

<b>Tab 1</b>	<b>SB 484 by Bradley; Sentencing</b>					
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424720	D	S	RCS	CJ, Bradley	Delete everything after	11/13 04:44 PM
857760	AA	S	RCS	CJ, Bradley	Delete L.72 - 73:	11/13 04:44 PM

<b>Tab 2</b>	<b>SB 602 by Bracy; Mandatory Minimum Sentences</b>					
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<b>Tab 3</b>	<b>SPB 7000 by CJ; OGSR/Criminal History Records/Department of Law Enforcement</b>					
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<b>Tab 4</b>	<b>SPB 7002 by CJ; OGSR/Active Criminal Intelligence or Criminal Investigative Information</b>					
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

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

**MEETING DATE:** Monday, November 13, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 484</b> Bradley	Sentencing; Authorizing a court to sentence certain offenders to a county jail for up to 24 months if the county has a contract with the Department of Corrections; prohibiting an offender from receiving gain-time or other sentence credit that would result in the offender serving less than 85 percent of the offender's sentence, etc.  CJ      11/13/2017 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0
2	<b>SB 602</b> Bracy	Mandatory Minimum Sentences; Authorizing a court to depart from certain mandatory minimum terms of imprisonment for drug trafficking if it makes specified findings, etc.  CJ      11/13/2017 Temporarily Postponed JU AP RC	Temporarily Postponed
Consideration of proposed bill:			
3	<b>SPB 7000</b>	OGSR/Criminal History Records/Department of Law Enforcement; Amending provisions relating to an exemption from public records requirements for certain criminal history records ordered expunged which are retained by the Department of Law Enforcement; saving the exemption from repeal under the Open Government Sunset Review Act, etc.	Submitted and Reported Favorably as Committee Bill Yeas 6 Nays 0

Consideration of proposed bill:

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, November 13, 2017, 4:00—6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SPB 7002</b>	OGSR/Active Criminal Intelligence or Criminal Investigative Information; Amending provisions which provides an exemption from public meetings requirements for portions of a meeting of a duly constituted criminal justice commission at which active criminal intelligence information or active criminal investigative information being considered by, or which may foreseeably come before, the commission is discussed; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 6 Nays 0

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Other Related Meeting Documents

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

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

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

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BILL: CS/SB 484

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Sentencing

DATE: November 15, 2017      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

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

**I. Summary:**

CS/SB 484 amends s. 921.188, F.S., authorizing a court to sentence an offender to a term of imprisonment in the county jail, in the county where the offense was committed, for up to twenty-four months. A court can order such a sentence for offenses committed on or after July 1, 2018, if the offender's:

- Total sentence points score is more than 44 points, but less than or equal to 60 points;
- Primary offense is not a forcible felony, unless the primary offense is a third-degree felony under ch. 810, F.S. (burglary and trespass); and
- Primary offense is not subject to a minimum mandatory sentence of more than 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 Florida Department of Corrections (FDC). The bill requires the FDC to enter into a contract to house state inmates if the county requests such a contract and the contract must establish the maximum number of beds and the validated per diem rate. The per diem rate must be based on the contracting county's most recent annual adult male custody or adult female custody per diem rate, but cannot exceed \$60 per inmate. All contractual per diem rates must be validated by the Auditor General before payments are made.

The court must order that the offender is under the jurisdiction of the FDC as a condition of the sentence. The bill also provides that an offender sentenced to a county jail under this provision must be transferred to a FDC facility if the contract between the FDC and the county terminates,

expires, or is not renewed for any reason when the offender still has a portion of his or her sentence to serve.

A contract is contingent upon a specific appropriation as provided by law and must be awarded on a first-come, first-served basis up to the maximum appropriation allowable. The maximum appropriation allowable consists of funds appropriated in or transferred to a newly created appropriation category named “Inmates Sentenced to County Jail.” The bill requires funds to be transferred from other appropriation categories to the Inmates Sentenced to County Jail appropriation category to cover the requirements of each executed contract.

The bill will likely have a negative indeterminate fiscal impact on the FDC, and a positive indeterminate fiscal impact on local governments. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

## **II. Present Situation:**

### **Criminal Punishment Code**

The Criminal Punishment Code<sup>1</sup> applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the “offense severity ranking chart” from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.<sup>2</sup> If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>3</sup>

A defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record; and other aggravating factors. The points are added in order to determine the “lowest permissible sentence” for the offense.<sup>4</sup> A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are mitigating “circumstances or factors that reasonably justify the downward departure.”<sup>5</sup>

The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.<sup>6</sup> The lowest permissible sentence in which total sentence points equal to or are less than 44 points is any nonstate prison sanction.<sup>7</sup> If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated

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<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> Section 921.0022, F.S.

<sup>3</sup> Section 921.0023, F.S.

<sup>4</sup> Section 921.0024, F.S.

<sup>5</sup> Section 921.0026, F.S.

<sup>6</sup> Section 775.082, F.S.

<sup>7</sup> Section 921.0042(2), F.S.

by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.<sup>8</sup>

The lowest permissible sentence for a person who scores between 45 and 60 points ranges from 12.75 months to 24 months, respectively.

### **Placement of State Inmates in Local Detention Facilities**

Section 921.188, F.S., permits the court to sentence an offender to a local detention facility as a condition of probation or community control for a felony offense if the offender scores between 40 and 52 points, or if the presumptive sentence is between 366 days and 22 months,<sup>9</sup> and there is a contract between the FDC and the chief correctional officer for the applicable county.<sup>10</sup>

Section 921.188, F.S., provides that the contract:

- May include all operational functions or only housing (such as staffing and medical) costs;
- Must include the per diem or partial per diem reimbursement payable by the FDC; and
- Per diem must not exceed the per diem published in the FDC's most recent annual report.

### **Alternative Sentencing**

An offender with a state prison sentence in excess of one year typically serves his or her sentence in a state correctional facility operated by the FDC;<sup>11</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>12</sup>
- Local detention facility, provided the FDC has negotiated a contract with the county to house inmates that have been committed to the FDC.<sup>13</sup> The FDC does not currently have any contracts to house inmates with counties.<sup>14</sup>
- Imprisonment in county jail if the total of the prisoner's cumulative sentences is not more than one year.<sup>15</sup>

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<sup>8</sup> Florida Department of Corrections and the Office of State Courts Administrator, *Florida Criminal Punishment Code Scoresheet Preparation Manual*, July 1, 2016, at p. 20, available at [http://www.dc.state.fl.us/pub/sen\\_cpcm/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf) (last visited on November 6, 2017).

<sup>9</sup> Section 921.188, F.S., went into effect on June 17, 1993, when the revised sentencing guidelines were established, but prior to the enactment of the Criminal Punishment Code in 1998. The 1994 revised sentencing guidelines assigned a point score to felony offenses and the presumptive sentence was determined by the total number of points. Section 921.188, F.S., authorizes a judge to sentence a person convicted of a felony offense, as defined in the former sentencing guidelines categories five through nine, to a local detention facility for the period of time equal to the offender's presumptive sentence.

<sup>10</sup> Section 921.188, F.S.

<sup>11</sup> Section 921.0024(2), F.S.

<sup>12</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 FDC.

<sup>13</sup> Section 944.171, F.S., further provides that the contracts must be competitively procured in accordance with s. 287.057, F.S., and are entered into after the parties agree to mutually agreed upon terms. Inmates placed in a county facility remain under the jurisdiction of the FDC. Section 287.057, F.S., provides for the competitive solicitation processes to be used by the state of Florida in conducting state business.

<sup>14</sup> Department of Corrections, *Senate Bill 484 Analysis*, at p. 3 (November 8, 2017) (on file with the Senate Committee on Criminal Justice)[hereinafter cited as "The FDC SB 484 Analysis"].

<sup>15</sup> Section 922.051, F.S.

- County work camp operated under a contractual agreement between the county and the state.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill amends s. 921.188, F.S., authorizing a court to sentence an offender to a term of imprisonment in the county jail, in the county where the offense was committed, for up to twenty-four months. A court can order such a sentence for offenses committed on or after July 1, 2018, if the offender's:

- Total sentence points score is more than 44 points, but less than or equal to 60 points;
- Primary offense is not a forcible felony, unless the primary offense is a third degree felony under ch. 810, F.S. (burglary and trespass); and
- Primary offense is not subject to a minimum mandatory sentence of more than 24 months.

A sentence imposed in accordance with this provision must still comply with the requirement that the offender serve a minimum of 85 percent of the sentence imposed.

The court may only sentence an offender to a county jail if there is a contractual agreement between the chief correctional officer of the county and the FDC. The bill requires the FDC to enter into a contract to house state inmates if the county requests such a contract. The contract must establish the maximum number of beds and the validated per diem rate. The per diem rate must be based on the contracting county's most recent annual adult male custody or adult female custody per diem rate, but cannot exceed \$60 per inmate. All contractual per diem rates must be validated by the Auditor General before payments are made.

The court must order that the offender is under the jurisdiction of the FDC as a condition of the sentence. The bill also provides that an offender sentenced to a county jail under this provision must be transferred to a FDC facility if the contract between the FDC and the county terminates, expires, or is not renewed for any reason when the offender still has a portion of his or her sentence to serve.

The bill specifies that a contract is contingent upon a specific appropriation as provided by law and must be awarded on a first-come, first-served basis up to the maximum appropriation allowable. The maximum appropriation allowable consists of funds appropriated in or transferred to a newly created appropriation category named "Inmates Sentenced to County Jail."

The bill requires funds to be transferred from other appropriation categories to the Inmates Sentenced to County Jail appropriation category in an amount needed to cover the requirements of each executed contract. However, the amount transferred cannot exceed the FDC's average total per diem published in the preceding fiscal year. To ensure that the maximum appropriation allowable is not exceeded, the bill requires the FDC to calculate each contract entered into at the maximum number of beds being filled for the entire contract period.

The bill is effective July 1, 2018.

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<sup>16</sup> Section 950.002, F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The FDC stated that the bill may result in the elimination of privately operated community release center contracts if the FDC is required to contract with the counties for the inmates currently served by these contracts.<sup>17</sup>

## C. Government Sector Impact:

It is unknown how many offenders will be sentenced to county jails or how many counties will seek contracts with the FDC. However, the bill will likely have a negative indeterminate fiscal impact on the FDC, and a positive indeterminate fiscal impact on local governments. The Criminal Justice Impact Conference (CJIC) met on March 2, 2017 and reviewed SB 1068 (2017), which is similar to this bill, and found that the bill would have a negative indeterminate bed impact on the FDC.<sup>18</sup> The CJIC further commented that given the specific provisions of the bill, the budgetary impact will potentially exceed the capital and operating impact costs for the FDC adopted by the CJIC.<sup>19</sup>

The bill requires the contract between a county and the FDC to establish a per diem rate not to exceed \$60 per inmate. The FDC's average adult male custody per diem is \$48.17 and the average female custody per diem is \$58.37.<sup>20</sup> This "full" per diem includes expenditures for security and other support staff, utilities, maintenance, insurance,

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<sup>17</sup> The FDC SB 484 Analysis at p. 6.

<sup>18</sup> See Office of Economic and Demographic Research, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm> (last visited November 8, 2017). The Criminal Justice Impact Conference defines a "negative indeterminate bed impact" to mean an unquantifiable decrease in prison beds.

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

<sup>20</sup> The FDC SB 484 Analysis at p. 6 and 8.

medical, and education. However, when changes that impact the inmate population do not require the opening or closure of an additional housing unit, the “variable” per diem rate of \$15.91 more accurately reflects the cost associated with housing an inmate.<sup>21</sup> The variable per diem rate includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, and personal care items.<sup>22</sup>

The bill does not provide for the use of these different per diem rates and only allows for a contracted per diem rate that does not exceed \$60. Therefore, if the number of offenders sentenced to a county jail has a minimal impact on state inmate populations, the FDC will be responsible for paying the county jails the contracted per diem rate rather than the “variable” per diem rate of \$15.91 it would pay for the inmate to be housed in a state facility.

The FDC found, based on FY 2016-17 inmate admissions, that approximately 4,200 inmates would be eligible to be sentenced to a county jail. Of that 4,200 inmates, seven percent are work release inmates. The per diem rate for the FDC operated community release centers for FY 2015-16 was \$34.35.<sup>23</sup>

The contracted community release center agreements guarantee payment of 80 percent of contracted available beds, regardless of whether the occupancy falls below the 80 percent capacity threshold.<sup>24</sup> The bill could result in the inability to ensure contracted Community Release Centers remain at or above 80 percent occupancy resulting in either payment for unoccupied beds or canceling existing community release center contracts.<sup>25</sup> If these inmates are no longer available for work release, the bill could also negatively impact subsistence revenues collected through work release programs, which are deposited into the general revenue fund.<sup>26</sup>

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

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

This bill amends section 921.188 of the Florida Statutes.

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<sup>21</sup> *Id.* at p. 8.

<sup>22</sup> *Id.* at p. 6.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

**IX. Additional Information:**

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

**CS by Criminal Justice on November 13, 2017:**

For offenses committed on or after July 1, 2018, the committee substitute amends s. 921.188, F.S.:

- Authorizing a court to sentence an offender to a county jail for up to 24 months if the offender's:
  - Total sentence points score is more than 44 points, but less than or equal to 60 points;
  - Primary offense is not a forcible felony, unless the primary offense is a third degree felony burglary or trespass; and
  - Primary offense is not subject to a mandatory minimum sentence of more than 24 months.
- Providing that a court may only sentence an offender to a county jail if the FDC and the county have a contractual agreement;
- Requiring an offender to be under the jurisdiction of the FDC as a condition of the sentence;
- Requiring an offender to be transferred to a FDC facility if the contract between the FDC and the county is terminated for any reason prior to the completion of the sentence;
- Requiring the FDC to enter into a contract with the county if the county requests a contract;
- Specifying that the contract must establish the maximum number of beds and the validated per diem rate;
- Creating a new appropriation category and requires funds to be appropriated in or transferred to the category to cover the costs of the contract; and
- Requiring that per diem rates are validated by the Auditor General prior to payments being made.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/13/2017	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 921.188, Florida Statutes, is amended to  
read:

921.188 Placement of certain state inmates in local  
detention facilities.—

(1) For offenses committed on or after ~~Effective~~ June 17,  
1993 and before July 1, 2018, notwithstanding the provisions of



424720

11 ss. 775.08, former 921.001, 921.002, 921.187, 944.02, and  
12 951.23, or any other law to the contrary, a person whose  
13 presumptive sentence is 1 year and 1 day up to 22 months in a  
14 state correctional institution may be placed by the court into  
15 the custody of a local detention facility as a condition of  
16 probation or community control for a felony offense contained in  
17 sentencing guidelines categories five through nine contained in  
18 Rules 3.701 and 3.988, Florida Rules of Criminal Procedure, or  
19 similar levels described in s. 921.0022, except for such person  
20 whose total sentence points are greater than 52 or less than 40.  
21 The court may place such person for the duration of the  
22 presumptive sentence. The court may only place a person in a  
23 local detention facility pursuant to this section if there is a  
24 contractual agreement between the chief correctional officer of  
25 that county and the Department of Corrections. The contract may  
26 include all operational functions, or only housing wherein the  
27 department would provide staffing and medical costs. The  
28 agreement must provide for a per diem or partial per diem  
29 reimbursement for each person placed under this section, which  
30 is payable by the Department of Corrections for the duration of  
31 the offender's placement in the facility. The full per diem  
32 reimbursement may not exceed the per diem published in the  
33 Department of Corrections' most recent annual report for total  
34 department facilities. This section does not limit the court's  
35 ability to place a person in a local detention facility for less  
36 than 1 year.

37 (2) (a) For offenses committed on or after July 1, 2018,  
38 notwithstanding ss. 775.08 and 921.0024 or any other provision  
39 of law, a court may sentence an offender to a term in the county



424720

40 jail in the county where the offense was committed for up to 24  
41 months if the offender meets all of the following criteria:

42 1. The offender's total sentence points score, as provided  
43 in s. 921.0024, is more than 44 points but no more than 60  
44 points.

45 2. The offender's primary offense is not a forcible felony  
46 as defined in s. 776.08, except that an offender whose primary  
47 offense is a third degree felony under chapter 810 is eligible  
48 to be sentenced to a county jail under this subsection.

49 3. The offender's primary offense is not punishable by a  
50 minimum mandatory sentence of more than 24 months.

51 (b) As a condition of the sentence, the court shall order  
52 that an offender will:

53 1. Be under the jurisdiction of the Department of  
54 Corrections.

55 2. Serve the remainder of his or her sentence in a  
56 Department of Corrections facility in the event a contract  
57 between the chief correctional officer and the Department of  
58 Corrections expires, terminates, or is not renewed during an  
59 offender's sentence term.

60 (c) An offender sentenced to county jail under this section  
61 may not receive gain-time or other sentence credit in an amount  
62 that would cause the offender's sentence to expire, end, or  
63 terminate, or that would result in the offender's release, prior  
64 to serving a minimum of 85 percent of the sentence imposed.

65 (d)1. A court may only sentence an offender to a county  
66 jail pursuant to this section if there is a contractual  
67 agreement between the chief correctional officer of that county  
68 and the Department of Corrections.



69        2. If the chief correctional officer of a county requests  
70 the Department of Corrections to enter into a contract that  
71 allows offenders to be sentenced to the county jail pursuant to  
72 subsection (1), subject to the restrictions of this paragraph  
73 and subsections (4) and (7), the Department of Corrections must  
74 enter into such a contract. The contract must specifically  
75 establish the maximum number of beds and the validated per diem  
76 rate. The contract must provide for per diem reimbursement for  
77 occupied inmate days based on the contracting county's most  
78 recent annual adult male custody or adult female custody per  
79 diem rates, not to exceed \$60 per inmate.

80        (e) A contract under this section is contingent upon a  
81 specific appropriation in the General Appropriations Act.  
82 Contracts must be awarded by the Department of Corrections on a  
83 first-come, first-served basis up to the maximum appropriation  
84 allowable in the General Appropriations Act for this purpose.  
85 The maximum appropriation allowable consists of funds  
86 appropriated in or transferred to the specific appropriation in  
87 the Inmates Sentenced to County Jail appropriation category.  
88 Prior to any transferred appropriation under this section, the  
89 Inmates Sentenced to County Jail appropriation category provides  
90 for estimated incremental appropriation for county jail beds  
91 contracted under this section in excess of the Department of  
92 Corrections' per diem for adult male and female inmates.

93        (f) The Department of Corrections shall transfer funds  
94 pursuant to s. 216.177 from other appropriation categories  
95 within the Adult Male Custody Operations or Adult and Youthful  
96 Offender Female Custody Operations budget entities to the  
97 Inmates Sentenced to County Jail appropriation category in an



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98 amount necessary to satisfy the requirements of each executed  
99 contract, but not to exceed the Department of Corrections'  
100 average total per diem published for the preceding fiscal year  
101 for adult male custody or adult and youthful offender female  
102 custody inmates for each county jail bed contracted.

103 (g) The Department of Corrections shall assume maximum  
104 annual value of each contract when determining the full use of  
105 funds appropriated to ensure that the maximum appropriation  
106 allowable is not exceeded.

107 (h) All contractual per diem rates under this section and  
108 all per diem rates used by the Department of Corrections must be  
109 validated by the Auditor General before payments are made.

110 Section 2. This act shall take effect July 1, 2018

111  
112 ===== T I T L E A M E N D M E N T =====

113 And the title is amended as follows:

114 Delete everything before the enacting clause  
115 and insert:

116 A bill to be entitled  
117 An act relating to sentencing; amending s. 921.188,  
118 F.S.; authorizing a court to sentence certain  
119 offenders to a county jail for up to 24 months if the  
120 county has a contract with the Department of  
121 Corrections; requiring sentencing conditions;  
122 prohibiting an offender from receiving gain-time or  
123 other sentence credit that would result in the  
124 offender serving less than 85 percent of the  
125 offender's sentence; providing contractual  
126 requirements; requiring specific appropriations;



424720

127 providing for such appropriations; requiring  
128 validation of per diem rates; providing an effective  
129 date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/13/2017	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment to Amendment (424720)**

Delete lines 72 - 73  
and insert:  
paragraph (a), subject to the restrictions of this paragraph and paragraphs (e) and (h), the Department of Corrections must

By Senator Bradley

5-00300-18

2018484\_\_

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 county has a contract with the Department of Corrections; prohibiting an offender from receiving gain-time or other sentence credit that would result in the offender serving less than 85 percent of the offender's sentence; 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, 2018, 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, except that an offender whose primary

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

5-00300-18

2018484\_\_

offense is a third degree felony under chapter 810 is eligible to be sentenced to a county jail under this subsection.

(c) The offender's primary offense is not punishable by a minimum mandatory sentence of more than 24 months.

(2) An offender sentenced to county jail under this section may not receive gain-time or other sentence credit in an amount that would cause the offender's sentence to expire, end, or terminate, or that would result in the offender's release, prior to serving a minimum of 85 percent of the sentence imposed.

(3) (a) A 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 (4) and (7), 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.

(4) A contract under this section is contingent upon a specific appropriation in the General Appropriations Act. Contracts must 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.

Page 2 of 3

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59 The maximum appropriation allowable consists of funds  
60 appropriated in or transferred to the specific appropriation in  
61 the Inmates Sentenced to County Jail appropriation category.  
62 Prior to any transferred appropriation under this section, the  
63 Inmates Sentenced to County Jail appropriation category provides  
64 for estimated incremental appropriation for county jail beds  
65 contracted under this section in excess of the Department of  
66 Corrections' per diem for adult male and female inmates.

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

77 (6) The Department of Corrections shall assume maximum  
78 annual value of each contract when determining the full use of  
79 funds appropriated to ensure that the maximum appropriation  
80 allowable is not exceeded.

81 (7) All contractual per diem rates under this section and  
82 all per diem rates used by the Department of Corrections must be  
83 validated by the Auditor General before payments are made.

84 Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

SB 484  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_  
Topic Sentencing \_\_\_\_\_  
Amendment Barcode (if applicable) \_\_\_\_\_

Name Stacy Scott \_\_\_\_\_

Job Title Public defender \_\_\_\_\_

Address 151 SW 2nd Ave \_\_\_\_\_ Phone \_\_\_\_\_  
Street

Gainesville FL 32601 \_\_\_\_\_ Email \_\_\_\_\_  
City State Zip

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

Representing FLORIDA Public Defender 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.*

THE FLORIDA SENATE

APPEARANCE RECORD

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

11-13-17

Meeting Date

484

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933

Phone 352.682.2542

Street

Gainesville

FL

32614

City

State

Zip

Email gnewburn@fammm.org

Speaking:  For  Against  Information

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

Representing FAMMM

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)

13 Nov 17

Meeting Date

484

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe

Phone 510.9922

Street

Tall

City

FL

State

3239

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:** October 25, 2017

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I respectfully request that **Senate Bill # 484**, relating to Sentencing, be placed on the:

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

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

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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.)

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

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BILL: SB 602

INTRODUCER: Senator Bracy

SUBJECT: Mandatory Minimum Sentences

DATE: November 9, 2017

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

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 602 authorizes a court to depart from the 3-year mandatory minimum term of imprisonment applicable to trafficking in various controlled substances, excluding opioids and opiates. The departure is authorized if the court makes written findings that the violation only involved possession and that a factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term would constitute or result in an injustice. Therefore, the court may not depart from the mandatory minimum term if the drug trafficking violation involves sale, purchase, manufacture, delivery, or importation of a controlled substance.

The Legislature's Office of Economic and Demographic Research estimates that the bill will have a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds). See Section V. Fiscal Impact Statement.

**II. Present Situation:**

**Florida's Controlled Substance Schedules**

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 schedules. The most important factors in determining which schedule may apply to a substance are the "potential for abuse"<sup>1</sup> of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are as follows:

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<sup>1</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.

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

### **Punishment of Prohibited Drug Acts**

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance. The penalty for violating s. 893.13, F.S., can depend on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred. For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., which includes many synthetic controlled substances, is a third degree felony.<sup>2</sup> However, if that substance is sold within 1,000 feet of a K-12 school or other designated facility or location, the violation is a second-degree felony.<sup>3</sup> With three exceptions,<sup>4</sup> s. 893.13, F.S., does not provide for mandatory minimum terms of imprisonment.

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances. The controlled substance involved in the trafficking must meet a specified weight or quantity threshold.

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<sup>2</sup> Section 893.13(1)(a)2., F.S. A third-degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 893.13(1)(c)2., F.S. A second-degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Exceptions: s. 893.13(1)(c)1., F.S. (selling, etc., certain Schedule I and II controlled substances within 1,000 feet of a K-12 school, park, community center, or publicly owned recreational facility); s. 893.13(1)(g)1., F.S. (manufacturing methamphetamine or phencyclidine in a structure or conveyance where any child under 16 is present); and s. 893.13(1)(g)2., F.S. (manufacturing methamphetamine or phencyclidine causes a child under 16 to suffer great bodily harm).

Most drug trafficking offenses are first degree felonies<sup>5</sup> and are subject to a mandatory minimum term<sup>6</sup> and a mandatory fine, which is determined by the weight or quantity range applicable to the weight or quantity of the substance involved in the trafficking.<sup>7</sup> For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000.<sup>8</sup> Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 15-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.<sup>9</sup>

### **Criminal Punishment Code**

The Criminal Punishment Code<sup>10</sup> (Code) is Florida's "primary sentencing policy."<sup>11</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>12</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. 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.<sup>13</sup> Absent mitigation,<sup>14</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>15</sup>

### **Mandatory Minimum Sentences and Departures**

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."<sup>16</sup> As previously noted, the sentencing range under the

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<sup>5</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

<sup>6</sup> There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from three years to life imprisonment.

<sup>7</sup> See s. 893.135, F.S.

<sup>8</sup> Section 893.135(b)(1)a., F.S.

<sup>9</sup> Section 893.135(b)(1)b., F.S.

<sup>10</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>11</sup> *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) Executive Summary (Offenses Committed On or After October 1, 1998)*, 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 Nov. 6, 2017).

<sup>12</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>13</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>14</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>15</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. Section 921.0024(2), F.S.

<sup>16</sup> Fla. R. Crim. P. 3.704(d)(26).

Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Prosecutors have “complete discretion” in the charging decision.<sup>17</sup> The exercise of this discretion may determine whether or not a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. A prosecutor could determine in a particular case that mandatory minimum sentencing is inappropriate or too severe and avoid or ameliorate such sentencing. For example, the prosecutor could offer a plea to a violation of s. 893.13, F.S., or attempted drug trafficking, neither of which carries a mandatory minimum term. A prosecutor could also offer a plea to a drug trafficking violation that carries a 3-year mandatory minimum term, even though the defendant could be prosecuted for a drug trafficking violation that carries a greater mandatory minimum term. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.<sup>18</sup>

There are few circumstances in which a court of its own accord can depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is a youthful offender.<sup>19</sup> A court may also depart from a mandatory minimum term for a violation s. 316.027(2)(c), F.S. (driver involved in a fatal crash fails to stop and remain at the scene of a crash) if the court “finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice.”<sup>20</sup>

### III. Effect of Proposed Changes:

The bill authorizes a court to depart from the 3-year mandatory minimum term of imprisonment applicable to trafficking in various controlled substances, excluding opioids and opiates. The departure is authorized if the court makes written findings that the violation only involved possession and that a factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term would constitute or result in an injustice. Therefore, the court may not depart from the mandatory minimum term if the drug trafficking violation involves sale, purchase, manufacture, delivery, or importation of a controlled substance.

The departure authorized by the bill is substantially similar to the departure currently authorized under s. 316.027, F.S. As previously noted, a court may depart from a mandatory minimum term

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<sup>17</sup> “Under Florida’s constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute.” *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986).

<sup>18</sup> Sections 790.163(2), 790.164(2), 893.135(4), and 921.0024(1)(b), F.S. However, lower-level dealers or peripheral actors may have little, if any, information beneficial to prosecutors. Inmate population data reported in a 2009 Senate interim report indicated that the average sentence of inmates with a lower-level trafficking offense was above the mandatory minimum term, while the average sentence of inmates with a higher-level trafficking offense was below the mandatory minimum term. *A Policy Analysis of Minimum Mandatory Sentencing for Drug Traffickers*, Interim Report 2010-109 (October 2009), p. 7, Committee on Criminal Justice, The Florida Senate, [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-109cj.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf) (last visited on Nov. 6, 2017).

<sup>19</sup> Section 958.04, F.S.

<sup>20</sup> Section 316.027(2)(g), F.S.

for a violation s. 316.027(2)(c), F.S. (driver involved in a fatal crash fails to stop and remain at the scene of a crash) if the court “finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice.”<sup>21</sup>

The bill impacts trafficking in specified quantities of the following controlled substances:

- In excess of 25 pounds, but less than 2,000 pounds of cannabis, or 300 or more cannabis plants, but not more than 2,000 cannabis plants;<sup>22</sup>
- 28 grams or more, but less than 200 grams, of cocaine;<sup>23</sup>
- 28 grams or more, but less than 200 grams, of phencyclidine;<sup>24</sup>
- 200 grams or more, but less than 5 kilograms, of methaqualone;<sup>25</sup>
- 14 grams or more, but less than 28 grams, of amphetamine or methamphetamine;<sup>26</sup>
- 4 grams or more, but less than 14 grams, of flunitrazepam;<sup>27</sup>
- 1 kilogram or more, but less than 5 kilograms, of gamma-hydroxybutyric acid (GHB);<sup>28</sup>
- 1 kilogram or more, but less than 5 kilograms, of gamma-butyrolactone (GBL);<sup>29</sup>
- 1 kilogram or more, but less than 5 kilograms, of 1,4-Butanediol;<sup>30</sup>
- 10 grams or more, but less than 200 grams, of specified phenethylamines and cathinones, substituted<sup>31</sup> phenethylamines, and substituted cathinones;<sup>32</sup>

<sup>21</sup> *Id.*

<sup>22</sup> Section 893.135(1)(a)1., F.S.

<sup>23</sup> Section 893.135(1)(b)1.a., F.S.

<sup>24</sup> Section 893.135(1)(d)1.a., F.S. Phencyclidine “is a hallucinogen formerly used as a veterinary anesthetic, and briefly as a general anesthetic for humans.” “Phencyclidine,” PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/phencyclidine> (last visited on Nov. 6, 2017).

<sup>25</sup> Section 893.135(1)(e)1.a., F.S. Methaqualone “is a quinazoline derivative with hypnotic and sedative properties.” “Methaqualone,” PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/6292> (last visited on Nov. 6, 2017).

<sup>26</sup> Section 893.135(1)(f)1.a., F.S.

<sup>27</sup> Section 893.135(1)(g)1.a., F.S. “Flunitrazepam, trade name Rohypnol, is a central nervous system depressant in a class of drugs called benzodiazepines.” “Flunitrazepam (Rohypnol),” Center for Substance Abuse Research, <http://www.cesar.umd.edu/cesar/drugs/rohypnol.asp> (last visited on Nov. 6, 2017).

<sup>28</sup> Section 893.135(1)(h)1.a., F.S. “Gamma-hydroxybutyric acid (GHB) is a naturally occurring analog of gamma-aminobutyric acid (GABA) that has been used in research and clinical medicine for many years. GHB was used clinically as an anesthetic in the 1960s but was withdrawn due to side effects that included seizures and coma.” Kapoor P., Revati Deshmukh R., and Kukreja I., “GHB Acid: A rage or reprove” (abstract) (Oct.–Dec. 2013) 4(4): 173, *Journal of Advanced Pharmaceutical Technology and Research*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3853692/> (last visited on Nov. 6, 2017). “The primary effects of GHB use are those of a CNS [central nervous system] depressant[.]” *Id.*

<sup>29</sup> Section 893.135(1)(i)1.a., F.S. “Analogues that are often substituted for GHB include GBL (gamma butyrolactone) and 1,4 BD (also called just “BD”), which is 1,4-butanediol.” “Drug Fact Sheet/GHB” (undated), U.S. Drug Enforcement Administration (on file with the Senate Committee on Criminal Justice).

<sup>30</sup> Section 893.135(1)(j)1.a., F.S. Supra n. 29.

<sup>31</sup> “The term ‘substituted’ is a general term that means a portion of the chemical structure is removed and replaced with a different chemical structure.” Staff Analysis (CS/CS/CS/SB 150) (April 27, 2017), p. 11, n. 58, The Florida Senate, <http://www.flsenate.gov/Session/Bill/2017/150/Analyses/2017s00150.ap.PDF> (last visited on Nov. 6, 2017).

<sup>32</sup> Section 893.135(1)(k)2.a., F.S. “Phenethylamines” is a broad category of “psychoactive substances.” Sanders B., Lankenau S., Bloom J., and Hathazi D., “‘Research chemicals’: Tryptamine and Phenethylamine Use Among High Risk Youth” (2008) 43(3-4): 389, *Substance Use & Misuse*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last visited on Nov. 6, 2017). “Cathinone ... is a monoamine alkaloid found in the shrub *Catha edulis* (Khat)[.]” and is “[c]losely related to ephedrine, cathine and other amphetamines[.]” “Cathinone,” PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/Cathinone#section=Top> (last visited on Nov. 6, 2017).

- 1 gram or more, but less than 5 grams, of lysergic acid diethylamide (LSD);<sup>33</sup>
- 280 grams or more, but less than 500 grams, of specified synthetic cannabinoids;<sup>34</sup> and
- 14 grams or more, but less than 100 grams, of n-benzyl phenethylamines.<sup>35</sup>

Except for cannabis, mixtures containing the above-referenced controlled substances are included.

Excluded from the departure provisions of the bill are trafficking in various opiates or opioids, such as opium, morphine, heroin, hydromorphone, codeine, hydrocodone, oxycodone, fentanyl, and carfentanil and other fentanyl derivatives.<sup>36</sup>

The bill does not authorize departure from mandatory fines.

The effective date of the bill is July 1, 2018.

#### IV. Constitutional Issues:

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

None.

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

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

The bill does not provide for retroactive application. Consequently, drug trafficking departures authorized by the bill would apply to applicable drug trafficking offenses committed on or after July 1, 2018, the effective date of the bill. “In Florida, without clear legislative intent to the contrary, a law is presumed to apply prospectively.”<sup>37</sup>

Additionally, Article X, Section 9 of the Florida Constitution, provides that repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime

<sup>33</sup> Section 893.135(1)(l)1.a., F.S.

<sup>34</sup> Section 893.135(1)(m)2.a., F.S. “Synthetic [c]annabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but ... they are cannabinoid-like in their activity.” “Synthetic Cannabinoids Drug Information,” Redwood Toxicology Laboratory, [https://www.redwoodtoxicology.com/resources/drug\\_info/synthetic\\_cannabinoids](https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids) (last visited on Nov. 6, 2017).

<sup>35</sup> Section 893.135(1)(n)2.a., F.S. Supra n. 32.

<sup>36</sup> These controlled substances are described in s. 893.135(1)(c), F.S.

<sup>37</sup> *Bates v. State*, 750 So.2d 6, 10 (Fla. 1999) (in the absence of explicit legislative direction, the court refused to retroactively apply amendments to a sentencing statute to offenses committed before the effective date of the amendments).

previously committed.<sup>38</sup> This prohibition applies even if the retroactive application does not disadvantage the offender.<sup>39</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research's (EDR) preliminary estimates that the bill will have a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds).<sup>40</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 893.135 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.

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<sup>38</sup> This constitutional provision operates as a savings clause to preserve laws in effect at the time of a defendant's crime that affect prosecution or punishment of the defendant for that crime.

<sup>39</sup> See *Castle v. State*, 305 So.2d 794, 796 (Fla. 4th DCA 1974), *affirmed*, 330 So.2d 10 (Fla. 1976) (Florida's saving clause prohibits retroactive application of a reduced penalty for arson to a defendant sentenced under the pre-amended arson statute).

<sup>40</sup> E-mail from EDR staff to staff of the Senate Committee on Criminal Justice, dated Nov. 3, 2017 (on file with the Senate Committee on Criminal Justice).

B. Amendments:

None.

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

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600702

LEGISLATIVE ACTION

Senate

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. .  
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. .  
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House

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraphs (a), (b), and (d) through (n) of  
subsection (1) of section 893.135, Florida Statutes, are amended  
and subsection (8) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or  
reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499



600702

11 and notwithstanding the provisions of s. 893.13:

12 (a) Any person who knowingly sells, purchases,  
13 manufactures, delivers, or brings into this state, or who is  
14 knowingly in actual or constructive possession of, in excess of  
15 25 pounds of cannabis, or 300 or more cannabis plants, commits a  
16 felony of the first degree, which felony shall be known as  
17 "trafficking in cannabis," punishable as provided in s. 775.082,  
18 s. 775.083, or s. 775.084. If the quantity of cannabis involved:

19 1. Is in excess of 25 pounds, but less than 2,000 pounds,  
20 or is 300 or more cannabis plants, but not more than 2,000  
21 cannabis plants, such person shall be sentenced to a mandatory  
22 minimum term of imprisonment of 3 years, and the defendant shall  
23 be ordered to pay a fine of \$25,000. However, the court may  
24 depart from the mandatory minimum term of imprisonment if it  
25 makes written findings as provided in subsection (8).

26 2. Is 2,000 pounds or more, but less than 10,000 pounds, or  
27 is 2,000 or more cannabis plants, but not more than 10,000  
28 cannabis plants, such person shall be sentenced to a mandatory  
29 minimum term of imprisonment of 7 years, and the defendant shall  
30 be ordered to pay a fine of \$50,000.

31 3. Is 10,000 pounds or more, or is 10,000 or more cannabis  
32 plants, such person shall be sentenced to a mandatory minimum  
33 term of imprisonment of 15 calendar years and pay a fine of  
34 \$200,000.

35  
36 For the purpose of this paragraph, a plant, including, but not  
37 limited to, a seedling or cutting, is a "cannabis plant" if it  
38 has some readily observable evidence of root formation, such as  
39 root hairs. To determine if a piece or part of a cannabis plant



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40 severed from the cannabis plant is itself a cannabis plant, the  
41 severed piece or part must have some readily observable evidence  
42 of root formation, such as root hairs. Callous tissue is not  
43 readily observable evidence of root formation. The viability and  
44 sex of a plant and the fact that the plant may or may not be a  
45 dead harvested plant are not relevant in determining if the  
46 plant is a "cannabis plant" or in the charging of an offense  
47 under this paragraph. Upon conviction, the court shall impose  
48 the longest term of imprisonment provided for in this paragraph.

49 (b)1. Any person who knowingly sells, purchases,  
50 manufactures, delivers, or brings into this state, or who is  
51 knowingly in actual or constructive possession of, 28 grams or  
52 more of cocaine, as described in s. 893.03(2)(a)4., or of any  
53 mixture containing cocaine, but less than 150 kilograms of  
54 cocaine or any such mixture, commits a felony of the first  
55 degree, which felony shall be known as "trafficking in cocaine,"  
56 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
57 If the quantity involved:

58 a. Is 28 grams or more, but less than 200 grams, such  
59 person shall be sentenced to a mandatory minimum term of  
60 imprisonment of 3 years, and the defendant shall be ordered to  
61 pay a fine of \$50,000. However, the court may depart from the  
62 mandatory minimum term of imprisonment if it makes written  
63 findings as provided in subsection (8).

64 b. Is 200 grams or more, but less than 400 grams, such  
65 person shall be sentenced to a mandatory minimum term of  
66 imprisonment of 7 years, and the defendant shall be ordered to  
67 pay a fine of \$100,000.

68 c. Is 400 grams or more, but less than 150 kilograms, such



69 person shall be sentenced to a mandatory minimum term of  
70 imprisonment of 15 calendar years and pay a fine of \$250,000.

71 2. Any person who knowingly sells, purchases, manufactures,  
72 delivers, or brings into this state, or who is knowingly in  
73 actual or constructive possession of, 150 kilograms or more of  
74 cocaine, as described in s. 893.03(2)(a)4., commits the first  
75 degree felony of trafficking in cocaine. A person who has been  
76 convicted of the first degree felony of trafficking in cocaine  
77 under this subparagraph shall be punished by life imprisonment  
78 and is ineligible for any form of discretionary early release  
79 except pardon or executive clemency or conditional medical  
80 release under s. 947.149. However, if the court determines that,  
81 in addition to committing any act specified in this paragraph:

82 a. The person intentionally killed an individual or  
83 counseled, commanded, induced, procured, or caused the  
84 intentional killing of an individual and such killing was the  
85 result; or

86 b. The person's conduct in committing that act led to a  
87 natural, though not inevitable, lethal result,  
88  
89 such person commits the capital felony of trafficking in  
90 cocaine, punishable as provided in ss. 775.082 and 921.142. Any  
91 person sentenced for a capital felony under this paragraph shall  
92 also be sentenced to pay the maximum fine provided under  
93 subparagraph 1.

94 3. Any person who knowingly brings into this state 300  
95 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,  
96 and who knows that the probable result of such importation would  
97 be the death of any person, commits capital importation of



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98 cocaine, a capital felony punishable as provided in ss. 775.082  
99 and 921.142. Any person sentenced for a capital felony under  
100 this paragraph shall also be sentenced to pay the maximum fine  
101 provided under subparagraph 1.

102 (d)1. Any person who knowingly sells, purchases,  
103 manufactures, delivers, or brings into this state, or who is  
104 knowingly in actual or constructive possession of, 28 grams or  
105 more of phencyclidine, as described in s. 893.03(2)(b)23., a  
106 substituted phenylcyclohexylamine, as described in s.  
107 893.03(1)(c)195., or a substance described in s.  
108 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
109 containing phencyclidine, as described in s. 893.03(2)(b)23., a  
110 substituted phenylcyclohexylamine, as described in s.  
111 893.03(1)(c)195., or a substance described in s.  
112 893.03(1)(c)13., 32., 38., 103., or 146., commits a felony of  
113 the first degree, which felony shall be known as "trafficking in  
114 phencyclidine," punishable as provided in s. 775.082, s.  
115 775.083, or s. 775.084. If the quantity involved:

116 a. Is 28 grams or more, but less than 200 grams, such  
117 person shall be sentenced to a mandatory minimum term of  
118 imprisonment of 3 years, and the defendant shall be ordered to  
119 pay a fine of \$50,000. However, the court may depart from the  
120 mandatory minimum term of imprisonment if it makes written  
121 findings as provided in subsection (8).

122 b. Is 200 grams or more, but less than 400 grams, such  
123 person shall be sentenced to a mandatory minimum term of  
124 imprisonment of 7 years, and the defendant shall be ordered to  
125 pay a fine of \$100,000.

126 c. Is 400 grams or more, such person shall be sentenced to



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127 a mandatory minimum term of imprisonment of 15 calendar years  
128 and pay a fine of \$250,000.

129 2. Any person who knowingly brings into this state 800  
130 grams or more of phencyclidine, as described in s.  
131 893.03(2)(b)23., a substituted phenylcyclohexylamine, as  
132 described in s. 893.03(1)(c)195., or a substance described in s.  
133 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
134 containing phencyclidine, as described in s. 893.03(2)(b)23., a  
135 substituted phenylcyclohexylamine, as described in s.  
136 893.03(1)(c)195., or a substance described in s.  
137 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the  
138 probable result of such importation would be the death of any  
139 person commits capital importation of phencyclidine, a capital  
140 felony punishable as provided in ss. 775.082 and 921.142. Any  
141 person sentenced for a capital felony under this paragraph shall  
142 also be sentenced to pay the maximum fine provided under  
143 subparagraph 1.

144 (e)1. Any person who knowingly sells, purchases,  
145 manufactures, delivers, or brings into this state, or who is  
146 knowingly in actual or constructive possession of, 200 grams or  
147 more of methaqualone or of any mixture containing methaqualone,  
148 as described in s. 893.03(1)(d), commits a felony of the first  
149 degree, which felony shall be known as "trafficking in  
150 methaqualone," punishable as provided in s. 775.082, s. 775.083,  
151 or s. 775.084. If the quantity involved:

152 a. Is 200 grams or more, but less than 5 kilograms, such  
153 person shall be sentenced to a mandatory minimum term of  
154 imprisonment of 3 years, and the defendant shall be ordered to  
155 pay a fine of \$50,000. However, the court may depart from the



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156 mandatory minimum term of imprisonment if it makes written  
157 findings as provided in subsection (8).

158       b. Is 5 kilograms or more, but less than 25 kilograms, such  
159 person shall be sentenced to a mandatory minimum term of  
160 imprisonment of 7 years, and the defendant shall be ordered to  
161 pay a fine of \$100,000.

162       c. Is 25 kilograms or more, such person shall be sentenced  
163 to a mandatory minimum term of imprisonment of 15 calendar years  
164 and pay a fine of \$250,000.

165       2. Any person who knowingly brings into this state 50  
166 kilograms or more of methaqualone or of any mixture containing  
167 methaqualone, as described in s. 893.03(1)(d), and who knows  
168 that the probable result of such importation would be the death  
169 of any person commits capital importation of methaqualone, a  
170 capital felony punishable as provided in ss. 775.082 and  
171 921.142. Any person sentenced for a capital felony under this  
172 paragraph shall also be sentenced to pay the maximum fine  
173 provided under subparagraph 1.

174       (f)1. Any person who knowingly sells, purchases,  
175 manufactures, delivers, or brings into this state, or who is  
176 knowingly in actual or constructive possession of, 14 grams or  
177 more of amphetamine, as described in s. 893.03(2)(c)2., or  
178 methamphetamine, as described in s. 893.03(2)(c)4., or of any  
179 mixture containing amphetamine or methamphetamine, or  
180 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine  
181 in conjunction with other chemicals and equipment utilized in  
182 the manufacture of amphetamine or methamphetamine, commits a  
183 felony of the first degree, which felony shall be known as  
184 "trafficking in amphetamine," punishable as provided in s.



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185 775.082, s. 775.083, or s. 775.084. If the quantity involved:

186 a. Is 14 grams or more, but less than 28 grams, such person  
187 shall be sentenced to a mandatory minimum term of imprisonment  
188 of 3 years, and the defendant shall be ordered to pay a fine of  
189 \$50,000. However, the court may depart from the mandatory  
190 minimum term of imprisonment if it makes written findings as  
191 provided in subsection (8).

192 b. Is 28 grams or more, but less than 200 grams, such  
193 person shall be sentenced to a mandatory minimum term of  
194 imprisonment of 7 years, and the defendant shall be ordered to  
195 pay a fine of \$100,000.

196 c. Is 200 grams or more, such person shall be sentenced to  
197 a mandatory minimum term of imprisonment of 15 calendar years  
198 and pay a fine of \$250,000.

199 2. Any person who knowingly manufactures or brings into  
200 this state 400 grams or more of amphetamine, as described in s.  
201 893.03(2)(c)2., or methamphetamine, as described in s.  
202 893.03(2)(c)4., or of any mixture containing amphetamine or  
203 methamphetamine, or phenylacetone, phenylacetic acid,  
204 pseudoephedrine, or ephedrine in conjunction with other  
205 chemicals and equipment used in the manufacture of amphetamine  
206 or methamphetamine, and who knows that the probable result of  
207 such manufacture or importation would be the death of any person  
208 commits capital manufacture or importation of amphetamine, a  
209 capital felony punishable as provided in ss. 775.082 and  
210 921.142. Any person sentenced for a capital felony under this  
211 paragraph shall also be sentenced to pay the maximum fine  
212 provided under subparagraph 1.

213 (g)1. Any person who knowingly sells, purchases,



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214 manufactures, delivers, or brings into this state, or who is  
215 knowingly in actual or constructive possession of, 4 grams or  
216 more of flunitrazepam or any mixture containing flunitrazepam as  
217 described in s. 893.03(1)(a) commits a felony of the first  
218 degree, which felony shall be known as "trafficking in  
219 flunitrazepam," punishable as provided in s. 775.082, s.  
220 775.083, or s. 775.084. If the quantity involved:

221       a. Is 4 grams or more but less than 14 grams, such person  
222 shall be sentenced to a mandatory minimum term of imprisonment  
223 of 3 years, and the defendant shall be ordered to pay a fine of  
224 \$50,000. However, the court may depart from the mandatory  
225 minimum term of imprisonment if it makes written findings as  
226 provided in subsection (8).

227       b. Is 14 grams or more but less than 28 grams, such person  
228 shall be sentenced to a mandatory minimum term of imprisonment  
229 of 7 years, and the defendant shall be ordered to pay a fine of  
230 \$100,000.

231       c. Is 28 grams or more but less than 30 kilograms, such  
232 person shall be sentenced to a mandatory minimum term of  
233 imprisonment of 25 calendar years and pay a fine of \$500,000.

234       2. Any person who knowingly sells, purchases, manufactures,  
235 delivers, or brings into this state or who is knowingly in  
236 actual or constructive possession of 30 kilograms or more of  
237 flunitrazepam or any mixture containing flunitrazepam as  
238 described in s. 893.03(1)(a) commits the first degree felony of  
239 trafficking in flunitrazepam. A person who has been convicted of  
240 the first degree felony of trafficking in flunitrazepam under  
241 this subparagraph shall be punished by life imprisonment and is  
242 ineligible for any form of discretionary early release except



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243 pardon or executive clemency or conditional medical release  
244 under s. 947.149. However, if the court determines that, in  
245 addition to committing any act specified in this paragraph:

246 a. The person intentionally killed an individual or  
247 counseled, commanded, induced, procured, or caused the  
248 intentional killing of an individual and such killing was the  
249 result; or

250 b. The person's conduct in committing that act led to a  
251 natural, though not inevitable, lethal result,

252  
253 such person commits the capital felony of trafficking in  
254 flunitrazepam, punishable as provided in ss. 775.082 and  
255 921.142. Any person sentenced for a capital felony under this  
256 paragraph shall also be sentenced to pay the maximum fine  
257 provided under subparagraph 1.

258 (h)1. Any person who knowingly sells, purchases,  
259 manufactures, delivers, or brings into this state, or who is  
260 knowingly in actual or constructive possession of, 1 kilogram or  
261 more of gamma-hydroxybutyric acid (GHB), as described in s.  
262 893.03(1)(d), or any mixture containing gamma-hydroxybutyric  
263 acid (GHB), commits a felony of the first degree, which felony  
264 shall be known as "trafficking in gamma-hydroxybutyric acid  
265 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.  
266 775.084. If the quantity involved:

267 a. Is 1 kilogram or more but less than 5 kilograms, such  
268 person shall be sentenced to a mandatory minimum term of  
269 imprisonment of 3 years, and the defendant shall be ordered to  
270 pay a fine of \$50,000. However, the court may depart from the  
271 mandatory minimum term of imprisonment if it makes written



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272 findings as provided in subsection (8).

273       b. Is 5 kilograms or more but less than 10 kilograms, such  
274 person shall be sentenced to a mandatory minimum term of  
275 imprisonment of 7 years, and the defendant shall be ordered to  
276 pay a fine of \$100,000.

277       c. Is 10 kilograms or more, such person shall be sentenced  
278 to a mandatory minimum term of imprisonment of 15 calendar years  
279 and pay a fine of \$250,000.

280       2. Any person who knowingly manufactures or brings into  
281 this state 150 kilograms or more of gamma-hydroxybutyric acid  
282 (GHB), as described in s. 893.03(1)(d), or any mixture  
283 containing gamma-hydroxybutyric acid (GHB), and who knows that  
284 the probable result of such manufacture or importation would be  
285 the death of any person commits capital manufacture or  
286 importation of gamma-hydroxybutyric acid (GHB), a capital felony  
287 punishable as provided in ss. 775.082 and 921.142. Any person  
288 sentenced for a capital felony under this paragraph shall also  
289 be sentenced to pay the maximum fine provided under subparagraph  
290 1.

291       (i)1. Any person who knowingly sells, purchases,  
292 manufactures, delivers, or brings into this state, or who is  
293 knowingly in actual or constructive possession of, 1 kilogram or  
294 more of gamma-butyrolactone (GBL), as described in s.  
295 893.03(1)(d), or any mixture containing gamma-butyrolactone  
296 (GBL), commits a felony of the first degree, which felony shall  
297 be known as "trafficking in gamma-butyrolactone (GBL),"  
298 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
299 If the quantity involved:

300       a. Is 1 kilogram or more but less than 5 kilograms, such



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301 person shall be sentenced to a mandatory minimum term of  
302 imprisonment of 3 years, and the defendant shall be ordered to  
303 pay a fine of \$50,000. However, the court may depart from the  
304 mandatory minimum term of imprisonment if it makes written  
305 findings as provided in subsection (8).

306 b. Is 5 kilograms or more but less than 10 kilograms, such  
307 person shall be sentenced to a mandatory minimum term of  
308 imprisonment of 7 years, and the defendant shall be ordered to  
309 pay a fine of \$100,000.

310 c. Is 10 kilograms or more, such person shall be sentenced  
311 to a mandatory minimum term of imprisonment of 15 calendar years  
312 and pay a fine of \$250,000.

313 2. Any person who knowingly manufactures or brings into the  
314 state 150 kilograms or more of gamma-butyrolactone (GBL), as  
315 described in s. 893.03(1)(d), or any mixture containing gamma-  
316 butyrolactone (GBL), and who knows that the probable result of  
317 such manufacture or importation would be the death of any person  
318 commits capital manufacture or importation of gamma-  
319 butyrolactone (GBL), a capital felony punishable as provided in  
320 ss. 775.082 and 921.142. Any person sentenced for a capital  
321 felony under this paragraph shall also be sentenced to pay the  
322 maximum fine provided under subparagraph 1.

323 (j)1. Any person who knowingly sells, purchases,  
324 manufactures, delivers, or brings into this state, or who is  
325 knowingly in actual or constructive possession of, 1 kilogram or  
326 more of 1,4-Butanediol as described in s. 893.03(1)(d), or of  
327 any mixture containing 1,4-Butanediol, commits a felony of the  
328 first degree, which felony shall be known as "trafficking in  
329 1,4-Butanediol," punishable as provided in s. 775.082, s.



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330 775.083, or s. 775.084. If the quantity involved:

331 a. Is 1 kilogram or more, but less than 5 kilograms, such  
332 person shall be sentenced to a mandatory minimum term of  
333 imprisonment of 3 years, and the defendant shall be ordered to  
334 pay a fine of \$50,000. However, the court may depart from the  
335 mandatory minimum term of imprisonment if it makes written  
336 findings as provided in subsection (8).

337 b. Is 5 kilograms or more, but less than 10 kilograms, such  
338 person shall be sentenced to a mandatory minimum term of  
339 imprisonment of 7 years, and the defendant shall be ordered to  
340 pay a fine of \$100,000.

341 c. Is 10 kilograms or more, such person shall be sentenced  
342 to a mandatory minimum term of imprisonment of 15 calendar years  
343 and pay a fine of \$500,000.

344 2. Any person who knowingly manufactures or brings into  
345 this state 150 kilograms or more of 1,4-Butanediol as described  
346 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,  
347 and who knows that the probable result of such manufacture or  
348 importation would be the death of any person commits capital  
349 manufacture or importation of 1,4-Butanediol, a capital felony  
350 punishable as provided in ss. 775.082 and 921.142. Any person  
351 sentenced for a capital felony under this paragraph shall also  
352 be sentenced to pay the maximum fine provided under subparagraph  
353 1.

354 (k)1. A person who knowingly sells, purchases,  
355 manufactures, delivers, or brings into this state, or who is  
356 knowingly in actual or constructive possession of, 10 grams or  
357 more of a:

358 a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,



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359 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,  
360 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163.,  
361 165., or 187.-189., a substituted cathinone, as described in s.  
362 893.03(1)(c)191., or substituted phenethylamine, as described in  
363 s. 893.03(1)(c)192.;

364 b. Mixture containing any substance described in sub-  
365 subparagraph a.; or

366 c. Salt, isomer, ester, or ether or salt of an isomer,  
367 ester, or ether of a substance described in sub-subparagraph a.,  
368

369 commits a felony of the first degree, which felony shall be  
370 known as "trafficking in phenethylamines," punishable as  
371 provided in s. 775.082, s. 775.083, or s. 775.084.

372 2. If the quantity involved under subparagraph 1.:

373 a. Is 10 grams or more, but less than 200 grams, such  
374 person shall be sentenced to a mandatory minimum term of  
375 imprisonment of 3 years and shall be ordered to pay a fine of  
376 \$50,000. However, the court may depart from the mandatory  
377 minimum term of imprisonment if it makes written findings as  
378 provided in subsection (8).

379 b. Is 200 grams or more, but less than 400 grams, such  
380 person shall be sentenced to a mandatory minimum term of  
381 imprisonment of 7 years and shall be ordered to pay a fine of  
382 \$100,000.

383 c. Is 400 grams or more, such person shall be sentenced to  
384 a mandatory minimum term of imprisonment of 15 years and shall  
385 be ordered to pay a fine of \$250,000.

386 3. A person who knowingly manufactures or brings into this  
387 state 30 kilograms or more of a substance described in sub-



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388 subparagraph 1.a., a mixture described in sub-subparagraph 1.b.,  
389 or a salt, isomer, ester, or ether or a salt of an isomer,  
390 ester, or ether described in sub-subparagraph 1.c., and who  
391 knows that the probable result of such manufacture or  
392 importation would be the death of any person commits capital  
393 manufacture or importation of phenethylamines, a capital felony  
394 punishable as provided in ss. 775.082 and 921.142. A person  
395 sentenced for a capital felony under this paragraph shall also  
396 be sentenced to pay the maximum fine under subparagraph 2.

397 (1)1. Any person who knowingly sells, purchases,  
398 manufactures, delivers, or brings into this state, or who is  
399 knowingly in actual or constructive possession of, 1 gram or  
400 more of lysergic acid diethylamide (LSD) as described in s.  
401 893.03(1)(c), or of any mixture containing lysergic acid  
402 diethylamide (LSD), commits a felony of the first degree, which  
403 felony shall be known as "trafficking in lysergic acid  
404 diethylamide (LSD)," punishable as provided in s. 775.082, s.  
405 775.083, or s. 775.084. If the quantity involved:

406 a. Is 1 gram or more, but less than 5 grams, such person  
407 shall be sentenced to a mandatory minimum term of imprisonment  
408 of 3 years, and the defendant shall be ordered to pay a fine of  
409 \$50,000. However, the court may depart from the mandatory  
410 minimum term of imprisonment if it makes written findings as  
411 provided in subsection (8).

412 b. Is 5 grams or more, but less than 7 grams, such person  
413 shall be sentenced to a mandatory minimum term of imprisonment  
414 of 7 years, and the defendant shall be ordered to pay a fine of  
415 \$100,000.

416 c. Is 7 grams or more, such person shall be sentenced to a



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417 mandatory minimum term of imprisonment of 15 calendar years and  
418 pay a fine of \$500,000.

419         2. Any person who knowingly manufactures or brings into  
420 this state 7 grams or more of lysergic acid diethylamide (LSD)  
421 as described in s. 893.03(1)(c), or any mixture containing  
422 lysergic acid diethylamide (LSD), and who knows that the  
423 probable result of such manufacture or importation would be the  
424 death of any person commits capital manufacture or importation  
425 of lysergic acid diethylamide (LSD), a capital felony punishable  
426 as provided in ss. 775.082 and 921.142. Any person sentenced for  
427 a capital felony under this paragraph shall also be sentenced to  
428 pay the maximum fine provided under subparagraph 1.

429         (m)1. A person who knowingly sells, purchases,  
430 manufactures, delivers, or brings into this state, or who is  
431 knowingly in actual or constructive possession of, 280 grams or  
432 more of a:

433             a. Substance described in s. 893.03(1)(c)30., 46.-50.,  
434 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic  
435 cannabinoid, as described in s. 893.03(1)(c)190.; or

436             b. Mixture containing any substance described in sub-  
437 subparagraph a.,

438  
439 commits a felony of the first degree, which felony shall be  
440 known as "trafficking in synthetic cannabinoids," punishable as  
441 provided in s. 775.082, s. 775.083, or s. 775.084.

442         2. If the quantity involved under subparagraph 1.:

443             a. Is 280 grams or more, but less than 500 grams, such  
444 person shall be sentenced to a mandatory minimum term of  
445 imprisonment of 3 years, and the defendant shall be ordered to



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446 pay a fine of \$50,000. However, the court may depart from the  
447 mandatory minimum term of imprisonment if it makes written  
448 findings as provided in subsection (8).

449 b. Is 500 grams or more, but less than 1,000 grams, such  
450 person shall be sentenced to a mandatory minimum term of  
451 imprisonment of 7 years, and the defendant shall be ordered to  
452 pay a fine of \$100,000.

453 c. Is 1,000 grams or more, but less than 30 kilograms, such  
454 person shall be sentenced to a mandatory minimum term of  
455 imprisonment of 15 years, and the defendant shall be ordered to  
456 pay a fine of \$200,000.

457 d. Is 30 kilograms or more, such person shall be sentenced  
458 to a mandatory minimum term of imprisonment of 25 years, and the  
459 defendant shall be ordered to pay a fine of \$750,000.

460 (n)1. A person who knowingly sells, purchases,  
461 manufactures, delivers, or brings into this state, or who is  
462 knowingly in actual or constructive possession of, 14 grams or  
463 more of:

464 a. A substance described in s. 893.03(1)(c)164., 174., or  
465 175., a n-benzyl phenethylamine compound, as described in s.  
466 893.03(1)(c)193.; or

467 b. A mixture containing any substance described in sub-  
468 subparagraph a.,

469  
470 commits a felony of the first degree, which felony shall be  
471 known as "trafficking in n-benzyl phenethylamines," punishable  
472 as provided in s. 775.082, s. 775.083, or s. 775.084.

473 2. If the quantity involved under subparagraph 1.:

474 a. Is 14 grams or more, but less than 100 grams, such



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475 person shall be sentenced to a mandatory minimum term of  
476 imprisonment of 3 years, and the defendant shall be ordered to  
477 pay a fine of \$50,000. However, the court may depart from the  
478 mandatory minimum term of imprisonment if it makes written  
479 findings as provided in subsection (8).

480 b. Is 100 grams or more, but less than 200 grams, such  
481 person shall be sentenced to a mandatory minimum term of  
482 imprisonment of 7 years, and the defendant shall be ordered to  
483 pay a fine of \$100,000.

484 c. Is 200 grams or more, such person shall be sentenced to  
485 a mandatory minimum term of imprisonment of 15 years, and the  
486 defendant shall be ordered to pay a fine of \$500,000.

487 3. A person who knowingly manufactures or brings into this  
488 state 400 grams or more of a substance described in sub-  
489 subparagraph 1.a. or a mixture described in sub-subparagraph  
490 1.b., and who knows that the probable result of such manufacture  
491 or importation would be the death of any person commits capital  
492 manufacture or importation of a n-benzyl phenethylamine  
493 compound, a capital felony punishable as provided in ss. 775.082  
494 and 921.142. A person sentenced for a capital felony under this  
495 paragraph shall also be sentenced to pay the maximum fine under  
496 subparagraph 2.

497 (8) The court may depart from the mandatory minimum term of  
498 imprisonment for a violation of this section if the departure is  
499 specifically authorized by this section and the court makes the  
500 following written findings:

501 (a) The offense only involved possession.

502 (b) The offender did not use or threaten violence or use a  
503 weapon during the commission of the offense.



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504           (c) The offense did not result in a death or serious bodily  
505 injury of a person not a party to the offense.

506           (d) A factor, consideration, or circumstance clearly  
507 demonstrates that imposing the mandatory minimum term of  
508 imprisonment would constitute or result in an injustice.

509           Section 2. This act shall take effect July 1, 2018.

510

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

512 And the title is amended as follows:

513           Delete everything before the enacting clause  
514 and insert:

515                           A bill to be entitled  
516           An act relating to mandatory minimum sentences;  
517           amending s. 893.135, F.S.; authorizing a court to  
518           depart from certain mandatory minimum terms of  
519           imprisonment for drug trafficking if it makes  
520           specified findings; providing an effective date.

521

By Senator Bracy

11-00693-18

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A bill to be entitled

An act relating to mandatory minimum sentences; amending s. 893.135, F.S.; authorizing a court to depart from certain mandatory minimum terms of imprisonment for drug trafficking if it makes specified findings; providing an effective date.

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

Section 1. Paragraphs (a), (b), and (d) through (n) of subsection (1) of section 893.135, Florida Statutes, are amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(a) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 25 pounds of cannabis, or 300 or more cannabis plants, commits a felony of the first degree, which felony shall be known as "trafficking in cannabis," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity of cannabis involved:

1. Is in excess of 25 pounds, but less than 2,000 pounds, or is 300 or more cannabis plants, but not more than 2,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$25,000. However, the court may depart from the mandatory minimum term of imprisonment if it

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makes written findings that the violation only involved possession and that a factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term of imprisonment would constitute or result in an injustice.

2. Is 2,000 pounds or more, but less than 10,000 pounds, or is 2,000 or more cannabis plants, but not more than 10,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$50,000.

3. Is 10,000 pounds or more, or is 10,000 or more cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$200,000.

For the purpose of this paragraph, a plant, including, but not limited to, a seedling or cutting, is a "cannabis plant" if it has some readily observable evidence of root formation, such as root hairs. To determine if a piece or part of a cannabis plant severed from the cannabis plant is itself a cannabis plant, the severed piece or part must have some readily observable evidence of root formation, such as root hairs. Callous tissue is not readily observable evidence of root formation. The viability and sex of a plant and the fact that the plant may or may not be a dead harvested plant are not relevant in determining if the plant is a "cannabis plant" or in the charging of an offense under this paragraph. Upon conviction, the court shall impose the longest term of imprisonment provided for in this paragraph.

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is

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59 knowingly in actual or constructive possession of, 28 grams or  
 60 more of cocaine, as described in s. 893.03(2)(a)4., or of any  
 61 mixture containing cocaine, but less than 150 kilograms of  
 62 cocaine or any such mixture, commits a felony of the first  
 63 degree, which felony shall be known as "trafficking in cocaine,"  
 64 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 65 If the quantity involved:

66 a. Is 28 grams or more, but less than 200 grams, such  
 67 person shall be sentenced to a mandatory minimum term of  
 68 imprisonment of 3 years, and the defendant shall be ordered to  
 69 pay a fine of \$50,000. However, the court may depart from the  
 70 mandatory minimum term of imprisonment if it makes written  
 71 findings that the violation only involved possession and that a  
 72 factor, consideration, or circumstance clearly demonstrates that  
 73 imposing the mandatory minimum term of imprisonment would  
 74 constitute or result in an injustice.

75 b. Is 200 grams or more, but less than 400 grams, such  
 76 person shall be sentenced to a mandatory minimum term of  
 77 imprisonment of 7 years, and the defendant shall be ordered to  
 78 pay a fine of \$100,000.

79 c. Is 400 grams or more, but less than 150 kilograms, such  
 80 person shall be sentenced to a mandatory minimum term of  
 81 imprisonment of 15 calendar years and pay a fine of \$250,000.

82 2. Any person who knowingly sells, purchases, manufactures,  
 83 delivers, or brings into this state, or who is knowingly in  
 84 actual or constructive possession of, 150 kilograms or more of  
 85 cocaine, as described in s. 893.03(2)(a)4., commits the first  
 86 degree felony of trafficking in cocaine. A person who has been  
 87 convicted of the first degree felony of trafficking in cocaine

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88 under this subparagraph shall be punished by life imprisonment  
 89 and is ineligible for any form of discretionary early release  
 90 except pardon or executive clemency or conditional medical  
 91 release under s. 947.149. However, if the court determines that,  
 92 in addition to committing any act specified in this paragraph:

93 a. The person intentionally killed an individual or  
 94 counseled, commanded, induced, procured, or caused the  
 95 intentional killing of an individual and such killing was the  
 96 result; or

97 b. The person's conduct in committing that act led to a  
 98 natural, though not inevitable, lethal result,

99  
 100 such person commits the capital felony of trafficking in  
 101 cocaine, punishable as provided in ss. 775.082 and 921.142. Any  
 102 person sentenced for a capital felony under this paragraph shall  
 103 also be sentenced to pay the maximum fine provided under  
 104 subparagraph 1.

105 3. Any person who knowingly brings into this state 300  
 106 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,  
 107 and who knows that the probable result of such importation would  
 108 be the death of any person, commits capital importation of  
 109 cocaine, a capital felony punishable as provided in ss. 775.082  
 110 and 921.142. Any person sentenced for a capital felony under  
 111 this paragraph shall also be sentenced to pay the maximum fine  
 112 provided under subparagraph 1.

113 (d)1. Any person who knowingly sells, purchases,  
 114 manufactures, delivers, or brings into this state, or who is  
 115 knowingly in actual or constructive possession of, 28 grams or  
 116 more of phencyclidine, as described in s. 893.03(2)(b)23., a

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117 substituted phenylcyclohexylamine, as described in s.  
 118 893.03(1)(c)195., or a substance described in s.  
 119 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
 120 containing phencyclidine, as described in s. 893.03(2)(b)23., a  
 121 substituted phenylcyclohexylamine, as described in s.  
 122 893.03(1)(c)195., or a substance described in s.  
 123 893.03(1)(c)13., 32., 38., 103., or 146., commits a felony of  
 124 the first degree, which felony shall be known as "trafficking in  
 125 phencyclidine," punishable as provided in s. 775.082, s.  
 126 775.083, or s. 775.084. If the quantity involved:

127 a. Is 28 grams or more, but less than 200 grams, such  
 128 person shall be sentenced to a mandatory minimum term of  
 129 imprisonment of 3 years, and the defendant shall be ordered to  
 130 pay a fine of \$50,000. However, the court may depart from the  
 131 mandatory minimum term of imprisonment if it makes written  
 132 findings that the violation only involved possession and that a  
 133 factor, consideration, or circumstance clearly demonstrates that  
 134 imposing the mandatory minimum term of imprisonment would  
 135 constitute or result in an injustice.

136 b. Is 200 grams or more, but less than 400 grams, such  
 137 person shall be sentenced to a mandatory minimum term of  
 138 imprisonment of 7 years, and the defendant shall be ordered to  
 139 pay a fine of \$100,000.

140 c. Is 400 grams or more, such person shall be sentenced to  
 141 a mandatory minimum term of imprisonment of 15 calendar years  
 142 and pay a fine of \$250,000.

143 2. Any person who knowingly brings into this state 800  
 144 grams or more of phencyclidine, as described in s.  
 145 893.03(2)(b)23., a substituted phenylcyclohexylamine, as

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146 described in s. 893.03(1)(c)195., or a substance described in s.  
 147 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
 148 containing phencyclidine, as described in s. 893.03(2)(b)23., a  
 149 substituted phenylcyclohexylamine, as described in s.  
 150 893.03(1)(c)195., or a substance described in s.  
 151 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the  
 152 probable result of such importation would be the death of any  
 153 person commits capital importation of phencyclidine, a capital  
 154 felony punishable as provided in ss. 775.082 and 921.142. Any  
 155 person sentenced for a capital felony under this paragraph shall  
 156 also be sentenced to pay the maximum fine provided under  
 157 subparagraph 1.

158 (e)1. Any person who knowingly sells, purchases,  
 159 manufactures, delivers, or brings into this state, or who is  
 160 knowingly in actual or constructive possession of, 200 grams or  
 161 more of methaqualone or of any mixture containing methaqualone,  
 162 as described in s. 893.03(1)(d), commits a felony of the first  
 163 degree, which felony shall be known as "trafficking in  
 164 methaqualone," punishable as provided in s. 775.082, s. 775.083,  
 165 or s. 775.084. If the quantity involved:

166 a. Is 200 grams or more, but less than 5 kilograms, such  
 167 person shall be sentenced to a mandatory minimum term of  
 168 imprisonment of 3 years, and the defendant shall be ordered to  
 169 pay a fine of \$50,000. However, the court may depart from the  
 170 mandatory minimum term of imprisonment if it makes written  
 171 findings that the violation only involved possession and that a  
 172 factor, consideration, or circumstance clearly demonstrates that  
 173 imposing the mandatory minimum term of imprisonment would  
 174 constitute or result in an injustice.

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175 b. Is 5 kilograms or more, but less than 25 kilograms, such  
 176 person shall be sentenced to a mandatory minimum term of  
 177 imprisonment of 7 years, and the defendant shall be ordered to  
 178 pay a fine of \$100,000.

179 c. Is 25 kilograms or more, such person shall be sentenced  
 180 to a mandatory minimum term of imprisonment of 15 calendar years  
 181 and pay a fine of \$250,000.

182 2. Any person who knowingly brings into this state 50  
 183 kilograms or more of methaqualone or of any mixture containing  
 184 methaqualone, as described in s. 893.03(1)(d), and who knows  
 185 that the probable result of such importation would be the death  
 186 of any person commits capital importation of methaqualone, a  
 187 capital felony punishable as provided in ss. 775.082 and  
 188 921.142. Any person sentenced for a capital felony under this  
 189 paragraph shall also be sentenced to pay the maximum fine  
 190 provided under subparagraph 1.

191 (f)1. Any person who knowingly sells, purchases,  
 192 manufactures, delivers, or brings into this state, or who is  
 193 knowingly in actual or constructive possession of, 14 grams or  
 194 more of amphetamine, as described in s. 893.03(2)(c)2., or  
 195 methamphetamine, as described in s. 893.03(2)(c)4., or of any  
 196 mixture containing amphetamine or methamphetamine, or  
 197 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine  
 198 in conjunction with other chemicals and equipment utilized in  
 199 the manufacture of amphetamine or methamphetamine, commits a  
 200 felony of the first degree, which felony shall be known as  
 201 "trafficking in amphetamine," punishable as provided in s.  
 202 775.082, s. 775.083, or s. 775.084. If the quantity involved:

203 a. Is 14 grams or more, but less than 28 grams, such person

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204 shall be sentenced to a mandatory minimum term of imprisonment  
 205 of 3 years, and the defendant shall be ordered to pay a fine of  
 206 \$50,000. However, the court may depart from the mandatory  
 207 minimum term of imprisonment if it makes written findings that  
 208 the violation only involved possession and that a factor,  
 209 consideration, or circumstance clearly demonstrates that  
 210 imposing the mandatory minimum term of imprisonment would  
 211 constitute or result in an injustice.

212 b. Is 28 grams or more, but less than 200 grams, such  
 213 person shall be sentenced to a mandatory minimum term of  
 214 imprisonment of 7 years, and the defendant shall be ordered to  
 215 pay a fine of \$100,000.

216 c. Is 200 grams or more, such person shall be sentenced to  
 217 a mandatory minimum term of imprisonment of 15 calendar years  
 218 and pay a fine of \$250,000.

219 2. Any person who knowingly manufactures or brings into  
 220 this state 400 grams or more of amphetamine, as described in s.  
 221 893.03(2)(c)2., or methamphetamine, as described in s.  
 222 893.03(2)(c)4., or of any mixture containing amphetamine or  
 223 methamphetamine, or phenylacetone, phenylacetic acid,  
 224 pseudoephedrine, or ephedrine in conjunction with other  
 225 chemicals and equipment used in the manufacture of amphetamine  
 226 or methamphetamine, and who knows that the probable result of  
 227 such manufacture or importation would be the death of any person  
 228 commits capital manufacture or importation of amphetamine, a  
 229 capital felony punishable as provided in ss. 775.082 and  
 230 921.142. Any person sentenced for a capital felony under this  
 231 paragraph shall also be sentenced to pay the maximum fine  
 232 provided under subparagraph 1.

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233 (g)1. Any person who knowingly sells, purchases,  
 234 manufactures, delivers, or brings into this state, or who is  
 235 knowingly in actual or constructive possession of, 4 grams or  
 236 more of flunitrazepam or any mixture containing flunitrazepam as  
 237 described in s. 893.03(1)(a) commits a felony of the first  
 238 degree, which felony shall be known as "trafficking in  
 239 flunitrazepam," punishable as provided in s. 775.082, s.  
 240 775.083, or s. 775.084. If the quantity involved:

241 a. Is 4 grams or more but less than 14 grams, such person  
 242 shall be sentenced to a mandatory minimum term of imprisonment  
 243 of 3 years, and the defendant shall be ordered to pay a fine of  
 244 \$50,000. However, the court may depart from the mandatory  
 245 minimum term of imprisonment if it makes written findings that  
 246 the violation only involved possession and that a factor,  
 247 consideration, or circumstance clearly demonstrates that  
 248 imposing the mandatory minimum term of imprisonment would  
 249 constitute or result in an injustice.

250 b. Is 14 grams or more but less than 28 grams, such person  
 251 shall be sentenced to a mandatory minimum term of imprisonment  
 252 of 7 years, and the defendant shall be ordered to pay a fine of  
 253 \$100,000.

254 c. Is 28 grams or more but less than 30 kilograms, such  
 255 person shall be sentenced to a mandatory minimum term of  
 256 imprisonment of 25 calendar years and pay a fine of \$500,000.

257 2. Any person who knowingly sells, purchases, manufactures,  
 258 delivers, or brings into this state or who is knowingly in  
 259 actual or constructive possession of 30 kilograms or more of  
 260 flunitrazepam or any mixture containing flunitrazepam as  
 261 described in s. 893.03(1)(a) commits the first degree felony of

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262 trafficking in flunitrazepam. A person who has been convicted of  
 263 the first degree felony of trafficking in flunitrazepam under  
 264 this subparagraph shall be punished by life imprisonment and is  
 265 ineligible for any form of discretionary early release except  
 266 pardon or executive clemency or conditional medical release  
 267 under s. 947.149. However, if the court determines that, in  
 268 addition to committing any act specified in this paragraph:

269 a. The person intentionally killed an individual or  
 270 counseled, commanded, induced, procured, or caused the  
 271 intentional killing of an individual and such killing was the  
 272 result; or

273 b. The person's conduct in committing that act led to a  
 274 natural, though not inevitable, lethal result,

275 such person commits the capital felony of trafficking in  
 276 flunitrazepam, punishable as provided in ss. 775.082 and  
 277 921.142. Any person sentenced for a capital felony under this  
 278 paragraph shall also be sentenced to pay the maximum fine  
 279 provided under subparagraph 1.

281 (h)1. Any person who knowingly sells, purchases,  
 282 manufactures, delivers, or brings into this state, or who is  
 283 knowingly in actual or constructive possession of, 1 kilogram or  
 284 more of gamma-hydroxybutyric acid (GHB), as described in s.  
 285 893.03(1)(d), or any mixture containing gamma-hydroxybutyric  
 286 acid (GHB), commits a felony of the first degree, which felony  
 287 shall be known as "trafficking in gamma-hydroxybutyric acid  
 288 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.  
 289 775.084. If the quantity involved:

290 a. Is 1 kilogram or more but less than 5 kilograms, such

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291 person shall be sentenced to a mandatory minimum term of  
 292 imprisonment of 3 years, and the defendant shall be ordered to  
 293 pay a fine of \$50,000. However, the court may depart from the  
 294 mandatory minimum term of imprisonment if it makes written  
 295 findings that the violation only involved possession and that a  
 296 factor, consideration, or circumstance clearly demonstrates that  
 297 imposing the mandatory minimum term of imprisonment would  
 298 constitute or result in an injustice.

299 b. Is 5 kilograms or more but less than 10 kilograms, such  
 300 person shall be sentenced to a mandatory minimum term of  
 301 imprisonment of 7 years, and the defendant shall be ordered to  
 302 pay a fine of \$100,000.

303 c. Is 10 kilograms or more, such person shall be sentenced  
 304 to a mandatory minimum term of imprisonment of 15 calendar years  
 305 and pay a fine of \$250,000.

306 2. Any person who knowingly manufactures or brings into  
 307 this state 150 kilograms or more of gamma-hydroxybutyric acid  
 308 (GHB), as described in s. 893.03(1)(d), or any mixture  
 309 containing gamma-hydroxybutyric acid (GHB), and who knows that  
 310 the probable result of such manufacture or importation would be  
 311 the death of any person commits capital manufacture or  
 312 importation of gamma-hydroxybutyric acid (GHB), a capital felony  
 313 punishable as provided in ss. 775.082 and 921.142. Any person  
 314 sentenced for a capital felony under this paragraph shall also  
 315 be sentenced to pay the maximum fine provided under subparagraph  
 316 1.

317 (i)1. Any person who knowingly sells, purchases,  
 318 manufactures, delivers, or brings into this state, or who is  
 319 knowingly in actual or constructive possession of, 1 kilogram or

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320 more of gamma-butyrolactone (GBL), as described in s.  
 321 893.03(1)(d), or any mixture containing gamma-butyrolactone  
 322 (GBL), commits a felony of the first degree, which felony shall  
 323 be known as "trafficking in gamma-butyrolactone (GBL)," and  
 324 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 325 If the quantity involved:

326 a. Is 1 kilogram or more but less than 5 kilograms, such  
 327 person shall be sentenced to a mandatory minimum term of  
 328 imprisonment of 3 years, and the defendant shall be ordered to  
 329 pay a fine of \$50,000. However, the court may depart from the  
 330 mandatory minimum term of imprisonment if it makes written  
 331 findings that the violation only involved possession and that a  
 332 factor, consideration, or circumstance clearly demonstrates that  
 333 imposing the mandatory minimum term of imprisonment would  
 334 constitute or result in an injustice.

335 b. Is 5 kilograms or more but less than 10 kilograms, such  
 336 person shall be sentenced to a mandatory minimum term of  
 337 imprisonment of 7 years, and the defendant shall be ordered to  
 338 pay a fine of \$100,000.

339 c. Is 10 kilograms or more, such person shall be sentenced  
 340 to a mandatory minimum term of imprisonment of 15 calendar years  
 341 and pay a fine of \$250,000.

342 2. Any person who knowingly manufactures or brings into the  
 343 state 150 kilograms or more of gamma-butyrolactone (GBL), as  
 344 described in s. 893.03(1)(d), or any mixture containing gamma-  
 345 butyrolactone (GBL), and who knows that the probable result of  
 346 such manufacture or importation would be the death of any person  
 347 commits capital manufacture or importation of gamma-  
 348 butyrolactone (GBL), a capital felony punishable as provided in

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349 ss. 775.082 and 921.142. Any person sentenced for a capital  
350 felony under this paragraph shall also be sentenced to pay the  
351 maximum fine provided under subparagraph 1.

352 (j)1. Any person who knowingly sells, purchases,  
353 manufactures, delivers, or brings into this state, or who is  
354 knowingly in actual or constructive possession of, 1 kilogram or  
355 more of 1,4-Butanediol as described in s. 893.03(1)(d), or of  
356 any mixture containing 1,4-Butanediol, commits a felony of the  
357 first degree, which felony shall be known as "trafficking in  
358 1,4-Butanediol," punishable as provided in s. 775.082, s.  
359 775.083, or s. 775.084. If the quantity involved:

360 a. Is 1 kilogram or more, but less than 5 kilograms, such  
361 person shall be sentenced to a mandatory minimum term of  
362 imprisonment of 3 years, and the defendant shall be ordered to  
363 pay a fine of \$50,000. However, the court may depart from the  
364 mandatory minimum term of imprisonment if it makes written  
365 findings that the violation only involved possession and that a  
366 factor, consideration, or circumstance clearly demonstrates that  
367 imposing the mandatory minimum term of imprisonment would  
368 constitute or result in an injustice.

369 b. Is 5 kilograms or more, but less than 10 kilograms, such  
370 person shall be sentenced to a mandatory minimum term of  
371 imprisonment of 7 years, and the defendant shall be ordered to  
372 pay a fine of \$100,000.

373 c. Is 10 kilograms or more, such person shall be sentenced  
374 to a mandatory minimum term of imprisonment of 15 calendar years  
375 and pay a fine of \$500,000.

376 2. Any person who knowingly manufactures or brings into  
377 this state 150 kilograms or more of 1,4-Butanediol as described

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378 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,  
379 and who knows that the probable result of such manufacture or  
380 importation would be the death of any person commits capital  
381 manufacture or importation of 1,4-Butanediol, a capital felony  
382 punishable as provided in ss. 775.082 and 921.142. Any person  
383 sentenced for a capital felony under this paragraph shall also  
384 be sentenced to pay the maximum fine provided under subparagraph  
385 1.

386 (k)1. A person who knowingly sells, purchases,  
387 manufactures, delivers, or brings into this state, or who is  
388 knowingly in actual or constructive possession of, 10 grams or  
389 more of a:

390 a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,  
391 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,  
392 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163.,  
393 165., or 187.-189., a substituted cathinone, as described in s.  
394 893.03(1)(c)191., or substituted phenethylamine, as described in  
395 s. 893.03(1)(c)192.;

396 b. Mixture containing any substance described in sub-  
397 subparagraph a.; or

398 c. Salt, isomer, ester, or ether or salt of an isomer,  
399 ester, or ether of a substance described in sub-subparagraph a.,  
400  
401 commits a felony of the first degree, which felony shall be  
402 known as "trafficking in phenethylamines," punishable as  
403 provided in s. 775.082, s. 775.083, or s. 775.084.

404 2. If the quantity involved under subparagraph 1.:

405 a. Is 10 grams or more, but less than 200 grams, such  
406 person shall be sentenced to a mandatory minimum term of

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407 imprisonment of 3 years and shall be ordered to pay a fine of  
 408 \$50,000. However, the court may depart from the mandatory  
 409 minimum term of imprisonment if it makes written findings that  
 410 the violation only involved possession and that a factor,  
 411 consideration, or circumstance clearly demonstrates that  
 412 imposing the mandatory minimum term of imprisonment would  
 413 constitute or result in an injustice.

414 b. Is 200 grams or more, but less than 400 grams, such  
 415 person shall be sentenced to a mandatory minimum term of  
 416 imprisonment of 7 years and shall be ordered to pay a fine of  
 417 \$100,000.

418 c. Is 400 grams or more, such person shall be sentenced to  
 419 a mandatory minimum term of imprisonment of 15 years and shall  
 420 be ordered to pay a fine of \$250,000.

421 3. A person who knowingly manufactures or brings into this  
 422 state 30 kilograms or more of a substance described in sub-  
 423 subparagraph 1.a., a mixture described in sub-subparagraph 1.b.,  
 424 or a salt, isomer, ester, or ether or a salt of an isomer,  
 425 ester, or ether described in sub-subparagraph 1.c., and who  
 426 knows that the probable result of such manufacture or  
 427 importation would be the death of any person commits capital  
 428 manufacture or importation of phenethylamines, a capital felony  
 429 punishable as provided in ss. 775.082 and 921.142. A person  
 430 sentenced for a capital felony under this paragraph shall also  
 431 be sentenced to pay the maximum fine under subparagraph 2.

432 (1)1. Any person who knowingly sells, purchases,  
 433 manufactures, delivers, or brings into this state, or who is  
 434 knowingly in actual or constructive possession of, 1 gram or  
 435 more of lysergic acid diethylamide (LSD) as described in s.

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436 893.03(1)(c), or of any mixture containing lysergic acid  
 437 diethylamide (LSD), commits a felony of the first degree, which  
 438 felony shall be known as "trafficking in lysergic acid  
 439 diethylamide (LSD)," punishable as provided in s. 775.082, s.  
 440 775.083, or s. 775.084. If the quantity involved:

441 a. Is 1 gram or more, but less than 5 grams, such person  
 442 shall be sentenced to a mandatory minimum term of imprisonment  
 443 of 3 years, and the defendant shall be ordered to pay a fine of  
 444 \$50,000. However, the court may depart from the mandatory  
 445 minimum term of imprisonment if it makes written findings that  
 446 the violation only involved possession and that a factor,  
 447 consideration, or circumstance clearly demonstrates that  
 448 imposing the mandatory minimum term of imprisonment would  
 449 constitute or result in an injustice.

450 b. Is 5 grams or more, but less than 7 grams, such person  
 451 shall be sentenced to a mandatory minimum term of imprisonment  
 452 of 7 years, and the defendant shall be ordered to pay a fine of  
 453 \$100,000.

454 c. Is 7 grams or more, such person shall be sentenced to a  
 455 mandatory minimum term of imprisonment of 15 calendar years and  
 456 pay a fine of \$500,000.

457 2. Any person who knowingly manufactures or brings into  
 458 this state 7 grams or more of lysergic acid diethylamide (LSD)  
 459 as described in s. 893.03(1)(c), or any mixture containing  
 460 lysergic acid diethylamide (LSD), and who knows that the  
 461 probable result of such manufacture or importation would be the  
 462 death of any person commits capital manufacture or importation  
 463 of lysergic acid diethylamide (LSD), a capital felony punishable  
 464 as provided in ss. 775.082 and 921.142. Any person sentenced for

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465 a capital felony under this paragraph shall also be sentenced to  
 466 pay the maximum fine provided under subparagraph 1.

467 (m)1. A person who knowingly sells, purchases,  
 468 manufactures, delivers, or brings into this state, or who is  
 469 knowingly in actual or constructive possession of, 280 grams or  
 470 more of a:

471 a. Substance described in s. 893.03(1)(c)30., 46.-50.,  
 472 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic  
 473 cannabinoid, as described in s. 893.03(1)(c)190.; or

474 b. Mixture containing any substance described in sub-  
 475 subparagraph a.,

476

477 commits a felony of the first degree, which felony shall be  
 478 known as "trafficking in synthetic cannabinoids," punishable as  
 479 provided in s. 775.082, s. 775.083, or s. 775.084.

480 2. If the quantity involved under subparagraph 1.:

481 a. Is 280 grams or more, but less than 500 grams, such  
 482 person shall be sentenced to a mandatory minimum term of  
 483 imprisonment of 3 years, and the defendant shall be ordered to  
 484 pay a fine of \$50,000. However, the court may depart from the  
 485 mandatory minimum term of imprisonment if it makes written  
 486 findings that the violation only involved possession and that a  
 487 factor, consideration, or circumstance clearly demonstrates that  
 488 imposing the mandatory minimum term of imprisonment would  
 489 constitute or result in an injustice.

490 b. Is 500 grams or more, but less than 1,000 grams, such  
 491 person shall be sentenced to a mandatory minimum term of  
 492 imprisonment of 7 years, and the defendant shall be ordered to  
 493 pay a fine of \$100,000.

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494 c. Is 1,000 grams or more, but less than 30 kilograms, such  
 495 person shall be sentenced to a mandatory minimum term of  
 496 imprisonment of 15 years, and the defendant shall be ordered to  
 497 pay a fine of \$200,000.

498 d. Is 30 kilograms or more, such person shall be sentenced  
 499 to a mandatory minimum term of imprisonment of 25 years, and the  
 500 defendant shall be ordered to pay a fine of \$750,000.

501 (n)1. A person who knowingly sells, purchases,  
 502 manufactures, delivers, or brings into this state, or who is  
 503 knowingly in actual or constructive possession of, 14 grams or  
 504 more of:

505 a. A substance described in s. 893.03(1)(c)164., 174., or  
 506 175., a n-benzyl phenethylamine compound, as described in s.  
 507 893.03(1)(c)193.; or

508 b. A mixture containing any substance described in sub-  
 509 subparagraph a.,

510

511 commits a felony of the first degree, which felony shall be  
 512 known as "trafficking in n-benzyl phenethylamines," punishable  
 513 as provided in s. 775.082, s. 775.083, or s. 775.084.

514 2. If the quantity involved under subparagraph 1.:

515 a. Is 14 grams or more, but less than 100 grams, such  
 516 person shall be sentenced to a mandatory minimum term of  
 517 imprisonment of 3 years, and the defendant shall be ordered to  
 518 pay a fine of \$50,000. However, the court may depart from the  
 519 mandatory minimum term of imprisonment if it makes written  
 520 findings that the violation only involved possession and that a  
 521 factor, consideration, or circumstance clearly demonstrates that  
 522 imposing the mandatory minimum term of imprisonment would

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2018602\_\_

523 constitute or result in an injustice.

524 b. Is 100 grams or more, but less than 200 grams, such  
525 person shall be sentenced to a mandatory minimum term of  
526 imprisonment of 7 years, and the defendant shall be ordered to  
527 pay a fine of \$100,000.

528 c. Is 200 grams or more, such person shall be sentenced to  
529 a mandatory minimum term of imprisonment of 15 years, and the  
530 defendant shall be ordered to pay a fine of \$500,000.

531 3. A person who knowingly manufactures or brings into this  
532 state 400 grams or more of a substance described in sub-  
533 subparagraph 1.a. or a mixture described in sub-subparagraph  
534 1.b., and who knows that the probable result of such manufacture  
535 or importation would be the death of any person commits capital  
536 manufacture or importation of a n-benzyl phenethylamine  
537 compound, a capital felony punishable as provided in ss. 775.082  
538 and 921.142. A person sentenced for a capital felony under this  
539 paragraph shall also be sentenced to pay the maximum fine under  
540 subparagraph 2.

541 Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11/13/17  
Meeting Date

602  
Bill Number (if applicable)  
600702 DE  
Amendment Barcode (if applicable)

Topic MANDATORY MINIMUMS

Name DAVID MARSEY

Job Title ATTORNEY

Address 101 N. MONROE ST, Ste 120

Phone (850) 222-6550

Tallahassee FL 32301  
City State Zip

Email dmarsey@tumberger.com

Speaking:  For  Against  Information

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

Representing FLORIDA POLICE CHIEF'S ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

13 Nov 17

Meeting Date

602

Bill Number (if applicable)

Topic Mandatory Minimum

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe  
Street

Phone 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

APPEARANCE RECORD

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

11/13/17

Meeting Date

SB602

Bill Number (if applicable)

Topic reform of cannabis prohibition

Amendment Barcode (if applicable)

Name John Hightower

Job Title paralyal

Address 128 Salon Ct  
Street

Phone 850 519 0363

Tampa 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 Normi TAMANESSIE / Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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)

November 13, 2017

*Meeting Date*

SB 602

*Bill Number (if applicable)*

Topic Mandatory Minimum Sentences

*Amendment Barcode (if applicable)*

Name Hon. Stacy Scott

Job Title Public Defender, 8th Judicial Circuit

Address 151 SW 2nd Avenue

*Street*

Phone 352-338-7370

Gainesville

FL

32601

Email scotts@pd08.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11/13/17  
Meeting Date

SB602  
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Buddy JACOBS

Job Title General Counsel Fla. Prosecuting Attorneys Association

Address 961687 Gateway Blvd.

Phone 904-261-3693

Street

Fernandina Bch. Fla. 32034

City

State

Zip

Email ajacobs@comcast.net

Speaking:  For  Against  Information

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

Representing State Attorneys

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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.)

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

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BILL: SPB 7000

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Criminal History Records/Department of Law Enforcement

DATE: November 13, 2017 REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Jones	Jones		<b>CJ Submitted as Comm. Bill/Fav</b>

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**I. Summary:**

SPB 7000 deletes the scheduled repeal of the current public records exemption for the court ordered expunged criminal history records of human trafficking victims. If the bill passes, the court ordered expunged criminal history records of human trafficking victims will continue to be confidential and exempt from public disclosure.

The bill requires a majority vote for passage.

The bill is effective July 1, 2018.

**II. Present Situation:**

**Public Records Law**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>3</sup> The Public Records Act states that “it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.”<sup>4</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

<sup>4</sup> Section 119.01(1), F.S.

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>5</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>6</sup>

The Legislature may create an exemption to the public records requirements by passing a general law by a two-thirds vote of the House and the Senate.<sup>7</sup> The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>8</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>9</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>10</sup> Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.<sup>11</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or public meetings exemptions.<sup>12</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after

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<sup>5</sup> Section 119.011(12), F.S., defines “public record” to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(2), F.S., defines “agency” to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of ch. 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> FLA. CONST., art. I, s. 24(c).

<sup>9</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>10</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Bd. of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

<sup>11</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

<sup>12</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption. The OGSR does not apply to an exemption required by federal law or applied solely to the Legislature or the State Court System. Section 119.15(2), F.S.

creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>13</sup>

The OGSR provides that a public records or open meetings exemption may be created, revised, or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.<sup>14</sup> An exemption serves an identifiable public purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;<sup>15</sup>
- It protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to their good name or reputation or jeopardize their safety;<sup>16</sup> or
- It protects trade or business secrets.<sup>17</sup>

As part of the OGSR review process, the Legislature is required to consider the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?<sup>18</sup>

If, in reenacting an existing exemption, the exemption is expanded, a public necessity statement and a two-thirds vote for passage are required.<sup>19</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, a public necessity statement and a two-thirds vote for passage are *not* required.

## **Human Trafficking**

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There is an estimated 20.9 million adults and children in the world who are in some sort of forced labor or sexual exploitation. Of that number, an

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<sup>13</sup> Section 119.15(3), F.S.

<sup>14</sup> Section 119.15(6)(b), F.S.

<sup>15</sup> Section 119.15(6)(b)1., F.S.

<sup>16</sup> Section 119.15(6)(b)2., F.S. However, if this public purpose is cited as the basis of an exemption, only personal identifying information is exempt.

<sup>17</sup> Section 119.15(6)(b)3., F.S.

<sup>18</sup> Section 119.15(6)(a), F.S.

<sup>19</sup> FLA. CONST. art. I, s. 24(c).

estimated 26 percent of them are children, and in 2010, it was estimated that as many as 300,000 children in the United States were at risk for exploitation each year.<sup>20</sup>

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person. A victim of human trafficking is a person subjected to coercion,<sup>21</sup> for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.<sup>22</sup>

### **Open Government Sunset Review of the Public Records Exemption for Expunged Criminal History Record of a Victim of Human Trafficking**

In 2013, the Legislature created s. 943.0583, F.S.<sup>23</sup> Section 943.0583, F.S., allows a victim of human trafficking to petition the court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme.<sup>24</sup>

The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order.<sup>25</sup> A criminal history record ordered expunged under s. 943.0583, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.<sup>26</sup>

Section 943.0583(10), F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

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<sup>20</sup> U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at [http://ojp.gov/newsroom/factsheets/ojpfs\\_humantrafficking.html](http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html) (last visited October 20, 2017). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited October 20, 2017).

<sup>21</sup> "Coercion" means using or threatening to use physical force against any person; restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; causing or threatening to cause financial harm to any person; enticing or luring any person by fraud or deceit; or providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.

<sup>22</sup> Section 943.0583(1)(c), F.S.

<sup>23</sup> Chapter 2013-99, L.O.F.

<sup>24</sup> Section 943.0583(3), F.S., does not allow the following offenses to be expunged: arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

<sup>25</sup> Section 943.045(16), F.S.

<sup>26</sup> Section 943.0583(10), F.S.

In creating the exemption, the Legislature articulated the following reasons for the exemption:

The Legislature finds that it is a public necessity that a criminal history record ordered expunged under s. 943.0583, Florida Statutes, that is retained by the Department of Law Enforcement be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.<sup>27</sup>

During the 2017 interim, Senate and House professional staff contacted the Florida Department of Law Enforcement (FDLE), the Florida Court Clerks and Comptrollers, and the Florida Prosecuting Attorney's Association as part of its review of s. 943.0583, F.S.

A total of 33 orders for expunction have been processed by the FDLE since 2014.<sup>28</sup> Specifically, the orders, by year, processed by the FDLE were:

- 1 in 2014;
- 12 in 2015;
- 6 in 2016; and
- 14 thus far in 2017.<sup>29</sup>

Professional staff from the Senate and the House attempted to ascertain if any victims of human trafficking were experiencing hurdles in the petition process. The Florida Court Clerks and Comptrollers and the Florida Prosecuting Attorney's Association were unaware of any issues.

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

The bill amends s. 943.0583, F.S., by deleting the scheduled repeal date, thereby reenacting the public record exemption for court ordered expunged criminal history records of victims of human trafficking.

The bill is effective July 1, 2018.

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

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

None.

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<sup>27</sup> Chapter 2013-99, L.O.F.

<sup>28</sup> Email from Ronald E. Draa, Director of External Affairs, Florida Department of Law Enforcement, to Senate Criminal Justice Staff (October 19, 2017) (on file with the Senate Criminal Justice Committee).

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

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 943.0583 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

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FOR CONSIDERATION By the Committee on Criminal Justice

591-00770-18

20187000pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 943.0583, F.S., relating to an exemption from public records requirements for certain criminal history records ordered expunged which are retained by the Department of Law Enforcement; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Section 943.0583, Florida Statutes, is amended to read:

943.0583 Human trafficking victim expunction.—

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

(a) "Human trafficking" has the same meaning as provided in s. 787.06.

(b) "Official documentation" means any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

(c) "Victim of human trafficking" means a person subjected to coercion, as defined in s. 787.06, for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

(2) Notwithstanding any other provision of law, upon the filing of a petition as provided in this section, any court in the circuit in which the petitioner was arrested, so long as the

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

591-00770-18

20187000pb

court has jurisdiction over the class of offense or offenses sought to be expunged, may order a criminal justice agency to expunge the criminal history record of a victim of human trafficking who complies with the requirements of this section. A petition need not be filed in the court where the petitioner's criminal proceeding or proceedings originally occurred. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the discretion of the court.

(3) A person who is a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chapters 796 and 847, without regard to the disposition of the arrest or of any charges. However, this section does not apply to any offense listed in s. 775.084(1)(b)1. Determination of the petition under this section should be by a preponderance of the evidence. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings. If a person is adjudicated not guilty by reason of insanity or is found to be incompetent to stand trial for any such charge, the expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national

Page 2 of 7

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

591-00770-18

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59 databases for use in determining eligibility to purchase or  
 60 possess a firearm or to carry a concealed firearm, as authorized  
 61 in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t), nor shall it  
 62 prevent any governmental agency that is authorized by state or  
 63 federal law to determine eligibility to purchase or possess a  
 64 firearm or to carry a concealed firearm from accessing or using  
 65 the record of the judgment or finding in the course of such  
 66 agency's official duties.

67 (4) A petition under this section must be initiated by the  
 68 petitioner with due diligence after the victim has ceased to be  
 69 a victim of human trafficking or has sought services for victims  
 70 of human trafficking, subject to reasonable concerns for the  
 71 safety of the victim, family members of the victim, or other  
 72 victims of human trafficking that may be jeopardized by the  
 73 bringing of such petition or for other reasons consistent with  
 74 the purpose of this section.

75 (5) Official documentation of the victim's status creates a  
 76 presumption that his or her participation in the offense was a  
 77 result of having been a victim of human trafficking but is not  
 78 required for granting a petition under this section. A  
 79 determination made without such official documentation must be  
 80 made by a showing of clear and convincing evidence.

81 (6) Each petition to a court to expunge a criminal history  
 82 record is complete only when accompanied by:

83 (a) The petitioner's sworn statement attesting that the  
 84 petitioner is eligible for such an expunction to the best of his  
 85 or her knowledge or belief and does not have any other petition  
 86 to expunge or any petition to seal pending before any court.

87 (b) Official documentation of the petitioner's status as a

591-00770-18

20187000pb

88 victim of human trafficking, if any exists.

89  
 90 Any person who knowingly provides false information on such  
 91 sworn statement to the court commits a felony of the third  
 92 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 93 775.084.

94 (7) (a) In judicial proceedings under this section, a copy  
 95 of the completed petition to expunge shall be served upon the  
 96 appropriate state attorney or the statewide prosecutor and upon  
 97 the arresting agency; however, it is not necessary to make any  
 98 agency other than the state a party. The appropriate state  
 99 attorney or the statewide prosecutor and the arresting agency  
 100 may respond to the court regarding the completed petition to  
 101 expunge.

102 (b) The petitioner or the petitioner's attorney may appear  
 103 at any hearing under this section telephonically, via video  
 104 conference, or by other electronic means.

105 (c) The court shall allow an advocate from a state  
 106 attorney's office, law enforcement agency, safe house or safe  
 107 foster home as defined in s. 409.1678(1), or a residential  
 108 facility offering services to adult victims of human trafficking  
 109 to be present with the petitioner during any court proceedings  
 110 or hearings under this section, if the petitioner has made such  
 111 a request and the advocate is able to be present.

112 (d) If relief is granted by the court, the clerk of the  
 113 court shall certify copies of the order to the appropriate state  
 114 attorney or the statewide prosecutor and the arresting agency.  
 115 The arresting agency is responsible for forwarding the order to  
 116 any other agency listed in the court order to which the

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20187000pb

117 arresting agency disseminated the criminal history record  
 118 information to which the order pertains. The department shall  
 119 forward the order to expunge to the Federal Bureau of  
 120 Investigation. The clerk of the court shall certify a copy of  
 121 the order to any other agency that the records of the court  
 122 reflect has received the criminal history record from the court.

123 (8) (a) Any criminal history record of a minor or an adult  
 124 that is ordered expunged pursuant to this section must be  
 125 physically destroyed or obliterated by any criminal justice  
 126 agency having custody of such record, except that any criminal  
 127 history record in the custody of the department must be retained  
 128 in all cases.

129 (b) The person who is the subject of a criminal history  
 130 record that is expunged under this section may lawfully deny or  
 131 fail to acknowledge the arrests covered by the expunged record,  
 132 except when the subject of the record is a candidate for  
 133 employment with a criminal justice agency or is a defendant in a  
 134 criminal prosecution.

135 (c) Subject to the exceptions in paragraph (b), a person  
 136 who has been granted an expunction under this section may not be  
 137 held under any law of this state to commit perjury or to be  
 138 otherwise liable for giving a false statement by reason of such  
 139 person's failure to recite or acknowledge an expunged criminal  
 140 history record.

141 (9) Any reference to any other chapter, section, or  
 142 subdivision of the Florida Statutes in this section constitutes  
 143 a general reference under the doctrine of incorporation by  
 144 reference.

145 (10) ~~(a)~~ A criminal history record ordered expunged under

Page 5 of 7

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146 this section that is retained by the department is confidential  
 147 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 148 Constitution, except that the record shall be made available to  
 149 criminal justice agencies for their respective criminal justice  
 150 purposes and to any governmental agency that is authorized by  
 151 state or federal law to determine eligibility to purchase or  
 152 possess a firearm or to carry a concealed firearm for use in the  
 153 course of such agency's official duties. Otherwise, such record  
 154 shall not be disclosed to any person or entity except upon order  
 155 of a court of competent jurisdiction. A criminal justice agency  
 156 may retain a notation indicating compliance with an order to  
 157 expunge.

158 ~~(b) This subsection is subject to the Open Government  
 159 Sunset Review Act in accordance with s. 119.15 and shall stand  
 160 repealed on October 2, 2018, unless reviewed and saved from  
 161 repeal through reenactment by the Legislature.~~

162 (11) (a) The following criminal intelligence information or  
 163 criminal investigative information is confidential and exempt  
 164 from s. 119.07(1) and s. 24(a), Art. I of the State  
 165 Constitution:

166 1. Any information that reveals the identity of a person  
 167 who is a victim of human trafficking whose criminal history  
 168 record has been expunged under this section.

169 2. Any information that may reveal the identity of a person  
 170 who is a victim of human trafficking whose criminal history  
 171 record has been ordered expunged under this section.

172 (b) Criminal investigative information and criminal  
 173 intelligence information made confidential and exempt under this  
 174 subsection may be disclosed by a law enforcement agency:

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175 1. In the furtherance of its official duties and  
176 responsibilities.

177 2. For print, publication, or broadcast if the law  
178 enforcement agency determines that such release would assist in  
179 locating or identifying a person that the agency believes to be  
180 missing or endangered. The information provided should be  
181 limited to that needed to identify or locate the victim.

182 3. To another governmental agency in the furtherance of its  
183 official duties and responsibilities.

184 (c) This exemption applies to such confidential and exempt  
185 criminal intelligence information or criminal investigative  
186 information held by a law enforcement agency before, on, or  
187 after the effective date of the exemption.

188 (d) This subsection is subject to the Open Government  
189 Sunset Review Act in accordance with s. 119.15 and shall stand  
190 repealed on October 2, 2020, unless reviewed and saved from  
191 repeal through reenactment by the Legislature.

192 Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

13 Nov 17

Meeting Date

SPB 7000

Bill Number (if applicable)

Topic Criminal History Records

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe

Phone 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.

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.)

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

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BILL: SPB 7002

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Active Criminal Intelligence or Criminal Investigative Information

DATE: November 13, 2017

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

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones		<b>CJ Submitted as Comm. Bill/Fav</b>

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**I. Summary:**

SPB 7002 continues an existing public meetings exemption for the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission. The bill removes the scheduled sunset and repeal of the exemption, thereby reenacting the exemption.

**II. Present Situation:**

**Public Records Law**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>3</sup> The Public Records Act states that “it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.”<sup>4</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>5</sup> The Florida Supreme

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

<sup>4</sup> Section 119.01(1), F.S.

<sup>5</sup> Section 119.011(12), F.S., defines “public record” to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(2), F.S., defines “agency” to mean any state, county, district, authority, or municipal officer,

Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>6</sup>

### **Public Meetings**

Article I, s. 24(b), of the Florida Constitution sets forth the state’s public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.<sup>7</sup>

Public policy regarding access to government meetings is further addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law” or “Sunshine Law,” requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken, be open to the public at all times.<sup>8</sup> A board or commission must provide reasonable notice of all public meetings.<sup>9</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.<sup>10</sup> Minutes of a public meeting must be promptly recorded and are open to public inspection.<sup>11</sup>

### **Public Records and Public Meetings Exemptions**

The Legislature may provide by general law for the exemption of records or meetings from the requirements of Art. I, s. 24(a) and (b), of the Florida Constitution.<sup>12</sup> The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its stated purpose.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or public meetings exemptions.<sup>14</sup> The

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department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of ch. 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> FLA. CONST., art. I, s. 24(b).

<sup>8</sup> Section 286.011(1), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 286.011(6), F.S.

<sup>11</sup> Section 286.011(2), F.S.

<sup>12</sup> FLA. CONST., art. I, s. 24(c).

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

<sup>14</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption. The OGSR does

OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>15</sup>

The OGSR provides that a public records or open meetings exemption may be created, revised, or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.<sup>16</sup> An exemption serves an identifiable public purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;<sup>17</sup>
- It protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to their good name or reputation or jeopardize their safety;<sup>18</sup> or
- It protects trade or business secrets.<sup>19</sup>

As part of the OGSR review process, the Legislature is required to consider the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?<sup>20</sup>

If, in reenacting an existing exemption, the exemption is expanded, a public necessity statement and a two-thirds vote for passage are required.<sup>21</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, a public necessity statement and a two-thirds vote for passage are *not* required.

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not apply to an exemption required by federal law or applied solely to the Legislature or the State Court System. Section 119.15(2), F.S.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(6)(b), F.S.

<sup>17</sup> Section 119.15(6)(b)1., F.S.

<sup>18</sup> Section 119.15(6)(b)2., F.S. However, if this public purpose is cited as the basis of an exemption, only personal identifying information is exempt.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

<sup>20</sup> Section 119.15(6)(a), F.S.

<sup>21</sup> FLA. CONST. art. I, s. 24(c).

## **Open Government Sunset Review of the Public Meetings Exemption for a Closed Portion of a Designated Criminal Justice Commission**

Active criminal intelligence information<sup>22</sup> and active criminal investigative information<sup>23</sup> are exempt from public disclosure.<sup>24</sup>

In 2013, the Legislature created s. 286.01141, F.S.<sup>25</sup> Section 286.01141(2), F.S., closes from the public the portion of a meeting of a duly constituted criminal justice commission<sup>26</sup> at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before the commission. Section 286.01141(2), F.S., also requires a criminal justice commission to publicly disclose that it discussed such information in the closed portion of a public meeting. This public meetings exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.<sup>27</sup>

In creating the exemption, the Legislature articulated the following reasons for the exemption:

It is the finding of the Legislature that it is a public necessity that the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the criminal justice commission be made exempt from public meeting requirements.

If the meetings at which exempt information is discussed were open to the public, the purpose of the exemption from public records requirements found in chapter 119, Florida Statutes, would be defeated. The members of a criminal justice commission must be able

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<sup>22</sup> “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Section 119.011(3)(a), F.S. Section 119.011(3)(c), F.S., provides that certain information is not criminal intelligence information, such as the time, date, location, and nature of a reported crime. Criminal intelligence information is “active”: (1) as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities; or (2) while such information is directly related to pending prosecutions or appeals. Section 119.011(3)(d), F.S. The word “active” does not apply to information in cases which are barred from prosecution under the applicable statute of limitation. *Id.*

<sup>23</sup> “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Section 119.011(3)(b), F.S. Section 119.011(3)(c), F.S., provides that certain information is not criminal investigative information, such as the time, date, location and nature of a reported crime. Criminal investigative information is “active”: (1) as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future; or (2) while such information is directly related to pending prosecutions or appeals. Section 119.011(3)(d), F.S. The word “active” does not apply to information in cases which are barred from prosecution under the applicable statute of limitation. *Id.*

<sup>24</sup> Section 119.071(2)(c)1., F.S.

<sup>25</sup> Chapter 2013-196, L.O.F.

<sup>26</sup> “Duly constituted criminal justice commission” means an advisory commission created by municipal or county ordinance whose membership is comprised of individuals from the private sector and the public sector and whose purpose is to examine local criminal justice issues. Section 286.01141(1)(a), F.S.

<sup>27</sup> Section 286.01141(3), F.S.

to hear and discuss exempt information freely in order to make sound recommendations regarding strategies and activities that are best suited to protect the welfare of the people of this state. The ability to conduct meetings at which members can freely discuss and fully understand the details of active criminal intelligence information and active criminal investigative information is critical to the ability of a criminal justice commission to operate effectively.<sup>28</sup>

### **Open Government Sunset Review Survey**

A joint OGSR survey by staffs of the Senate Committee on Criminal Justice and the House Oversight, Transparency and Administration Subcommittee was distributed to counties and municipalities.<sup>29</sup> Twenty survey responses were received. Two respondents, Miami-Dade County and Palm Beach County, indicated in their survey responses that they have a “duly constituted criminal justice commission” as defined in s. 286.01141(1)(a), F.S.

The Dade-Miami Criminal Justice Council “was created in 1978 and was codified via ordinance in February 2014.”<sup>30</sup> “The general purpose of [the council] is to encourage and facilitate the coordination and cooperation among various agencies and municipalities within Miami-Dade County with crime prevention/intervention strategies, criminal and juvenile justice activities and other activities related to criminal justice.”<sup>31</sup>

The Palm Beach County Criminal Justice Commission was created in 1988 pursuant to an ordinance adopted in 1988.<sup>32</sup> The commission

prioritizes its projects at its Annual Planning Meeting in February of each year. The issues discussed at the meetings center around the progress on these priorities which in the past few years have been our reentry program, community engagement, behavioral health issues in the system, body worn camera deployment amongst our local law enforcement agencies, the implementation of a validated risk assessment instrument for pretrial detention decision-making, our jail population and efforts to reduce it, law

<sup>28</sup> Section 2, ch. 2013-196, L.O.F.

<sup>29</sup> The survey and responses are on file with the Senate Committee on Criminal Justice. Unless otherwise indicated, all information relevant to duly constituted criminal justice commissions is from the survey responses. The Florida Association of Counties and the Florida League of Cities assisted legislative staffs by distributing the surveys. Counties responding to the survey: Brevard; DeSoto; Escambia; Madison; Miami-Dade; Monroe; Okaloosa; Okeechobee; Palm Beach; Pinellas; Seminole; St. Lucie; Sumter; and Walton. Municipalities responding to the survey: Hampton; Inverness; Lake Helen; Long Boat Key; Sanibel; and St. Petersburg. Staff also contacted the Broward County Crime Commission and determined that the commission was not created by ordinance, and therefore not a “duly constituted criminal justice commission” as defined in s. 286.01141(1)(a), F.S. The commission is organized as a Florida 501 C-4, non-profit corporation. See <http://www.browardcrime.org/aboutus.html> (last visited on October 11, 2017).

<sup>30</sup> Miami Dade County Ord. No. 14-17, ss. 1-8, adopted February 4, 2014, did not specify provisions intended for use. For purposes of classification, these provisions were included as Miami-Dade County Code of Ordinances, ch. 2, art. CXLIX, ss. 2-2166—2-2173. See [https://library.municode.com/fl/miami\\_-\\_dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH2AD\\_ARTCXLIXDAAMCRJUCO\\_S2-2166CRPU](https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTCXLIXDAAMCRJUCO_S2-2166CRPU) (last visited on October 11, 2017).

<sup>31</sup> Response of Miami-Dade County to the Staff OGSR Survey.

<sup>32</sup> Palm Beach County Ord. No. 88-16, adopted Aug. 16, 1988, effective Aug. 29, 1988, amended the Palm Beach County Code of Ordinances by adding provisions designated as Palm Beach Code of Ordinances, ch. 2, art. V, div. 5, ss. 2-216—2-221. See <http://discover.pbcgov.org/criminaljustice/PDF/CJC%20Ordinance.pdf> (last visited on October 11, 2017).

enforcement information sharing systems, and the Batterers' Intervention Program. In addition, other topics include current legislation and countywide crime statistics.<sup>33</sup>

The Dade-Miami Criminal Justice Council and the Palm Beach County Criminal Justice Commission have not closed any portion of their meetings to discuss active criminal intelligence information or active criminal investigation information. Because the Dade-Miami Criminal Justice Council has not used the exemption, Miami-Dade County did not render an opinion on whether the exemption should be reenacted. In contrast, Palm Beach County recommended reenactment of the exemption: "While the [Criminal Justice Commission] has never needed to use the exemption, there are always new issues to address. The [Criminal Justice Commission] is committed to data-driven policy-making and may require the exemption for future meetings."<sup>34</sup>

Reenacting the public meetings exemption would allow for a duly constituted criminal justice commission to discuss active criminal intelligence information or active criminal investigation should the need arise for such discussion; repeal of the exemption would preclude such discussion because the commission would not be able to reveal the contents of such exempt information in a public meeting.

There do not appear to be any alternative means available for members of a duly constituted criminal justice commission to discuss (as a body) active criminal intelligence information or active criminal investigative information. The exempt status of the active criminal intelligence information and active criminal investigation does not imply an exemption from the public meetings requirement of s. 286.011, F.S. An exemption from the public meetings requirement must be expressly provided.<sup>35</sup>

The open meeting exemption in s. 286.01141, F.S., is not protected by another exemption. Further, there are not multiple exemptions for the same type of meeting that would be appropriate to merge.

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

The bill continues a public meetings exemption in s. 286.01141, F.S., for the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission. The bill amends s. 286.01141, F.S., to remove the scheduled sunset and repeal of the exemption, thereby reenacting the exemption.

The bill takes effect October 1, 2018.

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<sup>33</sup> Response of Palm Beach County to the Staff OGSR Survey.

<sup>34</sup> *Id.* Subsequent to its survey response, the Palm Beach County Criminal Justice Commission confirmed that the commission approved the recommendation to reenact the exemption, which was pending approval by the commission at the time the survey response was received. E-mail from Kristina Henson, Executive Director of the Palm Beach County Criminal Justice Commission (October 2, 2017) (on file with the Senate Committee on Criminal Justice).

<sup>35</sup> Florida Attorney General Opinion 93-41 (June 7, 1993).

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

The bill reenacts an existing public records exemption for the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission. A simple majority vote of the members present in each house of the Legislature is required for passage of the bill.

**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 286.01141 of the Florida Statutes.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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FOR CONSIDERATION By the Committee on Criminal Justice

591-00771-18

20187002pb

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act; amending s. 286.01141, F.S., which  
 4 provides an exemption from public meetings  
 5 requirements for portions of a meeting of a duly  
 6 constituted criminal justice commission at which  
 7 active criminal intelligence information or active  
 8 criminal investigative information being considered  
 9 by, or which may foreseeably come before, the  
 10 commission is discussed; removing the scheduled repeal  
 11 of the exemption; providing an effective date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Section 286.01141, Florida Statutes, is amended  
 16 to read:  
 17 286.01141 Criminal justice commissions; public meetings  
 18 exemption.—  
 19 (1) As used in this section, the term:  
 20 (a) "Duly constituted criminal justice commission" means an  
 21 advisory commission created by municipal or county ordinance  
 22 whose membership is comprised of individuals from the private  
 23 sector and the public sector and whose purpose is to examine  
 24 local criminal justice issues.  
 25 (b) "Active" has the same meaning as provided in s.  
 26 119.011.  
 27 (c) "Criminal intelligence information" has the same  
 28 meaning as provided in s. 119.011.  
 29 (d) "Criminal investigative information" has the same

Page 1 of 2

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30 meaning as provided in s. 119.011.  
 31 (2) That portion of a meeting of a duly constituted  
 32 criminal justice commission at which members of the commission  
 33 discuss active criminal intelligence information or active  
 34 criminal investigative information that is currently being  
 35 considered by, or which may foreseeably come before, the  
 36 commission is exempt from s. 286.011 and s. 24(b), Art. I of the  
 37 State Constitution, provided that at any public meeting of the  
 38 criminal justice commission at which such matter is being  
 39 considered, the commission members publicly disclose the fact  
 40 that the matter has been discussed.  
 41 ~~(3) This section is subject to the Open Government Sunset~~  
 42 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
 43 ~~on October 2, 2018, unless reviewed and saved from repeal~~  
 44 ~~through reenactment by the Legislature.~~  
 45 Section 2. This act shall take effect October 1, 2018.

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)

13 Nov 17  
Meeting Date

SPB 7002  
Bill Number (if applicable)

Topic Criminal Investigative Information

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe  
Street

Phone 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.

## **Arnold, Sue**

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**From:** Brandes, Jeff  
**Sent:** Monday, November 13, 2017 9:21 AM  
**To:** Bracy, Randolph  
**Cc:** McCurdy, Travaris; Jones, Lauren; Arnold, Sue  
**Subject:** November 13 Committee Excusal Request

Good afternoon Chair Bracy,

I am writing to request respectfully that I be excused from the Criminal Justice Committee on November 13 due to a prior commitment.

If you have any questions regarding this request, please feel free to contact my office, or myself. Thank you for time and consideration of this matter.

Kind Regards,

**Jeff Brandes**

State Senator, District 24

District Office: (727) 563 - 2100

Capitol Office: (850) 487 - 5024

# CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 11/13/2017 4:04:39 PM

Ends: 11/13/2017 4:20:03 PM

Length: 00:15:25

4:04:38 PM Meeting called to order  
4:04:42 PM Roll call  
4:05:01 PM Tab 1 - SB 484 by Senator Bradley - Sentencing  
4:05:45 PM Amendment Barcode 424720 by Senator Bradley  
4:07:53 PM Amendment Barcode 857760 by Senator Bradley  
4:08:56 PM Amendment 857760 adopted, back on the strike all amendment  
4:10:40 PM Amendment Barcode 424720 adopted  
4:11:41 PM Back on SB 484 as Amended  
4:11:53 PM Speaker Barney Bishop from FL Smart Justice Alliance  
4:12:17 PM Speakers waive in support  
4:12:35 PM Senator Bradley waives close  
4:12:43 PM Roll call on SB 484  
4:14:31 PM Tab 2 - SB 602 by Senator Bracy - Mandatory Minimum Sentences is temporarily postponed  
4:15:50 PM Tab 3 - Consideration of Proposed Bill SPB 7000 - OGSR/Criminal History Records/Department of Law Enforcement  
4:16:46 PM Speaker waives in support  
4:17:08 PM Roll call on SPB 7000  
4:17:26 PM Tab 4 - Consideration of Proposed Bill SPB 7002 - OGSR/Active Criminal Intelligence or Criminal Investigative Information  
4:17:49 PM Speaker waives in support  
4:18:46 PM Roll call on SPB 7002  
4:19:01 PM Meeting moved to adjourn by Senator Bradley