentence is below the lowest permissible sentence or as  
67 enumerated in s. 924.06(1).

68 (j) A sentence for an offense committed on or after October  
69 1, 2017, may be appealed on the basis that it departs from the  
70 Criminal Punishment Code if the sentence is below the lowest  
71 permissible sentence provided in s. 921.0024(3); is outside the  
72 range authorized by s. 921.0024(3); or is as enumerated in s.  
73 924.06(1).

74 (4) As provided in s. 921.00261, a court may impose an  
75 upward departure sentence based upon circumstances or factors  
76 that reasonably justify the aggravation of the sentence. The  
77 level of proof necessary to establish facts supporting an upward  
78 departure sentence is a preponderance of the evidence. When  
79 multiple reasons exist to support an upward departure sentence,  
80 such sentence shall be upheld when at least one circumstance or  
81 factor justifies such sentence regardless of the presence of  
82 other circumstances or factors found not to justify such  
83 sentence. Any upward departure sentence must be explained in  
84 writing by the trial court judge.

85 Section 2. Present subsections (3) through (7) of section  
86 921.0024, Florida Statutes, are redesignated as subsections (4)  
87 through (8), respectively, and a new subsection (3) is added to

11-01088-17 20171194\_\_

88 that section, to read:

89 921.0024 Criminal Punishment Code; worksheet computations;  
90 scoresheets.-

91 (3) (a) This subsection applies to any felony offense,  
92 except a capital felony, committed on or after October 1, 2017.

93 (b) The lowest permissible sentence is the minimum sentence  
94 that may be imposed by the trial court, absent a valid reason  
95 for departure.

96 (c) The lowest permissible sentence is any nonstate prison  
97 sanction in which the total sentence points equal or are less  
98 than 44 points. The trial court may increase the total sentence  
99 points by up to, and including, 25 percent. If the total  
100 sentence points exceed 44 points as a result of this increase,  
101 the court may not impose a state prison sentence that is longer  
102 than the lowest permissible sentence in prison months calculated  
103 pursuant to paragraph (d).

104 (d) If the total sentence points exceed 44 points, the  
105 lowest permissible sentence in prison months shall be calculated  
106 by subtracting 28 points from the total sentence points and  
107 decreasing the remaining total by 25 percent. The total sentence  
108 points shall be calculated only as a means of determining the  
109 lowest permissible sentence. The trial court may impose  
110 sentences under this subsection or s. 921.00261 concurrently or  
111 consecutively. However, any sentence to state prison must exceed  
112 1 year. If the lowest permissible sentence in prison months  
113 exceeds the statutory maximum sentence as provided in s.  
114 775.082, the lowest permissible sentence in prison months must  
115 be imposed. If the total sentence points are greater than or  
116 equal to 363, the court may sentence the offender to life

11-01088-17 20171194\_\_

117 imprisonment. An offender sentenced to life imprisonment under  
 118 this subsection is not eligible for any form of discretionary  
 119 early release, except executive clemency or conditional medical  
 120 release under s. 947.149. This subsection does not supersede any  
 121 requirement in subsection (1) to impose a statutory maximum  
 122 sentence.

123 (e) The trial court may impose a state prison sentence that  
 124 does not vary upward by more than 25 percent from the lowest  
 125 permissible sentence in prison months calculated pursuant to  
 126 paragraph (d). However, no sentence imposed pursuant to this  
 127 paragraph may exceed the statutory maximum sentence as provided  
 128 in s. 775.082.

129 (f) Except as provided in s. 921.00261, the trial court may  
 130 not impose a sentence that varies upward by more than 25 percent  
 131 from the lowest permissible sentence in prison months calculated  
 132 pursuant to paragraph (d). The permissible range for sentencing  
 133 for an upward departure sentence imposed by the court pursuant  
 134 to s. 921.00261 is the lowest permissible sentence up to and  
 135 including the statutory maximum, as provided in s. 775.082, for  
 136 the primary offense and any additional offense before the court  
 137 for sentencing.

138 Section 3. Section 921.00261, Florida Statutes, is created  
 139 to read:

140 921.00261 Upward departure sentence; aggravating  
 141 circumstances.-

142 (1) (a) This section applies to any felony offense, except a  
 143 capital felony, committed on or after October 1, 2017.

144 (b) The sentence imposed pursuant to s. 921.0024(3) (d) or  
 145 (3) (e) is assumed to be appropriate for the offender. A sentence

11-01088-17 20171194\_\_

146 that the trial court is authorized to impose pursuant to s.  
 147 921.0024(3) is not an upward departure sentence. As used in this  
 148 section, the term "upward departure sentence" means a state  
 149 prison sentence that varies upward by more than 25 percent from  
 150 the lowest permissible sentence in prison months calculated  
 151 pursuant to s. 921.0024(3) (d).

152 (c) The trial court may impose an upward departure sentence  
 153 only if the sentence is accompanied by a written statement from  
 154 the court specifying the reasons for the departure, filed within  
 155 7 days after the date of sentencing. A written transcription of  
 156 orally stated reasons for this departure is permissible if it is  
 157 filed by the court within 7 days after the date of sentencing.

158 (d) The imposition of a split sentence of incarceration  
 159 followed by community control or probation does not by itself  
 160 constitute an upward departure. For the purpose of determining  
 161 the maximum sentence authorized by law, any community control  
 162 portion of a split sentence does not constitute a term of  
 163 imprisonment.

164 (e) An upward departure sentence must be within any  
 165 relevant maximum sentence limitations provided by s. 775.082.

166 (2) An upward departure sentence is discouraged unless  
 167 there are circumstances or factors that reasonably justify the  
 168 departure. Aggravating circumstances to be considered include,  
 169 but are not limited to, those listed in subsection (3). The  
 170 failure of the trial court to impose a sentence within the range  
 171 authorized by s. 921.0024(3) is subject to appellate review  
 172 under chapter 924, but the extent of the departure from such  
 173 range is not subject to appellate review.

174 (3) Aggravating circumstances under which an upward

11-01088-17 20171194\_\_

175 departure sentence is reasonably justified include, but are not  
176 limited to:

177 (a) The departure results from a legitimate, uncoerced plea  
178 bargain.

179 (b) The offense was one of violence and was committed in a  
180 manner that was especially heinous, atrocious, or cruel.

181 (c) The offenses before the court for sentencing arose out  
182 of separate episodes, the primary offense is scored at offense  
183 level 4 or higher, and the defendant has committed five or more  
184 offenses within a 180-day period which have resulted in  
185 convictions.

186 (d) The primary offense is scored at offense level 3, and  
187 the defendant has committed eight or more offenses within a 180-  
188 day period which have resulted in convictions.

189 (e) The offense before the court for disposition was  
190 committed within 6 months after the defendant was discharged  
191 from probation, community control, or pretrial intervention or  
192 diversion or released from state prison, whichever is later.

193 (f) The defendant occupied a leadership role in a criminal  
194 organization.

195 (g) The offense was committed by a public official under  
196 color of office.

197 (h) The defendant knew the victim was a law enforcement  
198 officer at the time of the offense, the offense was a violent  
199 offense, and that status is not an element of the primary  
200 offense.

201 (i) The offense created a substantial risk of death or  
202 great bodily harm to many persons or to one or more children.

203 (j) The victim was especially vulnerable due to age or

11-01088-17 20171194\_\_

204 physical or mental disability.

205 (k) The offense was motivated by prejudice based on race,  
206 color, ancestry, ethnicity, religion, sexual orientation, or  
207 national origin of the victim.

208 (l) The victim suffered extraordinary physical or emotional  
209 trauma or permanent physical injury or was treated with  
210 particular cruelty.

211 (m) The victim was physically attacked by the defendant in  
212 the presence of one or more members of the victim's family.

213 (n) The offense resulted in substantial economic hardship  
214 to the victim and consisted of an illegal act or acts committed  
215 by means of concealment, guile, or fraud to obtain money or  
216 property, to avoid payment or loss of money or property, or to  
217 obtain business or professional advantage, when two or more of  
218 the following circumstances were present:

219 1. The offense involved multiple victims or multiple  
220 incidents per victim;

221 2. The offense involved a high degree of sophistication or  
222 planning or occurred over a lengthy period of time;

223 3. The defendant used position or status to facilitate the  
224 commission of the offense, including positions of trust,  
225 confidence, or fiduciary relationship; or

226 4. The defendant was in the past involved in other conduct  
227 similar to that involved in the current offense.

228 (o) The offense was committed in order to prevent or avoid  
229 arrest, to impede or prevent prosecution for the conduct  
230 underlying the offense, or to effect an escape from custody.

231 (p) The defendant is not amenable to rehabilitation or  
232 supervision, as evidenced by an escalating pattern of criminal

11-01088-17 20171194\_\_

233 conduct, which is a progression from nonviolent to violent  
 234 crimes, a progression of increasingly violent crimes, or a  
 235 pattern of increasingly serious criminal activity.

236 (q) The defendant induced a minor to participate in any of  
 237 the offenses pending before the court for disposition.

238 (r) The primary offense is scored at offense level 7 or  
 239 higher, and the defendant has been convicted of one more offense  
 240 that scored, or would have scored, at an offense level 8 or  
 241 higher.

242 (s) The defendant has an extensive unscorable juvenile  
 243 record.

244 (t) The defendant committed an offense involving sexual  
 245 contact or sexual penetration, and, as a direct result of the  
 246 offense, the victim contracted a sexually transmissible disease.

247 Section 4. Subsection (1) of section 924.06, Florida  
 248 Statutes, is amended to read:

249 924.06 Appeal by defendant.—

250 (1) A defendant may appeal any of the following from:

251 (a) A final judgment of conviction when probation has not  
 252 been granted under chapter 948, except as provided in subsection  
 253 (3).~~+~~

254 (b) An order granting probation under chapter 948.~~+~~

255 (c) An order revoking probation under chapter 948.~~+~~

256 (d) A sentence, on the ground that it is illegal.~~+~~~~or~~

257 (e) A sentence imposed under s. 921.0024 of the Criminal  
 258 Punishment Code which exceeds the statutory maximum penalty  
 259 provided in s. 775.082 for an offense at conviction, or the  
 260 consecutive statutory maximums for offenses at conviction,  
 261 unless otherwise provided by law.

11-01088-17 20171194\_\_

262 (f) A sentence imposed outside the range authorized by s.  
 263 921.0024(3).

264 Section 5. Subsection (1) of section 924.07, Florida  
 265 Statutes, is amended to read:

266 924.07 Appeal by state.—

267 (1) The state may appeal any of the following from:

268 (a) An order dismissing an indictment or information or any  
 269 count thereof or dismissing an affidavit charging the commission  
 270 of a criminal offense, the violation of probation, the violation  
 271 of community control, or the violation of any supervised  
 272 correctional release.

273 (b) An order granting a new trial.

274 (c) An order arresting judgment.

275 (d) A ruling on a question of law when the defendant is  
 276 convicted and appeals from the judgment. Once the state's cross-  
 277 appeal is instituted, the appellate court shall review and rule  
 278 upon the question raised by the state regardless of the  
 279 disposition of the defendant's appeal.

280 (e) The sentence, on the ground that it is illegal.

281 (f) A judgment discharging a prisoner on habeas corpus.

282 (g) An order adjudicating a defendant insane under the  
 283 Florida Rules of Criminal Procedure.

284 (h) All other pretrial orders, except that it may not take  
 285 more than one appeal under this subsection in any case.

286 (i) A sentence imposed below the lowest permissible  
 287 sentence established by the Criminal Punishment Code under  
 288 chapter 921.

289 (j) A ruling granting a motion for judgment of acquittal  
 290 after a jury verdict.



11-01088-17

20171194\_\_

291 (k) An order denying restitution under s. 775.089.  
292 (l) An order or ruling suppressing evidence or evidence in  
293 limine at trial.  
294 (m) An order withholding adjudication of guilt in violation  
295 of s. 775.08435.  
296 (n) A sentence imposed outside the range authorized by s.  
297 921.0024(3).  
298 Section 6. For the purpose of incorporating the amendments  
299 made by this act to sections 924.06 and 924.07, Florida  
300 Statutes, in references thereto, subsection (3) of section  
301 958.04, Florida Statutes, is reenacted to read:  
302 958.04 Judicial disposition of youthful offenders.-  
303 (3) The provisions of this section shall not be used to  
304 impose a greater sentence than the permissible sentence range as  
305 established by the Criminal Punishment Code pursuant to chapter  
306 921 unless reasons are explained in writing by the trial court  
307 judge which reasonably justify departure. A sentence imposed  
308 outside of the code is subject to appeal pursuant to s. 924.06  
309 or s. 924.07.  
310 Section 7. This act shall take effect October 1, 2017.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/27/17

Meeting Date

1194

Bill Number (if applicable)

Topic Sentencing; CPC; Departures

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St. Ste 401

Phone (850) 445-9656

Street

TLH FL 32301

City

State

Zip

Email andy.thomas@flpd2.com

Speaking:  For  Against  Information

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

Representing Fla. Public Defender Assoc.

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)

27 Mar 17  
Meeting Date

1194  
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe  
Street

Phone 850.510.9922

Tall FL 3230  
City State Zip

Email \_\_\_\_\_

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.

**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: SM 1322

INTRODUCER: Senator Braynon

SUBJECT: Firearm Violence Awareness Month

DATE: March 24, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Appel	Hrdlicka	CJ	<b>Favorable</b>
2.			JU	
3.			RC	

---

**I. Summary:**

SM 1322 urges Congress to designate the month of September 2017 as “Firearm Awareness Month.”

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are formal petitions to the federal government requesting Congress to act on a particular subject.

**II. Present Situation:**

Various statistics show that firearm violence is a state and national issue. According to the Florida Department of Law Enforcement, there were 767 homicides, 157 rapes, 17,095 aggravated assaults, and 8,672 robberies involving firearms committed in Florida during 2015.<sup>1</sup> In the last year, there have been two mass shootings in Florida – at the Pulse nightclub in Orlando and the Fort Lauderdale airport. The Pulse nightclub incident involved 49 individuals killed and 53 injured.<sup>2</sup> At the Fort Lauderdale airport, a man killed 5 people and wounded 6

---

<sup>1</sup> Florida Department of Law Enforcement, statistics under *Firearm Use in Violent Crimes and Manslaughter for Florida by Country and Offense*, available at <http://www.fdle.state.fl.us/cms/FSAC/Data-Statistics/UCR-Offense-Data.aspx> (last visited March 22, 2017).

<sup>2</sup> Zambelich, Ariel and Hurt, Allison, *3 Hours In Orlando: Piecing Together An Attack And Its Aftermath*, June 26, 2016, the two-way, NPR, available at <http://www.npr.org/2016/06/16/482322488/orlando-shooting-what-happened-update> (last visited March 22, 2017).

others.<sup>3</sup> Additionally, there have been other cases of gun violence, such as the case of an 8 year old girl, Jada Page, killed in a drive by shooting in Miami in August of 2016.<sup>4</sup>

A recent study concluded that the firearm homicide rate in the United States is nearly 25.2 times higher than that of 23 countries that are similar in wealth and population.<sup>5</sup> The study concluded that the “results show that the United States, which has the most firearms per capita in the world, suffers disproportionately from firearms compared with other high-income countries.”<sup>6</sup> The Federal Bureau of Investigation’s 2015 Crime in the United States report found that “[f]irearms were used in 71.5 percent of the nation’s murders, 40.8 percent of robberies, and 24.2 percent of aggravated assaults.”<sup>7</sup>

Actual gun violence statistics vary from source to source, but the numbers of incidents and deaths appear to be in the tens of thousands. The Brady Campaign to Prevent Gun Violence compiled statistics from the Centers for Disease Control and Prevention from 2011-2015 and showed that every year approximately 33,800 people are killed and 78,800 people are injured in homicides, aggravated assaults, suicides and suicide attempts, unintentional shootings, and police interventions involving firearms in the United States. In this data, more than 2,600 of the people killed by firearms each year are children age 19 or younger.<sup>8</sup> The Gun Violence Archive for 2016 reported 58,350 total incidents involving guns, including about 16,000 deaths and 30,000 injuries.<sup>9</sup> Current statistics for 2017 include a total of 12,754 incidents.<sup>10</sup>

Currently only one state has designated a month to firearm awareness. In 2013, New York became the first and only state to recognize Gun Violence Awareness month each June.<sup>11</sup>

### III. Effect of Proposed Changes:

The Senate Memorial urges the Congress of the United States to designate the month of September 2017 as “Firearm Awareness Month.”

---

<sup>3</sup> Associated Press, *Suspect in Fort Lauderdale Airport Shooting Pleads Not Guilty*, January 30, 2017, New York Times, available at [https://www.nytimes.com/2017/01/30/arts/esteban-santiago-fort-lauderdale-airport-shooting.html?\\_r=0](https://www.nytimes.com/2017/01/30/arts/esteban-santiago-fort-lauderdale-airport-shooting.html?_r=0) (last visited March 22, 2017).

<sup>4</sup> Burch, Audra and Rabin, Charles, *Jada Page, 8, dies two days after she was struck by bullet in drive-by shooting*, August 30, 2016, Miami Herald, available at <http://www.miamiherald.com/news/local/community/miami-dade/edison-liberty-city/article98954667.html> (last visited March 22, 2017).

<sup>5</sup> Grinshteyn, Erin and Hemenway, David, *Violent Death Rates: The US Compared with Other High-income OECD Countries, 2010*, March 2016, American Journal of Medicine, Vol. 129, Issue 3, pp. 266-273, available at [http://www.amjmed.com/article/S0002-9343\(15\)01030-X/fulltext](http://www.amjmed.com/article/S0002-9343(15)01030-X/fulltext) (last visited March 22, 2017).

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

<sup>7</sup> FBI, *Latest Crime Statistics Released*, September 26, 2016, available at <https://www.fbi.gov/news/stories/latest-crime-statistics-released> (last visited March 22, 2017).

<sup>8</sup> Brady Campaign to Prevent Gun Violence, *Key Gun Violence Statistics\** available at <http://www.bradycampaign.org/key-gun-violence-statistics>.

<sup>9</sup> Gun Violence Archive, *Past Summary Ledgers*, available at <http://www.gunviolencearchive.org/past-tolls> (last visited March 22, 2017).

<sup>10</sup> Gun Violence Archive, homepage, available at <http://www.gunviolencearchive.org/> (last visited March 22, 2017).

<sup>11</sup> GVAM, *About GVAM*, available at <http://www.gunviolenceawarenessmonth.com/about.html> (last visited March 22, 2017).

Copies of the memorial will be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are formal petitions to the federal government requesting Congress to act on a particular subject.

**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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

None.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

---

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

---

By Senator Braynon

35-01334-17

20171322\_\_

## Senate Memorial

A memorial to the Congress of the United States,  
urging Congress to designate the month of September  
2017 as "Firearm Violence Awareness Month."

WHEREAS, the Department of Law Enforcement reports that in  
2015 there were 767 homicides, 154 rapes, 17,095 aggravated  
assaults, and 8,672 robberies involving a firearm committed in  
Florida, and

WHEREAS, the Centers for Disease Control and Prevention  
states that every year approximately 33,600 people are killed  
and 81,000 people are injured in homicides, aggravated assaults,  
suicides and suicide attempts, unintentional shootings, and  
police interventions involving firearms in the United States,  
and

WHEREAS, more than 2,600 of the people killed by firearms  
each year are children age 19 or younger, and

WHEREAS, the public has been horrified and saddened by  
recent mass shooting events such as the one on June 12, 2016, in  
which 49 people were killed and 53 people were wounded in the  
Pulse nightclub in Orlando and by firearm homicides such as the  
one on August 30, 2016, in which 8-year-old Jada Page was killed  
in a drive-by shooting in Miami, and

WHEREAS, the United States firearm homicide rate is 20  
times higher than the combined rates of 22 other countries that  
are its peers in wealth and population, and

WHEREAS, it is imperative that there be greater public  
awareness of firearm violence, NOW, THEREFORE,

Page 1 of 2

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

35-01334-17

20171322\_\_

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

That the Congress of the United States designate the month  
of September 2017 as "Firearm Violence Awareness Month."

BE IT FURTHER RESOLVED that the Secretary of State is  
directed to dispatch copies of this memorial to the President of  
the United States Senate, to the Speaker of the United States  
House of Representatives, and to each member of the Florida  
delegation to the United States Congress.

Page 2 of 2

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





# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Appropriations  
Appropriations Subcommittee on the Environment  
and Natural Resources  
Banking and Insurance  
Ethics and Elections  
Regulated Industries  
Rules

## JOINT COMMITTEE:

Joint Legislative Budget Commission

## SENATOR OSCAR BRAYNON II

*Democratic Leader*  
35th District

March 23, 2017

Senator Randolph Bracy, Chair  
Criminal Justice Committee,  
510 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Bracy:

This letter is to request that **Senate Memorial 1322**, relating to *Firearm Violence Awareness Month* be placed on the agenda of the next scheduled meeting of the committee.

*Firearm Violence Awareness Month; Urging Congress to designate the month of September 2017 as "Firearm Violence Awareness Month", etc.*

Thank you for consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Braynon II".

Senator Braynon  
District 35

CC: *Jennifer Hrdlicka, Staff Director*  
*Sue Arnold, Committee Administrative Assistant*

## REPLY TO:

- 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

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

JOE NEGRON  
President of the Senate

ANITERE FLORES  
President Pro Tempore

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

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

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

BILL: SB 1486  
 INTRODUCER: Senator Rouson  
 SUBJECT: Public Safety Coordinating Councils  
 DATE: March 24, 2017      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	<b>Favorable</b>
2.	_____	_____	CA	_____
3.	_____	_____	RC	_____

**I. Summary:**

SB 1486 amends s. 951.26, F.S., increasing the membership of the public safety coordinating council for a county and a consortium of two or more counties to include a person with expertise in the field of inmate reentry.

**II. Present Situation:**

Section 951.26, F.S., requires each board of county commissioners to establish a public safety coordinating council (PSCC) or join with a consortium of one or more other counties to establish a PSCC for the geographic area represented by the member counties. The purpose of the PSCC is to assess the population status of all detention or correctional facilities owned or contracted by the county and to formulate recommendations to ensure that the capacities of such facilities are not exceeded. The recommendations must include assessment of the availability of pretrial intervention, probation, work release, and substance abuse programs; gain-time and bail bond schedules; and the confinement status of inmates.

The PSCC is also authorized to develop a local public safety plan for future construction needs that covers at least 5 years. If the county or consortium of counties receives community corrections funds,<sup>1</sup> the PSCC must develop a public safety plan that meets that section's requirements.

The PSCC may also develop a comprehensive local reentry plan that is designed to assist offenders released from incarceration to successfully reenter the community. The PSCC must develop a plan in coordination with public safety officials and local community organizations who can provide the offender with reentry services such as assistance with housing, healthcare, education, substance abuse treatment, and employment.

<sup>1</sup> Section 948.51, F.S.

The PSCC for a county must consist of the following members:

- The state attorney, or an assistant state attorney designated by the state attorney;
- The public defender, or an assistant public defender designated by the public defender;
- The chief circuit judge, or another circuit judge designated by the chief circuit judge;
- The chief county judge, or another county judge designated by the chief county judge;
- The chief correctional officer;
- The sheriff, or a member designated by the sheriff, if the sheriff is not the chief correctional officer;
- The state probation circuit administrator, or a member designated by the state probation circuit administrator (appointed to a 4-year term);
- The chairperson of the board of county commissioners, or another county commissioner as designee;
- If the county has such program available, the director of any county probation or pretrial intervention program (appointed to a 4-year term);
- The director of a local substance abuse treatment program, or a member designated by the director (appointed to a 4-year term); and
- Representatives from county and state jobs programs and other community groups who work with offenders and victims, appointed by the chairperson of the board of county commissioners (appointed to 4-year terms).

The PSCC for a consortium of two or more counties must consist of the following members:

- A state attorney, or an assistant state attorney designated by a state attorney;
- A public defender, or an assistant public defender designated by a public defender;
- A chief circuit judge, or a circuit judge designated by a chief circuit judge;
- A chief county judge, or a county judge designated by a chief county judge;
- A sheriff or a jail administrator for a county within the consortium;
- A chief of police for a municipality within the geographic area of the consortium;
- A state probation circuit administrator, or a member designated by a state probation circuit administrator (appointed to a 4-year term);
- A county commissioner from each member county of the consortium;
- An elected member of the governing body of the most populous municipality within the geographic area of the consortium;
- A physician who practices in the area of alcohol and substance abuse (appointed to a 4-year term);
- A mental health professional who practices in the area of alcohol and substance abuse (appointed to a 4-year term); and
- An elected member of a school board within the geographic area of the consortium.

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

The bill amends s. 951.26, F.S., increasing the membership of the PSCC for a county to include a person with expertise in the field of inmate reentry appointed by the chairperson of the board of county commissioners to a 4-year term. The bill also increases the membership of a PSCC for a consortium to include a person with expertise in the field of inmate reentry and requires that the

member be appointed in a manner and for a term determined by the boards of county commissioners within the consortium.

The bill is effective July 1, 2017.

**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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 951.26 of the Florida Statutes.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

---

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

---

By Senator Rouson

19-01365A-17

20171486\_\_

A bill to be entitled

An act relating to public safety coordinating councils; amending s. 951.26, F.S.; specifying an additional member for public safety coordinating councils; providing for the member's appointment and term; providing an effective date.

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

Section 1. Subsection (1) of section 951.26, Florida Statutes, is amended to read:

951.26 Public safety coordinating councils.—

(1) Each board of county commissioners shall establish a county public safety coordinating council for the county or shall join with a consortium of one or more other counties to establish a public safety coordinating council for the geographic area represented by the member counties.

(a)1. The public safety coordinating council for a county shall consist of:

a. The state attorney, or an assistant state attorney designated by the state attorney.

b. The public defender, or an assistant public defender designated by the public defender.

c. The chief circuit judge, or another circuit judge designated by the chief circuit judge.

d. The chief county judge, or another county judge designated by the chief county judge.

e. The chief correctional officer.

f. The sheriff, or a member designated by the sheriff, if

Page 1 of 4

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

19-01365A-17

20171486\_\_

the sheriff is not the chief correctional officer.

g. The state probation circuit administrator, or a member designated by the state probation circuit administrator, to be appointed to a 4-year term.

h. The chairperson of the board of county commissioners, or another county commissioner as designee.

i. If the county has such program available, the director of any county probation or pretrial intervention program, to be appointed to a 4-year term.

j. The director of a local substance abuse treatment program, or a member designated by the director, to be appointed to a 4-year term.

k. Representatives from county and state jobs programs and other community groups who work with offenders and victims, appointed by the chairperson of the board of county commissioners to 4-year terms.

1. A person with expertise in the field of inmate reentry appointed by the chairperson of the board of county commissioners to a 4-year term.

2. The chairperson of the board of county commissioners, or another county commissioner as designee, shall serve as the chairperson of the council until the council elects a chairperson from the membership of the council.

(b)1. The public safety coordinating council for a consortium of two or more counties shall consist of the following members, appointed with the approval of each board of county commissioners within the consortium:

a. A chief circuit judge, or a circuit judge designated by a chief circuit judge.

Page 2 of 4

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

19-01365A-17 20171486\_\_

59 b. A chief county judge, or a county judge designated by a  
60 chief county judge.

61 c. A state attorney, or an assistant state attorney  
62 designated by a state attorney.

63 d. A public defender, or an assistant public defender  
64 designated by a public defender.

65 e. A state probation circuit administrator, or a member  
66 designated by a state probation circuit administrator, to be  
67 appointed to a 4-year term.

68 f. A physician who practices in the area of alcohol and  
69 substance abuse, to be appointed to a 4-year term.

70 g. A mental health professional who practices in the area  
71 of alcohol and substance abuse, to be appointed to a 4-year  
72 term.

73 h. A sheriff or a jail administrator for a county within  
74 the consortium.

75 i. A chief of police for a municipality within the  
76 geographic area of the consortium.

77 j. A county commissioner from each member county of the  
78 consortium.

79 k. An elected member of the governing body of the most  
80 populous municipality within the geographic area of the  
81 consortium.

82 l. An elected member of a school board within the  
83 geographic area of the consortium.

84 m. A person with expertise in the field of inmate reentry  
85 appointed in a manner and for a term determined by the boards of  
86 county commissioners within the consortium.

87 2. The members of the public safety coordinating council

Page 3 of 4

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

19-01365A-17 20171486\_\_

88 shall elect a chairperson from among its members.

89 Section 2. This act shall take effect July 1, 2017.

Page 4 of 4

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)

Mch 17

Meeting Date

1486

Bill Number (if applicable)

Topic PSCC

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone 850.510.9922

Street

Tall

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing 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.**





The Florida Senate

## Committee Agenda Request

**To:** Senator Randolph Bracy, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 14, 2017

---

I respectfully request that **Senate Bill #1486**, relating to public Safety Coordinating Councils , be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Rouson".

---

Senator Darryl Rouson  
Florida Senate, District 19

Cc: Sen. Dennis Baxley, VC; Jennifer Hrdlicka, SD; Sue Arnold AA

File signed original with committee office

S-020 (03/2004)

**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 1626

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Department of Legal Affairs

DATE: March 28, 2017

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1626 amends current law with respect to the Attorney General’s duties and responsibilities.

The bill:

- Gives the Statewide Council on Human Trafficking the authority to apply for and accept grants, funds, gifts, and services from the state, the federal government, and other sources for the purpose of defraying the cost of the council’s annual summit;
- Provides that the Attorney General may request the assignment of one or more Florida Highway Patrol officers to the Office of the Attorney General (OAG) for security services;
- Amends dates to keep Florida’s Deceptive and Unfair Trade Practices Act current with applicable federal law and rules;
- Provides a definition of “virtual currency” and amends the term “monetary instruments” to include “virtual currency” in the Money Laundering Act;
- Amends the Trust Code related to charitable trusts to allow the Attorney General to take over for the 20 state attorneys in matters involving oversight of charitable trusts, to require delivery of notice, and to give legal standing to the Attorney General under circumstances where a trustee of a charitable trust seeks to modify the status of the trust or its beneficiaries; and
- Creates s. 960.201, F.S., providing for compensation awards for loss of support to surviving family members of an emergency responder who dies in the line of duty while answering a call for service.

## II. Present Situation:

The Attorney General is charged with all common law powers and duties pertaining to the office unless they have been expressly restricted or modified by statute or the state constitution.<sup>1</sup>

The Attorney General is the chief law officer of the state and, absent express legislative restriction, may exercise such power and authority as the public interest may require.<sup>2</sup> As chief legal officer of the state, the Attorney General must be noticed in certain proceedings under Florida law and may bring actions on behalf of citizens of the state as provided for by law.<sup>3</sup>

The Attorney General is also the head of the Department of Legal Affairs.<sup>4</sup> The Department of Legal Affairs (DLA) is responsible for providing all legal services required by any executive department unless otherwise provided by law. Additionally, DLA administers certain trust funds and related programs that support crime victim services, criminal investigations,<sup>5</sup> and crime prevention.<sup>6</sup>

The Office of the Statewide Prosecution prosecutes crimes that impact two or more judicial circuits in the state. The Statewide Prosecutor is appointed by the Attorney General and serves a term of four years.<sup>7</sup> The office focuses on complex, often large scale, organized criminal activity, including violations of the Florida Money Laundering Act.<sup>8</sup>

## III. Effect of Proposed Changes:

This bill makes changes and updates in many subject areas of the Office of the Attorney General's jurisdiction and duties.

### Statewide Council on Human Trafficking

The Statewide Council on Human Trafficking resides within DLA “for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support victims.”<sup>9</sup> One of the duties of the council is to hold an annual statewide policy summit, but there is no dedicated funding source for the council to spend on the annual policy summit. **Section 1** amends s. 16.617, F.S., to give the council the authority to apply for and accept grants, funds, gifts, and services from the state, the federal government, and other sources for the purpose of defraying the cost of the annual summit.

---

<sup>1</sup> Section 16.01, F.S., *State ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976).

<sup>2</sup> *State ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976).

<sup>3</sup> *State ex rel. Landis v. S.H. Kress & Co.*, 115 Fla. 189 (Fla. 1934).

<sup>4</sup> Section 16.015, F.S.

<sup>5</sup> Sections 16.555 and 16.556, F.S.

<sup>6</sup> Section 16.54, F.S.

<sup>7</sup> Section 16.56, F.S.; see also, DLA, “Office of Statewide Prosecution,” available at <http://www.myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693> (last visited March 23, 2017).

<sup>8</sup> Sections 896.101 and 16.56(1)(a)13., F.S.

<sup>9</sup> Section 16.617, F.S.

## Security Detail

The Department of Highway Safety and Motor Vehicles assigns one Florida Highway Patrol officer as security detail for the Governor. The implementing bill for the 2016 General Appropriations Act provided for assignment of a patrol officer to each member of the Cabinet for the 2015-2016 and 2016-2017 fiscal years, as deemed appropriate by the Department of Highway Safety and Motor Vehicles or upon written request of the Cabinet member.<sup>10</sup> **Section 2** amends s. 321.04, F.S., to allow the Attorney General to request the assignment of one or more Florida Highway Patrol officers to the Office of the Attorney General for security services.

## Florida Deceptive and Unfair Trade Practices Act

The Attorney General is largely responsible, through the DLA, for enforcing the “Florida Deceptive and Unfair Trade Practices Act” (FDUPTA).<sup>11</sup>

A violation of the FDUPTA or related rules is statutorily defined as being tied to federal law relating to consumer protection.<sup>12</sup> In order to adopt any changes in the rules of the Federal Trade Commission Act, and therefore keep the Florida Statutes current, the date appearing in ss. 501.203(3) and 501.204(2), F.S., is amended in **Sections 3 and 4** of the bill to read “July 1, 2017.”

## Charitable Trusts

The Florida Trust Code appears in ch. 736, F.S. The Attorney General currently has the authority under s. 736.0100, F.S., to assert the rights of a qualified beneficiary of certain charitable trusts.<sup>13</sup>

**Sections 5-11** of the bill amend the Trust Code related to charitable trusts in numerous sections to accomplish two purposes. The first is to provide for the Attorney General to fulfill the role of the local state attorney in matters involving oversight of charitable trusts if it becomes necessary. The other purpose is to require delivery of notice to and give legal standing to the Attorney General under circumstances where a trustee of a charitable trust seeks to modify the status of the trust or its beneficiaries.<sup>14</sup> These revisions in current law will allow the Attorney General to carry out the responsibilities set forth in s. 736.0110, F.S., in a more consistent and effective manner.

---

<sup>10</sup> Current subsection (4) of s. 321.04, F.S., will expire on July 1, 2017. It was enacted “[i]n order to implement Specific Appropriation 2580 and section 85 of the 2016-2017 General Appropriations Act.”

<sup>11</sup> Part II of ch. 501, F.S., (Florida Deceptive and Unfair Trade Practices Act). If a violation occurs in a particular judicial circuit, the state attorney has the authority to enforce the act; however, the state attorney may defer to the DLA, or if the violation occurs in more than one judicial circuit, the DLA is the “enforcing authority.” s. 501.203(2), F.S.

<sup>12</sup> Sections 501.202(3), 501.203(3), and 501.204(2), F.S.

<sup>13</sup> Section 736.0110(3), F.S.

<sup>14</sup> See ss. 736.0110, 736.1201, 736.1205, 736.1206, 736.1207, 736.1208, and 736.1209, F.S. See also, *Delaware. ex rel. Gebelein v. Florida First National Bank*, 381 So.2d 1075 (Fla. 1st DCA 1979) and *Biden v. Lord*, 147 So.3d 632 (Fla. 1st DCA 2014).

## Virtual Currency

**Section 12** of the bill creates a definition that recognizes the existence of “virtual currency” in the realm of finances.<sup>15</sup> In s. 896.101, F.S., of the Money Laundering Act, the new definition provides that virtual currency means “a medium of exchange in electronic or digital format which is not a coin or currency of the United States or another country.”<sup>16</sup> The term “monetary instruments” is amended to include the term “virtual currency.”<sup>17</sup> These changes will update the Money Laundering Act to account for emerging and new types of currency used in transactions.

## Crimes Compensation Act

The Crimes Compensation Act exists in ss. 960.01-960.28, F.S., and conveys many duties and responsibilities upon the Attorney General’s Victims’ Services Office. Under this Act, claims are filed and payment is made to crime victims according to the criteria set forth in ss. 960.065, 960.07, 960.12, and 960.13, F.S.

**Sections 13-15** of the bill amend the Crimes Compensation Act to create s. 960.201, F.S., specifically providing for compensation awards for loss of support to surviving family members of an emergency responder who dies in the line of duty while answering a call for service.

The bill defines “crime” in s. 960.03(3)(f), F.S., as “a felony or misdemeanor that results in the death of an emergency responder, as defined in and solely for the purposes of s. 960.201, F.S., while answering a call for service in the line of duty.” “Emergency responder” means a law enforcement officer, a firefighter, or an emergency medical technician or paramedic.

The bill amends s. 960.16, F.S., to waive the state’s subrogation rights for awards made under s. 960.201, F.S.

The DLA may award one claim, up to a maximum of \$50,000, to the emergency responder’s surviving family members. If two or more persons are entitled to an award, then the award may be apportioned among the claimants at the discretion of the DLA. An award will be reduced or denied if the DLA has previously paid or approved a claim to the same victim or applicant regarding the same incident.

---

<sup>15</sup> Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as “convertible” virtual currency. Bitcoin is one example of a convertible virtual currency. Bitcoin can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies. Notice 2014-21, “IRS Virtual Currency Guidance: Virtual Currency Is Treated as Property for U.S. Federal Tax Purposes; General Rules for Property Transactions Apply,” IR-2014-36, March 25, 2014, available at <https://www.irs.gov/uac/newsroom/irs-virtual-currency-guidance> (last visited March 23, 2017).

<sup>16</sup> A recent ruling by a Miami trial court dismissed a case in which the defendant was charged with a violation of s. 560.125(5)(a), F.S. (money service business), and money laundering (s. 896.101 (5)(a) and (5)(b), F.S.). Although the ruling was based in large part on other facts in the case, the court included the finding that “...Bitcoin has a long way to go before it is the equivalent of money. The Florida Legislature may choose to adopt statutes regulating virtual currency in the future. At this time, however, attempting to fit the sale of Bitcoin into a statutory scheme regulating money services is like fitting a square peg in a round hole.” *State v. Espinoza*, Case No. F14-2923, 11th Judicial Circuit, Miami-Dade County, Florida, order dated July 22, 2016.

<sup>17</sup> Section 896.101(e), F.S.

In evaluating the claim, the DLA must determine if the emergency responder had any contribution to his or her death due to his or her conduct, but may disregard such contribution if the record shows that the conduct occurred when he or she was acting as an intervenor. The award amount may be reduced or denied by the DLA based on the outcome of the determination.

The DLA is authorized to adopt rules to implement these provisions.

#### **Effective Date**

The effective date of the bill is July 1, 2017.

#### **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:

Surviving family members of an emergency responder who dies in the line of duty while answering a call for service may be entitled to claims under the Crimes Compensation Act.

C. Government Sector Impact:

To the extent there is a fiscal impact related to Sections 13-15 of the bill (emergency responder death benefits), the Attorney General's Office reports that it can be absorbed by the Victims Compensation Trust Fund.

The fiscal impact, if any, on the Department of Highway Safety and Motor Vehicles to provide security detail as provided in Section 2 is unknown at this time.

The Statewide Council on Human Trafficking will be able to apply for and accept grants, funds, gifts, and services from the state, the federal government, and other sources for the purpose of defraying the cost of the annual summit, as provided in Section 1.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The DLA is authorized to adopt rules to implement the emergency responder death benefits in the Crimes Compensation Act.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 16.617, 321.04, 501.203, 501.204, 736.0110, 736.1201, 736.1205, 736.1206, 736.1207, 736.1208, 736.1209, 896.101, 960.03, 960.16, and 960.201.

**IX. Additional Information:**

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

**CS by Criminal Justice on March 27, 2017:**

The committee substitute:

- Removed the amendment to s. 560.103, F.S., that added the term “virtual currency” to the Money Services Business chapter.
- Removed the amendment to s. 741.403, F.S., that added family to the address confidentiality program for victims of domestic violence.
- Amended s. 896.101(2)(e), F.S., to include the term “virtual currency” within the definition of “monetary instruments” in the Money Laundering Act.

- B. **Amendments:**

None.



214888

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete lines 102 - 210

and insert:

Section 5. Subsection (3) of section 736.0110, Florida Statutes, is amended to read:

736.0110 Others treated as qualified beneficiaries.—

(3) The Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state. The





214888

11 Attorney General has standing to assert such rights in any  
12 judicial proceeding.

13 Section 6. Present subsections (2), (3), and (4) of section  
14 736.1201, Florida Statutes, are redesignated as subsections (3),  
15 (4), and (5), respectively, a new subsection (2) is added to  
16 that section, and present subsection (5) of that section is  
17 amended, to read:

18 736.1201 Definitions.—As used in this part:

19 (2) "Delivery of notice" means delivery of a written notice  
20 required under this part by sending a copy by any commercial  
21 delivery service requiring a signed receipt or by any form of  
22 mail requiring a signed receipt.

23 ~~(5) "State attorney" means the state attorney for the~~  
24 ~~judicial circuit of the principal place of administration of the~~  
25 ~~trust pursuant to s. 736.0108.~~

26 Section 7. Section 736.1205, Florida Statutes, is amended  
27 to read:

28 736.1205 Notice that this part does not apply.—In the case  
29 of a power to make distributions, if the trustee determines that  
30 the governing instrument contains provisions that are more  
31 restrictive than s. 736.1204(2), or if the trust contains other  
32 powers, inconsistent with the provisions of s. 736.1204(3) that  
33 specifically direct acts by the trustee, the trustee shall  
34 notify the ~~state~~ Attorney General when the trust becomes subject  
35 to this part. Section 736.1204 does not apply to any trust for  
36 which notice has been given pursuant to this section unless the  
37 trust is amended to comply with the terms of this part.

38 Section 8. Subsection (2) of section 736.1206, Florida  
39 Statutes, is amended to read:



214888

40 736.1206 Power to amend trust instrument.-

41 (2) In the case of a charitable trust that is not subject  
42 to ~~the provisions of~~ subsection (1), the trustee may amend the  
43 governing instrument to comply with ~~the provisions of~~ s.  
44 736.1204(2) after delivery of notice to, and with the consent  
45 of, the ~~state~~ Attorney General.

46 Section 9. Section 736.1207, Florida Statutes, is amended  
47 to read:

48 736.1207 Power of court to permit deviation.—This part does  
49 not affect the power of a court to relieve a trustee from any  
50 restrictions on the powers and duties that are placed on the  
51 trustee by the governing instrument or applicable law for cause  
52 shown and on complaint of the trustee, ~~state~~ Attorney General,  
53 or an affected beneficiary and notice to the affected parties.

54 Section 10. Paragraph (b) of subsection (4) of section  
55 736.1208, Florida Statutes, is amended to read:

56 736.1208 Release; property and persons affected; manner of  
57 effecting.—

58 (4) Delivery of a release shall be accomplished as follows:

59 (b) If the release is accomplished by reducing the class of  
60 permissible charitable organizations, by delivery of notice a  
61 copy of the release to the ~~state~~ Attorney General including a  
62 copy of the release.

63 Section 11. Section 736.1209, Florida Statutes, is amended  
64 to read:

65 736.1209 Election to come under this part.—With the consent  
66 of that organization or organizations, a trustee of a trust for  
67 the benefit of a public charitable organization or organizations  
68 may come under s. 736.1208(5) by delivery of notice to filing



69 ~~with the state~~ Attorney General of the an election, accompanied  
70 by the proof of required consent. Thereafter the trust shall be  
71 subject to s. 736.1208(5).

72 Section 12. Paragraph (e) of subsection (2) of section  
73 896.101, Florida Statutes, is amended, and a new paragraph (j)  
74 is added to that subsection to read:

75 896.101 Florida Money Laundering Act; definitions;  
76 penalties; injunctions; seizure warrants; immunity.-

77 (2) As used in this section, the term:

78 (e) "Monetary instruments" means coin or currency of the  
79 United States or of any other country, virtual currency,  
80 travelers' checks, personal checks, bank checks, money orders,  
81 investment securities in bearer form or otherwise in such form  
82 that title thereto passes upon delivery, and negotiable  
83 instruments in bearer form or otherwise in such form that title  
84 thereto passes upon delivery.

85 (j) "Virtual currency" means a medium of exchange in  
86 electronic or digital format which is not a coin or currency of  
87 the United States or another country.

88  
89 ===== T I T L E A M E N D M E N T =====

90 And the title is amended as follows:

91 Delete lines 14 - 42

92 and insert:

93 revising legislative intent; amending s. 736.0110,  
94 F.S.; providing that the Attorney General has standing  
95 to assert the rights of certain qualified  
96 beneficiaries in judicial proceedings; amending s.  
97 736.1201, F.S.; defining the term "delivery of



214888

98 notice"; deleting the term "state attorney"; amending  
99 s. 736.1205, F.S.; requiring a trustee to provide a  
100 specified notice to the Attorney General rather than  
101 the state attorney; amending s. 736.1206, F.S.;  
102 revising the conditions under which a trustee may  
103 amend the governing instrument of a specified  
104 charitable trust to comply with specified provisions  
105 of ch. 736, F.S.; amending s. 736.1207, F.S.;  
106 conforming a term; amending s. 736.1208, F.S.;  
107 revising the manner in which delivery of a release is  
108 accomplished; conforming provisions to changes made by  
109 the act; amending s. 736.1209, F.S.; revising  
110 requirements for a trustee of a specified trust who  
111 elects to be operated exclusively for the benefit of,  
112 and be supervised by, the specified public charitable  
113 organization or organizations; amending s. 896.101,  
114 F.S.; amending the term "monetary instruments";  
115 defining the term "virtual currency";

By Senator Bradley

5-01501B-17

20171626\_\_

1 A bill to be entitled  
 2 An act relating to the Department of Legal Affairs;  
 3 amending s. 16.617, F.S.; authorizing the Statewide  
 4 Council on Human Trafficking to apply for and accept  
 5 funds, grants, gifts, and services from various  
 6 governmental entities or any other public or private  
 7 source for a specified purpose; amending s. 321.04,  
 8 F.S.; requiring the Department of Highway Safety and  
 9 Motor Vehicles to assign one or more patrol officers  
 10 to the Office of the Attorney General for security  
 11 services upon request of the Attorney General;  
 12 amending s. 501.203, F.S.; redefining the term  
 13 "violation of this part"; amending s. 501.204, F.S.;  
 14 revising legislative intent; amending s. 560.103,  
 15 F.S.; redefining the term "monetary value"; amending  
 16 s. 736.0110, F.S.; providing that the Attorney General  
 17 has standing to assert the rights of certain qualified  
 18 beneficiaries in judicial proceedings; amending s.  
 19 736.1201, F.S.; defining the term "delivery of  
 20 notice"; deleting the term "state attorney"; amending  
 21 s. 736.1205, F.S.; requiring a trustee to provide a  
 22 specified notice to the Attorney General rather than  
 23 the state attorney; amending s. 736.1206, F.S.;  
 24 revising the conditions under which a trustee may  
 25 amend the governing instrument of a specified  
 26 charitable trust to comply with specified provisions  
 27 of ch. 736, F.S.; amending s. 736.1207, F.S.;  
 28 conforming a term; amending s. 736.1208, F.S.;  
 29 revising the manner in which delivery of a release is

Page 1 of 10

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

5-01501B-17

20171626\_\_

30 accomplished; conforming provisions to changes made by  
 31 the act; amending s. 736.1209, F.S.; revising  
 32 requirements for a trustee of a specified trust who  
 33 elects to be operated exclusively for the benefit of,  
 34 and be supervised by, the specified public charitable  
 35 organization or organizations; amending s. 741.403,  
 36 F.S.; revising application requirements for the  
 37 designation of an address by the Attorney General  
 38 which serves as the address of a person adjudicated  
 39 incapacitated; requiring dependents and household  
 40 members to be entitled to certain rights and  
 41 protections under certain circumstances; amending s.  
 42 896.101, F.S.; defining the term "virtual currency";  
 43 amending s. 960.03, F.S.; revising definitions;  
 44 amending s. 960.16, F.S.; providing an exception to a  
 45 subrogation requirement for awards; creating s.  
 46 960.201, F.S.; defining terms; authorizing the  
 47 Department of Legal Affairs to award the surviving  
 48 family of members of an emergency responder who is  
 49 killed under specified circumstances up to a specified  
 50 amount; specifying requirements to determine the award  
 51 amount; requiring apportionment of the award among  
 52 several claimants under certain circumstances;  
 53 requiring an award to be reduced or denied by the  
 54 department under certain circumstances; authorizing  
 55 rulemaking; providing an effective date.  
 56  
 57 Be It Enacted by the Legislature of the State of Florida:  
 58

Page 2 of 10

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

5-01501B-17 20171626\_\_

59 Section 1. Paragraph (d) is added to subsection (3) of  
60 section 16.617, Florida Statutes, to read:  
61 16.617 Statewide Council on Human Trafficking; creation;  
62 membership; duties.—

63 (3) ORGANIZATION AND SUPPORT.—

64 (d) The council may apply for and accept funds, grants,  
65 gifts, and services from the state, the Federal Government or  
66 any of its agencies, or any other public or private source for  
67 the purpose of defraying costs associated with the annual  
68 statewide policy summit.

69 Section 2. Present subsection (4) of section 321.04,  
70 Florida Statutes, is redesignated as subsection (5), and a new  
71 subsection (4) is added to that section, to read:

72 321.04 Personnel of the highway patrol; rank  
73 classifications; probationary status of new patrol officers;  
74 subsistence; special assignments.—

75 (4) Upon request of the Attorney General, the Department of  
76 Highway Safety and Motor Vehicles shall assign one or more  
77 patrol officers to the Office of the Attorney General for  
78 security services.

79 Section 3. Subsection (3) of section 501.203, Florida  
80 Statutes, is amended to read:

81 501.203 Definitions.—As used in this chapter, unless the  
82 context otherwise requires, the term:

83 (3) "Violation of this part" means any violation of this  
84 act or the rules adopted under this act and may be based upon  
85 any of the following as of July 1, 2017 ~~2015~~:

86 (a) Any rules promulgated pursuant to the Federal Trade  
87 Commission Act, 15 U.S.C. ss. 41 et seq.;

5-01501B-17 20171626\_\_

88 (b) The standards of unfairness and deception set forth and  
89 interpreted by the Federal Trade Commission or the federal  
90 courts; or

91 (c) Any law, statute, rule, regulation, or ordinance which  
92 proscribes unfair methods of competition, or unfair, deceptive,  
93 or unconscionable acts or practices.

94 Section 4. Subsection (2) of section 501.204, Florida  
95 Statutes, is amended to read:

96 501.204 Unlawful acts and practices.—

97 (2) It is the intent of the Legislature that, in construing  
98 subsection (1), due consideration and great weight shall be  
99 given to the interpretations of the Federal Trade Commission and  
100 the federal courts relating to s. 5(a)(1) of the Federal Trade  
101 Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017 ~~2015~~.

102 Section 5. Subsection (21) of section 560.103, Florida  
103 Statutes, is amended to read:

104 560.103 Definitions.—As used in this chapter, the term:

105 (21) "Monetary value" means a medium of exchange,  
106 regardless of whether ~~or not~~ redeemable in currency, and  
107 includes mediums that are in electronic or digital format.

108 Section 6. Subsection (3) of section 736.0110, Florida  
109 Statutes, is amended to read:

110 736.0110 Others treated as qualified beneficiaries.—

111 (3) The Attorney General may assert the rights of a  
112 qualified beneficiary with respect to a charitable trust having  
113 its principal place of administration in this state. The  
114 Attorney General has standing to assert such rights in any  
115 judicial proceeding.

116 Section 7. Present subsections (2), (3), and (4) of section

5-01501B-17 20171626\_\_  
 117 736.1201, Florida Statutes, are redesignated as subsections (3),  
 118 (4), and (5), respectively, a new subsection (2) is added to  
 119 that section, and present subsection (5) of that section is  
 120 amended, to read:

121 736.1201 Definitions.—As used in this part:

122 (2) "Delivery of notice" means delivery of a written notice  
 123 required under this part by sending a copy by any commercial  
 124 delivery service requiring a signed receipt or by any form of  
 125 mail requiring a signed receipt.

126 ~~(5) "State attorney" means the state attorney for the~~  
 127 ~~judicial circuit of the principal place of administration of the~~  
 128 ~~trust pursuant to s. 736.0108.~~

129 Section 8. Section 736.1205, Florida Statutes, is amended  
 130 to read:

131 736.1205 Notice that this part does not apply.—In the case  
 132 of a power to make distributions, if the trustee determines that  
 133 the governing instrument contains provisions that are more  
 134 restrictive than s. 736.1204(2), or if the trust contains other  
 135 powers, inconsistent with the provisions of s. 736.1204(3) that  
 136 specifically direct acts by the trustee, the trustee shall  
 137 notify the state Attorney General when the trust becomes subject  
 138 to this part. Section 736.1204 does not apply to any trust for  
 139 which notice has been given pursuant to this section unless the  
 140 trust is amended to comply with the terms of this part.

141 Section 9. Subsection (2) of section 736.1206, Florida  
 142 Statutes, is amended to read:

143 736.1206 Power to amend trust instrument.—

144 (2) In the case of a charitable trust that is not subject  
 145 ~~to the provisions of~~ subsection (1), the trustee may amend the

5-01501B-17 20171626\_\_  
 146 governing instrument to comply with ~~the provisions of~~ s.  
 147 736.1204(2) after delivery of notice to, and with the consent  
 148 of, the ~~state~~ Attorney General.

149 Section 10. Section 736.1207, Florida Statutes, is amended  
 150 to read:

151 736.1207 Power of court to permit deviation.—This part does  
 152 not affect the power of a court to relieve a trustee from any  
 153 restrictions on the powers and duties that are placed on the  
 154 trustee by the governing instrument or applicable law for cause  
 155 shown and on complaint of the trustee, state Attorney General,  
 156 or an affected beneficiary and notice to the affected parties.

157 Section 11. Paragraph (b) of subsection (4) of section  
 158 736.1208, Florida Statutes, is amended to read:

159 736.1208 Release; property and persons affected; manner of  
 160 effecting.—

161 (4) Delivery of a release shall be accomplished as follows:

162 (b) If the release is accomplished by reducing the class of  
 163 permissible charitable organizations, by delivery of notice a  
 164 copy of the release to the ~~state~~ Attorney General including a  
 165 copy of the release.

166 Section 12. Section 736.1209, Florida Statutes, is amended  
 167 to read:

168 736.1209 Election to come under this part.—With the consent  
 169 of that organization or organizations, a trustee of a trust for  
 170 the benefit of a public charitable organization or organizations  
 171 may come under s. 736.1208(5) by delivery of notice to filing  
 172 with the state Attorney General of the an election, accompanied  
 173 by the proof of required consent. Thereafter the trust shall be  
 174 subject to s. 736.1208(5).

5-01501B-17

20171626\_\_

175 Section 13. Present paragraphs (b) through (e) of  
 176 subsection (1) of section 741.403, Florida Statutes, are  
 177 redesignated as paragraphs (c) through (f), respectively, a new  
 178 paragraph (b) is added to that subsection, present subsections  
 179 (4), (5), and (6) of that section are redesignated as  
 180 subsections (5), (6), and (7), respectively, and a new  
 181 subsection (4) is added to that section, to read:

182 741.403 Address confidentiality program; application;  
 183 certification.—

184 (1) An adult person, a parent or guardian acting on behalf  
 185 of a minor, or a guardian acting on behalf of a person  
 186 adjudicated incapacitated under chapter 744 may apply to the  
 187 Attorney General to have an address designated by the Attorney  
 188 General serve as the person's address or the address of the  
 189 minor or incapacitated person. To the extent possible within  
 190 funds appropriated for this purpose, the Attorney General shall  
 191 approve an application if it is filed in the manner and on the  
 192 form prescribed by the Attorney General and if it contains all  
 193 of the following:

194 (b) An applicant-approved list of all dependents and  
 195 household members residing with the applicant whose presence, if  
 196 disclosed or released, would endanger the safety of the  
 197 applicant.

198 (4) Dependents and household members of the certified  
 199 program participant are entitled to the same rights and  
 200 protections as the certified program participant as long as they  
 201 are approved by the certified program participant and primarily  
 202 reside at the certified program participant's address.

203 Section 14. Paragraph (j) is added to subsection (2) of

Page 7 of 10

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

5-01501B-17

20171626\_\_

204 section 896.101, Florida Statutes, to read:

205 896.101 Florida Money Laundering Act; definitions;  
 206 penalties; injunctions; seizure warrants; immunity.—

207 (2) As used in this section, the term:

208 (j) "Virtual currency" means a medium of exchange in  
 209 electronic or digital format which is not a coin or currency of  
 210 the United States or another country.

211 Section 15. Paragraph (f) is added to subsection (3) of  
 212 section 960.03, Florida Statutes, and paragraph (e) is added to  
 213 subsection (14) of that section, to read:

214 960.03 Definitions; ss. 960.01-960.28.—As used in ss.

215 960.01-960.28, unless the context otherwise requires, the term:

216 (3) "Crime" means:

217 (f) A felony or misdemeanor that results in the death of an  
 218 emergency responder, as defined in and solely for the purposes  
 219 of s. 960.201, while answering a call for service in the line of  
 220 duty, notwithstanding paragraph (c).

221 (14) "Victim" means:

222 (e) An emergency responder, as defined in and solely for  
 223 the purposes of s. 960.201, who is killed while answering a call  
 224 for service in the line of duty.

225 Section 16. Section 960.16, Florida Statutes, is amended to  
 226 read:

227 960.16 Subrogation.—Except for an award made under s.  
 228 960.201, payment of an award pursuant to this chapter shall  
 229 subrogate the state, to the extent of such payment, to any right  
 230 of action accruing to the claimant or to the victim or  
 231 intervenor to recover losses directly or indirectly resulting  
 232 from the crime with respect to which the award is made. Causes

Page 8 of 10

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



5-01501B-17 20171626\_\_

233 of action which shall be subrogated under this section include,  
 234 but are not limited to, any claim for compensation under any  
 235 insurance provision, including an uninsured motorist provision,  
 236 when such claim seeks to recover losses directly or indirectly  
 237 resulting from the crime with respect to which the award is  
 238 made.

239 Section 17. Section 960.201, Florida Statutes, is created  
 240 to read:

241 960.201 Emergency responder death benefits.-

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

243 (a) "Answering a call for service" means actively  
 244 performing official duties that include the identification,  
 245 prevention, or enforcement of the penal, traffic, or highway  
 246 laws of this state; and include traveling to the scene of an  
 247 emergency situation and upon arrival performing those functions  
 248 that the emergency responder has been trained and certified to  
 249 perform.

250 (b) "Emergency medical technician" has the same meaning as  
 251 in s. 401.23(11).

252 (c) "Emergency responder" means a law enforcement officer,  
 253 a firefighter, or an emergency medical technician or paramedic.

254 (d) "Firefighter" has the same meaning as in s. 633.102(9).

255 (e) "Law enforcement officer" has the same meaning as in s.  
 256 943.10(1).

257 (f) "Paramedic" has the same meaning as in s. 401.23(17).

258 (g) "Surviving family members of an emergency responder"  
 259 means the surviving spouse, children, parents or guardian, or  
 260 siblings of a deceased emergency responder.

261 (2) Notwithstanding ss. 960.065(1) and 960.13 for crime

5-01501B-17 20171626\_\_

262 victim compensation awards, the department may award for any one  
 263 claim up to a maximum of \$50,000 to the surviving family members  
 264 of an emergency responder who, as a result of a crime, is killed  
 265 answering a call for service in the line of duty.

266 (3) In determining the amount of an award:

267 (a) The department shall determine whether, because of his  
 268 or her conduct, the emergency responder contributed to his or  
 269 her death, and shall reduce the amount of the award or reject  
 270 the claim altogether in accordance with such determination.

271 (b) The department may disregard the contribution of the  
 272 emergency responder to his or her own death, as determined under  
 273 paragraph (a), when the record shows that such conduct occurred  
 274 in connection with the efforts of the emergency responder acting  
 275 as an intervenor as defined in s. 960.03.

276 (4) If two or more persons are entitled to an award under  
 277 this section, the award shall be apportioned among the claimants  
 278 at the discretion and direction of the department.

279 (5) An award under this section shall be reduced or denied  
 280 if the department has previously approved or paid out a claim  
 281 under s. 960.13 to the same victim or applicant regarding the  
 282 same incident. An award for victim compensation under s. 960.13  
 283 shall be denied if the department has previously approved or  
 284 paid out an emergency responder death benefits claim under this  
 285 section.

286 (6) The department may adopt rules that establish limits  
 287 below the amount set forth in subsection (2) and that establish  
 288 criteria governing awards pursuant to this section.

289 Section 18. This act shall take effect July 1, 2017.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/27/17

Meeting Date

1626

Bill Number (if applicable)

Topic ~~Senate Page~~ Department of Legal Affairs Amendment Barcode (if applicable)

Name Andrew Fay

Job Title Special Counsel

Address PL 02

Street

Phone 850-245-0155

Tallahassee FL 3230

City

State

Zip

Email Andrew.Fay@myfloridalegal.com

Speaking:  For  Against  Information

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

Representing Office of the Attorney General

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

## Committee Agenda Request

**To:** Senator Randolph Bracy, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 15, 2017

---

I respectfully request that **Senate Bill # 1626**, relating to Department of Legal Affairs, be placed on the:

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

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

Senator Rob Bradley  
Florida Senate, District 5

**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 1670

INTRODUCER: Senator Latvala

SUBJECT: Juvenile Justice

DATE: March 24, 2017

REVISED: 03/27/17

---

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u></u>	<u></u>	<u>ACJ</u>	<u></u>
3.	<u></u>	<u></u>	<u>AP</u>	<u></u>

---

**I. Summary:**

SB 1670 makes numerous changes that increase the use of secure detention.

Specifically the bill:

- Creates the designation of a prolific juvenile offender;
- Requires that children who meet the criteria for the designation of prolific juvenile offender be held in detention until disposition;
- Requires the court to place children who are adjudicated and awaiting placement for a nonsecure residential commitment program in secure detention until they are placed in a residential commitment program;
- Requires that the period for detention be tolled on the date the Department of Juvenile Justice (DJJ) alleges the child has violated a condition of his or her detention until the court enters a ruling on the violation; and
- Requires a prolific juvenile offender's adjudicatory hearing be held within 45 days after the petition is filed.

The DJJ shares the costs of secure detention with the counties that are not fiscally constrained. The fiscal impact of this bill would be **\$6,938,462** (50 percent of which would be general revenue and 50 percent of which would be from the Shared Detention Trust Fund). The state's portion would total **\$3,469,231** and the counties' portion would be **\$3,469,231**. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2017.

## II. Present Situation:

### Detention of Juveniles

The Department of Juvenile Justice (DJJ) provides detention care to supervise juveniles charged with committing a crime or who are held pursuant to a court order. There are two types of detention care, secure and nonsecure detention. Secure detention is the temporary custody of a child while under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.<sup>1</sup>

Nonsecure detention is the temporary, nonsecure custody of a child while the child is released to the custody of the parent, guardian, or custodian under the supervision of the DJJ staff pending adjudication, disposition, or placement. There are numerous forms of nonsecure detention; they include home detention, electronic monitoring, and nonsecure shelters.<sup>2</sup>

The DJJ operates 21 secure detention facilities with 1,302 beds in 21 counties. During Fiscal Year 2015-16, a total of 15,142 children were served through secure detention, 11,463 were served through home detention, and 2,803 were served through electronic monitoring. There are three county-operated detention centers in Marion, Polk, and Seminole Counties.<sup>3</sup>

During Fiscal Year 2015-16, 2,437 children were committed to nonsecure residential commitment programs. These committed children awaiting placement in the community committed 4,308 new charges, including felonies, misdemeanors, and technical offenses. For that same period, 149 committed youth awaiting placement absconded during their time pending placement.<sup>4</sup>

### Pre-Adjudication Detention

Section 985.255, F.S., requires a child to have a detention hearing within 24 hours of being taken into custody and placed in detention. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention.<sup>5</sup>

During the period of time between when a child is taken into custody and the detention hearing, the DJJ makes the determination of whether a child should be placed in detention. The DJJ must make its decision on a risk assessment of the child.<sup>6</sup> The child must be placed in secure detention until the detention hearing if the child:

- Is charged with possessing or discharging a firearm on school property.

---

<sup>1</sup> Section 985.03(18), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Department of Juvenile Justice, *2017 Agency Bill Analysis for SB 1670*, March 10, 2017, (on file with the Senate Criminal Justice Committee).

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

<sup>5</sup> Section 985.255(3)(a), F.S.

<sup>6</sup> A risk assessment must take into consideration the child's prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. Section 985.245(2), F.S.

- Has been taken into custody on three or more separate occasions within a 60-day period.<sup>7</sup>

Section 985.24, F.S., requires that all determinations and court orders regarding the use of detention care must be based upon findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court by:
  - Intentionally disrupting the administration of the court;
  - Intentionally disobeying a court order; or
  - Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or
- Requests protection from imminent bodily harm.<sup>8</sup>

At a detention hearing, the court must determine the need for continued detention and use the results of the DJJ's risk assessment.<sup>9</sup> The court may order a child stay in detention, if the child is:

- Alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.
- Wanted in another jurisdiction for a felony offense.
- Charged with a delinquent act or violation of law and requests to be detained for protection from an imminent physical threat to his or her personal safety.
- Charged with committing an offense of domestic violence<sup>10</sup> and is detained.<sup>11</sup>
- Charged with possession of or discharging a firearm on school property or the illegal possession of a firearm.
- Charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., (drug offenses) or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.
- Charged with any second degree or third degree felony involving a violation of ch. 893, F.S., or any third degree felony that is not also a crime of violence, and the child:

---

<sup>7</sup> Section 985.25, F.S.

<sup>8</sup> Section 985.24(1), F.S.

<sup>9</sup> Section 985.255(3)(a), F.S., provides that a court does not have to use the DJJ's risk assessment in making its determination of detention if the child is detained because he or she is charged with a domestic violence offense, possession of or discharging a firearm on school property, or the illegal possession of a firearm.

<sup>10</sup> Section 741.28(2), F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. A family or household member includes: spouses; former spouses; persons related by blood or marriage; persons who are presently residing together as if a family or who have resided together in the past as if a family in the same single family dwelling unit; and persons who are parents of a child in common, regardless of whether they have been married.

<sup>11</sup> Section 985.255(2), F.S., allows a child to be held in secure detention if the court finds that respite care is not available and it is necessary to place the child in secure detention to protect the victim from injury.

- Has a record of failure to appear at court hearings;
- Has a record of law violations prior to court hearings;
- Has already been detained or has been released and is awaiting final disposition of the case;
- Has a record of violent conduct resulting in physical injury to others; or
- Is found to have been in possession of a firearm.
- Alleged to have violated the conditions of the child's probation or conditional release supervision.
- Detained on a judicial order for failure to appear and has previously willfully failed to appear:
  - For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or
  - At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.<sup>12</sup>

If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court must state, in writing, clear and convincing reasons for such placement.<sup>13</sup>

### **Length of Detention**

Once a detention hearing has been held and the state has filed a petition alleging a child committed a delinquent act or a violation of law, an adjudicatory hearing must be held as soon as practicable.<sup>14</sup> A child cannot be held in detention for more than 21 days unless an adjudicatory hearing is held.<sup>15</sup> The court may extend the length of the detention by nine days if more time is required for the prosecution or defense to prepare for cases involving certain serious crimes.<sup>16</sup> Except as stated above, after the adjudicatory hearing, a child cannot be held in detention for more than 15 days.<sup>17</sup>

### **Post-Disposition Detention**

After the court finds that a child has committed a delinquent act, it must conduct a disposition hearing to determine the appropriate sanction for the child.<sup>18</sup> If the court places a child in a commitment program, the court must also place the child in detention care (secure or nonsecure) while awaiting placement in such commitment program.<sup>19</sup>

If the child is awaiting placement in a nonsecure residential program he or she can only be in secure or nonsecure detention for up to five days. The DJJ may seek an extension of the five-day

---

<sup>12</sup> Section 985.255(1), F.S.

<sup>13</sup> Section 985.255(3)(b), F.S.

<sup>14</sup> Section 985.35(1), F.S.

<sup>15</sup> Section 985.26(2), F.S.

<sup>16</sup> These serious crimes include capital felonies, life felonies, and first or second degree felonies. Section 985.26(2), F.S.

<sup>17</sup> Section 985.26(3), F.S.

<sup>18</sup> Section 985.433, F.S.

<sup>19</sup> Section 985.27, F.S.

period to hold the child in detention care until the commitment placement is made. However, if the child is in secure detention, the continued detention cannot exceed 15 days.<sup>20</sup>

A child who violates his or her nonsecure detention or nonsecure detention with electronic monitoring can be placed in secure detention for five days for the first and each subsequent violation.<sup>21</sup>

If the placement for the child is a high- or maximum-risk residential program, the child must be held in secure detention until the placement is made.<sup>22</sup>

### III. Effect of Proposed Changes:

#### Pre-Adjudication Detention

The bill amends s. 985.255, F.S., to add to the criteria a court may consider at a detention hearing. The bill adds the criteria of whether the child is classified as a *prolific juvenile offender*. (Section 4).

The bill requires that the child be designated as a *prolific juvenile offender* if the child:

- Is charged with a delinquent act that would be a felony if committed by an adult;
- Has been adjudicated or had adjudication withheld for a felony offense or delinquent act that would be a felony if committed by an adult, before the current charge; and
- Has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
  - An arrest event for which a disposition<sup>23</sup> has not been entered;
  - An adjudication; or
  - An adjudication withheld.

The bill defines the term “arrest event” to mean an arrest for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction.

The bill excludes the charge that the child is currently arrested for and the felony offense that the child had been adjudicated of or had adjudication withheld in (bullets one and two above) from being counted as one of the 5 acts above (bullet three).

The bill also amends s. 985.24, F.S., to require the findings used to determine a child’s detention care include the finding that *the child is at risk for recidivism*. (Section 1).

Section 985.245, F.S., requires a risk assessment be used to determine a child’s detention care. The bill amends s. 985.245, F.S., to exclude a child designated as a prolific juvenile offender from such requirement. (Section 2).

<sup>20</sup> Section 985.27(1)(a), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 985.27(1)(b) and (c), F.S.

<sup>23</sup> The bill defines disposition to mean the entry of a nolle prosequi for the charges, a dismissal of the case, or the entry of a disposition order by the court.



A child must be placed in secure detention until the detention hearing if he or she is charged with certain offenses. The bill amends s. 985.25, F.S., to include a child who is designated as a prolific juvenile offender to this list. **(Section 3).**

### **Length of Detention**

The bill requires a prolific juvenile offender to be held in secure detention until the disposition of his or her case. The bill defines the term “disposition” to mean the entry of a nolle prosequi for the charges, a dismissal of the case, or the entry of a disposition order by the court. **(Section 5).** The bill creates s. 985.26(4)(b), F.S., to establish a tolling period for juveniles who have violated a condition of detention until the court enters a ruling on the violation. The bill specifies that a court retains jurisdiction over a child for a violation of a condition of detention care during the tolling period. If the court finds that a child has violated his or her detention care, the number of days that the child served in detention care before commission of the violation is excluded from the normally applicable maximum detention periods of 21-days prior to the adjudicatory hearing and 15-days prior to disposition. This allows the court to continue such child’s detention care for another 21-days or 15-days, as applicable. **(Section 5).**

The bill also amends s. 985.35, F.S., relating to adjudicatory hearings, to require a prolific juvenile offender’s adjudicatory hearing be held within 45 days after the petition is filed alleging that he or she has committed a delinquent act or violation, unless a delay is requested by the child. **(Section 8).**

### **Post-Disposition Detention**

The bill amends s. 985.27, F.S., to require that all children who are adjudicated and awaiting placement in a commitment program be held in secure detention until placement or commitment. **(Section 7).**

### **Other**

The bill amends s. 985.265, F.S., **(Section 6)**, and s. 985.514, F.S., **(Section 9)**, to remove the reference of “secure” and “nonsecure” detention. The bill makes this change to consistently use “detention” care throughout ch. 985, F.S.

**Sections 10-16** amend ss. 790.22, 985.115, 985.13, 985.275, and 985.319, F.S., to reenact provisions to incorporate changes made by the bill.

The bill is effective October 1, 2017. **(Section 17).**

## **IV. Constitutional Issues:**

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

Because the bill results in the counties paying more for juvenile detention costs than what was previously required, the bill falls within the purview of the mandates provision of section 18, Art. VII of the Florida Constitution. Subsection (a) of section 18, Art. VII of the Florida Constitution provides in pertinent part that “no county or municipality shall

be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated.” The bill applies to all persons similarly situated, including the state and local governments. The bill does not include a legislative finding that the bill fulfills an important state interest.

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 bill makes changes that increase the use of secure detention which will potentially exacerbate current stresses on detention staffing and turnover, which, if not addressed, will increase overtime costs and could lead to increased facility incidents. During Fiscal Year 2015-16, the DJJ expended \$6,842,317 in overtime for detention officers. The bill would increase detention utilization by 33 percent; estimating a similar increase to overtime costs at 33 percent would add **\$2,257,965**.<sup>24</sup>

The bill provides that children who meet the criteria for the designation of prolific juvenile offender be held in detention until disposition. Based on Fiscal Year 2015-16, the DJJ determined 371 youth would meet the definition of prolific juvenile offender. Based on this, the DJJ assumes it would serve 371 youth once and 185.5 (half) of these youth a second time, totaling 557 cases annually. The current average time to disposition for these youth is 71 days. The bill provides that the adjudicatory hearing of a prolific juvenile offender must be held within 45 days. The DJJ assumes that half of the population will have their disposition hearing within 45 days, while the other half will have their disposition hearing within the current average. The DJJ has determined the fiscal impact of this change to be **\$1,318,241**.

---

<sup>24</sup> Department of Juvenile Justice, *2017 Agency Bill Analysis for SB 1670*, March 10, 2017, (on file with the Senate Criminal Justice Committee). Discussion in this part of the analysis of the fiscal impact is from this source. Unless otherwise noted, all information in this section of the analysis regarding the DJJ estimates is from this source.

The bill requires the court to place youth who are adjudicated and awaiting placement for a nonsecure residential commitment program in secure detention until they are placed. The DJJ has determined the fiscal impact on operational costs to be **\$3,362,256**.

The bill requires that the period for detention be tolled on the date the DJJ alleges the child has violated a condition of the child's detention care until the court enters a ruling on the violation. It is unclear the frequency with which this provision would be utilized to determine the fiscal impact. It could also exacerbate current stresses on detention staffing and turnover, which, if not addressed, will increase overtime costs and impact facility incidents.

The DJJ shares the costs of secure detention with the counties that are not fiscally constrained. The fiscal impact of this bill would be **\$6,938,462** (50 percent of which would be general revenue and 50 percent of which would be from the Shared Detention Trust Fund). The state's portion would total **\$3,469,231** and the counties' portion would be **\$3,469,231**.

Additionally, the bill would require the DJJ to determine if youth meet the definition of prolific juvenile offender to hold youth in secure detention until their detention hearing based on complex criteria. This would require modification of the Juvenile Justice Information System (JJIS) to identify these youth. The DJJ estimates the fiscal impact of this to be **\$44,528**; this cost would be in addition to the \$3,469,231.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.24, 985.245, 985.25, 985.255, 985.26, 985.265, 985.27, 985.35, and 985.514.

This bill reenacts the following sections of the Florida Statutes: 790.22, 985.115, 985.13, 985.245, 985.255, 985.275, and 985.319.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

---

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

---

By Senator Latvala

16-00721B-17

20171670\_\_

1 A bill to be entitled  
 2 An act relating to juvenile justice; amending s.  
 3 985.24, F.S.; revising requirements for placement of a  
 4 child in detention care; revising terminology;  
 5 amending s. 985.245, F.S.; providing that a child who  
 6 is designated a prolific juvenile offender does not  
 7 require a risk assessment to be placed in detention  
 8 care; amending s. 985.25, F.S.; revising terminology;  
 9 providing that a child meeting specified criteria  
 10 shall be placed in secure detention care until the  
 11 child's detention hearing; amending s. 985.255, F.S.;  
 12 revising terminology; providing criteria for a child  
 13 to be designated a prolific juvenile offender;  
 14 defining the term "arrest event"; conforming  
 15 provisions to changes made by the act; amending s.  
 16 985.26, F.S.; revising terminology; requiring the  
 17 court to place a prolific juvenile offender in secure  
 18 detention care under a special detention order until  
 19 disposition; defining the term "disposition"; revising  
 20 terminology; providing for the tolling of the period  
 21 of detention care for an alleged violation of  
 22 detention care conditions; providing for the retention  
 23 of jurisdiction by the court over a child during the  
 24 tolling period; revising the calculation of detention  
 25 days served if a child violates detention care;  
 26 amending s. 985.265, F.S.; revising terminology;  
 27 amending s. 985.27, F.S.; requiring secure detention  
 28 for all children awaiting placement in a commitment  
 29 program until the placement or commitment is

Page 1 of 20

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

16-00721B-17

20171670\_\_

30 accomplished; deleting provisions relating to the  
 31 detention of children; amending s. 985.35, F.S.;  
 32 requiring the adjudicatory hearing for a child  
 33 designated a prolific juvenile offender to be held  
 34 within a specified period unless such child requests a  
 35 delay; amending s. 985.514, F.S.; revising  
 36 terminology; reenacting s. 790.22(8), F.S., relating  
 37 to secure detention for minors charged with an offense  
 38 involving firearms, to incorporate the amendments made  
 39 by the act to ss. 985.24, 985.25, 985.255, and 985.26,  
 40 F.S., in references thereto; reenacting s. 985.115(2),  
 41 F.S., relating to release or delivery from custody, to  
 42 incorporate the amendments made by the act to ss.  
 43 985.255 and 985.26, F.S., in references thereto;  
 44 reenacting s. 985.13(2), F.S., relating to probable  
 45 cause affidavits, to incorporate the amendments made  
 46 by the act to ss. 985.255 and 985.26, F.S., in  
 47 references thereto; reenacting s. 985.245(2)(b), F.S.,  
 48 relating to risk assessment instruments, to  
 49 incorporate the amendment made by this act to s.  
 50 985.255, F.S., in a reference thereto; reenacting s.  
 51 985.255(2), F.S., relating to detention criteria and  
 52 hearings, to incorporate the amendment made by this  
 53 act to s. 985.26, F.S., in a reference thereto;  
 54 reenacting s. 985.275(1), F.S., relating to detention  
 55 of an escapee or absconder, to incorporate the  
 56 amendment made by this act to s. 985.255, F.S., in a  
 57 reference thereto; reenacting s. 985.319(6), F.S.,  
 58 relating to process and service, to incorporate the

Page 2 of 20

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

16-00721B-17

20171670\_\_

59 amendment made by this act to s. 985.255, F.S., in a  
60 reference thereto; providing an effective date.

61  
62 Be It Enacted by the Legislature of the State of Florida:

63  
64 Section 1. Paragraphs (d) and (e) of subsection (1) and  
65 subsection (2) of section 985.24, Florida Statutes, are amended,  
66 and paragraph (f) is added to subsection (1) of that section, to  
67 read:

68 985.24 Use of detention; prohibitions.—

69 (1) All determinations and court orders regarding the use  
70 of detention care shall be based primarily upon findings that  
71 the child:

72 (d) Has committed contempt of court by:

73 1. Intentionally disrupting the administration of the  
74 court;

75 2. Intentionally disobeying a court order; or

76 3. Engaging in a punishable act or speech in the court's  
77 presence which shows disrespect for the authority and dignity of  
78 the court; ~~or~~

79 (e) Requests protection from imminent bodily harm; or

80 (f) Is at risk for recidivism.

81 (2) A child alleged to have committed a delinquent act or  
82 violation of law may not be placed into ~~secure or nonsecure~~  
83 detention care for any of the following reasons:

84 (a) To allow a parent to avoid his or her legal  
85 responsibility.

86 (b) To permit more convenient administrative access to the  
87 child.

16-00721B-17

20171670\_\_

88 (c) To facilitate further interrogation or investigation.

89 (d) Due to a lack of more appropriate facilities.

90 Section 2. Subsection (1) of section 985.245, Florida  
91 Statutes, is amended to read:

92 985.245 Risk assessment instrument.—

93 (1) All determinations and court orders regarding placement  
94 of a child into detention care shall comply with all  
95 requirements and criteria provided in this part and shall be  
96 based on a risk assessment of the child, unless the child is  
97 placed into detention care under as provided in s. 985.255(2) or  
98 is designated a prolific juvenile offender under s.  
99 985.255(1)(j).

100 Section 3. Subsection (1) of section 985.25, Florida  
101 Statutes, is amended to read:

102 985.25 Detention intake.—

103 (1) The department shall receive custody of a child who has  
104 been taken into custody from the law enforcement agency or court  
105 and shall review the facts in the law enforcement report or  
106 probable cause affidavit and make such further inquiry as may be  
107 necessary to determine whether detention care is appropriate.

108 (a) During the period of time from the taking of the child  
109 into custody to the date of the detention hearing, the initial  
110 decision as to the child's placement into ~~secure or nonsecure~~  
111 detention care shall be made by the department under ss. 985.24  
112 and 985.245(1).

113 (b) The department shall base the decision whether to place  
114 the child into ~~secure or nonsecure~~ detention care on an  
115 assessment of risk in accordance with the risk assessment  
116 instrument and procedures developed by the department under s.

16-00721B-17 20171670\_\_

117 985.245, except that, however, a child shall be placed in secure  
 118 detention care until the child's detention hearing if the child  
 119 meets the criteria specified in s. 985.255(1)(j), is charged  
 120 with possessing or discharging a firearm on school property in  
 121 violation of s. 790.115, ~~or shall be placed in secure detention~~  
 122 ~~care. A child who has been taken into custody on three or more~~  
 123 ~~separate occasions within a 60-day period shall be placed in~~  
 124 ~~secure detention care until the child's detention hearing.~~

125 (c) If the final score on the child's risk assessment  
 126 instrument indicates detention care is appropriate, but the  
 127 department otherwise determines the child should be released,  
 128 the department shall contact the state attorney, who may  
 129 authorize release.

130 (d) If the final score on the risk assessment instrument  
 131 indicates detention is not appropriate, the child may be  
 132 released by the department in accordance with ss. 985.115 and  
 133 985.13.

134  
 135 Under no circumstances shall the department or the state  
 136 attorney or law enforcement officer authorize the detention of  
 137 any child in a jail or other facility intended or used for the  
 138 detention of adults, without an order of the court.

139 Section 4. Subsection (1) and paragraphs (a) and (c) of  
 140 subsection (3) of section 985.255, Florida Statutes, are amended  
 141 to read:

142 985.255 Detention criteria; detention hearing.—

143 (1) Subject to s. 985.25(1), a child taken into custody and  
 144 placed into ~~secure or nonsecure~~ detention care shall be given a  
 145 hearing within 24 hours after being taken into custody. At the

16-00721B-17 20171670\_\_

146 hearing, the court may order continued detention if:

147 (a) The child is alleged to be an escapee from a  
 148 residential commitment program; or an absconder from a  
 149 nonresidential commitment program, a probation program, or  
 150 conditional release supervision; or is alleged to have escaped  
 151 while being lawfully transported to or from a residential  
 152 commitment program.

153 (b) The child is wanted in another jurisdiction for an  
 154 offense which, if committed by an adult, would be a felony.

155 (c) The child is charged with a delinquent act or violation  
 156 of law and requests in writing through legal counsel to be  
 157 detained for protection from an imminent physical threat to his  
 158 or her personal safety.

159 (d) The child is charged with committing an offense of  
 160 domestic violence as defined in s. 741.28 and is detained as  
 161 provided in subsection (2).

162 (e) The child is charged with possession of or discharging  
 163 a firearm on school property in violation of s. 790.115 or the  
 164 illegal possession of a firearm.

165 (f) The child is charged with a capital felony, a life  
 166 felony, a felony of the first degree, a felony of the second  
 167 degree that does not involve a violation of chapter 893, or a  
 168 felony of the third degree that is also a crime of violence,  
 169 including any such offense involving the use or possession of a  
 170 firearm.

171 (g) The child is charged with any second degree or third  
 172 degree felony involving a violation of chapter 893 or any third  
 173 degree felony that is not also a crime of violence, and the  
 174 child:

16-00721B-17

20171670\_\_

175 1. Has a record of failure to appear at court hearings  
 176 after being properly notified in accordance with the Rules of  
 177 Juvenile Procedure;

178 2. Has a record of law violations prior to court hearings;

179 3. Has already been detained or has been released and is  
 180 awaiting final disposition of the case;

181 4. Has a record of violent conduct resulting in physical  
 182 injury to others; or

183 5. Is found to have been in possession of a firearm.

184 (h) The child is alleged to have violated the conditions of  
 185 the child's probation or conditional release supervision.  
 186 However, a child detained under this paragraph may be held only  
 187 in a consequence unit as provided in s. 985.439. If a  
 188 consequence unit is not available, the child shall be placed on  
 189 nonsecure detention with electronic monitoring.

190 (i) The child is detained on a judicial order for failure  
 191 to appear and has previously willfully failed to appear, after  
 192 proper notice:

193 1. For an adjudicatory hearing on the same case regardless  
 194 of the results of the risk assessment instrument; or

195 2. At two or more court hearings of any nature on the same  
 196 case regardless of the results of the risk assessment  
 197 instrument.

198 A child may be held in secure detention for up to 72 hours in  
 199 advance of the next scheduled court hearing pursuant to this  
 200 paragraph. The child's failure to keep the clerk of court and  
 201 defense counsel informed of a current and valid mailing address  
 202 where the child will receive notice to appear at court  
 203

Page 7 of 20

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

16-00721B-17

20171670\_\_

204 proceedings does not provide an adequate ground for excusal of  
 205 the child's nonappearance at the hearings.

206 (j) The child is a prolific juvenile offender. A child must  
 207 be designated by the court as a prolific juvenile offender if  
 208 the child:

209 1. Is charged with a delinquent act that would be a felony  
 210 if committed by an adult;

211 2. Has been adjudicated or had adjudication withheld for a  
 212 felony offense or delinquent act that would be a felony if  
 213 committed by an adult, before the charge under subparagraph 1.;  
 214 and

215 3. Has 5 or more of any of the following, at least 3 of  
 216 which must have been for felony offenses or delinquent acts that  
 217 would have been felonies if committed by an adult:

218 a. An arrest event for which a disposition, as defined in  
 219 s. 985.26, has not been entered;

220 b. An adjudication; or

221 c. An adjudication withheld.

222

223 This subparagraph excludes the arrest event that resulted in the  
 224 charge under subparagraph 1. and the adjudication or  
 225 adjudication withheld under subparagraph 2. As used in this  
 226 subparagraph, the term "arrest event" means an arrest for one or  
 227 more criminal offenses or delinquent acts arising out of the  
 228 same episode, act, or transaction.

229 (3) (a) The purpose of the detention hearing required under  
 230 subsection (1) is to determine the existence of probable cause  
 231 that the child has committed the delinquent act or violation of  
 232 law that he or she is charged with and the need for continued

Page 8 of 20

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



16-00721B-17 20171670\_\_

233 detention. Unless a child is detained under paragraph (1)(d), ~~or~~  
 234 paragraph (1)(e), or paragraph (1)(j), the court shall use the  
 235 results of the risk assessment performed by the department and,  
 236 based on the criteria in subsection (1), shall determine the  
 237 need for continued detention.

238 (c) Except as provided in s. 790.22(8), s. 985.26(2)(b), or  
 239 ~~in~~ s. 985.27, when a child is placed into ~~secure or nonsecure~~  
 240 detention care, or into a respite home or other placement  
 241 pursuant to a court order following a hearing, the court order  
 242 must include specific instructions that direct the release of  
 243 the child from such placement no later than 5 p.m. on the last  
 244 day of the detention period specified in s. 985.26 or s. 985.27,  
 245 whichever is applicable, unless the requirements of such  
 246 applicable provision have been met or an order of continuance  
 247 has been granted under s. 985.26(4). If the court order does not  
 248 include a release date, the release date shall be requested from  
 249 the court on the same date that the child is placed in detention  
 250 care. If a subsequent hearing is needed to provide additional  
 251 information to the court for safety planning, the initial order  
 252 placing the child in detention care shall reflect the next  
 253 detention review hearing, which shall be held within 3 calendar  
 254 days after the child's initial detention placement.

255 Section 5. Subsections (1) through (4) of section 985.26,  
 256 Florida Statutes, are amended to read:

257 985.26 Length of detention.—

258 (1) A child may not be placed into or held in ~~secure or~~  
 259 ~~nonsecure~~ detention care for longer than 24 hours unless the  
 260 court orders such detention care, and the order includes  
 261 specific instructions that direct the release of the child from

16-00721B-17 20171670\_\_

262 such detention care, in accordance with s. 985.255. The order  
 263 shall be a final order, reviewable by appeal under s. 985.534  
 264 and the Florida Rules of Appellate Procedure. Appeals of such  
 265 orders shall take precedence over other appeals and other  
 266 pending matters.

267 (2) (a) Except as provided in paragraph (b), a child may not  
 268 be held in ~~secure or nonsecure~~ detention care under a special  
 269 detention order for more than 21 days unless an adjudicatory  
 270 hearing for the case has been commenced in good faith by the  
 271 court. However, upon good cause being shown that the nature of  
 272 the charge requires additional time for the prosecution or  
 273 defense of the case, the court may extend the length of  
 274 detention for an additional 9 days if the child is charged with  
 275 an offense that would be, if committed by an adult, a capital  
 276 felony, a life felony, a felony of the first degree, or a felony  
 277 of the second degree involving violence against any individual.

278 (b) A child who is designated a prolific juvenile offender  
 279 under s. 985.255(1)(j) shall be held in secure detention care  
 280 under a special detention order until disposition. As used in  
 281 this paragraph, the term "disposition" means the entry of a  
 282 nolle prosequi for the charges, a dismissal of the case, or the  
 283 entry of a disposition order by the court.

284 (3) Except as provided in subsection (2), a child may not  
 285 be held in ~~secure or nonsecure~~ detention care for more than 15  
 286 days following the entry of an order of adjudication.

287 (4) (a) The time limits in subsections (2) and (3) do not  
 288 include periods of delay resulting from a continuance granted by  
 289 the court for cause on motion of the child or his or her counsel  
 290 or of the state. Upon the issuance of an order granting a

16-00721B-17 20171670\_\_  
 291 continuance for cause on a motion by either the child, the  
 292 child's counsel, or the state, the court shall conduct a hearing  
 293 at the end of each 72-hour period, excluding Saturdays, Sundays,  
 294 and legal holidays, to determine the need for continued  
 295 detention of the child and the need for further continuance of  
 296 proceedings for the child or the state.

(b) The period for detention care under this section is tolled on the date that the department alleges that the child has violated a condition of the child's detention care until the court enters a ruling on the violation. Notwithstanding the tolling of detention care, the court retains jurisdiction over the child for a violation of a condition of detention care during the tolling period. If the court finds that a child has violated his or her detention care, the number of days that the child served in detention care before commission of the violation shall be excluded from the time limits under subsections (2) and (3).

Section 6. Subsection (2) of section 985.265, Florida Statutes, is amended to read:

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

(2) If a child is on release status and not detained under this part, the child may be placed into ~~secure or nonsecure~~ detention care only pursuant to a court hearing in which the original risk assessment instrument and the newly discovered evidence or changed circumstances are introduced into evidence with a rescored risk assessment instrument.

Section 7. Section 985.27, Florida Statutes, is amended to read:

16-00721B-17 20171670\_\_  
 320 985.27 Postdisposition detention while awaiting commitment  
 321 placement.-

~~(1) The court must place all children who are adjudicated and awaiting placement in a commitment program in secure detention care until the placement or commitment is accomplished. Children who are in nonsecure detention care may be placed on electronic monitoring.~~

~~(a) A child who is awaiting placement in a nonsecure residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. Any child held in secure detention during the 5 days must meet detention admission criteria under this part. The department may seek an order from the court authorizing continued detention for a specific period of time necessary for the appropriate residential placement of the child. However, such continued detention in secure detention care may not exceed 15 days after entry of the commitment order, excluding Saturdays, Sundays, and legal holidays, and except as otherwise provided in this section. A child who is placed in nonsecure detention care or nonsecure detention care with electronic monitoring, while awaiting placement in a nonsecure residential program, may be held in secure detention care for 5 days, if the child violates the conditions of the nonsecure detention care or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.~~

~~(b) If the child is committed to a high-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.~~

~~(c) If the child is committed to a maximum-risk residential~~

16-00721B-17 20171670\_\_

349 ~~program, the child must be held in secure detention care until~~  
 350 ~~placement or commitment is accomplished.~~

351 ~~(2) Regardless of detention status, a child being~~  
 352 ~~transported by the department to a residential commitment~~  
 353 ~~facility of the department may be placed in secure detention~~  
 354 ~~overnight, not to exceed a 24-hour period, for the specific~~  
 355 ~~purpose of ensuring the safe delivery of the child to his or her~~  
 356 ~~residential commitment program, court, appointment, transfer, or~~  
 357 ~~release.~~

358 Section 8. Subsection (1) of section 985.35, Florida  
 359 Statutes, is amended to read:

360 985.35 Adjudicatory hearings; withheld adjudications;  
 361 orders of adjudication.-

362 (1) (a) Except as provided in paragraph (b), the  
 363 adjudicatory hearing must be held as soon as practicable after  
 364 the petition alleging that a child has committed a delinquent  
 365 act or violation of law is filed and in accordance with the  
 366 Florida Rules of Juvenile Procedure; but reasonable delay for  
 367 the purpose of investigation, discovery, or procuring counsel or  
 368 witnesses shall be granted. If the child is being detained, the  
 369 time limitations in s. 985.26(2) and (3) apply.

370 (b) If the child is designated a prolific juvenile offender  
 371 under s. 985.255(1)(j), the adjudicatory hearing must be held  
 372 within 45 days after the petition alleging that the child has  
 373 committed a delinquent act or violation of law has been filed  
 374 unless a delay is requested by the child.

375 Section 9. Subsection (1) of section 985.514, Florida  
 376 Statutes, is amended to read:

377 985.514 Responsibility for cost of care; fees.-

16-00721B-17 20171670\_\_

378 (1) When any child is placed into ~~secure or nonsecure~~  
 379 detention care or into other placement for the purpose of being  
 380 supervised by the department pursuant to a court order following  
 381 a detention hearing, the court shall order the child's parents  
 382 to pay fees to the department as provided in s. 985.039.

383 Section 10. For the purpose of incorporating the amendments  
 384 made by this act to sections 985.24, 985.25, 985.255, and  
 385 985.26, Florida Statutes, in references thereto, subsection (8)  
 386 of section 790.22, Florida Statutes, is reenacted to read:

387 790.22 Use of BB guns, air or gas-operated guns, or  
 388 electric weapons or devices by minor under 16; limitation;  
 389 possession of firearms by minor under 18 prohibited; penalties.-

390 (8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor  
 391 is charged with an offense that involves the use or possession  
 392 of a firearm, including a violation of subsection (3), or is  
 393 charged for any offense during the commission of which the minor  
 394 possessed a firearm, the minor shall be detained in secure  
 395 detention, unless the state attorney authorizes the release of  
 396 the minor, and shall be given a hearing within 24 hours after  
 397 being taken into custody. At the hearing, the court may order  
 398 that the minor continue to be held in secure detention in  
 399 accordance with the applicable time periods specified in s.  
 400 985.26(1)-(5), if the court finds that the minor meets the  
 401 criteria specified in s. 985.255, or if the court finds by clear  
 402 and convincing evidence that the minor is a clear and present  
 403 danger to himself or herself or the community. The Department of  
 404 Juvenile Justice shall prepare a form for all minors charged  
 405 under this subsection which states the period of detention and  
 406 the relevant demographic information, including, but not limited

16-00721B-17

20171670\_\_

407 to, the gender, age, and race of the minor; whether or not the  
 408 minor was represented by private counsel or a public defender;  
 409 the current offense; and the minor's complete prior record,  
 410 including any pending cases. The form shall be provided to the  
 411 judge for determining whether the minor should be continued in  
 412 secure detention under this subsection. An order placing a minor  
 413 in secure detention because the minor is a clear and present  
 414 danger to himself or herself or the community must be in  
 415 writing, must specify the need for detention and the benefits  
 416 derived by the minor or the community by placing the minor in  
 417 secure detention, and must include a copy of the form provided  
 418 by the department.

419 Section 11. For the purpose of incorporating the amendment  
 420 made by this act to sections 985.255 and 985.26, Florida  
 421 Statutes, in references thereto, subsection (2) of section  
 422 985.115, Florida Statutes, is reenacted to read:

423 985.115 Release or delivery from custody.—

424 (2) Unless otherwise ordered by the court under s. 985.255  
 425 or s. 985.26, and unless there is a need to hold the child, a  
 426 person taking a child into custody shall attempt to release the  
 427 child as follows:

428 (a) To the child's parent, guardian, or legal custodian or,  
 429 if the child's parent, guardian, or legal custodian is  
 430 unavailable, unwilling, or unable to provide supervision for the  
 431 child, to any responsible adult. Prior to releasing the child to  
 432 a responsible adult, other than the parent, guardian, or legal  
 433 custodian, the person taking the child into custody may conduct  
 434 a criminal history background check of the person to whom the  
 435 child is to be released. If the person has a prior felony

16-00721B-17

20171670\_\_

436 conviction, or a conviction for child abuse, drug trafficking,  
 437 or prostitution, that person is not a responsible adult for the  
 438 purposes of this section. The person to whom the child is  
 439 released shall agree to inform the department or the person  
 440 releasing the child of the child's subsequent change of address  
 441 and to produce the child in court at such time as the court may  
 442 direct, and the child shall join in the agreement.

443 (b) Contingent upon specific appropriation, to a shelter  
 444 approved by the department or to an authorized agent.

445 (c) If the child is believed to be suffering from a serious  
 446 physical condition which requires either prompt diagnosis or  
 447 prompt treatment, to a law enforcement officer who shall deliver  
 448 the child to a hospital for necessary evaluation and treatment.

449 (d) If the child is believed to be mentally ill as defined  
 450 in s. 394.463(1), to a law enforcement officer who shall take  
 451 the child to a designated public receiving facility as defined  
 452 in s. 394.455 for examination under s. 394.463.

453 (e) If the child appears to be intoxicated and has  
 454 threatened, attempted, or inflicted physical harm on himself or  
 455 herself or another, or is incapacitated by substance abuse, to a  
 456 law enforcement officer who shall deliver the child to a  
 457 hospital, addictions receiving facility, or treatment resource.

458 (f) If available, to a juvenile assessment center equipped  
 459 and staffed to assume custody of the child for the purpose of  
 460 assessing the needs of the child in custody. The center may then  
 461 release or deliver the child under this section with a copy of  
 462 the assessment.

463 Section 12. For the purpose of incorporating the amendment  
 464 made by this act to section 985.255 and 985.26, Florida

16-00721B-17 20171670\_\_

465 Statutes, in references thereto, subsection (2) of section  
 466 985.13, Florida Statutes, is reenacted to read:  
 467 985.13 Probable cause affidavits.—  
 468 (2) A person taking a child into custody who determines,  
 469 under part V, that the child should be detained or released to a  
 470 shelter designated by the department, shall make a reasonable  
 471 effort to immediately notify the parent, guardian, or legal  
 472 custodian of the child and shall, without unreasonable delay,  
 473 deliver the child to the appropriate juvenile probation officer  
 474 or, if the court has so ordered under s. 985.255 or s. 985.26,  
 475 to a detention center or facility. Upon delivery of the child,  
 476 the person taking the child into custody shall make a written  
 477 report or probable cause affidavit to the appropriate juvenile  
 478 probation officer. Such written report or probable cause  
 479 affidavit must:  
 480 (a) Identify the child and, if known, the parents,  
 481 guardian, or legal custodian.  
 482 (b) Establish that the child was legally taken into  
 483 custody, with sufficient information to establish the  
 484 jurisdiction of the court and to make a prima facie showing that  
 485 the child has committed a violation of law.  
 486 Section 13. For the purpose of incorporating the amendment  
 487 made by this act to section 985.255, Florida Statutes, in a  
 488 reference thereto, paragraph (b) of subsection (2) of section  
 489 985.245, Florida Statutes, is reenacted to read:  
 490 985.245 Risk assessment instrument.—  
 491 (2)  
 492 (b) The risk assessment instrument shall take into  
 493 consideration, but need not be limited to, prior history of

16-00721B-17 20171670\_\_

494 failure to appear, prior offenses, offenses committed pending  
 495 adjudication, any unlawful possession of a firearm, theft of a  
 496 motor vehicle or possession of a stolen motor vehicle, and  
 497 probation status at the time the child is taken into custody.  
 498 The risk assessment instrument shall also take into  
 499 consideration appropriate aggravating and mitigating  
 500 circumstances, and shall be designed to target a narrower  
 501 population of children than s. 985.255. The risk assessment  
 502 instrument shall also include any information concerning the  
 503 child's history of abuse and neglect. The risk assessment shall  
 504 indicate whether detention care is warranted, and, if detention  
 505 care is warranted, whether the child should be placed into  
 506 secure or nonsecure detention care.  
 507 Section 14. For the purpose of incorporating the amendment  
 508 made by this act to section 985.26, Florida Statutes, in a  
 509 reference thereto, subsection (2) of section 985.255, Florida  
 510 Statutes, is reenacted to read:  
 511 985.255 Detention criteria; detention hearing.—  
 512 (2) A child who is charged with committing an offense that  
 513 is classified as an act of domestic violence as defined in s.  
 514 741.28 and whose risk assessment instrument indicates secure  
 515 detention is not appropriate may be held in secure detention if  
 516 the court makes specific written findings that:  
 517 (a) Respite care for the child is not available.  
 518 (b) It is necessary to place the child in secure detention  
 519 in order to protect the victim from injury.  
 520  
 521 The child may not be held in secure detention under this  
 522 subsection for more than 48 hours unless ordered by the court.

16-00721B-17

20171670\_\_

523 After 48 hours, the court shall hold a hearing if the state  
 524 attorney or victim requests that secure detention be continued.  
 525 The child may continue to be held in detention care if the court  
 526 makes a specific, written finding that detention care is  
 527 necessary to protect the victim from injury. However, the child  
 528 may not be held in detention care beyond the time limits set  
 529 forth in this section or s. 985.26.

530 Section 15. For the purpose of incorporating the amendment  
 531 made by this act to section 985.255, Florida Statutes, in a  
 532 reference thereto, subsection (1) of section 985.275, Florida  
 533 Statutes, is reenacted to read:

534 985.275 Detention of escapee or absconder on authority of  
 535 the department.—

536 (1) If an authorized agent of the department has reasonable  
 537 grounds to believe that any delinquent child committed to the  
 538 department has escaped from a residential commitment facility or  
 539 from being lawfully transported thereto or therefrom, or has  
 540 absconded from a nonresidential commitment facility, the agent  
 541 shall notify law enforcement and, if the offense would require  
 542 notification under chapter 960, notify the victim. The agent  
 543 shall make every reasonable effort as permitted within existing  
 544 resources provided to the department to locate the delinquent  
 545 child, and the child may be returned to the facility or, if it  
 546 is closer, to a detention center for return to the facility.  
 547 However, a child may not be held in detention longer than 24  
 548 hours, excluding Saturdays, Sundays, and legal holidays, unless  
 549 a special order so directing is made by the judge after a  
 550 detention hearing resulting in a finding that detention is  
 551 required based on the criteria in s. 985.255. The order shall

16-00721B-17

20171670\_\_

552 state the reasons for such finding. The reasons shall be  
 553 reviewable by appeal or in habeas corpus proceedings in the  
 554 district court of appeal.

555 Section 16. For the purpose of incorporating the amendment  
 556 made by this act to section 985.255, Florida Statutes, in a  
 557 reference thereto, subsection (6) of section 985.319, Florida  
 558 Statutes, is reenacted to read:

559 985.319 Process and service.—

560 (6) If the petition alleges that the child has committed a  
 561 delinquent act or violation of law and the judge deems it  
 562 advisable to do so, under the criteria of s. 985.255, the judge  
 563 may, by endorsement upon the summons and after the entry of an  
 564 order in which valid reasons are specified, order the child to  
 565 be taken into custody immediately, and in such case the person  
 566 serving the summons shall immediately take the child into  
 567 custody.

568 Section 17. This act shall take effect October 1, 2017.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1670

Meeting Date

Bill Number (if applicable)

Topic SB 1670

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title leg Director

Address 2737 Centerville Dr

Phone 717-2716

Street  
Tallahassee, FL 32319  
City State Zip

Email meredith.stanfield@  
djj-state.fl.us

Speaking:  For  Against  Information

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

Representing Department of Juvenile Justice

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

3/27/17

Meeting Date

1670

Bill Number (if applicable)

Topic "Prolific" Juvenile Offenders

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 S Monroe St. Ste. 401

Street

Phone (850) 445-9656  
6006-1014

TLH FL 32301

City

State

Zip

Email andy.thomas@fpd2.com

Speaking:  For  Against  Information

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

Representing FDPDA

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)

3-27-17

Meeting Date

1670

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Bill Cervone

Job Title STATE ATTY - 8 CIR

Address 120 W CENTRAL AVE

Street

Gainesville FL

City

State

32601

Zip

Phone 352-341-3886

Email cervonew@scw.org

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)

3/27/2017

*Meeting Date*

1670

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Sheriff Bob Gualtieri

Job Title Sheriff

Address 10750 Ulmerton Road

Phone 727-582-6200

*Street*

Largo

FL

33778

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations, *Chair*  
Commerce and Tourism  
Environmental Preservation and Conservation  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission,  
*Alternating Chair*

**SENATOR JACK LATVALA**

16th District

March 14, 2017

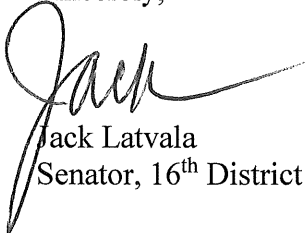
The Honorable Randolph Bracy  
213 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Bracy,

I respectfully request you place Senate Bill 1670, relating to Juvenile Justice, on your Criminal Justice agenda at your earliest convenience.

Should you have any questions or concerns regarding this legislation, please do not hesitate to contact me personally.

Sincerely,

  
Jack Latvala  
Senator, 16<sup>th</sup> District

cc: Jennifer Hrdlicka, Staff Director

**REPLY TO:**

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

# CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 3/27/2017 1:32:27 PM

Ends: 3/27/2017 3:10:38 PM

Length: 01:38:12

1:32:26 PM Meeting called to order  
1:32:30 PM Roll Call  
1:32:43 PM Tab 2- SB548 by Bracy- Comprehensive Case Information System  
1:33:52 PM Amendment Barcode 881540  
1:34:53 PM Back on SB548 as amended  
1:35:48 PM Speaker Judge Robert Roundtree from State Courts System  
1:36:44 PM Speaker Fred Baggett from Florida Court Clerks and Comptrollers  
1:38:17 PM Debate from Senator Bean  
1:39:44 PM Close on SB548  
1:39:58 PM Roll call on SB548  
1:40:17 PM Tab 8- SM1332 by Braynon- Firearm Violence Awareness Month  
1:40:57 PM Debate from Senator Rouson  
1:41:51 PM Roll call on SM1322  
1:42:23 PM Tab 1- SB260 by Stuebe- Threats to Kill or Do Bodily Injury  
1:43:38 PM Amendment Barcode 131814  
1:44:53 PM Back on SB260 as amended  
1:45:18 PM Sheriff Jerry Demings from Orange County Sheriff'sOffice  
1:46:18 PM Question from Senator Brandes  
1:47:09 PM Debate from Senator Clemens  
1:48:15 PM Comments from Chair Bracy  
1:48:35 PM Debate from Senator Brandes  
1:48:52 PM Close on SB260  
1:49:40 PM Roll call on SB260  
1:50:27 PM Tab 11- SB1670 by Latvala- Juvenile Justice  
1:53:10 PM Sheriff Bob Gualtieri from Florida Sheriffs Association  
1:58:18 PM Question from Senator Clemens about where to send convicted juveniles  
1:59:13 PM Question from Senator Bradley regarding the 45 day requirement  
2:06:12 PM Public Defender Andy Thomas from FDPDA  
2:12:57 PM Speaker Meridith Stanfield  
2:14:28 PM Debate from Senator Baxley  
2:16:38 PM Debate from Senator Rouson  
2:19:27 PM Debate from Senator Bradley  
2:21:51 PM Debate from Senator Bean  
2:23:22 PM Close on SB1670  
2:25:45 PM Roll call on SB1670  
2:27:09 PM Tab 10- SB1626 by Bradley- Department of Legal Affairs  
2:28:21 PM Amendment Barcode 214888  
2:28:27 PM Back on SB1626 as amended  
2:28:59 PM Roll call on SB1626  
2:29:18 PM Tab 5- SB1068 by Brandes- Sentencing  
2:29:56 PM Amendment Barcode 925088  
2:30:56 PM Questions on the amendment  
2:32:50 PM Debate on the amendment  
2:38:01 PM Roll call on the amendment  
2:39:00 PM Back on SB1068 as amended  
2:39:16 PM Speaker Sheriff Bob Gualtieri from Florida Sheriffs Association  
2:40:04 PM Debate on SB1068  
2:40:48 PM Close on SB1068  
2:42:17 PM Roll call on SB1068  
2:43:17 PM Tab 6- SB1102 by Rouson- Criminal Offenses  
2:45:54 PM Speaker Barney Bishop from Florida Smart Justice Alliance  
2:47:28 PM Speaker Sheriff Bob Gualtieri from Florida Sheriffs Association

**2:50:14 PM** Speaker Scott McCoy from Southern Poverty Law Center  
**2:51:12 PM** Speaker Chelsea Murphy from Right on Crime  
**2:52:51 PM** Debate on SB1102  
**2:56:14 PM** Close on SB1102  
**2:57:22 PM** Roll call on SB1102  
**2:58:23 PM** Tab 9- SB1486 by Rouson- Public Safety Coordinating Councils  
**2:59:27 PM** Debate on SB1486  
**3:00:27 PM** Roll call on SB1486  
**3:01:04 PM** Tab 3- SB552 by Bracy- Child Support  
**3:01:41 PM** Amendment Barcode 924974  
**3:02:01 PM** Back on SB552 as amended  
**3:03:01 PM** Roll call on SB552  
**3:03:56 PM** Tab 4- SB1002 by Perry- Controlled Substances  
**3:04:32 PM** Amendment Barcode 491230  
**3:04:48 PM** Back on SB1002 as amended  
**3:06:06 PM** Close on SB1002  
**3:06:10 PM** Roll call on SB1002  
**3:07:45 PM** Tab 7- SB1194 by Bracy- Sentencing  
**3:08:56 PM** Roll call on SB1194  
**3:09:56 PM** Meeting moved to ajourn by Senator Rouson