

<b>Tab 3</b>	<b>SB 238 by Bracy; Conditional Medical Release Program</b>						
829882	D	S	RCS	CJ, Bracy	Delete everything after	01/09 09:01 PM	
<b>Tab 4</b>	<b>SB 618 by Baxley (CO-INTRODUCERS) Steube, Book, Rouson, Mayfield; (Identical to H 00581) Subpoenas in Investigations of Sexual Offenses</b>						
968614	D	S	RCS	CJ, Baxley	Delete everything after	01/09 09:01 PM	
<b>Tab 5</b>	<b>SB 854 by Brandes; Corrections Specialists</b>						
772110	D	S	RCS	CJ, Brandes	Delete everything after	01/09 09:01 PM	
<b>Tab 6</b>	<b>SB 866 by Bracy; (Similar to H 00355) Sentencing</b>						
<b>Tab 7</b>	<b>SB 870 by Bracy; Capital Felonies</b>						
<b>Tab 8</b>	<b>SB 928 by Bracy (CO-INTRODUCERS) Rouson; (Similar to H 00713) Theft</b>						
524256	A	S	RCS	CJ, Bracy	Delete L.120 - 156:	01/09 09:01 PM	
<b>Tab 9</b>	<b>SB 970 by Brandes; (Similar to H 01261) Alcohol and Drug-related Overdoses</b>						
885704	A	S	RCS	CJ, Brandes	Delete L.33 - 43:	01/09 09:01 PM	

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

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

**MEETING DATE:** Tuesday, January 9, 2018

**TIME:** 4:00—5:30 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	Presentation on Pretrial Release Alternatives.		Presented
2	Pretrial Release Programs in Pinellas County - Sheriff Gualtieri of the Pinellas County Sherriff's Office.		Presented
3	<b>SB 238</b> Bracy	Conditional Medical Release Program; Expanding eligibility for conditional medical release to include inmates with debilitating illnesses; requiring that certain persons whose eligibility is verified by the Commission on Offender Review be placed on conditional medical release; requiring the Department of Corrections to refer an eligible inmate to the commission, etc.  CJ      01/09/2018 Fav/CS ACJ AP RC	Fav/CS Yeas 4 Nays 2
4	<b>SB 618</b> Baxley (Identical H 581)	Subpoenas in Investigations of Sexual Offenses; Authorizing an investigative or law enforcement officer conducting an investigation into specified matters to subpoena certain persons or entities for the production of records, documents, or other tangible things and testimony; prohibiting the use of a subpoena to compel records, documents, or other tangible objects protected under certain circumstances; authorizing a court to punish a person who does not comply with a subpoena as indirect criminal contempt, etc.  CJ      01/09/2018 Fav/CS JU AP RC	Fav/CS Yeas 7 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, January 9, 2018, 4:00—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 854</b> Brandes	Corrections Specialists; Authorizing the Department of Corrections to employ or appoint a person as a corrections specialist if that person is at least 18 years of age and meets specified criteria; prohibiting a corrections specialist program participant from supervising inmates, etc.  CJ 01/09/2018 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0
6	<b>SB 866</b> Bracy (Similar H 355, S 570)	Sentencing; Revising the threshold of assessed sentence points below which a court must sentence nonviolent felony offenders who commit certain offenses on or after a specified date to a nonstate prison sanction, etc.  CJ 01/09/2018 Favorable JU ACJ AP	Favorable Yeas 5 Nays 2
7	<b>SB 870</b> Bracy	Capital Felonies; Providing legislative findings and intent regarding the retroactive application of Hurst v. State, No. SC12-1947 (Fla., October 14, 2016), etc.  CJ 01/09/2018 Not Considered RC	Not Considered
8	<b>SB 928</b> Bracy (Similar H 713)	Theft; Revising threshold amounts and types of property which qualify for theft offenses; revising threshold amounts for retail theft, etc.  CJ 01/09/2018 Fav/CS JU RC	Fav/CS Yeas 4 Nays 2
9	<b>SB 970</b> Brandes (Similar H 1261)	Alcohol and Drug-related Overdoses; Prohibiting the arrest, charging, prosecution, or penalizing under specified provisions of a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol or a drug-related overdose; prohibiting a person from being penalized for a violation of a condition of certain programs if that person in good faith seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol or a drug-related overdose, etc.  CJ 01/09/2018 Fav/CS JU RC	Fav/CS Yeas 5 Nays 1

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, January 9, 2018, 4:00—5:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents



# **PRETRIAL DIVERSION, AND DEFLECTION AND THE NATIONAL MOVEMENT ON BAIL REFORM**

**JANUARY 9, 2018**

---

- Lanard Perry, CPSP
  - Alachua County Court Services
  - Assistant Director
  - 352-264-6866
  - [lperry@alachuacounty.us](mailto:lperry@alachuacounty.us)
-

**Who is in jail should be a  
public safety decision driven  
by risk, not a business  
decision driven by profit**

---

# MONEY BAIL VERSUS PRETRIAL DIVERSION (1)

- Money Bail Systems do not address public safety.
    - A money bond does not ensure protect communities from dangerous folks.
  - There is science capable of predicting who is a good candidate for release and who should be held in pretrial detention.
    - Pretrial Risk Assessment
-

## MONEY BAIL VERSUS PRETRIAL DIVERSION (2)

- High functioning Pretrial Services Agencies are the low cost answer to maintaining pretrial defendants pending case disposition.

Program	Actual Spent FY15.16	# Clients Served FY15.16	Annual Cost Per Client FY15.16	Cost Per Day FY15.16
Community Service	\$528,810.00	2050	\$ 257.96	\$ 0.707
Day Reporting	\$237,284.00	288	\$ 823.90	\$ 2.257
Treatment Courts	\$563,756.00	248	\$ 2,273.21	\$ 6.228
Metamorphosis	\$670,016.00	131	\$ 5,114.63	\$ 14.013
OPUS	\$282,333.00	97	\$ 2,910.65	\$ 7.974
Pretrial Services	\$1,578,544.00	10512	\$ 150.17	\$ 0.411
Probation	\$863,596.00	1858	\$ 464.80	\$ 1.273
Work Release	\$1,175,275.00	179	\$ 6,565.78	\$ 17.988
OVERALL	\$5,899,614.00	15363	\$ 384.01	\$ 1.052

## **MONEY BAIL VERSUS PRETRIAL DIVERSION (3)**

- Nationally, 60% of all County jail inmates are in a pretrial status.
  - Pretrial defendants who remain in jail
    - generally receive harsher sentences
    - are not able to support and care for their families,
      - although most can be safely released pending case disposition and will come back to Court and will not commit new law violations
    - High court appearance rate / low failure to appear rate
-



## **THE GOAL AND THE FOCUS OF THE NATIONAL BAIL REFORM MOVEMENT**

- The GOAL is to promote Court appearance and public safety.
  - The FOCUS is to manage risk.
-

# THE SCIENCE OF PRETRIAL RISK ASSESSMENT

- DEFINING RISK:
    - A defendant's likelihood of:
      - Missing a scheduled court date
      - Arrest on a separate criminal offense
  - ASSESSING RISK:
    - Actuarial risk tools and factors replace judgment. These factors guide the assessor to a usually numeric scoring of risk. Risk factors generally are static.
    - Risk Assessment Instruments incorporate dynamic risk factors and the concept of "criminogenic need"
-



## **RISK ASSESSMENT:**

- Background Investigation
    - Defendant interview
    - Criminal history check
  - Assess Risk Based on Risk Factors
  - Recommendations
-

## WHAT ELSE PRETRIAL SERVICES AGENCIES DO

- Help Courts make informed bail decisions, including nonfinancial options for release for appropriate defendants.
  - Ensure release options are realistic, enforceable and measurable
  - Promote maximized pretrial release, appearance, public safety and compliance outcomes.
-

## **PRETRIAL SERVICES AGENCIES**

- Ensure management of essential and inter-related functions under a single organization structure and mission. The result is better coordination among functions, i.e. ensuring that release recommendations match supervision resources and capacity.
  - Better staff direction and motivation to critical work priorities and cleared lines of communication.
  - Systems have a single actor responsible for pretrial functions.
-

# **SEVERAL JURISDICTIONS /STATES HAVE LEGISLATION AUTHORIZING OR ENCOURAGING PRETRIAL SERVICES AGENCIES:**

Kentucky

Washington DC

Illinois

Hawaii

Vermont

Federal Courts

Virginia

Colorado

Nevada

West Virginia

---

## **RISK MANAGEMENT:**

- Supervision
  - Monitoring
  - Support
-

## **SERVICE INTEGRATION:**

- Needs Assessment
  - Substance Abuse
  - Mental Health
-



## PERFORMANCE MEASUREMENT:

- Appearance Rate
  - Safety
-

## **STRATEGIC GOALS:**

- Judicial concurrence with Pretrial Services Agencies recommendation
  - Continued compliant pretrial release
  - Minimize rearrests
  - Maximize Court Appearance
-



# ASSESSING RISK

- The consensus from the behavioral science, economic and criminal justice fields is that actuarial risk assessment is the superior method of determining risk.
  - Adjusted actuarial assessments, where practitioners have limited and well defined rules to override risk assessment instrument results – the preferred actuarial risk assessment technique.
-

# THREE STEPS

- Assess: Gather data; apply the tool; and calculate the results
  - Adjust: Consider mitigating and aggravating circumstances; adjust supervision response as needed
  - Recommend: Recommend supervision level and conditions consistent to risk level and other factors
-

# QUESTIONS

- Is it fair to only release those pretrial defendants who have access to funds and can post a money bond?
  - Should release of a pretrial defendant be dependent on how much money they have *or* should it be on what it takes to ensure public safety?
-

# RECAP

- Risk is a defendant's likelihood to miss a scheduled court date or to be arrested in a separate criminal offense pretrial.
  - The procedure that best predicts risk is an adjusted actuarial risk assessment.
  - Florida has a "public domain" validated pretrial risk assessment instrument.
  - Most defendants present a low to moderate pretrial risk. This should be reflected in an agency's recommendations and a Court's release decisions.
-

**THANK YOU**

**Who is in jail should be a  
public safety decision driven  
by risk, not a business  
decision driven by profit**

---

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/9/18

Meeting Date

Tab 1

Bill Number (if applicable)

Topic Referral Services

Amendment Barcode (if applicable)

Name Lanard Perry

Job Title Assistant Director

Address 14 NE 1st St

Street

Phone 352-264-6866

Gainesville FL

City

State

32601

Zip

Email lperry@alachuacounty.us

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Alachua County Department of Court Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

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

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

1-9-18

Meeting Date

TCS 1

Bill Number (if applicable)

Topic PRE-TRIAL RELEASE PRESENTATION

Amendment Barcode (if applicable)

Name Bill Cervone

Job Title State Attorney - 8 CIR

Address 120 W UNIVERSITY AVE

Phone 352-374-3686

Street

Gainesville FL 32601

City

State

Zip

Email cervonew@sao8.org

Speaking: ☐ For ☐ Against ☒ Information

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

Representing 8TH CIR STATE ATTORNEY'S OFFICE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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1/9/2018

Meeting Date

T-021  
N/A

Bill Number (if applicable)

Topic PRESENTATION ON PRETRIAL RELEASE ALTERNATIVES

Amendment Barcode (if applicable)

Name MARK A. HEFFERNAN

Job Title FLORIDA BAIL AGENTS ASSOCIATION

Address 1000 NW 14 ST

Street

Phone 305 525 1434

MIAMI

City

FL

State

33136

Zip

Email MARK@BAILBUNG.COM

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FLORIDA BAIL AGENTS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



Tab 1

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

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1-9-17

Meeting Date

Bill Number (if applicable)

Topic Presentation on PreTrial Release Alternatives

Amendment Barcode (if applicable)

Name Matthew Jones

Job Title Florida Bail Agents Association - President

Address 312 May St  
Street

Phone 239 846-2811

Punta Gorda  
City

FL  
State

33950  
Zip

Email matthew@flbailbonds.org

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Bail Agents 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.*

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S-001 (10/14/14)



**Sheriff Bob Gualtieri**  
**Pinellas County Sheriff's Office**

# **ROR and Supervised Bond Presentation**

*"Leading The Way For A Safer Pinellas"*



## **Bail Purpose**

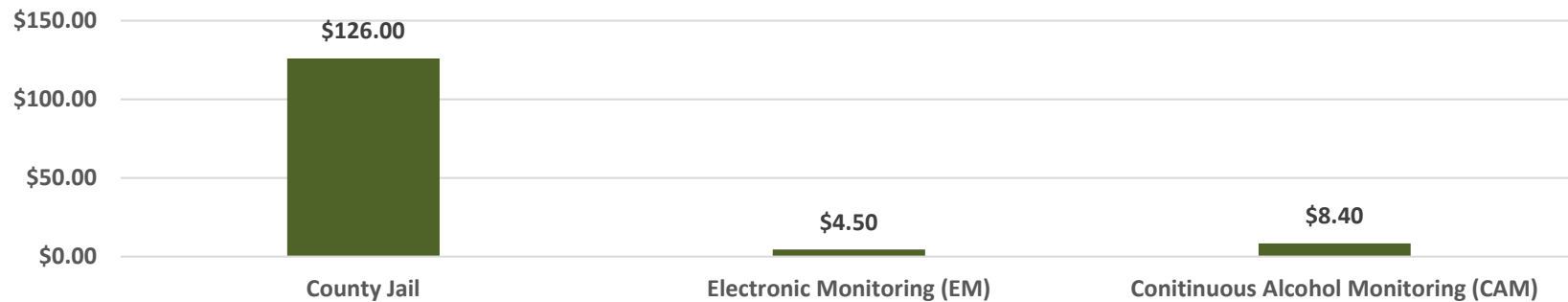
- Bail is to ensure those released from jail pending disposition of their criminal case are not a danger to the community or risk of flight.
- The challenge for judges is to set a proper bail amount that ensures someone will not reoffend, appear for court and generally comply with the terms of release.
- Some bail amounts are proper to ensure compliance, but too high for defendants to meet and that means they may spend months in jail waiting for their case to be resolved.



# Sheriff Bob Gualtieri

## Pinellas County Sheriff's Office

### Daily Supervision Costs



- Bail is not and should not be punitive.
- Our goal is public safety, compliance with the terms of release, and effectively managing the jail population.
- In 2014 we had a crowded jail with about 70% of the inmates being pre-trial detainees (those awaiting disposition of their cases).



# Sheriff Bob Gualtieri

## Pinellas County Sheriff's Office

### Awaiting Case Disposition

- If someone can be **successfully** released from jail pending disposition of their criminal case, where they can work and support their families, that is better than them unnecessarily sitting in jail for several months.
- Many people were sitting in jail because the bail amounts were too high for them to pay the cash bail or the fee to a bail bondsman.
- The bail amounts were proper, and without more oversight of the defendant the judges could not lower the bail while ensuring public safety and compliance.



### Active Monitoring

- We approached the judges and offered to have the sheriff's office electronic monitor (EM) and/or continuous alcohol monitor (CAM) defendants if the judges would lower the bail amounts so the defendants could afford bail.
- This resulted in a partnership with the bail bond industry; they provide the bail and the sheriff's office provides the supervision to ensure compliance that bail alone might not.
- The key is ACTIVE (passive monitoring is different and ineffective) EM and/or CAM, to enforce the conditions of no alcohol consumption and restrictions on where the defendant can/cannot go and when.



# Sheriff Bob Gualtieri

## Pinellas County Sheriff's Office

### Example:

- Example: defendant is in jail on \$10,000 bail. Judge agrees to reduce the bail to \$5,000 because the person will be on EM and/or CAM supervised by the sheriff's office with the condition that he not consume alcohol and be in his residence between 10:00 p.m. and 6:00 a.m., and not go within 500 feet of the victim's home.
- Pinellas County Sheriff's Office started its Supervised Bail Bond Program in October 2014.
- Over 1,700 people have been released from the jail on bail bond with EM and/or CAM through October 2017.



## **Monitoring**

- We average 200 people per day on EM and/or CAM through our Supervised Bail program who otherwise would be in jail.
- Our EM and CAM is active monitoring that allows us to continuously track offenders through cellular networks and global positioning system (GPS).
- Our CAM system allows us to randomly test for alcohol consumption, absorption or elimination. The presence of alcohol can be measured by testing breath or perspiration. Current equipment is "Alcohol Monitoring System" (AMS) and Secure Continuous Remote Alcohol Monitor (SCRAM) ankle bracelet and Remote Breath device.





# Sheriff Bob Gualtieri

## Pinellas County Sheriff's Office

### Savings & Success

Average	Daily Cost (Total)	Annual Cost (Total)
200 (Jail, \$126/day)	\$25,200	\$9,200,000
200 (Monitoring, \$4.50/day)	\$900	\$328,500

- Of the 1,721 inmates released through our Supervised Bail Bond program, 52% were released on a combination of CAM and bond; 43% EM and bond; and 5% bond with EM and CAM.
- The average length of time a person spends on Supervised Bond is 88 days. That is 88 days that the person would otherwise spend in jail awaiting disposition of their case. (88 days at \$126 = \$11,088 or 88 days at \$4.50 = \$396).



# Sheriff Bob Gualtieri

## Pinellas County Sheriff's Office

### Savings & Success

- Of the 1,721 defendants released on EM and/or CAM only 8 or 0.5% failed to appear and 88 or 5.1% had a new arrest while on supervised release.
- Stated the other way **99.5 % appeared as required for court and 94.9% did not commit a new crime while on Supervised Bond.**
- Of the 1,721 released defendants, 347 or 20% violated the terms of the release but did NOT fail to appear or commit a new crime. Violating the terms of release means they consumed alcohol, violated curfew, etc... The violation was addressed and the person remained on supervised release.



## **Savings & Success**

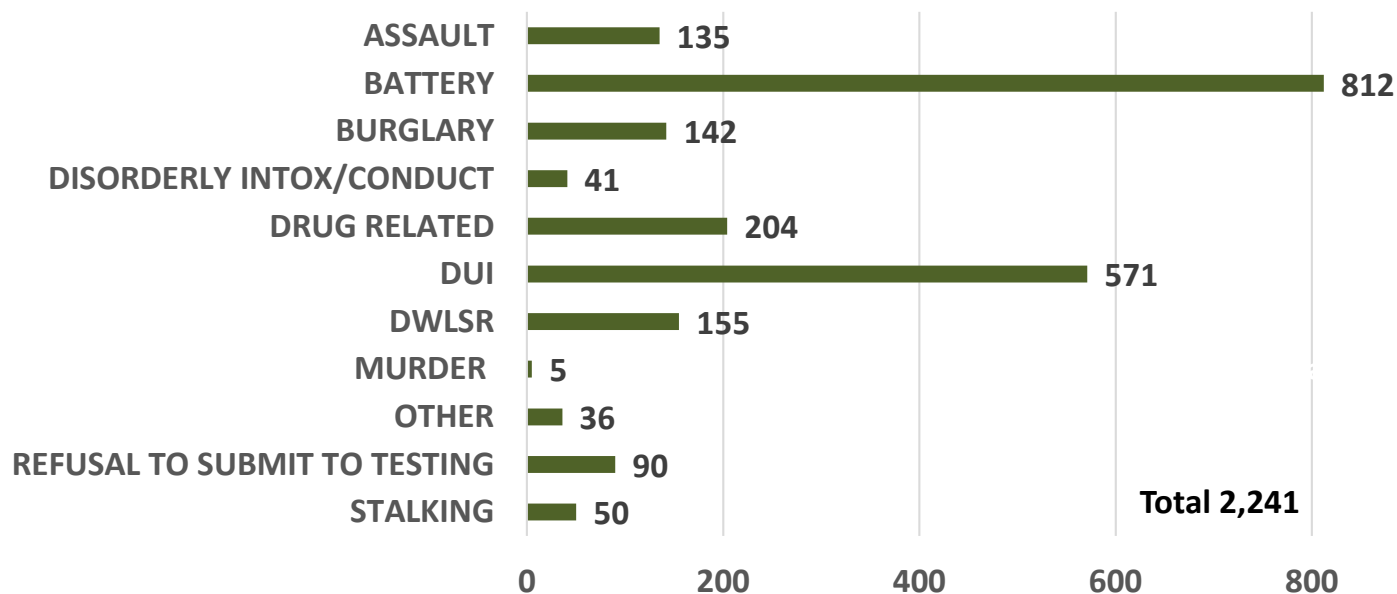
- 80% fully complied with all terms of the Supervised Bond program.
- The program's effectiveness is due to: proper case evaluation and good decision-making by the judges; the program being ACTIVE monitoring with immediate consequences; and the program being run by the sheriff's office (law enforcement supervision).
- Of the total cases supervised, 45% were felonies, 30% misdemeanors and 25% DUI's (felonies and misdemeanors).



# Sheriff Bob Gualtieri

## Pinellas County Sheriff's Office

### Supervised Bond by Case Type – October 2014 to October 2017



Bond Account Summary	
Average Bond Amount Reduced to:	\$5,000
\$0-\$1,000	43%
\$1,001-\$2,500	20%
\$2,501-\$5,000	20%
\$5,001-\$10,000	10%
\$10,001-\$100,000	7%
\$100,001-\$250,000	>1%

*"Leading The Way For A Safer Pinellas"*



## **Release on Recognizance (ROR) Program**

- In addition to the Supervised Bail program we also operate a Release on Recognizance (ROR) program.
- ROR is where a person charged with a crime is released without any monetary conditions.
- This is different from the Supervised Bond program because under supervised bond there is a combination of monetary conditions coupled with other supervision.
- ROR is carries no cash bail or bail bond requirement.



## **Release on Recognizance (ROR) Program**

- In addition to the 200 people per day on Supervised Bail, we average 700 per day on supervised ROR. This is in addition to the people who are released from the booking desk at the jail on unsupervised ROR.
- A person is arrested and under the Bail Schedule we have the option in many cases of releasing the person outright from the jail on unsupervised ROR.
- If we set a bail amount and the person does not post bail then they appear before a judge at first appearance court. The judge may release the person on ROR, raise or lower the bail amount, or refer the person to our office for an ROR investigation.



## **Release on Recognizance (ROR) Program**

- Upon receipt of the referral we conduct an investigation regarding the person's suitability for ROR and if we believe the criteria has been met we then take the file and recommendation to a judge who makes the ROR decision. Our investigation includes the use of a risk assessment instrument.
- We also monitor the jail inmate population and look for people in jail for offenses and with bail amounts that indicate the person may be a candidate for ROR.



## **Release on Recognizance (ROR) Program**

- We self-initiate initiate ROR investigations without a referral from the court and if we believe the person is a good candidate for ROR we take the file to a judge and recommend release on supervised ROR.
- Putting the ROR and Supervised Bond programs together, we have an average of 900 people per day on supervised release who otherwise would be in the Pinellas County Jail.





## **Release on Recognizance (ROR) Savings**

- Our average daily jail population is 3,000 inmates and housing the additional 900 people per day would be an astronomical expense, and it is unnecessary.
- The cost to house 900 people per day is \$113,400 and annually it is \$41 million.
- The cost to run our entire pre-trial release program is \$2.1 million so the annual savings achieved through the ROR and Supervised Bond programs is \$38.9 million, with 99% of the defendants appearing for court.



## **Additional Information**

- PCSO pays our EM/CAM provider approximately \$500,000 per year, which is offset by some fees we collect from the Supervised Bond defendants if they have the ability to pay.
- Regardless, the \$500,000 is offset by the \$9.2 million in incarceration costs for the average 200 people per day released on the Supervised Bond program.



# Sheriff Bob Gualtieri

## Pinellas County Sheriff's Office



*"Leading The Way For A Safer Pinellas"*

## THE FLORIDA SENATE

**APPEARANCE RECORD**

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

1/9/2018

Meeting Date

Tab 2

Bill Number (if applicable)

Topic Pretrial Release Programs in Pinellas County

Amendment Barcode (if applicable)

Name Bob Gualtieri

Presenter

Job Title Sheriff

Address 10750 Ulmerton Road

Phone 727-582-6200

Street

Largo

FL

33778

City

State

Zip

Email

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

Representing Pinellas County Sheriffs Office

Appearing at request of Chair: ☒ Yes ☐ NoLobbyist 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)

9 Jan 18

Meeting Date

Top 2

Bail Presentation

Bill Number (if applicable)

Topic Bail Presentation

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone \_\_\_\_\_

Street

Fall

Email \_\_\_\_\_

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Fla. Small Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Tab 2

1/9/18  
Meeting Date

Bail Presumption  
Bill Number (if applicable)

Topic Bail

Amendment Barcode (if applicable)

Name JEFF KOTTKAMP

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

Address 3311 DARTMOUTH DRIVE  
Street

Phone 239-297-9741

City

State

Zip

Email JEFF.KOTTKAMP@GMAIL.COM

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Financial Casualty & Surety

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

---

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

---

BILL: CS/SB 238

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Conditional Medical Release Program

DATE: January 11, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	<b>Fav/CS</b>
2.			ACJ	
3.			AP	
4.			RC	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 238 creates a new “Mandatory Conditional Medical Release” process that requires, rather than permits, the Florida Commission on Offender Review (FCOR) to release an inmate if specified factors are met. The current conditional medical release (CMR) structure remains substantially similar and is amended to be entitled “Permissive Conditional Medical Release.”

The bill creates a new CMR designation entitled “inmate with a debilitating illness,” which means an inmate who is determined to be suffering from a significant and permanent nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present any danger to society.

The bill provides that an inmate that meets one of the three CMR designations (permanently incapacitated inmate, terminally ill inmate, or inmate with debilitating illness) may be eligible for either Permissive or Mandatory CMR.

Mandatory CMR requires the Department of Corrections (DOC) to refer an inmate to the FCOR for release if the inmate meets one of the three CMR designations and the inmate has:

- Served at least 50 percent of his or her sentence.
- No current or prior conviction for:
  - A capital, life, or first degree felony;

- A sexual offense; or
- An offense involving a child.
- Not received a disciplinary report within the previous six months.
- Never received a disciplinary report for a violent act.
- Renounced any gang affiliation.

The FCOR must verify that an inmate meets the above-mentioned eligibility criteria within 60 days of the referral.

The DOC's referral of an inmate for either Mandatory or Permissive CMR must include specified information, including a proposed CMR plan, relevant medical history, and prison experience and criminal history information.

The bill requires the DOC to develop a release plan for an inmate released on Permissive or Mandatory CMR and the FCOR is authorized to approve the release plan. The release plan must include necessary medical care details, including intervals for periodic medical evaluations, and may include supervision with electronic monitoring.

The bill reenacts a number of sections of law to incorporate changes made by the act.

The bill is effective October 1, 2018.

## **II. Present Situation:**

The Criminal Punishment Code<sup>1</sup> (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>2</sup> The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code 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>3</sup>

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time,<sup>4</sup> and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.<sup>5</sup>

However, there are several exceptions provided in law that allow an inmate to be released from imprisonment prior to the service of 85 percent of his or her sentence, including, but not limited to, control release<sup>6</sup> and conditional medical release.

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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 775.082, F.S.

<sup>4</sup> Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

<sup>5</sup> Section 921.002(1), F.S.

<sup>6</sup> Section 947.146, F.S., provides for the limited authority to release inmates to ensure that the prison bed capacity maintains between 99 and 100 percent of total capacity.



## Conditional Medical Release

Conditional Medical Release (CMR), which was created by the Florida Legislature in 1992,<sup>7</sup> is a discretionary release of inmates who are “terminally ill” or “permanently incapacitated” and who are not a danger to others.<sup>8</sup> The Florida Commission on Offender Review (FCOR) reviews eligible inmates for release under the CMR program.

Eligible inmates include inmates that are designated by the Department of Corrections (DOC) as a:

- “Permanently incapacitated inmate,” which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or
- “Terminally ill inmate,” which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.<sup>9</sup>

However, inmates sentenced to death are ineligible for CMR.

The release of an inmate on CMR is for the remainder of the inmate’s sentence and requires periodic medical evaluations at intervals determined by the FCOR at the time of release.<sup>10</sup>

Supervision can be revoked and the offender returned to prison if the FCOR determines:

- That a violation of any condition of the release has occurred; or
- Her or his medical or physical condition improves to the point that the offender no longer meets the CMR criteria.<sup>11</sup>

Section 947.141, F.S., provides a hearing process for determining whether a CMR releasee must be recommitted to the DOC for a violation of release conditions or a change in medical status.

The FCOR has approved and released 55 inmates for CMR in the last three fiscal years, including:

- 14 in FY 2016-17;
- 27 in FY 2015-16; and
- 14 in FY 2014-15.<sup>12</sup>

The DOC has recommended 120 inmates for release in the past three fiscal years, including:

- 34 in FY 2016-17;
- 51 in FY 2015-16; and

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<sup>7</sup> Chapter 92-310, L.O.F.

<sup>8</sup> Florida Commission on Offender Review, *Release Types, Post Release*, available at <https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease> (last visited January 8, 2018).

<sup>9</sup> Section 947.149(1), F.S.

<sup>10</sup> Section 947.149(4), F.S.

<sup>11</sup> Section 947.149(5), F.S.

<sup>12</sup> Email from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data (attachment on file with the Senate Committee on Criminal Justice) (December 15, 2017).

- 35 in FY 2014-15.<sup>13</sup>

### III. Effect of Proposed Changes:

The bill amends s. 947.149, F.S., by creating two processes for an inmate to be granted CMR, including “Permissive CMR” and “Mandatory CMR.”

A new CMR designation is created, entitled “inmate with a debilitating illness,” which is defined to include an inmate determined to be suffering from a significant and permanent nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present any danger to society. The current designations of permanently incapacitated inmate or terminally ill inmate are not altered.

The current CMR process remains substantially the same, but is amended to be entitled “Permissive Conditional Medical Release.” The bill expands Permissive CMR from current law by permitting any inmate determined to be eligible under any of the three CMR designations (permanently incapacitated inmate, terminally ill inmate, or inmate with debilitating illness) and referred by the DOC to the FCOR to be considered for release by the FCOR. The FCOR continues to retain sole discretion on the determination of whether to release an inmate under Permissive CMR.

The bill creates a new CMR process, entitled “Mandatory Conditional Medical Release,” that imposes additional eligibility requirements than those required in Permissive CMR. If an inmate meets all of the eligibility requirements of Mandatory CMR, the FCOR is required to release the inmate on CMR upon verifying the inmate’s eligibility.

For Mandatory CMR, the bill requires the DOC to refer an inmate to the FCOR for release if the inmate meets one of the three CMR designations (permanently incapacitated inmate, terminally ill inmate, or inmate with debilitating illness) and the inmate has:

- Served at least 50 percent of his or her sentence.
- No current or prior conviction for:
  - A capital, life, or first degree felony;
  - A sexual offense; or
  - An offense involving a child.
- Not received a disciplinary report within the previous six months.
- Never received a disciplinary report for a violent act.
- Renounced any gang affiliation.

The FCOR must verify that an inmate meets the above-mentioned eligibility criteria within 60 days of the referral.

The DOC’s referral of an inmate for either Permissive or Mandatory CMR must include:

- The proposed conditional medical release plan.
- Any relevant medical history, including current medical prognosis.

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

- Criminal history, including:
  - The inmate's claim of innocence, if any;
  - The degree to which the inmate accepts responsibility for his or her actions leading to the conviction of the crime; and
  - How any claim of responsibility has affected the inmate's feelings of remorse.
- Any history of substance abuse and mental health issues, provided the inmate authorizes release when such information is collected in accordance with 42 C.F.R. s. 2.
- Any disciplinary action taken against the inmate while in prison.
- Any participation in prison work and other prison programs.
- Any other information the DOC deems necessary.

The bill requires the DOC to develop a release plan for an inmate released on Permissive or Mandatory CMR and the FCOR is authorized to approve the release plan. The release plan must include periodic medical evaluations and may include supervision with electronic monitoring.

The bill provides that an inmate's release on Permissive or Mandatory CMR is for the remainder of the inmate's sentence. However, the bill also applies the above-described process for revocation and recommitment to inmates released on Permissive or Mandatory CMR.

The bill reenacts ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., incorporating changes made by the act.

The bill is effective October 1, 2018.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference has not reviewed the bill at this time. However, the bill expands CMR by creating a new CMR designation which will likely cause an increased number of inmates to be referred to the FCOR for CMR. Additionally, the bill requires the FCOR to release inmates that qualify for release under the Mandatory CMR process. However, it is unknown how many additional inmates will be eligible for release under the new provisions of the bill. To the extent that the bill increases the number of inmates released on CMR, the bill will likely result in a negative indeterminate prison bed impact (an unquantifiable decrease in prison beds).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 947.149 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141.

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

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

**CS by Criminal Justice on January 9, 2018:**

The committee substitute amends s. 947.149, F.S., expanding the process of CMR and:

- Establishing a new CMR designation, entitled “inmate with a debilitating illness”;
- Amending the current CMR process to be entitled “Permissive Conditional Medical Release”;
- Creating the Mandatory Conditional Medical Release process including eligibility requirements;
- Providing the DOC must refer an inmate to the FCOR if he or she meets all the eligibility requirements of Mandatory CMR;
- Requiring, rather than permitting, the FCOR to release an inmate referred by the DOC for Mandatory CMR upon verification of eligibility;
- Requiring specified information to be included in the DOC’s referral for either Permissive or Mandatory CMR;
- Requiring the DOC to submit a release plan that includes regular medical reviews and may include electronic monitoring; and
- Modifying the effective date to October 1.

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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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/09/2018	.	
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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. Section 947.149, Florida Statutes, is amended to  
read:

947.149 Conditional medical release.—

(1) The commission shall, in conjunction with the  
department, establish the conditional medical release program.

An inmate is eligible for supervised ~~consideration for~~ release



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under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be within one of the following designations:

(a) "Inmate with a debilitating illness," which means an inmate who is determined to be suffering from a significant and permanent nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.

~~(b)-(a)~~ "Permanently incapacitated inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

~~(c)-(b)~~ "Terminally ill inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.

(2) PERMISSIVE CONDITIONAL MEDICAL RELEASE.—

(a) Notwithstanding any provision to the contrary, any person qualifying for one of the three designations defined in subsection (1) determined eligible under this section and sentenced to the custody of the department may, upon referral by the department, be considered for conditional medical release by



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the commission, in addition to any parole consideration for which the inmate may be considered, except that conditional medical release is not authorized for an inmate who is under sentence of death. ~~No inmate has a right to conditional medical release or to a medical evaluation to determine eligibility for such release.~~

(b)(3) The authority and whether or not to grant conditional medical release and establish additional conditions of conditional medical release under this subsection rests solely within the discretion of the commission, in accordance with the provisions of this section, together with the authority to approve the release plan to include necessary medical care and attention.

(c) The department shall identify inmates who may be eligible for conditional medical release based upon available medical information and shall refer them to the commission for consideration.

(d) In considering an inmate for conditional medical release in accordance with this subsection, the commission may require that additional medical evidence be produced or that additional medical examinations be conducted, and may require such other investigations to be made as may be warranted.

(3) MANDATORY CONDITIONAL MEDICAL RELEASE.—

(a) To be eligible for supervised release under this subsection, an inmate qualifying for one of the three designations defined in subsection (1) shall also be determined by the department to meet all of the following criteria:

1. Has served at least 50 percent of his or her sentence.
2. Has no current or prior conviction for:





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a. A capital, life, or first degree felony.

b. A sexual offense, which means an offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

c. An offense involving a child.

3. Has not received a disciplinary report within the previous 6 months.

4. Has never received a disciplinary report for a violent act.

5. Has renounced any gang affiliation.

(b) Any person sentenced to the custody of the department that is determined to be eligible for placement on conditional medical release in accordance with this subsection must be referred by the department to the commission. Upon receiving a referral from the department, the commission shall verify the eligibility of an inmate and, upon verification, such inmate must be placed on conditional medical release.

(c) In verifying the inmate's eligibility for conditional medical release, the commission shall review the information provided by the department.

(d) The commission must finish its verification of an inmate's eligibility within 60 days after the department refers the inmate for conditional medical release.

(4) No inmate has a right to conditional medical release or to a medical evaluation to determine eligibility for such release.

(5) The department's referral of an inmate to the commission for release under this section must include all of the following information:

(a) The proposed conditional medical release plan.



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98       (b) Any relevant medical history, including current medical  
99 prognosis.

100       (c) Criminal history. The criminal history must include all  
101 of the following information:

102           1. The inmate's claim of innocence, if any.

103           2. The degree to which the inmate accepts responsibility  
104 for his or her actions leading to the conviction of the crime.

105           3. How any claim of responsibility has affected the  
106 inmate's feelings of remorse.

107       (d) Any history of substance abuse and mental health  
108 issues, provided the inmate authorizes release when such  
109 information is collected in accordance with 42 C.F.R. s. 2.

110       (e) Any disciplinary action taken against the inmate while  
111 in prison.

112       (f) Any participation in prison work and other prison  
113 programs.

114       (g) Any other information the department deems necessary.

115       (6)-(4) The conditional medical release term of an inmate  
116 released on conditional medical release is for the remainder of  
117 the inmate's sentence, without diminution of sentence for good  
118 behavior. Supervision of the medical releasee must include a  
119 release plan as proposed by the department and approved by the  
120 commission and include periodic medical evaluations. Supervision  
121 may also include electronic monitoring at intervals determined  
122 by the commission at the time of release.

123       (7) (a) -(5) -(a) If it is discovered during the conditional  
124 medical release that the medical or physical condition of the  
125 medical releasee has improved to the extent that she or he would  
126 no longer be eligible for conditional medical release under this



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section, the commission may order that the releasee be returned to the custody of the department for a conditional medical release revocation hearing, in accordance with s. 947.141. If conditional medical release is revoked due to improvement in the medical or physical condition of the releasee, she or he shall serve the balance of her or his sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued prior to conditional medical release. If the person whose conditional medical release is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.

(b) In addition to revocation of conditional medical release pursuant to paragraph (a), conditional medical release may also be revoked for violation of any condition of the release established by the commission, in accordance with s. 947.141, and the releasee's gain-time may be forfeited pursuant to s. 944.28(1).

~~(8)-(6)~~ The department and the commission shall adopt rules as necessary to implement the conditional medical release program.

Section 2. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (6) of section 316.1935, Florida Statutes, is reenacted to read:

316.1935 Fleeing or attempting to elude a law enforcement officer; aggravated fleeing or eluding.—

(6) Notwithstanding s. 948.01, no court may suspend, defer,



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or withhold adjudication of guilt or imposition of sentence for any violation of this section. A person convicted and sentenced to a mandatory minimum term of incarceration under paragraph (3)(b) or paragraph (4)(b) is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency or conditional medical release under s. 947.149, prior to serving the mandatory minimum sentence.

Section 3. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (k) of subsection (4) of section 775.084, Florida Statutes, is reenacted to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(4)

(k)1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 947.149.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence



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and shall not be eligible for parole, control release, or any form of early release.

Section 4. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) and paragraph (b) of subsection (3) of section 775.087, Florida Statutes, is reenacted to read:

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

(2)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

(3)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum



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mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

Section 5. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (3) of section 784.07, Florida Statutes, is reenacted to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(3) Any person who is convicted of a battery under paragraph (2)(b) and, during the commission of the offense, such person possessed:

(a) A "firearm" or "destructive device" as those terms are defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 3 years.

(b) A semiautomatic firearm and its high-capacity detachable box magazine, as defined in s. 775.087(3), or a machine gun as defined in s. 790.001, shall be sentenced to a



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minimum term of imprisonment of 8 years.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

Section 6. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (1) of section 790.235, Florida Statutes, is reenacted to read:

790.235 Possession of firearm or ammunition by violent career criminal unlawful; penalty.—

(1) Any person who meets the violent career criminal criteria under s. 775.084(1)(d), regardless of whether such person is or has previously been sentenced as a violent career criminal, who owns or has in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or carries a concealed weapon, including a tear gas gun or chemical weapon or device, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person convicted of a violation of this section shall be sentenced to a mandatory minimum of 15 years' imprisonment; however, if the person would be sentenced to a longer term of imprisonment under s. 775.084(4)(d), the person must be sentenced under that provision. A person convicted of a violation of this section is not eligible for any form of discretionary early release, other than pardon,



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executive clemency, or conditional medical release under s.  
947.149.

Section 7. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (7) of section 794.0115, Florida Statutes, is reenacted to read:

794.0115 Dangerous sexual felony offender; mandatory sentencing.—

(7) A defendant sentenced to a mandatory minimum term of imprisonment under this section is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, before serving the minimum sentence.

Section 8. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraphs (b), (c), and (g) of subsection (1) and subsection (3) of section 893.135, Florida Statutes, are reenacted 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:

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first





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degree, which felony shall be known as "trafficking in cocaine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, 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 \$50,000.

b. Is 200 grams or more, but less than 400 grams, 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 \$100,000.

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

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

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



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

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

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person



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shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$100,000.

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

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as described in s. 893.03(2)(a)1.g., or any salt thereof, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 200 grams or more, but less than 30 kilograms, such



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person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.o., or any salt thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:



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(I) Alfentanil, as described in s. 893.03(2)(b)1.;  
(II) Carfentanil, as described in s. 893.03(2)(b)6.;  
(III) Fentanyl, as described in s. 893.03(2)(b)9.;  
(IV) Sufentanil, as described in s. 893.03(2)(b)29.;  
(V) A fentanyl derivative, as described in s.  
893.03(1)(a)62.;  
(VI) A controlled substance analog, as described in s.  
893.0356, of any substance described in sub-sub-subparagraphs  
(I)-(V); or  
(VII) A mixture containing any substance described in sub-  
sub-subparagraphs (I)-(VI),  
commits a felony of the first degree, which felony shall be  
known as "trafficking in fentanyl," punishable as provided in s.  
775.082, s. 775.083, or s. 775.084.  
b. If the quantity involved under sub-subparagraph a.:  
(I) Is 4 grams or more, but less than 14 grams, such person  
shall be sentenced to a mandatory minimum term of imprisonment  
of 3 years, and shall be ordered to pay a fine of \$50,000.  
(II) Is 14 grams or more, but less than 28 grams, such  
person shall be sentenced to a mandatory minimum term of  
imprisonment of 15 years, and shall be ordered to pay a fine of  
\$100,000.  
(III) Is 28 grams or more, such person shall be sentenced  
to a mandatory minimum term of imprisonment of 25 years, and  
shall be ordered to pay a fine of \$500,000.  
5. A person who knowingly sells, purchases, manufactures,  
delivers, or brings into this state, or who is knowingly in  
actual or constructive possession of, 30 kilograms or more of



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any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

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

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result, such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6. A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as



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described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

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

a. Is 4 grams or more but less than 14 grams, 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 \$50,000.

b. Is 14 grams or more but less than 28 grams, 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 \$100,000.

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in



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actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

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

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

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

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. A person sentenced to a mandatory minimum term of imprisonment under this





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section is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, prior to serving the mandatory minimum term of imprisonment.

Section 9. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, Subsection (2) of section 921.0024, Florida Statutes, is reenacted to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence



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under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. An offender sentenced to life imprisonment under this section is not eligible for any form of discretionary early release, except executive clemency or conditional medical release under s. 947.149.

Section 10. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (b) of subsection (7) of section 944.605, Florida Statutes, is reenacted to read:

944.605 Inmate release; notification; identification card.—  
(7)

(b) Paragraph (a) does not apply to inmates who:

1. The department determines have a valid driver license or state identification card, except that the department shall provide these inmates with a replacement state identification card or replacement driver license, if necessary.

2. Have an active detainer, unless the department determines that cancellation of the detainer is likely or that the incarceration for which the detainer was issued will be less than 12 months in duration.

3. Are released due to an emergency release or a conditional medical release under s. 947.149.

4. Are not in the physical custody of the department at or within 180 days before release.

5. Are subject to sex offender residency restrictions, and who, upon release under such restrictions, do not have a



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qualifying address.

Section 11. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 944.70, Florida Statutes, is reenacted to read:

944.70 Conditions for release from incarceration.—

(1)

(b) A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only:

1. Upon expiration of the person's sentence;

2. Upon expiration of the person's sentence as reduced by accumulated meritorious or incentive gain-time;

3. As directed by an executive order granting clemency;

4. Upon placement in a conditional release program pursuant to s. 947.1405 or a conditional medical release program pursuant to s. 947.149; or

5. Upon the granting of control release, including emergency control release, pursuant to s. 947.146.

Section 12. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (h) of subsection (1) of section 947.13, Florida Statutes, is reenacted to read:

947.13 Powers and duties of commission.—

(1) The commission shall have the powers and perform the duties of:

(h) Determining what persons will be released on conditional medical release under s. 947.149, establishing the conditions of conditional medical release, and determining whether a person has violated the conditions of conditional



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medical release and taking action with respect to such a violation.

Section 13. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, Subsections (1), (2), and (7) of section 947.141, Florida Statutes, are reenacted to read:

947.141 Violations of conditional release, control release, or conditional medical release or addiction-recovery supervision.—

(1) If a member of the commission or a duly authorized representative of the commission has reasonable grounds to believe that an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated the terms and conditions of the release in a material respect, such member or representative may cause a warrant to be issued for the arrest of the releasee; if the offender was found to be a sexual predator, the warrant must be issued.

(2) Upon the arrest on a felony charge of an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731, the offender must be detained without bond until the initial appearance of the offender at which a judicial determination of probable cause is made. If the trial court judge determines that there was no probable cause for the arrest, the offender may be released. If the trial court judge determines that there was probable cause for the arrest, such determination also constitutes reasonable grounds to believe that the offender violated the conditions of the release. Within 24 hours after the trial court judge's finding of probable cause, the detention facility administrator or designee shall



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notify the commission and the department of the finding and transmit to each a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based. The offender must continue to be detained without bond for a period not exceeding 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the commission whether to issue a warrant charging the offender with violation of the conditions of release. Upon the issuance of the commission's warrant, the offender must continue to be held in custody pending a revocation hearing held in accordance with this section.

(7) If a law enforcement officer has probable cause to believe that an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated the terms and conditions of his or her release by committing a felony offense, the officer shall arrest the offender without a warrant, and a warrant need not be issued in the case.

Section 14. This act shall take effect October 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to conditional medical release;  
amending s. 947.149, F.S.; defining the term "inmate  
with a debilitating illness"; expanding eligibility  
for conditional medical release to include inmates



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with debilitating illnesses; creating permissive conditional medical release; requiring the Department of Corrections to refer eligible inmates; authorizing the Florida Commission on Offender Review to release eligible inmates; creating mandatory conditional medical release; providing criteria for eligibility; requiring the department to refer an eligible inmate to the commission; requiring that certain inmates whose eligibility is verified by the commission be placed on conditional medical release; requiring that the department's referral for release include certain information; requiring the commission to review the information and verify an inmate's eligibility within a certain timeframe; authorizing electronic monitoring for an inmate on conditional medical release; reenacting ss. 316.1935(6), 775.084(4)(k), 775.087(2)(b) and (3)(b), 784.07(3), 790.235(1), 794.0115(7), 893.135(1)(b), (c), and (g) and (3), 921.0024(2), 944.605(7)(b), 944.70(1)(b), 947.13(1)(h), and 947.141(1), (2), and (7), F.S., all relating to authorized conditional medical release granted under s. 947.149, F.S., to incorporate the amendment made to s. 947.149, F.S., in references thereto; providing an effective date.

By Senator Bracy

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A bill to be entitled

An act relating to the conditional medical release program; amending s. 947.149, F.S.; defining the term "inmate with a debilitating illness"; expanding eligibility for conditional medical release to include inmates with debilitating illnesses; providing criteria for eligibility; requiring that certain persons whose eligibility is verified by the Commission on Offender Review be placed on conditional medical release; requiring the Department of Corrections to refer an eligible inmate to the commission; requiring that the department's referral for release include certain information; requiring the commission to review the information and verify an inmate's eligibility within a certain timeframe; authorizing electronic monitoring for an inmate on conditional medical release; reenacting ss. 316.1935(6), 775.084(4)(k), 775.087(2)(b) and (3)(b), 784.07(3), 790.235(1), 794.0115(7), 893.135(1)(b), (c), and (g) and (3), 921.0024(2), 944.605(7)(b), 944.70(1)(b), 947.13(1)(h), and 947.141(1), (2), and (7), F.S., all relating to authorized conditional medical release granted under s. 947.149, F.S., to incorporate the amendment made to s. 947.149, F.S., in references thereto; providing an effective date.

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

Section 1. Section 947.149, Florida Statutes, is amended to

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read:

947.149 Conditional medical release.—

(1) The commission shall, in conjunction with the department, establish the conditional medical release program. An inmate is eligible for supervised ~~consideration for~~ release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be within one of the following designations:

(a) "Inmate with a debilitating illness," which means an inmate who is determined to be suffering from a significant and permanent nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present any danger to society.

(b) ~~(a)~~ "Permanently incapacitated inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

(c) ~~(b)~~ "Terminally ill inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.

(2) To be eligible, an inmate must also be determined by the department to meet all of the following criteria:

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(a) Has served at least 50 percent of his or her sentence.

(b) Has been convicted of a felony.

(c) Has no current or prior conviction for a capital or first degree felony, for a sexual offense, or for an offense involving a child.

(d) Has not received a disciplinary report within the previous 6 months.

(e) Has never received a disciplinary report for a violent act.

(f) Has renounced any gang affiliation.

(3)(2) Notwithstanding any provision to the contrary, any person determined eligible under this section and sentenced to the custody of the department ~~must~~ may, upon referral by the department and verification of eligibility by the commission, be placed on ~~considered for~~ conditional medical release by the commission, in addition to any parole consideration for which the inmate may be considered, except that conditional medical release is not authorized for an inmate who is under sentence of death.

(4) An ~~no~~ inmate does not have ~~has~~ a right to conditional medical release or to a medical evaluation to determine eligibility for such release.

(5) (a) (3) The commission has the authority and whether or not to grant conditional medical release and establish additional conditions of conditional medical release rests solely within the discretion of the commission, in accordance with the provisions of this section, together with the authority to approve the release plan proposed by the department to include necessary medical care and attention.

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(b) The department shall identify inmates who may be eligible for conditional medical release based upon available medical information and ~~must~~ shall refer them to the commission if they are eligible under this section for consideration. In ~~considering an inmate for conditional medical release, the commission may require that additional medical evidence be produced or that additional medical examinations be conducted, and may require such other investigations to be made as may be warranted.~~

(c) The department's referral of the inmate to the commission must include all of the following information:

1. The proposed conditional medical release plan.

2. Any relevant medical history, including current medical prognosis.

3. Prison experience and criminal history. The criminal history must include all of the following:

a. The inmate's claim of innocence, if any.

b. The degree to which the inmate accepts responsibility for his or her actions leading to the conviction of the crime.

c. How any claim of responsibility has affected the inmate's feelings of remorse.

4. Any history of substance abuse and mental health issues.

5. Any disciplinary action taken against the inmate while in prison.

6. Any participation in prison work and other prison programs.

7. Any other information the department deems necessary.

(d) In verifying the inmate's eligibility for conditional medical release, the commission shall review the information

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provided by the department.

(e) The commission must finish its verification of an inmate's eligibility within 60 days after the department refers the inmate for conditional medical release.

(6) ~~(4)~~ The conditional medical release term of an inmate released on conditional medical release is for the remainder of the inmate's sentence, without diminution of sentence for good behavior. Supervision of the medical releasee must include periodic medical evaluations at intervals included in the recommended release plan and approved determined by the commission at the time of release. Supervision may also include electronic monitoring.

(7) (a) ~~(5) (a)~~ If it is discovered during the conditional medical release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for conditional medical release under this section, the commission may order that the releasee be returned to the custody of the department for a conditional medical release revocation hearing, in accordance with s. 947.141. If conditional medical release is revoked due to improvement in the medical or physical condition of the releasee, she or he shall serve the balance of her or his sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued prior to conditional medical release. If the person whose conditional medical release is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.

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(b) In addition to revocation of conditional medical release pursuant to paragraph (a), conditional medical release may also be revoked for violation of any condition of the release established by the commission, in accordance with s. 947.141, and the releasee's gain-time may be forfeited pursuant to s. 944.28(1).

(8) ~~(6)~~ The department and the commission shall adopt rules as necessary to implement the conditional medical release program.

Section 2. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (6) of section 316.1935, Florida Statutes, is reenacted to read:

316.1935 Fleeing or attempting to elude a law enforcement officer; aggravated fleeing or eluding.—

(6) Notwithstanding s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section. A person convicted and sentenced to a mandatory minimum term of incarceration under paragraph (3) (b) or paragraph (4) (b) is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency or conditional medical release under s. 947.149, prior to serving the mandatory minimum sentence.

Section 3. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (k) of subsection (4) of section 775.084, Florida Statutes, is reenacted to read:

775.084 Violent career criminals; habitual felony offenders

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and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(4)

(k)1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 947.149.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

Section 4. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) and paragraph (b) of subsection (3) of section 775.087, Florida Statutes, are reenacted to read:

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

(2)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum

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mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

(3)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

Section 5. For the purpose of incorporating the amendment

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made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (3) of section 784.07, Florida Statutes, is reenacted to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(3) Any person who is convicted of a battery under paragraph (2)(b) and, during the commission of the offense, such person possessed:

(a) A "firearm" or "destructive device" as those terms are defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 3 years.

(b) A semiautomatic firearm and its high-capacity detachable box magazine, as defined in s. 775.087(3), or a machine gun as defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 8 years.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

Section 6. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (1) of section 790.235, Florida Statutes, is reenacted to read:

790.235 Possession of firearm or ammunition by violent

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career criminal unlawful; penalty.—

(1) Any person who meets the violent career criminal criteria under s. 775.084(1)(d), regardless of whether such person is or has previously been sentenced as a violent career criminal, who owns or has in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or carries a concealed weapon, including a tear gas gun or chemical weapon or device, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person convicted of a violation of this section shall be sentenced to a mandatory minimum of 15 years' imprisonment; however, if the person would be sentenced to a longer term of imprisonment under s. 775.084(4)(d), the person must be sentenced under that provision. A person convicted of a violation of this section is not eligible for any form of discretionary early release, other than pardon, executive clemency, or conditional medical release under s. 947.149.

Section 7. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (7) of section 794.0115, Florida Statutes, is reenacted to read:

794.0115 Dangerous sexual felony offender; mandatory sentencing.—

(7) A defendant sentenced to a mandatory minimum term of imprisonment under this section is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, before serving the minimum

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291 sentence.

292 Section 8. For the purpose of incorporating the amendment  
293 made by this act to section 947.149, Florida Statutes, in a  
294 reference thereto, paragraphs (b), (c), and (g) of subsection  
295 (1) and subsection (3) of section 893.135, Florida Statutes, are  
296 reenacted to read:

297 893.135 Trafficking; mandatory sentences; suspension or  
298 reduction of sentences; conspiracy to engage in trafficking.—

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

301 (b)1. Any person who knowingly sells, purchases,  
302 manufactures, delivers, or brings into this state, or who is  
303 knowingly in actual or constructive possession of, 28 grams or  
304 more of cocaine, as described in s. 893.03(2)(a)4., or of any  
305 mixture containing cocaine, but less than 150 kilograms of  
306 cocaine or any such mixture, commits a felony of the first  
307 degree, which felony shall be known as "trafficking in cocaine,"  
308 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
309 If the quantity involved:

310 a. Is 28 grams or more, but less than 200 grams, such  
311 person shall be sentenced to a mandatory minimum term of  
312 imprisonment of 3 years, and the defendant shall be ordered to  
313 pay a fine of \$50,000.

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

318 c. Is 400 grams or more, but less than 150 kilograms, such  
319 person shall be sentenced to a mandatory minimum term of

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320 imprisonment of 15 calendar years and pay a fine of \$250,000.

321 2. Any person who knowingly sells, purchases, manufactures,  
322 delivers, or brings into this state, or who is knowingly in  
323 actual or constructive possession of, 150 kilograms or more of  
324 cocaine, as described in s. 893.03(2)(a)4., commits the first  
325 degree felony of trafficking in cocaine. A person who has been  
326 convicted of the first degree felony of trafficking in cocaine  
327 under this subparagraph shall be punished by life imprisonment  
328 and is ineligible for any form of discretionary early release  
329 except pardon or executive clemency or conditional medical  
330 release under s. 947.149. However, if the court determines that,  
331 in addition to committing any act specified in this paragraph:

332 a. The person intentionally killed an individual or  
333 counseled, commanded, induced, procured, or caused the  
334 intentional killing of an individual and such killing was the  
335 result; or

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

338  
339 such person commits the capital felony of trafficking in  
340 cocaine, punishable as provided in ss. 775.082 and 921.142. Any  
341 person sentenced for a capital felony under this paragraph shall  
342 also be sentenced to pay the maximum fine provided under  
343 subparagraph 1.

344 3. Any person who knowingly brings into this state 300  
345 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,  
346 and who knows that the probable result of such importation would  
347 be the death of any person, commits capital importation of  
348 cocaine, a capital felony punishable as provided in ss. 775.082

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

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$100,000.

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

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as

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described in s. 893.03(2)(a)1.g., or any salt thereof, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 200 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.o., or any salt thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person

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shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

(I) Alfentanil, as described in s. 893.03(2)(b)1.;

(II) Carfentanil, as described in s. 893.03(2)(b)6.;

(III) Fentanyl, as described in s. 893.03(2)(b)9.;

(IV) Sufentanil, as described in s. 893.03(2)(b)29.;

(V) A fentanyl derivative, as described in s. 893.03(1)(a)62.;

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or

(VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be

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known as "trafficking in fentanyl," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and shall be ordered to pay a fine of \$50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and shall be ordered to pay a fine of \$100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of \$500,000.

5. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

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

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

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6. A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(g)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first

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degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more but less than 14 grams, 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 \$50,000.

b. Is 14 grams or more but less than 28 grams, 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 \$100,000.

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the

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523 result; or

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

526  
527 such person commits the capital felony of trafficking in  
528 flunitrazepam, punishable as provided in ss. 775.082 and  
529 921.142. Any person sentenced for a capital felony under this  
530 paragraph shall also be sentenced to pay the maximum fine  
531 provided under subparagraph 1.

532       (3) Notwithstanding the provisions of s. 948.01, with  
533 respect to any person who is found to have violated this  
534 section, adjudication of guilt or imposition of sentence shall  
535 not be suspended, deferred, or withheld, nor shall such person  
536 be eligible for parole prior to serving the mandatory minimum  
537 term of imprisonment prescribed by this section. A person  
538 sentenced to a mandatory minimum term of imprisonment under this  
539 section is not eligible for any form of discretionary early  
540 release, except pardon or executive clemency or conditional  
541 medical release under s. 947.149, prior to serving the mandatory  
542 minimum term of imprisonment.

543       Section 9. For the purpose of incorporating the amendment  
544 made by this act to section 947.149, Florida Statutes, in a  
545 reference thereto, subsection (2) of section 921.0024, Florida  
546 Statutes, is reenacted to read:

547       921.0024 Criminal Punishment Code; worksheet computations;  
548 scoresheets.—

549       (2) The lowest permissible sentence is the minimum sentence  
550 that may be imposed by the trial court, absent a valid reason  
551 for departure. The lowest permissible sentence is any nonstate

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552 prison sanction in which the total sentence points equals or is  
553 less than 44 points, unless the court determines within its  
554 discretion that a prison sentence, which may be up to the  
555 statutory maximums for the offenses committed, is appropriate.  
556 When the total sentence points exceeds 44 points, the lowest  
557 permissible sentence in prison months shall be calculated by  
558 subtracting 28 points from the total sentence points and  
559 decreasing the remaining total by 25 percent. The total sentence  
560 points shall be calculated only as a means of determining the  
561 lowest permissible sentence. The permissible range for  
562 sentencing shall be the lowest permissible sentence up to and  
563 including the statutory maximum, as defined in s. 775.082, for  
564 the primary offense and any additional offenses before the court  
565 for sentencing. The sentencing court may impose such sentences  
566 concurrently or consecutively. However, any sentence to state  
567 prison must exceed 1 year. If the lowest permissible sentence  
568 under the code exceeds the statutory maximum sentence as  
569 provided in s. 775.082, the sentence required by the code must  
570 be imposed. If the total sentence points are greater than or  
571 equal to 363, the court may sentence the offender to life  
572 imprisonment. An offender sentenced to life imprisonment under  
573 this section is not eligible for any form of discretionary early  
574 release, except executive clemency or conditional medical  
575 release under s. 947.149.

576       Section 10. For the purpose of incorporating the amendment  
577 made by this act to section 947.149, Florida Statutes, in a  
578 reference thereto, paragraph (b) of subsection (7) of section  
579 944.605, Florida Statutes, is reenacted to read:

580       944.605 Inmate release; notification; identification card.—



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- 581 (7)
- 582 (b) Paragraph (a) does not apply to inmates who:
- 583 1. The department determines have a valid driver license or
- 584 state identification card, except that the department shall
- 585 provide these inmates with a replacement state identification
- 586 card or replacement driver license, if necessary.
- 587 2. Have an active detainer, unless the department
- 588 determines that cancellation of the detainer is likely or that
- 589 the incarceration for which the detainer was issued will be less
- 590 than 12 months in duration.
- 591 3. Are released due to an emergency release or a
- 592 conditional medical release under s. 947.149.
- 593 4. Are not in the physical custody of the department at or
- 594 within 180 days before release.
- 595 5. Are subject to sex offender residency restrictions, and
- 596 who, upon release under such restrictions, do not have a
- 597 qualifying address.
- 598 Section 11. For the purpose of incorporating the amendment
- 599 made by this act to section 947.149, Florida Statutes, in a
- 600 reference thereto, paragraph (b) of subsection (1) of section
- 601 944.70, Florida Statutes, is reenacted to read:
- 602 944.70 Conditions for release from incarceration.—
- 603 (1)
- 604 (b) A person who is convicted of a crime committed on or
- 605 after January 1, 1994, may be released from incarceration only:
- 606 1. Upon expiration of the person's sentence;
- 607 2. Upon expiration of the person's sentence as reduced by
- 608 accumulated meritorious or incentive gain-time;
- 609 3. As directed by an executive order granting clemency;

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- 610 4. Upon placement in a conditional release program pursuant
- 611 to s. 947.1405 or a conditional medical release program pursuant
- 612 to s. 947.149; or
- 613 5. Upon the granting of control release, including
- 614 emergency control release, pursuant to s. 947.146.
- 615 Section 12. For the purpose of incorporating the amendment
- 616 made by this act to section 947.149, Florida Statutes, in a
- 617 reference thereto, paragraph (h) of subsection (1) of section
- 618 947.13, Florida Statutes, is reenacted to read:
- 619 947.13 Powers and duties of commission.—
- 620 (1) The commission shall have the powers and perform the
- 621 duties of:
- 622 (h) Determining what persons will be released on
- 623 conditional medical release under s. 947.149, establishing the
- 624 conditions of conditional medical release, and determining
- 625 whether a person has violated the conditions of conditional
- 626 medical release and taking action with respect to such a
- 627 violation.
- 628 Section 13. For the purpose of incorporating the amendment
- 629 made by this act to section 947.149, Florida Statutes, in a
- 630 reference thereto, subsections (1), (2), and (7) of section
- 631 947.141, Florida Statutes, are reenacted to read:
- 632 947.141 Violations of conditional release, control release,
- 633 or conditional medical release or addiction-recovery
- 634 supervision.—
- 635 (1) If a member of the commission or a duly authorized
- 636 representative of the commission has reasonable grounds to
- 637 believe that an offender who is on release supervision under s.
- 638 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated

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the terms and conditions of the release in a material respect, such member or representative may cause a warrant to be issued for the arrest of the releasee; if the offender was found to be a sexual predator, the warrant must be issued.

(2) Upon the arrest on a felony charge of an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731, the offender must be detained without bond until the initial appearance of the offender at which a judicial determination of probable cause is made. If the trial court judge determines that there was no probable cause for the arrest, the offender may be released. If the trial court judge determines that there was probable cause for the arrest, such determination also constitutes reasonable grounds to believe that the offender violated the conditions of the release. Within 24 hours after the trial court judge's finding of probable cause, the detention facility administrator or designee shall notify the commission and the department of the finding and transmit to each a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based. The offender must continue to be detained without bond for a period not exceeding 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the commission whether to issue a warrant charging the offender with violation of the conditions of release. Upon the issuance of the commission's warrant, the offender must continue to be held in custody pending a revocation hearing held in accordance with this section.

(7) If a law enforcement officer has probable cause to

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believe that an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated the terms and conditions of his or her release by committing a felony offense, the officer shall arrest the offender without a warrant, and a warrant need not be issued in the case.

Section 14. This act shall take effect July 1, 2018.

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

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

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

1/09/2018

*Meeting Date*

SB 238

*Bill Number (if applicable)*

Topic Conditional Medical Release Program

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P. O. Box 10788

Phone 850-521-3042

*Street*

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

1/9/18

*Meeting Date*

SB 238

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Hon. Bob Dillinger

Job Title Public Defender

Address 14250 49th Street North

Phone 727-464-6119

*Street*

Clearwater

FL

33762

*City*

*State*

*Zip*

Email \_\_\_\_\_

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)

11/9/18

Meeting Date

238

Bill Number (if applicable)

Topic Conditional Medical Release Program

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title POLICY ADVISOR

Address 115 S. Andrews Ave.  
Street

Phone 954-253-7320

FT. LAUDERDALE FL 33301  
City State Zip

Email dsainvil@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BROWARD COUNTY GOVT. (BCC)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/9/2018

Meeting Date

SB 238

Bill Number (if applicable)

Topic CONDITIONAL MED RELEASE

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title LEGISLATIVE COUNSEL

Address PO BOX 10788  
Street

Phone 850-347-6994

TALLAHASSEE FL 32302  
City State Zip

Email KGROSS@ACLUFL.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-9-18

Meeting Date

238

Bill Number (if applicable)

Topic Medical Release

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 0142933

Phone 352-682-2542

Street

PO Box Gainesville, FL 32614

Email gnewburn@famm.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FAMM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/9/18

Meeting Date

238

Bill Number (if applicable)

Topic

Conditional Med. Release

Amendment Barcode (if applicable)

Name

Chelsea Murphy

Job Title

State Director

Address

824 N. Duval St.

Phone

9545570016

Street

City

DA

State

FL

Zip

32303

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Right on Crime

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

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

1/9/2018

Meeting Date

238

Bill Number (if applicable)

Topic

Conditional Medical Release

Amendment Barcode (if applicable)

Name

Jorge Chamizo

Job Title

Attorney

Address

108 South Monroe Street

Phone

850-681-0024

Street

Tallahassee, FL 32308

Email

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Fla. Assoc. of Criminal Def. Lawyers

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

9 Jan 18

Meeting Date

238

Bill Number (if applicable)

Topic Conditional Medical Release

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone \_\_\_\_\_

Street

Tall

Email \_\_\_\_\_

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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: CS/SB 618

INTRODUCER: Criminal Justice Committee and Senator Baxley and others

SUBJECT: Subpoenas in Investigations of Sexual Offenses

DATE: January 10, 2018

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 618 addresses use of a subpoena in an investigation involving allegations of sexual abuse of a child or the suspected commission of certain sex crimes. A subpoena may be used to obtain records or other information and testimony to authenticate such information. This subpoena does not apply to information regarding subscribers or customers of a provider of an electronic communication service or remote computing service, which is addressed separately in the bill.

In investigations involving sexual abuse of a child, an investigative or law enforcement officer may:

- Without notice to the subscriber or customer of a provider of an electronic communication service or remote computing service, use a subpoena to obtain information pertaining to the subscriber or customer, excluding contents of a communication; and
- With prior notice or delayed notice, use a subpoena to obtain contents of a communication that has been in electronic storage in an electronic communications system for more than 180 days.

An investigative or law enforcement officer may prohibit a subpoena recipient from disclosing to any person for 180 days the existence of the subpoena or delay required notification for 180 days, if the subpoena is accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result. Limited disclosure is authorized. A court may grant an extension of the nondisclosure period or delay of notification.

The bill also authorizes a petition to modify or set aside a subpoena or disclosure prohibition, permits the retention of subpoenaed information for specific uses, specifies what notice is required, specifies procedures for retention of records, provides for compensation of a subpoenaed witness and others, provides legal protections for subpoena compliance, and authorizes a court to compel compliance with a subpoena and to sanction refusal to comply.

## II. Present Situation:

### Subpoenas

“Subpoena,” which literally means “under penalty,”<sup>1</sup> is “process or a writ of a judicial nature.”<sup>2</sup> “‘Process’ is synonymous with the term ‘writ’” and is “a means whereby a court compels compliance with its demands[.]”<sup>3</sup>

There are two types of subpoenas. The subpoena ad testificandum is used to compel the attendance and testimony of witnesses.<sup>4</sup> The subpoena duces tecum is used to compel production of documents, materials, or other tangible information.<sup>5</sup>

### Sections 27.04 and 16.56(3), F.S.

“The purpose of an investigative subpoena is to allow the State to obtain the information necessary to determine whether criminal activity has occurred or is occurring.”<sup>6</sup> Section 27.04, F.S., is “the statutory basis for the prosecutor’s investigative functions[.]”<sup>7</sup>

Section 27.04, F.S., provides:

The state attorney shall have summoned all witnesses required on behalf of the state; and he or she is allowed the process of his or her court to summon witnesses from throughout the state to appear before the state attorney at such convenient places in the state attorney’s judicial circuit and at such convenient times as may be designated in the

<sup>1</sup> Webster’s New World College Dictionary, 5th Ed. (2014).

<sup>2</sup> Op. Att’y Gen. Fla. 81-65 (1981) (citations omitted), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/6515E4FA246990B085256587004F3F07> (last visited on Jan. 4, 2018).

<sup>3</sup> *Id.* This does not mean that a subpoena is approved by a signed order of the court. Op. Att’y Gen. Fla. 94-86 (1994), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/936FCA358E6BC1998525622100600BAF> (last visited on Jan. 4, 2018).

<sup>4</sup> “What is a Subpoena?”, FindLaw, available at <http://litigation.findlaw.com/going-to-court/what-is-a-subpoena.html> (last visited on Jan. 8, 2018).

<sup>5</sup> *Id.* Information may include data, such as “non-content information, connected to our Internet transactions (e.g., websites visited, to/from and time/date stamps on emails).” Richard M. Thompson II & Jared P. Cole, *Stored Communications Act: Reform of the Electronic Communications Privacy Act (ECPA)*, CRS Report 44036 (May 19, 2015) p. 2, Congressional Research Service (on file with the Senate Committee on Criminal Justice).

<sup>6</sup> *State v. Investigation*, 802 So.2d 1141, 1144 (Fla. 2d. DCA 2001).

<sup>7</sup> Mark F. Lewis, “The Prosecutor as Investigator,” v. LXXVII, no. 9, p. 65, *Fla. B.J.* (October 2003), available at <https://www.floridabar.org/news/tfb-journal/?durl=%2FDIVCOM%2FJN%2Fjournal01.nsf%2FArticles%2FFFEFF64064A313885256DAD004C4BC8> (last visited on Jan. 4, 2018). “Once on notice of the possibility of criminal activity within his jurisdiction, the state attorney has the authority to investigate, section 27.04, Florida Statutes (1983); indeed, it is his duty.” *State v. National Research Systems, Inc.*, 459 So.2d 1134, 1135 (Fla. 3d DCA 1984).

summons, to testify before him or her as to any violation of the law upon which they may be interrogated, and he or she is empowered to administer oaths to all witnesses summoned to testify by the process of his or her court or who may voluntarily appear before the state attorney to testify as to any violation or violations of the law.

The state attorney's authority under s. 27.04, F.S., to "use the process of court" includes both compelling witness testimony and production of records and other information.<sup>8</sup> Section 16.56(3), F.S., provides the same authority to the statewide prosecutor.

### **Section 92.605, F.S., and the Stored Communications Act**

The provisions of s. 92.605, F.S., apply to a search warrant, court order, or subpoena issued in compliance with the federal Stored Communications Act (SCA).<sup>9</sup> Section 92.605, F.S., allows a search for records that are in the actual or constructive possession of an out-of-state corporation that provides electronic communication services or remote computing services to the public, when those records would reveal:

- The identity of the customers using those services;
- Data stored by, or on behalf of, the customers;
- The customers' usage of those services; or
- The recipients or destinations of communications sent to or from those customers.<sup>10</sup>

Under s. 92.605, F.S., when an out-of-state corporation subject to this section is properly served<sup>11</sup> by an applicant<sup>12</sup> for such subpoena, court order, or search warrant, the out-of-state corporation must provide to the applicant all records sought pursuant to such process within 20 business days after receipt, or the date indicated within the subpoena, if later, including those records maintained or located outside the State of Florida.<sup>13</sup> If the records cannot be produced within the 20-day time period, the out-of-state corporation must notify the applicant within the 20-day time period and agree to produce the documents at the earliest possible time. The applicant must pay the out-of-state corporation the reasonable expenses associated with compliance.<sup>14</sup>

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<sup>8</sup> *State v. Jett*, 358 So.2d 875, 876 (Fla. 3d DCA 1978).

<sup>9</sup> The "Stored Communications Act" is a term used to describe Title II of the Electronic Communications Privacy Act of 1986 (ECPA), Pub. L. No. 99-508, 100 Stat. 1848 (1986), though the term "appears nowhere in the language of the statute." *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations* (July 2009), p. 115, n. 1, U.S. Department of Justice, available at <http://www.justice.gov/criminal/cybercrime/docs/ssmanual2009.pdf> (last visited on Jan. 4, 2018). Title II of the ECPA is codified at 18 U.S.C. ss. 2701-2712.

<sup>10</sup> Section 92.605(2), F.S.

<sup>11</sup> "Properly served" means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity properly registered to do business in any state. In order for an out-of-state corporation to be properly served, the service must be effected on the corporation's registered agent. Section 92.605(1)(h), F.S.

<sup>12</sup> "Applicant" means a law enforcement officer who is seeking a court order or subpoena under s. 16.56, F.S., s. 27.04, F.S., s. 905.185, F.S., or s. 914.04, F.S., or who is issued a search warrant under s. 933.01, F.S., or anyone who is authorized to issue a subpoena under the Florida Rules of Criminal Procedure. Section 92.605(1)(b), F.S.

<sup>13</sup> Section 92.605(2)(b), F.S. In any criminal case, the content of any electronic communication may be obtained under s. 92.605, F.S., only by court order or by the issuance of a search warrant, unless otherwise provided under the ECPA or other provision of law. Section 92.605(9), F.S.

<sup>14</sup> Section 92.605(2)(b), F.S.

When the applicant makes a showing and the court finds that failure to produce records within 20 business days would cause an adverse result, the subpoena, court order, or warrant may require production of records within less than 20 business days. A court may reasonably extend the time required for production of the records upon finding that the out-of-state corporation needs the extension and that the extension would not cause an adverse result.<sup>15</sup>

Additionally, s. 92.605, F.S.:

- Requires that an out-of-state corporation seeking to quash or object to the subpoena, court order, or warrant seek relief from the court issuing such subpoena, court order, or warrant in accordance with s. 92.605, F.S.;<sup>16</sup>
- Requires verification of the authenticity of produced records upon written request from the applicant or if ordered by the court;<sup>17</sup>
- Provides that a cause of action does not arise against any out-of-state corporation or Florida business for providing records, information, facilities, or assistance in accordance with the terms of a subpoena, court order, or warrant subject to s. 92.605, F.S.;<sup>18</sup> and
- Provides for admissibility in evidence in a criminal proceeding of records produced in compliance with s. 92.605, F.S.<sup>19</sup>

### **Section 934.23, F.S., and the Stored Communications Act**

#### ***Major Features of Section 934.23, F.S.***

Section 934.23, F.S., is patterned after the federal SCA. It closely tracks 18 U.S.C. s. 2703. “The SCA protects communications held by two defined classes of network service providers[.]”<sup>20</sup> Those classes are electronic communication service (ECS) providers and remote computing service (RCS) providers.<sup>21</sup>

Section 934.23, F.S., specifies how an investigative or law enforcement officer may obtain the content of a wire or electronic communication that has been in electronic storage in an electronic communications system, a wire or electronic communication held or maintained on a remote computing service, and a record or other information pertaining to a subscriber or customer of such service, not including the contents of a communication.

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<sup>15</sup> Section 92.605(2)(c), F.S. Section 92.605(1)(a), F.S., contains a definition of “adverse result” that is identical to the definitions of that term in s. 934.25(2) and (6), F.S. See, *infra*, n. 46.

<sup>16</sup> Section 92.605(2)(d), F.S.

<sup>17</sup> Section 92.605(2)(e), F.S.

<sup>18</sup> Section 92.605(4), F.S.

<sup>19</sup> Section 92.605(5)-(8), F.S. A Florida electronic communication service provider or remote computing service provider is required to produce the same records previously described when served with a subpoena, court order, or warrant issued by another state. Section 92.605(3), F.S.

<sup>20</sup> *Supra*, n. 9, at p. 117.

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

Section 934.23, F.S., also provides procedures for retention of records and other evidence pending issuance of process<sup>22</sup> and provides legal protections<sup>23</sup> and reasonable compensation for those providing assistance.<sup>24</sup>

***Terminology Relevant to Section 934.23, F.S.***

Essential to an understanding of s. 934.23, F.S., is an understanding of the following terminology used in the section, most of which is patterned on terminology used in the SCA:

- “Contents,” when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.<sup>25</sup>
- “Electronic communication” means the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce. The definition does not include: any wire or oral communication; any communication made through a tone-only paging device; any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.<sup>26</sup>
- “Electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications.<sup>27</sup>
- “Electronic communications system” means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.<sup>28</sup>
- “Electronic storage” means any temporary intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof, and any storage of a wire or electronic communication by an electronic communication service for purposes of backup protection of such communication.<sup>29</sup>

<sup>22</sup> An ECS provider or RCS provider, upon the request of an investigative or law enforcement officer, must take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process. The records must be retained for a period of 90 days, which is extended for an additional 90 days upon a renewed request by such officer. Section 934.23(7), F.S.

<sup>23</sup> No cause of action lies in any court against an ECS provider, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under ss. 934.21-934.28, F.S. Section 934.23(6), F.S. Further, an ECS provider, RCS provider, or any other person who furnished assistance pursuant to s. 934.23, F.S., is held harmless from any claim and civil liability resulting from the disclosure of information pursuant to that section. Section 934.23(8), F.S.

<sup>24</sup> An ECS provider, RCS provider, or any other person who furnished assistance pursuant to s. 934.23, F.S., must be reasonably compensated for reasonable expenses incurred in providing such assistance. Section 934.23(8), F.S.

<sup>25</sup> Section 934.02(7), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(8). “The contents of a network account are the actual files (including email) stored in the account.... For example, stored emails or voice mails are ‘contents,’ as are word processing files stored in employee network accounts. The subject lines of emails are also contents.” *Supra*, n. 9, at p. 122-123.

<sup>26</sup> Section 934.02(12), F.S. This definition is very similar to the definition in 18 U.S.C. s. 2510(12).

<sup>27</sup> Section 934.02(15), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(15).

<sup>28</sup> Section 934.02(14), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(14). Telephone companies and electronic mail companies are examples of “electronic communications service” providers. *Supra*, n. 9, at p. 117.

<sup>29</sup> Section 934.02(17), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(17). According to the U.S. Department of Justice (DOJ), “‘electronic storage’ refers only to temporary storage made in the course of transmission by a service provider and to backups of such intermediate communications made by the service provider to ensure system

- “Investigative or law enforcement officer” means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct on behalf of the Government investigations of, or to make arrests for, offenses enumerated in this chapter or similar federal offenses, any attorney authorized by law to prosecute or participate in the prosecution of such offenses, or any other attorney representing the State of Florida or political subdivision thereof in any civil, regulatory, disciplinary, or forfeiture action relating to, based upon, or derived from such offenses.<sup>30</sup>
- “Remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communications system.<sup>31</sup>
- “Subpoena” means any administrative subpoena authorized by federal or Florida law, federal or Florida grand jury subpoena, or any criminal investigative subpoena as authorized by Florida statute which may be utilized on behalf of the government by an investigative or law enforcement officer.<sup>32</sup>
- “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce.<sup>33</sup>

### ***Disclosure of Records or Information under Section 934.23, F.S.***

The SCA (specifically, 18 U.S.C. s. 2703) “provides for different means of obtaining evidence, and different levels of privacy protection, depending on the type of evidence sought and the type of provider possessing it.”<sup>34</sup> Section 934.23, F.S., mirrors this approach. The types of evidence obtainable by different means are discussed in detail below.<sup>35</sup>

### **No Process – Consent of the Subscriber or Customer**

An investigative or law enforcement officer may require an ECS provider or RCS provider to disclose a record or other information pertaining to a subscriber or customer of such service, not

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integrity. It does not include post-transmission storage of communications.” *Supra*, n. 9, at p. 123. Under the DOJ interpretation, an e-mail is only in “electronic storage” if not accessed by the recipient. *Id.* However, the federal Ninth Circuit in *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004), rejected this interpretation and “held that email messages were in ‘electronic storage’ regardless of whether they had been previously accessed[.]” *Supra*, n. 9, at p. 125, citing *Theofel*, 359 F.3d at 1075-77.

<sup>30</sup> Section 934.02(6), F.S. The definition in 18 U.S.C. 2510(7) refers to federal law enforcement officers and prosecutors.

<sup>31</sup> Section 934.02(19), F.S. This definition is identical to the definition in 18 U.S.C. s. 2711(2). “Roughly speaking, a remote computing service is provided by an off-site computer that stores or processes data for a customer.” *Supra*, n. 9, at p. 119.

<sup>32</sup> Section 934.02(23), F.S.

<sup>33</sup> Section 934.02(1), F.S. This definition is very similar to the definition in 18 U.S.C. s. 2510(1).

<sup>34</sup> *Matter of Search Warrant for [redacted].com*, 248 F.Supp. 3d 970, 975 (C.D. Cal. 2017). “The structure of the SCA reflects a series of classifications that indicate the drafters judgments about what kinds of information implicate greater or lesser privacy interests.” *Supra*, n. 9, at p. 115. “Some information can be obtained from providers with a subpoena, other information requires a special court order; and still other information requires a search warrant. In addition, some types of legal process require notice to the subscriber, while other types do not.” *Id.*

<sup>35</sup> This analysis follows the format provided by the DOJ in its discussion of the SCA. *Supra*, n. 9.



including the contents of a communication, if the officer has the consent of the subscriber or customer to such disclosure.<sup>36</sup>

### Subpoena

An investigative or law enforcement officer who obtains a subpoena may obtain from the ECS provider or RCS provider basic information, including session information, regarding a subscriber or customer of the provider.<sup>37</sup> This information includes:

- Name and address;
- Local and long-distance telephone connection records, or records of session times or durations;
- Length of service, including the starting date of service;
- Types of services used;
- Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- Means and source of payment, including any credit card or bank account number of a subscriber to or customer.<sup>38</sup>

### Subpoena with Prior Notice to the Subscriber or Customer

An investigative or law enforcement officer who obtains a subpoena and provides prior notice to the subscriber or customer or with delayed notice pursuant to s. 934.25, F.S., may obtain:

- Whatever can be obtained by subpoena without prior notice;
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for more than 180 days;<sup>39</sup>
- An electronic communication that is held or maintained on a RCS:
  - On behalf of a subscriber or customer of the RCS and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service; and
  - Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.<sup>40</sup>

<sup>36</sup> Section 934.23(4)(a)3., F.S. (similar to 18 U.S.C. s. 2703(c)(1)(C)).

<sup>37</sup> Section 934.23(4)(a)4. and (4)(b), F.S.

<sup>38</sup> Section 934.23(4)(b), F.S. (similar to 18 U.S.C. s. (c)(2)). “In general, the items in this list relate to the identity of a subscriber, his relationship with his service provider, and his basic session connection records. In the Internet context, ‘any temporarily assigned network address’ includes the IP address used by a customer for a particular session. For example, for a webmail service, the IP address used by a customer accessing her email account constitutes a ‘temporarily assigned network address.’ This list does not include other, more extensive transaction-related records, such as logging information revealing the email addresses of persons with whom a customer corresponded.” *Supra*, n. 9, at p. 121.

<sup>39</sup> Section 934.23(1) and (2)(b)1., F.S. (similar to 18 U.S.C. s. 2703(a) and (b)(1)(B)(i)).

<sup>40</sup> Section 934.23(2)(b)1. and (3), F.S. (similar to 18 U.S.C. s. 2703(b)(1)(B)(i) and (2)). According to the DOJ, “[o]utside the Ninth Circuit ..., this third category will include opened and sent e-mail.” *Supra*, n. 9, at p. 129.

Court Order for Disclosure without Prior Notice

Pursuant to s. 934.23(5), F.S., a court order for disclosure issues only if the investigative or law enforcement officer offers specific and articulable facts showing that there are reasonable grounds to believe the contents of a wire or electronic communication or the records of other information sought are relevant and material to an ongoing criminal investigation.<sup>41</sup>

An investigative or law enforcement officer who obtains a court order for disclosure may obtain:

- Whatever can be obtained by subpoena without prior notice; and
- From an ECS provider or RCS provider, a record or other information pertaining to the subscriber or customer of such service, not including contents of communications.<sup>42</sup>

Court Order for Disclosure with Prior Notice

An investigative or law enforcement officer who obtains a court order for disclosure without prior notice, and either gives prior notice to the subscriber or customer or complies with delayed notice provisions of s. 934.25, F.S., may obtain:

- Whatever can be obtained by a court order for disclosure;
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for more than 180 days;<sup>43</sup> and
- Contents of an electronic communication that is held or maintained on a RCS as described in s. 934.23(3), F.S.<sup>44</sup>

Search Warrant

An investigative or law enforcement officer who obtains a search warrant may obtain:

- Whatever can be obtained pursuant to a court order for disclosure with notice; and
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for 180 days or less.<sup>45</sup>

**Section 934.25, F.S. (Delayed Notice)**

Section 934.25, F.S., is also patterned after the SCA. It closely tracks 18 U.S.C. s. 2705.

Pursuant to s. 934.25(1), F.S., if an investigative or law enforcement officer seeks to obtain evidence from an RCS provider under s. 934.23(2), F.S. (contents of communications in a RCS)

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<sup>41</sup> According to the DOJ, the equivalent federal court order for disclosure (under 18 U.S.C. s. 2703(d)) is needed “to obtain most account logs and most transactional records.” *Supra*, n. 9, at p. 130.

<sup>42</sup> Section 934.23(4)(a)2., F.S. (similar to 18 U.S.C. s. 2703(c)(1)(B)). “This is a catch-all category that includes all records that are not contents, including basic subscriber and session information.... As one court explained, ‘a record means something stored or archived. The term information is synonymous with data.’ *In re United States*, 509 F. Supp. 2d 76, 80 (D. Mass. 2007).” *Supra*, n. 9, at p. 122.

<sup>43</sup> Section 934.23(1), F.S. (similar to 18 U.S.C. s. 2703(a)).

<sup>44</sup> Section 934.23(2)(b)2. and (3), F.S. According to the DOJ, except in the federal Ninth Circuit, the federal government can obtain with a court order for disclosure with prior notice “the full contents of a subscriber’s account except unopened email and voicemail that have been in the account for 180 days or less.” *Supra*, n. 9, at p. 132.

<sup>45</sup> Section 934.23(1), F.S. (similar to 18 U.S.C. s. 2703(a)). “Investigators can obtain everything associated with an account with a search warrant. The SCA does not require the government to notify the customer or subscriber when it obtains information from a provider using search warrant.” *Supra*, n. 9, at p. 133.

pursuant to a court order for disclosure or subpoena, the officer may delay required notice under s. 934.23(2), F.S., for a period not exceeding 90 days as provided:

- Where a court order is sought, the officer includes in the application a request for an order delaying the notification for a period not to exceed 90 days, which request the court must grant if it determines that there is reason to believe that notification of the existence of the court order *may* have an “adverse result.”<sup>46</sup>
- Where a subpoena is obtained, delay the notification for a period not to exceed 90 days upon the execution of a written certification of a supervisory official<sup>47</sup> that there is reason to believe that notification of the existence of the subpoena may have an “adverse result” described in subsection (2) (see previous description).<sup>48</sup>

Section 934.25(4), F.S., provides that the 90-day period may be extended by court order, but only in 90-day increments and only in accordance with s. 934.25(6), F.S., which effectively requires the officer to demonstrate to the court or certify that there is reason to believe notification *will* result in any act specified in that subsection (acts identical to those acts that constitute an “adverse result” under subsection (2)).<sup>49</sup>

Section 934.25(5), F.S., provides that, upon the expiration of the period of delay of notification under s. 934.25(1), F.S., or s. 934.25(4), F.S., the investigative or law enforcement officer must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request together with notice which:

- States with reasonable specificity the nature of the law enforcement inquiry, and
- Informs the subscriber or customer:
  - That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested;
  - That notification of such subscriber or customer was delayed;
  - What investigative or law enforcement officer or what court made the certification or determination pursuant to which that delay was made; and
  - Which provision of ss. 934.21-934.28, F.S., allowed such delay.<sup>50</sup>

Section 934.25(6), F.S., also authorizes an investigative or law enforcement officer acting under s. 934.23, F.S., when not required to notify the subscriber or customer under s. 934.23(2)(a), F.S. (warrant), or to the extent such notice may be delayed pursuant to s. 934.25(1), F.S. (subpoena or

<sup>46</sup> Section 934.25(1)(a), F.S. (similar to 18 U.S.C. s. 2705(a)(1)(A)). An “adverse result” is defined in s. 934.25(2) and (6), F.S., as any of the following acts: endangering the life or physical safety of an individual; fleeing from prosecution; destroying or tampering with evidence; intimidating potential witnesses; or seriously jeopardizing an investigation or unduly delaying a trial. This definition is identical to the definition of the term in 18 U.S.C. s. 2705(a)(2).

<sup>47</sup> A “supervisory official” is “the person in charge of an investigating or law enforcement agency’s or entity’s headquarters or regional office; the state attorney of the circuit from which the subject subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification. Section 934.25(7), F.S. (similar to 18 U.S.C. s. 2705(a)(6)).

<sup>48</sup> Section 934.25(1)(b), F.S. (similar to 18 U.S.C. s. 2705(a)(1)(B)). The investigative or law enforcement officer has to maintain a true copy of a certification obtained under paragraph (1)(b). Section 934.25(3), F.S. (similar to 18 U.S.C. s. 2705(a)(3)).

<sup>49</sup> Similar to 18 U.S.C. s. 2705(a)(4).

<sup>50</sup> Similar to 18 U.S.C. s. 2705(a)(5) and (b).

court order for disclosure), to apply to a court for an order commanding an ECS provider or RCS provider to whom a warrant, subpoena, or court order is directed not to notify any other person of the existence of the warrant, subpoena, or court order. The order of nondisclosure is “for such period as the court deems appropriate” and can only be entered if the court determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order *will* result in any act specified in that subsection (acts identical to those acts that constitute an “adverse result”).<sup>51</sup>

### III. Effect of Proposed Changes:

The bill creates s. 934.255, F.S., which relates to subpoenas obtained by an investigative or law enforcement officer conducting an investigation into allegations of the sexual abuse of a child or an individual’s suspected commission of any of a list of specified sex crimes.

#### Definitions

The bill provides the following definitions of terms relevant to the provisions of the bill:

- “Child” means a person under 18 years of age.
- “Deliver” is construed in accordance with completed delivery, as provided for in Rule 1.080(b) of the Florida Rules of Civil Procedure.
- “Sexual abuse of a child” means a criminal offense based on any conduct described in s. 39.01(71), F.S.
- “Supervisory official” means the person in charge of an investigating or law enforcement agency’s or entity’s headquarters or regional office; the state attorney of the circuit from which the subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification.

#### Investigative Subpoena for Records or Other Information

The bill authorizes use of a subpoena in an investigation into allegations of the sexual abuse of a child or an individual’s suspected commission of any of a list of specified sex crimes<sup>52</sup> to compel the production of records, documents, or other tangible objects and the testimony of the subpoena recipient to authenticate such information. This investigative subpoena does not apply to information held or maintained by an electronic communication service (ECS) provider or remote computing service (RCS) provider, which is addressed separately in the bill.

#### Investigative Subpoena Directed to ECS Provider or RCS Provider

In an investigation involving sexual abuse of a child, an investigative or law enforcement officer may, without notice to the subscriber or customer of an ECS provider or RCS provider, obtain records or other information pertaining to the subscriber or customer, not including the contents

<sup>51</sup> *Supra*, n. 46. Similar to 18 U.S.C. s. 2705(b).

<sup>52</sup> The crimes are listed in s. 943.0435(1)(h)1.a.(I), F.S., and include but are not limited to: various sex trafficking crimes under s. 787.06, F.S.; sexual battery offenses under ch. 794, F.S.; lewd offenses under ss. 800.04 and 825.1025, F.S.; sexual performance by a child under s. 827.071, F.S.; various computer pornography crimes under ch. 847, F.S.; and selling or buying a minor to engage in sexually explicit conduct under s. 847.0145, F.S.

of a communication. This information consists of the basic subscriber identity and session information described in s. 934.23(4)(b), F.S.:

- Name and address;
- Local and long-distance telephone connection records, or records of session times or durations;
- Length of service, including the starting date of service;
- Types of services used;
- Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- Means and source of payment, including any credit card or bank account number of a subscriber to or customer.

In an investigation involving sexual abuse of a child, an investigative or law enforcement officer may, with notice to the subscriber or customer of a RCS provider or with delayed notice (see discussion, *infra*), obtain the contents of any wire or electronic communication that has been in electronic storage in an electronic communication system for more than 180 days. This information, which is the same information obtainable with a subpoena and prior notice as provided in s. 934.23(2)(b) and (3), F.S., consists of any electronic communication that is held or maintained on a remote computing service:

- On behalf of a subscriber or customer of such service and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service.
- Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.

### **Requirements Relating to Subpoena and Production of Subpoenaed Information**

The bill requires that a subpoena describe the records, documents, or other tangible objects required to be produced, and prescribe a date by which such information must be produced.

### **Petition for an Order Modifying or Setting Aside a Subpoena or Disclosure Prohibition**

At any time before the date prescribed in the subpoena by which records, documents, or other tangible objects must be produced, a person or entity receiving a subpoena may, before a judge of competent jurisdiction, petition for an order modifying or setting aside the subpoena or a prohibition of disclosure.

### **Retention of Subpoenaed Records or Other Information for Use in an Investigation**

An investigative or law enforcement officer who uses a subpoena to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

### **Nondisclosure of the Existence of a Subpoena**

The bill authorizes an investigative or law enforcement officer to prohibit a subpoena recipient from disclosing to any person for 180 days the existence of the subpoena, if the subpoena is accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena *may* have an adverse result.<sup>53</sup> However, a subpoena recipient may disclose information otherwise subject to any applicable nondisclosure requirement to:

- Persons as is necessary to comply with the subpoena;
- An attorney in order to obtain legal advice or assistance regarding compliance with the subpoena; or
- Any other person as allowed and specifically authorized by the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification.

The subpoena recipient must notify any person to whom disclosure of the subpoena is made of the existence of, and length of time associated with, the nondisclosure requirement. A person to whom disclosure of the subpoena is made cannot disclose the existence of the subpoena during the nondisclosure period.

At the request of the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification, the subpoena recipient must identify to the officer or supervisory official, before or at the time of compliance with the subpoena, the name of any person to whom disclosure was made. If the officer or supervisory official makes such a request, the subpoena recipient has an ongoing duty to disclose the identity of any individuals notified of the subpoena's existence throughout the nondisclosure period.

### **Delay of Required Notification**

The bill authorizes an investigative or law enforcement officer to delay for 180 days the notification required for a subpoena to obtain contents of a communication that has been in electronic storage in an electronic communications system for more than 180 days, if the subpoena is accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena *may* have an adverse result.

### **Extension of the Nondisclosure Period or Delay of Notification**

A court may grant extensions of the nondisclosure period or period of delay of notification of up to 90 days each. An extension must be consistent with another provision of the bill which authorizes an investigative or law enforcement officer, when not required to notify the subscriber or customer, or to the extent that such notification may be delayed, to apply to a court for an order prohibiting an ECS provider or RCS provider, for such period as the court deems appropriate, from notifying anyone of the existence of the subpoena. Under this provision, the

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<sup>53</sup> An "adverse result" is any of the following acts by a subpoena recipient: endangering the life or physical safety of an individual; fleeing from prosecution; destroying or tampering with evidence; intimidating potential witnesses; or seriously jeopardizing an investigation or unduly delaying a trial. Section 934.25(2) and (6), F.S.

court must enter the order if it determines that there is reason to believe that notification of the existence of the subpoena *will* result in an adverse result.

### **Compelling Compliance with a Subpoena and Sanctioning Noncompliance**

In the case of contumacy<sup>54</sup> by a person served a subpoena, or his or her refusal to comply with the subpoena, the investigative or law enforcement officer who sought the subpoena may petition a court of competent jurisdiction to compel compliance. The court may address the matter as indirect criminal contempt pursuant to Rule 3.840 of the Florida Rules of Criminal Procedure.

Any prohibited disclosure of a subpoena for which a period of prohibition of disclosure, a delay of notification, or an extension thereof is in effect is punishable as provided in s. 934.43, F.S. As applicable to a subpoena, s. 934.43, F.S., provides that it is a third degree felony for a person having knowledge of a subpoena issued or obtained by an investigative or law enforcement officer to give notice or attempt to give notice of the subpoena with the intent to obstruct, impede or prevent:

- A criminal investigation or prosecution; or
- The obtaining by the officer of the information or materials sought pursuant to the subpoena.

### **Records Retention by a Provider**

An ECS provider or a RCS provider, upon the request of an investigative or law enforcement officer, must take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process. The records must be retained for a period of 90 days, which is extended for an additional 90 days upon a renewed request by an investigative or law enforcement officer.

### **Protection from Claims and Civil Liability**

No cause of action lies in any court against a provider of wire or electronic communication service for providing information, facilities, or assistance in accordance with the terms of a subpoena. An ECS provider, a RCS provider, or any other person who furnished assistance with complying with a subpoena (as provided in the bill) is held harmless from any claim and civil liability resulting from the disclosure of information (as provided in the bill).

### **Compensation**

An ECS provider, a RCS provider, or any other person who furnished assistance with complying with a subpoena (as provided in the bill) must be reasonably compensated for reasonable expenses incurred in providing such assistance.

A witness who is subpoenaed to appear to testify to authenticate subpoenaed records or other information must be paid the same fees and mileage rate paid to a witness appearing before a court of competent jurisdiction in this state.

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<sup>54</sup> Merriam-Webster's online dictionary defines "contumacy" as "stubborn resistance to authority; *specifically*: willful contempt of court." See <https://www.merriam-webster.com/dictionary/contumacy> (last visited on Jan. 4, 2018).

**Effective Date**

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

**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 bill is substantially patterned after current law and does not appear to obligate the recipient of a subpoena to provide records or information beyond what the recipient is required to provide under current law. There may be some indeterminate litigation costs to the subpoena recipient if the recipient elects to challenge provisions of the bill in court.

**C. Government Sector Impact:**

The bill is substantially patterned after current law and does not appear to authorize an investigative or law enforcement officer to obtain records or information beyond what may be obtained under current law. There may be a workload impact in regard to preparing and submitting written certifications relevant to nondisclosure or delay of notification, but that impact, if any, is indeterminate. There may also be some indeterminate litigation costs associated with defending provisions of the bill if challenged in court.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



**VIII. Statutes Affected:**

This bill creates section 934.255 of the Florida Statutes.

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

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

**CS by Criminal Justice on January 9, 2018:**

The Committee Substitute:

- Makes technical changes to correct referencing errors and remove inapplicable language.
- Removes references and terminology relating to investigations involving a child sexual offender's failure to register as a sexual predator or sexual offender.
- Makes conforming changes to further model the bill after provisions of ss. 943.23 and 934.25, F.S., which include authorizing multiple 90-day court-ordered extensions of delay of notification and the nondisclosure period, incorporating procedures for retention of records and other evidence pending issuance of a court order or other process, and providing legal protections and reasonable compensation for those providing assistance with subpoena compliance.
- Removes a provision relating to service of process.
- Removes a provision that states that a subpoena may not compel the production of a record, etc., that would otherwise be protected from production.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/09/2018	.	
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	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 934.255, Florida Statutes, is created to  
read:

934.255 Subpoenas in investigations of sexual offenses.—

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

(a) "Child" means a person under 18 years of age.

(b) "Deliver" is construed in accordance with completed



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11 delivery, as provided for in Rule 1.080(b) of the Florida Rules  
12 of Civil Procedure.

13 (c) "Sexual abuse of a child" means a criminal offense  
14 based on any conduct described in s. 39.01(71).

15 (d) "Supervisory official" means the person in charge of an  
16 investigating or law enforcement agency's or entity's  
17 headquarters or regional office; the state attorney of the  
18 circuit from which the subpoena has been issued; the statewide  
19 prosecutor; or an assistant state attorney or assistant  
20 statewide prosecutor specifically designated by the state  
21 attorney or statewide prosecutor to make such written  
22 certification.

23 (2) An investigative or law enforcement officer who is  
24 conducting an investigation into:

25 (a) Allegations of the sexual abuse of a child or an  
26 individual's suspected commission of a crime listed in s.  
27 943.0435(1)(h)1.a.(I) may use a subpoena to compel the  
28 production of records, documents, or other tangible objects and  
29 the testimony of the subpoena recipient concerning the  
30 production and authenticity of such records, documents, or  
31 objects, except as provided in paragraphs (b) and (c).

32 (b) Allegations of the sexual abuse of a child may use a  
33 subpoena to require a provider of electronic communication  
34 services or remote computing services to disclose a record or  
35 other information pertaining to a subscriber or customer of such  
36 service as described in 934.23(4)(b), not including the contents  
37 of a communication. An investigative or law enforcement officer  
38 who receives records or information from a provider of  
39 electronic communication services or remote computing services



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under this paragraph is not required to provide notice to a subscriber or customer of that provider.

(c) Allegations of the sexual abuse of a child may use a subpoena to require a provider of remote computing services to disclose the contents of any wire or electronic communication that has been in electronic storage in an electronic communications system for more than 180 days and to which this paragraph is made applicable by paragraph (d), with prior notice, or with delayed notice pursuant to subsection (6), from the investigative or law enforcement officer to the subscriber or customer.

(d) Paragraph (c) applies to any electronic communication that is held or maintained on a remote computing service:

1. On behalf of a subscriber or customer of such service and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service.

2. Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.

A subpoena issued under this subsection must describe the records, documents, or other tangible objects required to be produced, and must prescribe a date by which such records, documents, or other tangible objects must be produced.

(3) At any time before the date prescribed in the subpoena



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by which records, documents, or other tangible objects must be produced, a person or entity receiving a subpoena issued pursuant to subsection (2) may, before a judge of competent jurisdiction, petition for an order modifying or setting aside the subpoena or a prohibition of disclosure issued under subsection (5) or subsection (9).

(4) An investigative or law enforcement officer who uses a subpoena issued under subsection (2) to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

(5) If a subpoena issued under subsection (2) is served upon a recipient and accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result, as described in subsection (7), the subpoena recipient is prohibited from disclosing to any person for a period of 180 days the existence of the subpoena.

(a) A recipient of a subpoena issued under subsection (2) that is accompanied by a written certification issued pursuant to this subsection is authorized to disclose information otherwise subject to any applicable nondisclosure requirement to persons as is necessary to comply with the subpoena, to an attorney in order to obtain legal advice or assistance regarding compliance with the subpoena, or to any other person as allowed and specifically authorized by the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification. The subpoena recipient shall notify any person to whom disclosure of the



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subpoena is made pursuant to this paragraph of the existence of,  
and length of time associated with, the nondisclosure  
requirement.

(b) A person to whom disclosure of the subpoena is made  
under paragraph (a) is subject to the nondisclosure requirements  
of this subsection in the same manner as the subpoena recipient.

(c) At the request of the investigative or law enforcement  
officer who obtained the subpoena or the supervisory official  
who issued the written certification, the subpoena recipient  
shall identify to the investigative or law enforcement officer  
or supervisory official, before or at the time of compliance  
with the subpoena, the name of any person to whom disclosure was  
made under paragraph (a). If the investigative or law  
enforcement officer or supervisory official makes such a  
request, the subpoena recipient has an ongoing duty to disclose  
the identity of any individuals notified of the subpoena's  
existence throughout the nondisclosure period.

(6) An investigative or law enforcement officer who obtains  
a subpoena pursuant to paragraph (2)(c) may delay the  
notification required under that paragraph for a period not to  
exceed 180 days upon the execution of a written certification of  
a supervisory official that there is reason to believe that that  
notification of the existence of the subpoena may have an  
adverse result described in subsection (7).

(7) Any of the following acts by a subpoena recipient  
constitute an adverse result:

(a) Endangering the life or physical safety of an  
individual.

(b) Fleeing from prosecution.



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(c) Destroying or tampering with evidence.

(d) Intimidating potential witnesses.

(e) Seriously jeopardizing an investigation or unduly delaying a trial.

(8) The investigative or law enforcement officer shall maintain a true copy of a written certification obtained under subsection (5) or subsection (6).

(9) The court may grant extensions of the nondisclosure period provided in subsection (5) or the delay of notification provided in subsection (6) of up to 90 days each upon application by an investigative or law enforcement officer, but only in accordance with subsection (11).

(10) Upon the expiration of the period of delay of notification in subsection (6) or subsection (9), an investigative or law enforcement officer who receives records or information pursuant to a subpoena issued under paragraph (2)(c) must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request, together with notice that:

(a) States with reasonable specificity the nature of the law enforcement inquiry; and

(b) Informs the subscriber or customer of all of the following:

1. That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested.

2. That notification of such subscriber or customer was



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delayed.

3. What investigative or law enforcement officer or what court made the written certification or determination pursuant to which that delay was made.

4. Which provision of ss. 934.21-934.28 allowed such a delay.

(11) An investigative or law enforcement officer acting under paragraph (2)(b), when not required to notify the subscriber or customer, or to the extent that such notice may be delayed pursuant to subsection (6), may apply to a court for an order prohibiting a provider of electronic communication services or remote computing services to whom the subpoena is directed, for such period as the court deems appropriate, from notifying any other person of the existence of such subpoena except as specifically authorized in subsection (5). The court shall enter such order if it determines that there is reason to believe that notification of the existence of the subpoena will result in an adverse result, as specified under subsection (7).

(12) In the case of contumacy by a person served a subpoena issued under subsection (2), or his or her refusal to comply with such a subpoena, the investigative or law enforcement officer who sought the subpoena may petition a court of competent jurisdiction to compel compliance. The court may address the matter as indirect criminal contempt pursuant to Rule 3.840 of the Florida Rules of Criminal Procedure. Any prohibited disclosure of a subpoena issued under subsection (2) for which a period of prohibition of disclosure provided in subsection (5), a delay of notification in subsection (6), or an extension thereof under subsection (9) is in effect is





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punishable as provided in s. 934.43.

(13) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a subpoena under this section.

(14) (a) A provider of wire or electronic communication services or a remote computing service, upon the request of an investigative or law enforcement officer, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(b) Records referred to in paragraph (a) shall be retained for a period of 90 days, which shall be extended for an additional 90 days upon a renewed request by an investigative or law enforcement officer.

(15) A provider of electronic communication service, a remote computing service, or any other person who furnished assistance pursuant to this section shall be held harmless from any claim and civil liability resulting from the disclosure of information pursuant to this section and shall be reasonably compensated for reasonable expenses incurred in providing such assistance. A witness who is subpoenaed to appear to testify under subsection (2) and who complies with the subpoena must be paid the same fees and mileage rate paid to a witness appearing before a court of competent jurisdiction in this state.

Section 2. This act shall take effect October 1, 2018.

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



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And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to subpoenas in investigations of sexual offenses; creating s. 934.255, F.S.; defining terms; authorizing an investigative or law enforcement officer conducting an investigation into specified matters to subpoena certain persons or entities for the production of records, documents, or other tangible things and testimony; specifying requirements for the issuance of a subpoena; authorizing a subpoenaed person to petition a court for an order modifying or setting aside the subpoena or a prohibition on disclosure; authorizing an investigative or law enforcement officer to retain subpoenaed records, documents, or other tangible objects under certain circumstances; prohibiting the disclosure of a subpoena for a specified period if the disclosure might result in an adverse result; providing exceptions; specifying the acts that constitute an adverse result; requiring the investigative or law enforcement officer to maintain a true copy of a written certification; authorizing a court to grant extension of certain periods under certain circumstances; requiring an investigative or law enforcement officer to serve or deliver a copy of the process along with specified information upon the expiration of a nondisclosure period or delay of



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notification; authorizing an investigative or law enforcement officer to apply to a court for an order prohibiting certain entities from notifying the existence of a subpoena under certain circumstances; authorizing an investigative or law enforcement officer to petition a court to compel compliance; authorizing a court to punish a person who does not comply with a subpoena as indirect criminal contempt; providing criminal penalties; precluding a cause of action against certain entities or persons for providing information, facilities, or assistance in accordance with terms of a subpoena; providing for preservation of evidence pending issuance of process; providing that certain entities or persons shall be held harmless from any claim and civil liability resulting from disclosure of specified information; providing for reasonable compensation for reasonable expenses incurred in providing assistance; requiring that a subpoenaed witness be paid certain fees and mileage; providing an effective date.

By Senator Baxley

12-00012A-18

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1 A bill to be entitled  
 2 An act relating to subpoenas in investigations of  
 3 sexual offenses; creating s. 934.255, F.S.; defining  
 4 terms; authorizing an investigative or law enforcement  
 5 officer conducting an investigation into specified  
 6 matters to subpoena certain persons or entities for  
 7 the production of records, documents, or other  
 8 tangible things and testimony; specifying requirements  
 9 for the issuance of a subpoena; requiring that a  
 10 subpoenaed witness be paid certain fees and mileage;  
 11 prohibiting the use of a subpoena to compel records,  
 12 documents, or other tangible objects protected under  
 13 certain circumstances; authorizing a subpoenaed person  
 14 to petition a court for an order modifying or setting  
 15 aside the subpoena or a prohibition on disclosure;  
 16 authorizing an investigative or law enforcement  
 17 officer to retain subpoenaed records, documents, or  
 18 other tangible objects under certain circumstances;  
 19 prohibiting the disclosure of a subpoena for a  
 20 specified period if the disclosure might result in an  
 21 adverse result; providing exceptions; specifying the  
 22 acts that constitute an adverse result; requiring the  
 23 investigative or law enforcement officer to maintain a  
 24 true copy of a written certification; authorizing a  
 25 court to grant extension of certain periods under  
 26 certain circumstances; requiring an investigative or  
 27 law enforcement officer to serve or deliver a copy of  
 28 the process along with specified information upon the  
 29 expiration of a nondisclosure period or delay of

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30 notification; authorizing an investigative or law  
 31 enforcement officer to apply to a court for an order  
 32 prohibiting certain entities from notifying the  
 33 existence of a subpoena under certain circumstances;  
 34 requiring that a subpoena be served in a specified  
 35 manner; authorizing an investigative or law  
 36 enforcement officer to petition a court to compel  
 37 compliance; authorizing a court to punish a person who  
 38 does not comply with a subpoena as indirect criminal  
 39 contempt; providing criminal penalties; providing an  
 40 effective date.

41  
 42 Be It Enacted by the Legislature of the State of Florida:

43  
 44 Section 1. Section 934.255, Florida Statutes, is created to  
 45 read:

46 934.255 Subpoenas in investigations of sexual offenses.—

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

48 (a) "Child" means a person under 18 years of age.

49 (b) "Child sexual offender" means a person required to  
 50 register as a sexual offender under s. 943.0435 or as a sexual  
 51 predator under s. 775.21, and the registration was for a  
 52 conviction of an offense in which a child was the victim.

53 (c) "Deliver" is construed in accordance with completed  
 54 delivery, as provided for in Rule 1.080(b) of the Florida Rules  
 55 of Civil Procedure.

56 (d) "Sexual abuse of a child" means a criminal offense  
 57 based on any conduct described in s. 39.01(71).

58 (e) "Supervisory official" means the person in charge of an

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investigating or law enforcement agency's or entity's headquarters or regional office; the state attorney of the circuit from which the subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification.

(2) An investigative or law enforcement officer who is conducting an investigation into:

(a) Allegations of the sexual abuse of a child, a child sexual offender's failure to register as required by chapter 943 or chapter 775, or an individual's suspected commission of a crime listed in s. 775.21(4)(a) may use a subpoena to compel the production of records, documents, or other tangible objects and the testimony of the subpoena recipient concerning the production and authenticity of such records, documents, or objects, except as provided in paragraphs (b) and (c).

(b) Allegations of the sexual abuse of a child may require a provider of electronic communication services or remote computing services to disclose a record or other information pertaining to a subscriber or customer of such service, not including the contents of a communication, when the investigative or law enforcement officer obtains such information in the manner prescribed in s. 934.23(4)(a), or through the use of a subpoena that is served upon a provider of electronic communication services or remote computer services, compelling the provider to produce records, documents, or other tangible objects and testimony concerning their production and authenticity. An investigative or law enforcement officer who

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receives records or information from a provider of electronic communication services or remote computing services under this paragraph is not required to provide notice to a subscriber or customer of that provider.

(c) Allegations of the sexual abuse of a child may require, through the use of a subpoena, a provider of electronic communication services or remote computing services to disclose a record or other information, including the contents of any wire or electronic communication that has been in electronic storage in an electronic communications system for more than 180 days and to which this subsection is made applicable by paragraph (d), with prior notice, or with delayed notice pursuant to subsection (8), from the investigative or law enforcement officer to the subscriber or customer.

(d) Paragraph (c) applies to any electronic communication that is held or maintained on a remote computing service:

1. On behalf of a subscriber or customer of such service and received by means of electronic transmission from, or created by means of, computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service.

2. Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.

A subpoena issued under this subsection must describe the records, documents, or other tangible objects required to be

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produced, and must prescribe a date by which such records, documents, or other tangible objects must be produced. A subpoena issued under this subsection and in the course of an investigation into a child sexual offender's alleged failure to register, as required by chapter 943 or chapter 775, may require production as soon as possible, but must allow the subpoena recipient a minimum of 24 hours after service of the subpoena to produce the records, documents, or other tangible objects.

(3) A witness who is subpoenaed to appear to testify under subsection (2) and who complies with the subpoena must be paid the same fees and mileage rate paid to a witness appearing before a court of competent jurisdiction in this state.

(4) A subpoena issued pursuant to subsection (2) may not compel the production of any record, document, or other tangible object which would otherwise be protected from production under the standards applicable to a subpoena duces tecum if issued by a court of competent jurisdiction.

(5) At any time before the date prescribed in the subpoena by which records, documents, or other tangible objects must be produced, a person or entity receiving a subpoena issued pursuant to subsection (2) may, before a judge of competent jurisdiction, petition for an order modifying or setting aside the subpoena or a prohibition of disclosure issued under subsections (7) or (12).

(6) An investigative or law enforcement officer who uses a subpoena issued under subsection (2) to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

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(7) If a subpoena issued under subsection (2) is served upon a recipient and accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result, as described in subsection (9), the subpoena recipient is prohibited from disclosing to any person for a period of 180 days the existence of the subpoena.

(a) A recipient of a subpoena issued under subsection (2) that is accompanied by a written certification issued pursuant to this subsection is authorized to disclose information otherwise subject to any applicable nondisclosure requirement to persons as is necessary to comply with the subpoena, to an attorney in order to obtain legal advice or assistance regarding compliance with the subpoena, or to any other person as allowed and specifically authorized by the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification. The subpoena recipient shall notify any person to whom disclosure of the subpoena is made pursuant to this paragraph of the existence of, and length of time associated with, the nondisclosure requirement.

(b) A person to whom disclosure of the subpoena is made under paragraph (a) is subject to the nondisclosure requirements of this subsection in the same manner as the subpoena recipient.

(c) At the request of the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification, the subpoena recipient shall identify to the investigative or law enforcement officer or supervisory official, before or at the time of compliance

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with the subpoena, the name of any person to whom disclosure was made under paragraph (a). If the investigative or law enforcement officer or supervisory official makes such a request, the subpoena recipient has an ongoing duty to disclose the identity of any individuals notified of the subpoena's existence throughout the nondisclosure period.

(8) An investigative or law enforcement officer who obtains a subpoena under subsection (2) may delay the notification required under paragraph (2)(c) for a period not to exceed 180 days after the execution of a written certification of a supervisory official unless there is reason to believe that notification of the existence of the subpoena may have an adverse result described in subsection (9).

(9) Any of the following acts by a subpoena recipient constitute an adverse result:

(a) Endangering the life or physical safety of an individual.

(b) Fleeing from prosecution.

(c) Destroying or tampering with evidence.

(d) Intimidating potential witnesses.

(e) Seriously jeopardizing an investigation or unduly delaying a trial.

(10) The investigative or law enforcement officer shall maintain a true copy of a written certification obtained under subsection (7) or subsection (8).

(11) The court may grant an extension of the nondisclosure period provided in subsection (7) or the delay of notification provided in subsection (8) of up to 90 days upon application, or by certification by an investigative or law enforcement officer,

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but only in accordance with subsection (13).

(12) Upon the expiration of the nondisclosure period provided in subsection (7) or delay of notification in subsection (8), an investigative or law enforcement officer who receives records or information pursuant to a subpoena issued under paragraph (2)(c) must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request, together with notice that:

(a) States with reasonable specificity the nature of the law enforcement inquiry; and

(b) Informs the subscriber or customer of all of the following:

1. That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested.

2. That notification of such subscriber or customer was delayed.

3. What investigative or law enforcement officer or what court made the written certification or determination pursuant to which that delay was made.

4. Which provision of ss. 934.21-934.28 allowed such a delay.

(13) An investigative or law enforcement officer acting under paragraph (2)(b), when not required to notify the subscriber or customer, or to the extent that such notice may be delayed pursuant to subsection (8), may apply to a court for an order prohibiting a provider of electronic communication

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233 services or remote computing services to whom the subpoena is  
 234 directed, for such period as the court deems appropriate, from  
 235 notifying any other person of the existence of such subpoena  
 236 except as specifically authorized in subsection (7). The court  
 237 shall enter such order if it determines that there is reason to  
 238 believe that notification of the existence of the warrant,  
 239 subpoena, or court order will result in an adverse result, as  
 240 specified under subsection (9).  
 241 (14) A subpoena issued under subsection (2) shall be served  
 242 in accordance with chapter 48, except that service may be made  
 243 on a domestic or foreign corporation or on a partnership or  
 244 other unincorporated association that is subject to suit under a  
 245 common name by delivering the subpoena to an officer, a managing  
 246 or general agent, or any other agent authorized by appointment  
 247 or by law to receive service of process. The affidavit of the  
 248 individual serving the subpoena entered on a true copy of the  
 249 subpoena is proof of service.  
 250 (15) In the case of contumacy by a person served a subpoena  
 251 issued under subsection (2), or his or her refusal to comply  
 252 with such a subpoena, the investigative or law enforcement  
 253 officer who sought the subpoena may petition a court of  
 254 competent jurisdiction to compel compliance. The court may  
 255 address the matter as indirect criminal contempt pursuant to  
 256 Rule 3.840 of the Florida Rules of Criminal Procedure. Any  
 257 prohibited disclosure of a subpoena issued under subsection (2)  
 258 for which a period of prohibition of disclosure provided in  
 259 subsection (7), a delay of notification in subsection (8), or an  
 260 extension thereof under subsection (11) is in effect is  
 261 punishable as provided in s. 934.43.

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

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262 Section 2. This act shall take effect October 1, 2018.

Page 10 of 10

**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)

01/09/2018

*Meeting Date*

618

*Bill Number (if applicable)*

Topic Subpoenas in investigations of sexual offenses

*Amendment Barcode (if applicable)*

Name Jennifer Cook Pritt

Job Title Assistant Commissioner

Address 2331 Phillips Road

Phone 850-410-7001

*Street*

Tallahassee

FL

32306

*City*

*State*

*Zip*

Email jenniferpritt@fdle.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Law Enforcement (FDLE)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

1/9/2018

*Meeting Date*

618

*Bill Number (if applicable)*

Topic Subpoenas in Investigations of Sexual Offenses

*Amendment Barcode (if applicable)*

Name Bob Gualtieri

Job Title Sheriff

Address 10750 Ulmerton Road

Phone 727-582-6200

*Street*

Largo

FL

33778

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-9-18  
Meeting Date

SB 618  
Bill Number (if applicable)

Topic Subpoenas in Inv.s of Sexual offenses

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney, 18<sup>th</sup> Judicial Circuit

Address 2725 Judge Fran Jamieson

Phone 321-637-5575

Street

Viera

Fl.

32940

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Prosecuting Attorneys 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)

11/9/18

Meeting Date

618

Bill Number (if applicable)

Topic Subpoenas in investigations of sexual abuses

Amendment Barcode (if applicable)

Name Lt. Rob Vitaliano + Agent Mike Spadafora

Job Title Brevard Co. Sheriff's Office

Address 700 PARK AVE

Street

Phone 321 506-8771

TITUSVILLE

City

FL

State

32780

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Brevard County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/9/18

Meeting Date

618

Bill Number (if applicable)

Topic SPEAK ON BEHALF of Bill

Amendment Barcode (if applicable)

Name Wayne Ivey

Job Title Sheriff

Address 700 S. PARK Ave

Phone (351) 427-7231

Street

Titusville

City

FL

State

32708

Zip

Email Wayne.Ivey@bcsos.us

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Brevard County

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)

9 Jan 18

Meeting Date

618

Bill Number (if applicable)

Topic Subpoena's in Sexual Investigations

Amendment Barcode (if applicable)

Name Banney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone \_\_\_\_\_

Street

Tall

Email \_\_\_\_\_

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-9-18

Meeting Date

618

Bill Number (if applicable)

Topic Subpoenas and Investigations of Sexual offenses

Amendment Barcode (if applicable)

Name CJ Johnson

Job Title General Counsel

Address 275 Center Place

Phone 321-501-9903

Street

Melbourne

City

FL

State

32940

Zip

Email CJohnson@ccchampions.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Community Champions, Businesses Against Child Exploitation

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: CS/SB 854

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Corrections Specialists

DATE: January 10, 2018

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 854 amends s. 943.13, F.S., authorizing a person to be employed as a full-time, part-time, or auxiliary correctional officer at 18 years of age, rather than the current age requirement of 19 years of age.

The bill also creates s. 944.145, F.S., prohibiting a correctional officer who is younger than 19 years of age from supervising inmates, but authorizing him or her to perform all other duties performed by a full-time, part-time, or auxiliary correctional officer.

The bill is effective July 1, 2018.

**II. Present Situation:**

The Criminal Justice Standards and Training Commission (Commission), which is housed within the Florida Department of Law Enforcement (FDLE) is, in part, responsible for implementing



requirements related to the training, certification, and discipline of full-time, part-time,<sup>1</sup> and auxiliary<sup>2</sup> correctional officers.<sup>3</sup>

Section 943.10(2), F.S., defines “correctional officer” to mean any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.<sup>4</sup>

Section 943.13, F.S., provides that to be eligible to be employed as a correctional officer, the person must:

- Be at least 19 years of age;
- Be a citizen of the United States, notwithstanding any law of the state to the contrary;
- Be a high school graduate or its equivalent;<sup>5</sup>
- Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States;<sup>6</sup>
- Have documentation of his or her processed fingerprints on file with the employing agency or, if a private correctional officer, have documentation of his or her processed fingerprints on file with the Department of Corrections (DOC) or the Commission;<sup>7</sup>

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<sup>1</sup> Section 943.10(7), F.S., defines “part-time correctional officer” to mean any person who is employed or appointed less than full time, as defined by the employing or appointing agency, with or without compensation, whose responsibilities include the supervision, protection, care, custody, and control of inmates within a correctional institution.

<sup>2</sup> Section 943.10(9), F.S., defines “auxiliary correctional officer” to mean any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time correctional officer and who, while under the supervision of a full-time or part-time correctional officer, has the same authority as a full-time or part-time correctional officer for the purpose of providing supervision, protection, care, custody, and control of inmates within a correctional institution or a county or municipal detention facility.

<sup>3</sup> Correctional officers are eligible for special risk class benefits in accordance with s. 121.0515, F.S. Special risk class membership awards more retirement credit per year of service than is awarded to other employees due to the increased risk that such employees undertake as a part of their duties. Membership of correctional officers in the special risk class is determined by whether the officer’s primary duties and responsibilities involve the custody of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or whether the officer is the supervisor or command officer of a member or members who have such responsibilities.

Section 121.0515(1) and (3)(c), F.S.

<sup>4</sup> Section 943.10(2), F.S.

<sup>5</sup> Section 943.13(3), F.S., provides that the Commission must define the term high school equivalency in rule.

<sup>6</sup> Section 943.13(4), F.S., further specifies that: a. Any person who, after July 1, 1981, pleads guilty or nolo contendere to or is found guilty of any felony or of a misdemeanor involving perjury or a false statement is not eligible for employment or appointment as an officer, notwithstanding suspension of sentence or withholding of adjudication; and b. Any person who has pled nolo contendere to a misdemeanor involving a false statement, prior to December 1, 1985, and has had such record sealed or expunged shall not be deemed ineligible for employment or appointment as an officer.

<sup>7</sup> Section 943.13(5), F.S., provides that the FDLE must retain and enter into the statewide automated biometric identification system all fingerprints submitted. Thereafter, the fingerprints must be available for all purposes and uses authorized for arrest fingerprints entered in the statewide automated biometric identification system pursuant to s. 943.051, F.S. The FDLE is also required to search all arrest fingerprints received pursuant to s. 943.051, F.S., against the fingerprints retained in the statewide automated biometric identification system in accordance with s. 943.13, F.S., and report to the employing agency any arrest records that are identified with the retained employee’s fingerprints. These fingerprints must be forwarded to the FDLE for processing and retention.

- Have passed a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the Commission;
- Have a good moral character as determined by a background investigation by the Commission;
- Execute and submit a sworn affidavit-of-applicant form attesting to his or her compliance with the above-listed requirements to the employing agency or, if a private correctional officer, submit to the appropriate governmental entity;
- Complete a Commission approved basic recruit training program for the applicable criminal justice discipline, unless exempt under law;<sup>8</sup> and
- Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline.

If a critical need for officers exists, the employing agency may temporarily employ a person as a correctional officer, if he or she has met all the requirements listed above, even if he or she has not completed basic recruit school or received an acceptable score on the certification examination.<sup>9</sup> Any person employed as a temporary correctional officer must be supervised by another correctional officer anytime he or she is performing any duties of a correctional officer and must attend the first basic recruit training program offered in the geographic area within 180 consecutive days of employment.<sup>10</sup> A person temporarily employed as a correctional officer is prohibited from being employed in the position for more than 30 months. However, a person that is attending the first available basic recruit training program offered in his or her geographic area may continue to be employed as a temporary correctional officer until he or she:

- Fails or withdraws from the basic recruit training program; or
- Is separated from employment or appointment by the employing agency.<sup>11</sup>

Any person employed as a correctional officer, regardless of age, must comply with all the above-described eligibility criteria and any other requirements imposed by the Commission, including such requirements as continuing education requirements proscribed in s. 943.135, F.S.

The DOC reports that 23 states permit 18 year olds to be employed as correctional officers.<sup>12</sup>

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<sup>8</sup> Section 943.13(9), F.S., provides an exemption for an applicant to be required to take the basic recruit training program, including that if the applicant has completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government and served as a full-time sworn officer in another state or for the Federal Government for at least 1 year. For the exemption to be available, the applicant cannot have more than an 8-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for the exemption.

<sup>9</sup> Section 943.131(1)(a), F.S.

<sup>10</sup> Section 943.131(1)(a) and (c), F.S.

<sup>11</sup> Section 943.131(1)(b), F.S.

<sup>12</sup> These states include Arkansas, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Florida Department of Corrections, *Senate Bill 854 Analysis*, at p. 2, (September 19, 2017) (on file with the Senate Committee on Criminal Justice).

**III. Effect of Proposed Changes:**

The bill amends s. 943.13, F.S., expanding the eligibility requirements of a correctional officer to include a person who is 18 years of age, rather than 19 years of age or older. The person seeking employment at the age of 18 must comply with all of the eligibility requirements of s. 943.13, F.S., described above, however may be 18 years of age, rather than 19.

The bill also creates s. 944.145, F.S., prohibiting a correctional officer younger than 19 years of age from supervising inmates. A correctional officer that is younger than 19 may perform all other duties performed by a full-time, part-time, or auxiliary correctional officer.<sup>13</sup>

The bill is effective July 1, 2018.

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill permits the DOC to hire persons who are 18 years of age to perform limited correctional officer functions. To the extent that this bill increases the number of persons the DOC is able to hire, the bill will likely reduce the current vacancy rate within correctional facilities.

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<sup>13</sup> A person employed as a correctional officer who is younger than 19 years of age will not qualify for special risk class benefits because he or she will not be supervising inmates, which is required pursuant to s. 121.0515, F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 943.13 of the Florida Statutes.

This bill creates section 944.145 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Criminal Justice on January 9, 2018:**

The committee substitute amends s. 943.13, F.S., expanding the eligibility requirements of a correctional officer to include a person who is 18 years of age, rather than 19 years of age or older. The committee substitute also creates s. 944.145, F.S., prohibiting a correctional officer younger than 19 years of age from supervising inmates.

- B. **Amendments:**

None.



772110

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/09/2018	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (1) of section 943.13, Florida  
Statutes, is amended to read

943.13 Officers' minimum qualifications for employment or  
appointment.—On or after October 1, 1984, any person employed or  
appointed as a full-time, part-time, or auxiliary law  
enforcement officer or correctional officer; on or after October



772110

1, 1986, any person employed as a full-time, part-time, or auxiliary correctional probation officer; and on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Department of Management Services shall:

(1) Be at least 19 years of age, except that any person employed as a full-time, part-time, or auxiliary correctional officer may be at least 18 years of age.

Section 2. Section 944.145, Florida Statutes, is created to read:

944.145 Correctional officers under the age of 19.—A correctional officer who is under the age of 19 years shall not supervise inmates, but may perform all of the other duties performed by a full-time, part-time, or auxiliary correctional officer.

Section 3. This act shall take effect July 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to correctional officers; amending s. 943.13, F.S.; permitting a full-time, part-time, or auxiliary correctional officer to be employed at 18 years of age; creating s. 944.145, F.S.; prohibiting a correctional officer who is under 19 years of age from supervising inmates; permitting an officer who is



772110

40       under 19 years of age to perform all other tasks  
41       performed by a full-time, part-time, or auxiliary  
42       correctional officer; providing an effective date.

By Senator Brandes

24-01031-18

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A bill to be entitled

An act relating to corrections specialists; creating s. 943.1311, F.S.; authorizing the Department of Corrections to employ or appoint a person as a corrections specialist if that person is at least 18 years of age and meets specified criteria; prohibiting a person from being employed or appointed for longer than a certain period of time; providing exceptions; prohibiting a corrections specialist program participant from supervising inmates; specifying the duties that a person employed or appointed as a corrections specialist is authorized to perform; providing an effective date.

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

Section 1. Section 943.1311, Florida Statutes, is created to read:

943.1311 Corrections Specialist Program.—

(1) (a) The Department of Corrections may employ or appoint a person as a corrections specialist if he or she is at least 18 years of age, complies with all the qualifications for employment specified in s. 943.13(2)-(8), and, if he or she has not fulfilled the requirements of s. 943.13(9) and (10), he or she is enrolled in an approved basic recruit training program available in the geographic area.

(b) A person may not be employed or appointed as a corrections specialist under this section for more than 30 months. However, a person who is employed or appointed as a

Page 1 of 2

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corrections specialist and is attending the first available training program offered in his or her geographic area may continue to be employed or appointed until he or she:

1. Fails or withdraws from the basic recruit training program; or

2. Is separated from employment or appointment by the employing agency.

(2) A person employed or appointed under this section may not supervise inmates, but may perform all of the other duties performed by a person temporarily employed or appointed under s. 943.131.

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

Page 2 of 2

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

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

January 9, 2018

*Meeting Date*

SB 854

*Bill Number (if applicable)*

772110

*Amendment Barcode (if applicable)*

Topic Amendment 772110 for SB 854 Corrections Specialists

Name Jared Torres

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Corrections

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

1/9/2018

SB 854

*Meeting Date*

*Bill Number (if applicable)*

Topic Corrections Specialists

*Amendment Barcode (if applicable)*

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Law Enforcement

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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

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

January 9, 2018

*Meeting Date*

SB 854

*Bill Number (if applicable)*

Topic SB 854 Corrections Specialists

*Amendment Barcode (if applicable)*

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Corrections

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)

9 Jan 18

Meeting Date

854

Bill Number (if applicable)

Topic Corrections specialist

Amendment Barcode (if applicable)

Name Barney Bishop

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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

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** December 24, 2017

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I respectfully request that **Senate Bill #854**, relating to **Corrections Specialists**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

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

Senator Jeff Brandes  
Florida Senate, District 24

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

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

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

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BILL: SB 866

INTRODUCER: Senator Bracy

SUBJECT: Sentencing

DATE: January 8, 2018

REVISED: 01/10/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	<b>Favorable</b>
2.			JU	
3.			ACJ	
4.			AP	

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**I. Summary:**

SB 866 amends s. 775.082(10), F.S., to require a nonstate prison sanction for certain nonviolent offenders who commit an offense on or after October 1, 2018, and whose total sentence points are 44 points or fewer, unless a jury or a court (if the defendant waives a jury trial) finds that a nonstate prison sanction could present a danger to the public. Under current s. 775.082(10), F.S., this provision is triggered when the offender's total sentence points are 22 points or fewer. Current law also requires a court to make the "danger to the public" findings. The change to require jury findings (unless there is a jury waiver) is intended to address a recent Florida case holding that s. 782.082(10), F.S., is unconstitutional because a court, rather than a jury, makes the "danger to the public" findings.

The bill also amends s. 921.0024(2), F.S., of the Criminal Punishment Code (Code), to provide that, for offenses committed on or after October 1, 2018, the lowest permissible sentence under the Code is a nonstate prison sanction if total sentence points equal or are less than 52 points. Current s. 921.0024(2), F.S., specifies the lowest permissible sentence under the Code is a nonstate prison sanction if total sentence points equal or are less than 44 points. The bill also makes conforming changes to the calculation for determining the lowest permissible sentence in state prison months when total sentence points exceed 52 points.

The effect of these changes is that there will be more offenders who score a nonstate prison sanction as the lowest permissible sentence, and the scored lowest permissible sentence in state prison months for offenders who score more than 52 total sentence points will be six months less than under current law.

The Criminal Justice Impact Conference estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds). See Section V. Fiscal Impact Statement.

## II. Present Situation:

### Criminal Punishment Code

The Criminal Punishment Code<sup>1</sup> (Code) is Florida's "primary sentencing policy."<sup>2</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>3</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. 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, though the court may impose a prison sentence up to the statutory maximum for any felony offense committed. 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>4</sup> Absent mitigation,<sup>5</sup> the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the offenses committed.<sup>6</sup>

### Length of Stay

According to a 2015 study of the operations of the Department of Corrections (DOC), length of stay (LOS) in Florida correctional facilities exceeds the national LOS average (30 months). LOS has consistently increased in Florida "from just under 30 months on average in 2008 to almost 40 months by 2015."<sup>7</sup> According to the study's authors, the longer average LOS in Florida "explains to a large degree Florida's significantly higher incarceration rate of 522 per 100,000 population versus the U.S. state incarceration rate of 416 per 100,000."<sup>8</sup>

### Departure from a Code Sentence

An exception to typical Code sentencing is found in s. 775.082(10), F.S. Under this subsection, if a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third

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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> *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 Dec. 12, 2017).

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

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

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

<sup>6</sup> If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

<sup>7</sup> *Study of Operations of the Florida Department of Corrections* (prepared by Carter Goble Associates, LLC), Report No. 15-FDC (November 2015), Office of Program Policy Analysis and Government Accountability, Florida Legislature, p. 80 (footnote omitted). This study is available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/15-FDC.pdf> (last visited on Dec. 12, 2017).

<sup>8</sup> *Id.*

degree felony but not a forcible felony,<sup>9</sup> and if the defendant's total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, the court must sentence the defendant to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the defendant to a state correctional facility.<sup>10</sup>

### **Woods v. State**

In *Apprendi v. New Jersey*, the U.S. Supreme Court held: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."<sup>11</sup> "[T]he Sixth Amendment provides defendants with the right to have a jury find those facts beyond a reasonable doubt."<sup>12</sup>

In a subsequent case, *Blakely v. Washington*, the U.S. Supreme Court opined that a defendant may waive his or her rights under *Apprendi*.<sup>13</sup> "In the context of plea deals, 'the State is free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to judicial factfinding.... If appropriate waivers are procured, States may continue to offer judicial factfinding as a matter of course to all defendants who plead guilty.'"<sup>14</sup>

In *Woods v. State*, the First District Court of Appeal held that s. 775.082(10), F.S., was unconstitutional: "The statutory authority in the last sentence of subsection (10), allowing a trial judge to make factual findings to increase an offender's sentence to a state correctional facility, is unconstitutional because only a jury may make findings that increase a penalty beyond a statutory maximum (which is up to twelve months of incarceration as a nonstate sanction)."<sup>15</sup> The court cited as authority *Apprendi*, *Blakely*, and *Plott v. State*,<sup>16</sup> a Florida Supreme Court case.

To date, the *Woods* decision has not been overruled by the Florida Supreme Court and no other Florida appellate court appears to have addressed the same constitutional question addressed in

<sup>9</sup> Section 776.08, F.S., defines a "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>10</sup> Section 775.082(10), F.S.

<sup>11</sup> *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

<sup>12</sup> *Alleyne v. United States*, 133 S.Ct. 2151, 2160 (2013), citing *Apprendi v. New Jersey*, 530 U.S. at 484.

<sup>13</sup> *Blakely v. Washington*, 542 U.S. 296, 310 (2004).

<sup>14</sup> *Murray v. State*, 133 So.3d. 557, 558 (Fla.1st DCA 2014), quoting *Blakely*, 542 U.S. at 310. See also *Smith v. State*, 174 So.3d 1025 (Fla. 2d DCA 2015) (departure sentence based on judicial findings did not violate *Apprendi/Blakely* jury requirement because the defendant entered a plea to offenses upon which his departure was based and did not object to factual bases for the departure). In *Murray*, the court rejected a claim that a sentence under s. 775.082(10), F.S., violated *Apprendi* because the defendant "knowingly accepted the judge as factfinder after discussion with the judge and counsel," and therefore "validly waived any *Apprendi/Blakely* concern." *Murray*, 133 So.3d at 559.

<sup>15</sup> *Woods v. State*, 214 So.3d 803, 805-806 (Fla. 1st DCA 2017).

<sup>16</sup> 148 So.3d 90, 95 (Fla. 2014) ("[W]e hold that upward departure sentences that are unconstitutionally enhanced in violation of *Apprendi* and *Blakely* patently fail to comport with constitutional limitations, and consequently, the sentences are illegal under rule 3.800(a).").



*Woods v. State*.<sup>17</sup> If a legal issue has only been addressed by one Florida district court of appeal and the decision has not been overruled by the Florida Supreme Court, the decision is controlling law on that legal issue and must be followed by all Florida trial courts.<sup>18</sup>

### III. Effect of Proposed Changes:

The bill amends s. 775.082(10), F.S., to require a nonstate prison sanction for certain nonviolent offenders who commit an offense on or after October 1, 2018, and whose total sentence points are 44 points or fewer, unless a jury or a court (if the defendant waives a jury trial) finds that a nonstate prison sanction could present a danger to the public. Under current s. 775.082(10), F.S., this provision is triggered when the offender's total sentence points are 22 points or fewer. Current law also requires a court to make the "danger to the public" findings. The change to require jury findings (unless there is a jury waiver) is intended to address *Woods v. State* (discussed, supra), which held that s. 775.082(10), F.S., is unconstitutional because a court, rather than a jury, makes the "danger to the public" findings.

The bill also amends s. 921.0024(2), F.S., of the Criminal Punishment Code (Code), to provide that, for offenses committed on or after October 1, 2018, the lowest permissible sentence under the Code is a nonstate prison sanction if total sentence points equal or are less than 52 points. Current s. 921.0024(2), F.S., specifies the lowest permissible sentence under the Code is a nonstate prison sanction if total sentence points equal or are less than 44 points.

Under current s. 921.0024(2), F.S., an offender can only score a state prison sentence as the lowest permissible sentence if total sentence points exceed 44 points. The lowest permissible sentence in state prison months is calculated by subtracting 28 points from the total sentence points (exceeding 44 points) and decreasing the remaining total by 25 percent. A prison sentence must exceed 12 months.<sup>19</sup> This calculation will always result in a state prison sentence that exceeds 12 months.

The bill also amends s. 921.0024(2), F.S., to make conforming changes to the calculation for determining the lowest permissible sentence in state prison months when total sentence points exceed 52 points. Under the bill, for offenses committed on or after October 1, 2018, the lowest permissible sentence in state prison months is calculated by subtracting 36 points from the total sentence points (exceeding 52 points) and decreasing the remaining total by 25 percent. This calculation will always result in a state prison sentence that exceeds 12 months.

The effect of these changes is:

- There will be more offenders who score a nonstate prison sanction as the lowest permissible sentence.

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<sup>17</sup> In a 2016 case, the Second District Court of Appeal did not reach a constitutional argument raised by the appellant that was similar to the argument raised in *Woods*, but the court noted that "no court in Florida has yet reached the issue." *Reed v. State*, 192 So.3d 641, 644, n. 2 (Fla. 2d DCA 2016) (citations omitted). Senate Criminal Justice Committee staff reviewed cases subsequent to *Reed* but did not find any Florida Supreme Court case overruling *Woods* or any Florida appellate case addressing a constitutional argument similar to that raised in *Woods*.

<sup>18</sup> *Pardo v. State*, 596 So.2d 665, 666 (Fla. 1992).

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

- Those offenders with total sentence points exceeding 52 points, will score a lowest permissible sentence in state prison months that is six months less than they would score under current s. 921.0024(2), F.S. For example, a Level 7 primary offense (one count) scores 56 sentence points. Under s. 921.0024(2), F.S., as amended by the bill, a first-time offender with only a Level 7 primary offense (one count)<sup>20</sup> would score a state prison sentence of 15 months as the lowest permissible sentence in state prison months. In contrast, under current s. 921.0024(2), F.S., the same offender would score a state prison sentence of 21 months as the lowest permissible sentence in state prison months.

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

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have a “negative significant” prison bed impact (a decrease of more than 25 prison beds).<sup>21</sup>

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<sup>20</sup> In this example, the offender does not score points for any factor other than one count of the primary offense.

<sup>21</sup> Telephonic communication on Jan. 9, 2018, between staff of the Senate Committee on Criminal Justice and staff of the Office of Economic and Demographic Research.

The Legislature's Office of Economic and Demographic Research (EDR) provided information relevant to the CJIC impact estimate.<sup>22</sup> Regarding Section 1 of the bill, which amends s. 775.02(10), F.S., the EDR comments:

Per DOC, in FY 16-17, 4.1% of those sentenced for offenses prior to the creation of s. 775.082(10), F.S. (July 1st, 2009) were sentenced to prison, and 1.5% of those sentenced for offenses committed after this law was created received a prison sentence. For those with sentencing points between 23 and 44 whose criteria matches s. 775.082(10), F.S., 10.7% received a prison sentence in FY 16-17 (3,163 adj.).<sup>23</sup>

It is not known how the inclusion of the jury will impact sentencing decisions for those with 44 points or less, nor is it known how judges will respond in the other 96.2% of cases, given that they tended to incarcerate at a higher rate than those under 22 points before the initial statute passed (10.7% compared to 4.1%). However, it is likely that judicial activity will change in some form with the implementation of this new scoring structure, and though the magnitude of the reduction cannot be quantified, with 3,163 (adj.) offenders receiving prison sentences, even a small shift in judicial and jury activity in response to this change could produce a significant effect.

Regarding Section 2 of the bill, which amends s. 921.0024(2), F.S., the EDR comments:

... Under this bill, 52 points or less would be the new range where the lowest permissible sentence is a nonstate prison sanction, "unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate," and prison sentence length above 52 points would be calculated by subtracting 36 points from the total sentence points and decreasing the remaining total by 25%. *This would reduce future prison sentences by 6 months for point calculations.*<sup>24</sup>

Per DOC, in FY 16-17, about 14.2% of sentences up to 44 points were state prison sanctions, excluding those fitting the criteria in amended s. 775.082(10), F.S. Between 44 and 52 points, prison sentences jumped to 47.9% of all sentences, and above 52 points they reached 62.6%. This shows that judges already give nonstate prison sanctions to offenders between 44 and 52 points in over half of the sentences. Furthermore, such discretion also applies for prison sentence length. Currently, a person with 53 points should receive a prison sentence of 18.75 months, with the new bill dropping that to 12.75 months. However, a close examination of the 53 point category shows that 34% of

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<sup>22</sup> Information provided by EDR staff (on file with the Senate Committee on Criminal Justice). All EDR impact analysis information is from this source.

<sup>23</sup> The abbreviation "adj." means "adjusted." Sentencing data from the DOC is incomplete, which means that the numbers the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

<sup>24</sup> Emphasis provided by Senate Criminal Justice Committee staff.

offenders sentenced under this point total received a prison sentence that was 18 months or less.

It is not known how this section of the bill will impact current judicial discretion. However, it is likely that judicial activity will change in some form with the implementation of this new scoring structure, with a reduction in prison sentencing between 45 and 52 points. Although the magnitude of that reduction cannot be quantified, there are 4,419 (adj.) offenders who received prison sentences across these points, so even a small shift among judges toward nonstate sanctions could significantly impact prison sentences, as well as with the additional shift downwards in prison sentence length for those with 53 points or more.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.082 and 921.0024.

This bill also reenacts the following sections of the Florida Statutes for the purpose of the amendments made to section 921.0024 of the Florida Statutes: 921.00241, 921.0026, 921.00265, 924.06, 948.01, 948.06, and 948.20.

**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.

By Senator Bracy

11-00302B-18

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A bill to be entitled

An act relating to sentencing; amending s. 775.082, F.S.; revising the threshold of assessed sentence points below which a court must sentence nonviolent felony offenders who commit certain offenses on or after a specified date to a nonstate prison sanction; providing an exception; amending s. 921.0024, F.S.; revising the computation of the lowest permissible sentence under the Criminal Punishment Code for certain offenses; reenacting ss. 921.00241(1), 921.0026(1) and (2)(m), 921.00265(1), 924.06(1)(e), 948.01(7) and (8), 948.06(2)(i) and (j) and (8)(b), and 948.20(1), F.S., relating to prison diversion programs, mitigating circumstances, recommended sentences, appeals by defendants, placement on probation or into community control, violations of probation and community control, and drug offender probation, respectively, to incorporate the amendment made to s. 921.0024, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (10) of section 775.082, Florida Statutes, is amended to read:

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

(10) If a defendant is sentenced for an offense committed

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on or after October 1, 2018 ~~July 1, 2009~~, which is a third degree felony but not a forcible felony as defined in s. 776.08, and excluding any third degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are ~~44~~ 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the jury makes findings, or the defendant waives the right to a jury trial and ~~the~~ court makes written findings, that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.

Section 2. Subsection (2) of section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(2) (a) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure.

(b) For offenses committed on or after October 1, 1998, and before October 1, 2018, the lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

(c) For offenses committed on or after October 1, 2018, the

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lowest permissible sentence is any nonstate prison sanction in which the total sentence points equal or are fewer than 52 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceed 52 points, the lowest permissible sentence in prison months shall be calculated by subtracting 36 points from the total sentence points and decreasing the remaining total by 25 percent.

(d) The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. An offender sentenced to life imprisonment under this section is not eligible for any form of discretionary early release, except executive clemency or conditional medical release under s. 947.149.

Section 3. For the purpose of incorporating the amendment made by this act to section 921.0024, Florida Statutes, in a reference thereto, subsection (1) of section 921.00241, Florida Statutes, is reenacted to read:

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921.00241 Prison diversion program.—

(1) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, a court may divert from the state correctional system an offender who would otherwise be sentenced to a state facility by sentencing the offender to a nonstate prison sanction as provided in subsection (2). An offender may be sentenced to a nonstate prison sanction if the offender meets all of the following criteria:

(a) The offender's primary offense is a felony of the third degree.

(b) The offender's total sentence points score, as provided in s. 921.0024, is not more than 48 points, or the offender's total sentence points score is 54 points and 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law.

(c) The offender has not been convicted or previously convicted of a forcible felony as defined in s. 776.08, but excluding any third degree felony violation under chapter 810.

(d) The offender's primary offense does not require a minimum mandatory sentence.

Section 4. For the purpose of incorporating the amendment made by this act to section 921.0024, Florida Statutes, in references thereto, subsection (1) and paragraph (m) of subsection (2) of section 921.0026, Florida Statutes, are reenacted to read:

921.0026 Mitigating circumstances.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

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(1) A downward departure from the lowest permissible sentence, as calculated according to the total sentence points pursuant to s. 921.0024, is prohibited unless there are circumstances or factors that reasonably justify the downward departure. Mitigating factors to be considered include, but are not limited to, those listed in subsection (2). The imposition of a sentence below the lowest permissible sentence is subject to appellate review under chapter 924, but the extent of downward departure is not subject to appellate review.

(2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:

(m) The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. For purposes of this paragraph, the term "nonviolent felony" has the same meaning as provided in s. 948.08(6).

Section 5. For the purpose of incorporating the amendment made by this act to section 921.0024, Florida Statutes, in a reference thereto, subsection (1) of section 921.00265, Florida Statutes, is reenacted to read:

921.00265 Recommended sentences; departure sentences; mandatory minimum sentences.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(1) The lowest permissible sentence provided by

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calculations from the total sentence points pursuant to s. 921.0024(2) is assumed to be the lowest appropriate sentence for the offender being sentenced. A departure sentence is prohibited unless there are mitigating circumstances or factors present as provided in s. 921.0026 which reasonably justify a departure.

Section 6. For the purpose of incorporating the amendment made by this act to section 921.0024, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 924.06, Florida Statutes, is reenacted to read:

924.06 Appeal by defendant.—

(1) A defendant may appeal from:

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

Section 7. For the purpose of incorporating the amendment made by this act to section 921.0024, Florida Statutes, in references thereto, subsections (7) and (8) of section 948.01, Florida Statutes, are reenacted to read:

948.01 When court may place defendant on probation or into community control.—

(7) (a) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the sentencing court may place the defendant into a postadjudicatory treatment-based drug court program if the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer, the offense is a nonviolent felony, the defendant is amenable to substance abuse treatment, and the

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defendant otherwise qualifies under s. 397.334(3). The satisfactory completion of the program shall be a condition of the defendant's probation or community control. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

(b) The defendant must be fully advised of the purpose of the program, and the defendant must agree to enter the program. The original sentencing court shall relinquish jurisdiction of the defendant's case to the postadjudicatory drug court program until the defendant is no longer active in the program, the case is returned to the sentencing court due to the defendant's termination from the program for failure to comply with the terms thereof, or the defendant's sentence is completed.

(8)(a) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2016, the sentencing court may place the defendant into a postadjudicatory mental health court program if the offense is a nonviolent felony, the defendant is amenable to mental health treatment, including taking prescribed medications, and the defendant is otherwise qualified under s. 394.47892(4). The satisfactory completion of the program must be a condition of the defendant's probation or community control. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08. Defendants charged with resisting an officer with violence under s. 843.01, battery on a law enforcement officer under s. 784.07, or aggravated assault may participate in the mental health court program if the court

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so orders after the victim is given his or her right to provide testimony or written statement to the court as provided in s. 921.143.

(b) The defendant must be fully advised of the purpose of the mental health court program, and the defendant must agree to enter the program. The original sentencing court shall relinquish jurisdiction of the defendant's case to the postadjudicatory mental health court program until the defendant is no longer active in the program, the case is returned to the sentencing court due to the defendant's termination from the program for failure to comply with the terms thereof, or the defendant's sentence is completed.

(c) The Department of Corrections may establish designated and trained mental health probation officers to support individuals under supervision of the mental health court program.

Section 8. For the purpose of incorporating the amendment made by this act to section 921.0024, Florida Statutes, in references thereto, paragraphs (i) and (j) of subsection (2) and paragraph (b) of subsection (8) of section 948.06, Florida Statutes, are reenacted to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(2)

(i)1. Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the court may order the defendant to successfully complete a postadjudicatory treatment-based drug court program if:



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233 a. The court finds or the offender admits that the offender  
 234 has violated his or her community control or probation;  
 235 b. The offender's Criminal Punishment Code scoresheet total  
 236 sentence points under s. 921.0024 are 60 points or fewer after  
 237 including points for the violation;  
 238 c. The underlying offense is a nonviolent felony. As used  
 239 in this subsection, the term "nonviolent felony" means a third  
 240 degree felony violation under chapter 810 or any other felony  
 241 offense that is not a forcible felony as defined in s. 776.08;  
 242 d. The court determines that the offender is amenable to  
 243 the services of a postadjudicatory treatment-based drug court  
 244 program;  
 245 e. The court has explained the purpose of the program to  
 246 the offender and the offender has agreed to participate; and  
 247 f. The offender is otherwise qualified to participate in  
 248 the program under the provisions of s. 397.334(3).  
 249 2. After the court orders the modification of community  
 250 control or probation, the original sentencing court shall  
 251 relinquish jurisdiction of the offender's case to the  
 252 postadjudicatory treatment-based drug court program until the  
 253 offender is no longer active in the program, the case is  
 254 returned to the sentencing court due to the offender's  
 255 termination from the program for failure to comply with the  
 256 terms thereof, or the offender's sentence is completed.  
 257 (j)1. Notwithstanding s. 921.0024 and effective for  
 258 offenses committed on or after July 1, 2016, the court may order  
 259 the offender to successfully complete a postadjudicatory mental  
 260 health court program under s. 394.47892 or a military veterans  
 261 and servicemembers court program under s. 394.47891 if:

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

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262 a. The court finds or the offender admits that the offender  
 263 has violated his or her community control or probation;  
 264 b. The underlying offense is a nonviolent felony. As used  
 265 in this subsection, the term "nonviolent felony" means a third  
 266 degree felony violation under chapter 810 or any other felony  
 267 offense that is not a forcible felony as defined in s. 776.08.  
 268 Offenders charged with resisting an officer with violence under  
 269 s. 843.01, battery on a law enforcement officer under s. 784.07,  
 270 or aggravated assault may participate in the mental health court  
 271 program if the court so orders after the victim is given his or  
 272 her right to provide testimony or written statement to the court  
 273 as provided in s. 921.143;  
 274 c. The court determines that the offender is amenable to  
 275 the services of a postadjudicatory mental health court program,  
 276 including taking prescribed medications, or a military veterans  
 277 and servicemembers court program;  
 278 d. The court explains the purpose of the program to the  
 279 offender and the offender agrees to participate; and  
 280 e. The offender is otherwise qualified to participate in a  
 281 postadjudicatory mental health court program under s.  
 282 394.47892(4) or a military veterans and servicemembers court  
 283 program under s. 394.47891.  
 284 2. After the court orders the modification of community  
 285 control or probation, the original sentencing court shall  
 286 relinquish jurisdiction of the offender's case to the  
 287 postadjudicatory mental health court program until the offender  
 288 is no longer active in the program, the case is returned to the  
 289 sentencing court due to the offender's termination from the  
 290 program for failure to comply with the terms thereof, or the

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offender's sentence is completed.

(8)

(b) For purposes of this section and ss. 903.0351, 948.064, and 921.0024, the term "violent felony offender of special concern" means a person who is on:

1. Felony probation or community control related to the commission of a qualifying offense committed on or after the effective date of this act;

2. Felony probation or community control for any offense committed on or after the effective date of this act, and has previously been convicted of a qualifying offense;

3. Felony probation or community control for any offense committed on or after the effective date of this act, and is found to have violated that probation or community control by committing a qualifying offense;

4. Felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b) and has committed a qualifying offense on or after the effective date of this act;

5. Felony probation or community control and has previously been found by a court to be a three-time violent felony offender as defined in s. 775.084(1)(c) and has committed a qualifying offense on or after the effective date of this act; or

6. Felony probation or community control and has previously been found by a court to be a sexual predator under s. 775.21 and has committed a qualifying offense on or after the effective date of this act.

Section 9. For the purpose of incorporating the amendment made by this act to section 921.0024, Florida Statutes, in a

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reference thereto, subsection (1) of section 948.20, Florida Statutes, is reenacted to read:

948.20 Drug offender probation.—

(1) If it appears to the court upon a hearing that the defendant is a chronic substance abuser whose criminal conduct is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent felony if such nonviolent felony is committed on or after July 1, 2009, and notwithstanding s. 921.0024 the defendant's Criminal Punishment Code scoresheet total sentence points are 60 points or fewer, the court may either adjudge the defendant guilty or stay and withhold the adjudication of guilt. In either case, the court may also stay and withhold the imposition of sentence and place the defendant on drug offender probation or into a postadjudicatory treatment-based drug court program if the defendant otherwise qualifies. As used in this section, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

Section 10. This act shall take effect October 1, 2018.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

9 Jan 18

Meeting Date

866

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 209 S. Monroe

Phone \_\_\_\_\_

Street

Tall

Email \_\_\_\_\_

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

1/9/18

*Meeting Date*

866

*Bill Number (if applicable)*

Topic Sentencing

*Amendment Barcode (if applicable)*

Name Sal Nuzzo

Job Title VP Policy

Address 100 N Duval Street

Phone 850-322-9941

*Street*

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The James Madison Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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

1/09/2018

*Meeting Date*

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

SB 866

*Bill Number (if applicable)*

Topic Sentencing

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

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Phone 850-521-3042

*Street*

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

1/9/18

SB 866

*Meeting Date*

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Hon. Stacy Scott

Job Title Public Defender

Address 151 SW 2nd Street

Phone 352-338-7370

*Street*

Gainesville

FL

32601

*City*

*State*

*Zip*

Email \_\_\_\_\_

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/9/18

Meeting Date

SB 866

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor.

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Phone 954-789-9293

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Ft. Lauderdale

FL

33301

City

State

Zip

Email dewest@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County (BCC)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/9/18

Meeting Date

SB 866

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title LEGISLATIVE COUNSEL

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TALLAHASSEE, FL 32302

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State

Zip

Email KGROSS@ACLUFL.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU OF FLORIDA (AMERICAN CIVIL LIBERTIES UNION)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-9-18

Meeting Date

866

Bill Number (if applicable)

Topic

Sentencing

Amendment Barcode (if applicable)

Name

Greg Newburn

Job Title

State Policy Director

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Email

gnewburn@famms.org

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

FAMM

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/9/2018

Meeting Date

866

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone 850-681-0024

Tallahassee FL 32301

Email jorge@flapartners.com

City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla Assoc. of Crim. Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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: SB 870

INTRODUCER: Senator Bracy

SUBJECT: Capital Felonies

DATE: January 8 , 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	<b>Pre-meeting</b>
2.			RC	

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**I. Summary:**

SB 870 sets forth legislative findings and intent related to the implementation of the death penalty by the courts.

During 2016 and 2017 the question of whether a unanimous vote of the jury would be required under Florida law in order for the death penalty to be imposed was settled by the Legislature and the courts.

The Florida Supreme Court and the Legislature have now required jury unanimity and the application of that law by the court has resulted in retroactive applicability to June 24, 2002, the date of *Ring v. Arizona*, 536 U.S. 584 (2002), a U.S. Supreme Court case.

Specifically, the bill sets forth legislative findings in ss. 921.141 and 921.142, F.S., reflecting that:

- The Florida Supreme Court's decision not to apply *Hurst v. State*, 202 So.3d 40 (Fla. 2016), in cases in which the death sentence became final prior to June 24, 2002, will result in a miscarriage of justice for those inmates; and
- The retroactive application of *Hurst* in those cases will provide a more just and final resolution in those cases.

The legislative intent set forth in the bill is that the *Hurst v. State* case apply retroactively in cases in which the death sentence became final prior to June 24, 2002. This will pave the way for inmates under those sentences to seek review under *Hurst*.

Although difficult to quantify, the judiciary, prosecutors, public defenders, and appellate counsel should expect additional workload when the bill becomes law.

The bill is effective July 1, 2018.

## II. Present Situation:

### Recent Death Penalty Sentencing Background

In 2016, the U.S. Supreme Court decided in *Hurst v. Florida*<sup>1</sup> that “the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death.”<sup>2</sup> The U.S. Supreme Court remanded the *Hurst v. Florida* case to the Florida Supreme Court.

The state court issued its opinion applying the *Hurst v. Florida* ruling in October 2016.<sup>3</sup> The Florida Supreme Court found that the [U.S.] Supreme Court’s decision in *Hurst v. Florida* requires that “all the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury,” and that “in order for the trial court to impose a sentence of death, *the jury’s recommended sentence of death must be unanimous.*”<sup>4</sup>

After the Florida Supreme Court issued its *Hurst v. State* opinion, the 2017 Legislature passed a bill requiring jury unanimity in order for the death penalty to be imposed.<sup>5</sup>

### The *Ring v. Arizona* Case and the Retroactive Application of *Hurst*

In *Ring v. Arizona* the U.S. Supreme Court ruled that juries, rather than judges acting alone, must make crucial factual determinations that subject a convicted murderer to the death penalty. The decision was clear as to its application to the Arizona death penalty sentencing scheme.<sup>6</sup> The *Ring* court was not so clear about whether Florida’s different sentencing scheme was effected by the *Ring* decision, so over the next 14 years *Ring* was not applied in Florida. However, the U.S. Supreme Court clarified in its 2016 *Hurst v. Florida* opinion that *Ring* applied in Florida just as it did in Arizona.<sup>7</sup>

In the December 2016 *Mosely* case, the Florida Supreme Court held that its *Hurst v. State* decision requiring jury unanimity for a death sentence applied retroactively.<sup>8</sup> The date of the *Ring* opinion<sup>9</sup> became the Florida Supreme Court’s bright line for deciding *Hurst*’s retroactivity.

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<sup>1</sup> *Hurst v. Florida*, 136 S.Ct. 616 (2016).

<sup>2</sup> *Id.* at p. 619.

<sup>3</sup> *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

<sup>4</sup> *Id.* at p. 44. (emphasis added).

<sup>5</sup> Chapter 2017-1, L.O.F. (2017).

<sup>6</sup> “Capital defendants, no less than noncapital defendants, we conclude, are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment.” *Ring v. Arizona*, 536 U.S. 584, 589 (2002).

<sup>7</sup> “In light of *Ring*, we hold that *Hurst*’s sentence violates the Sixth Amendment.” *Hurst v. Florida*, 136 S.Ct. 616, 622 (2016).

<sup>8</sup> “[A] major development occurred in 2016, when the United States Supreme Court finally held in *Hurst v. Florida* that the ‘analysis the *Ring* Court applied to Arizona’s sentencing scheme applies equally to Florida’s.’” *Mosley v. State*, 209 So.3d 1248, 1274 (Fla. 2016).

<sup>9</sup> *Ring v. Arizona* was decided on June 24, 2002.

Therefore, if a death sentence became final *prior to* June 24, 2002, under current decisional law the defendant is *not* entitled to *Hurst* relief.<sup>10</sup> If, however, the sentence became final *on or after* June 24, 2002, the defendant *is* entitled to seek *Hurst* relief.<sup>11</sup>

### III. Effect of Proposed Changes:

The bill creates the opportunity for inmates whose death sentences became final prior to June 24, 2002, to seek relief under the *Hurst v. State* decision which requires a unanimous jury vote for death in order for a death sentence to be imposed.<sup>12</sup>

The bill sets forth legislative findings in ss. 921.141 and 921.142, F.S., the death penalty statutes, reflecting that:

- The Florida Supreme Court's decision not to apply *Hurst* in cases in which the death sentence became final prior to June 24, 2002,<sup>13</sup> will result in a miscarriage of justice for those inmates; and
- The retroactive application of *Hurst* in those cases will provide a more just and final resolution in those cases.

The legislative intent in the bill is that the *Hurst v. State*<sup>14</sup> case apply retroactively in cases in which the death sentence became final prior to June 24, 2002.

The bill is effective July 1, 2018.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>10</sup> *Asay v. State*, 210 So.3d 1, 11 (Fla., 2016), *cert. den.* 138 S.Ct. 41 (2017).

A sentence becomes final on the disposition of the petition for writ of certiorari by the U.S. Supreme Court if filed, or 90 days after the Florida Supreme Court's decision affirming a judgment and sentence becomes final if the petition for certiorari review is not filed. Fla. R. Crim. P. 3.851.

<sup>11</sup> *Mosely v. State*, 209 So.3d 1248, 1283 (Fla. 2016).

<sup>12</sup> *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

<sup>13</sup> June 24, 2002, is the date that the U.S. Supreme Court's opinion in *Ring v. Arizona* was decided. *Ring v. Arizona*, 536 U.S. 584 (2002).

<sup>14</sup> *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The number of cases in which the death sentence may be effected by the bill cannot be determined with certainty. There are currently 350 people sentenced to death and housed in the Department of Corrections and an undetermined number of those inmates are already entitled to post-*Ring* case review under the *Hurst* decision.<sup>15</sup> If the bill becomes law all death cases will be under review. For this reason, the judiciary, prosecutors, public defenders, and appellate counsel should expect additional workload.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

While the *Hurst* opinion did require jury unanimity for a death sentence, it did not declare the death penalty itself to be unconstitutional.<sup>16</sup> Therefore, no case to come before the Florida Supreme Court after the court's *Hurst* decision has resulted in a death row inmate being set free or having his or her sentence automatically changed to a life sentence.

As the court has considered death cases raising a *Hurst* claim, the court has ruled that if the jury's recommended death sentence was the result of a vote that was less than unanimous (a *Hurst* claim), then the sentencing error was not harmless.<sup>17</sup> In those cases the court has vacated the death sentences, and remanded the cases to the trial court for a new penalty proceeding.<sup>18</sup> Conversely, if the jury recommendation for death was the result of a unanimous vote, the death sentences have been upheld by the court.<sup>19</sup>

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<sup>15</sup> Florida Department of Corrections, Corrections Offender Network, Offender Information Search, Death Row Statistics, <http://www.dc.state.fl.us/OffenderSearch/deathrowroster.aspx> (last visited January 4, 2018).

<sup>16</sup> *Hurst v. State*, 202 So.3d 40, 65 (Fla. 2016).

<sup>17</sup> The harmless error analysis places the burden on the state, as the beneficiary of the error, to prove that there is no reasonable possibility that the error contributed to the conviction or to the sentence recommended in the sentencing proceeding. Where the Court finds that the error was not harmless the case must be remanded to "correct" the error. *State v. DiGuilio*, 491 So.2d 1129, 1138 (Fla. 1986); *Zack v. State*, 753 So.2d 9, 20 (Fla. 2000).

<sup>18</sup> *Hojan v. State*, 212 So.3d 982 (Fla. 2017).

<sup>19</sup> *Cozzie v. State*, 225 So.3d 717 (Fla. 2017).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 921.141 and 921.142.

**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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By Senator Bracy

11-00587-18

2018870

A bill to be entitled

An act relating to capital felonies; amending ss. 921.141 and 921.142, F.S.; providing legislative findings and intent regarding the retroactive application of *Hurst v. State*, No. SC12-1947 (Fla., October 14, 2016); providing an effective date.

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

Section 1. Present subsection (9) of section 921.141, Florida Statutes, is redesignated as subsection (10), and a new subsection (9) is added to that section, to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(9) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that the Florida Supreme Court decided in *Asay v. State*, No. SC16-223, SC16-102, and SC16-628 (Fla., December 22, 2016), that *Hurst v. State*, No. SC12-1947 (Fla., October 14, 2016), will not apply in cases in which the death sentence became final prior to June 24, 2002, the day that the United States Supreme Court issued its opinion in *Ring v. Arizona*, 536 U.S. 584 (2002). The Legislature finds that the court's decision not to apply *Hurst v. State* in the cases of inmates whose death sentences became final before June 24, 2002, will result in a miscarriage of justice for those inmates. The Legislature further finds that the retroactive application of *Hurst v. State* to death row cases in which the death sentence became final before June 24, 2002, will provide a more just and final resolution in those cases. Therefore, it is the intent of the Legislature that *Hurst v.*

11-00587-18

2018870

*State*, No. SC12-1947 (Fla., October 14, 2016), apply in cases in which the death sentence became final before June 24, 2002.

Section 2. Subsection (1) of section 921.142, Florida Statutes, is amended to read:

921.142 Sentence of death or life imprisonment for capital drug trafficking felonies; further proceedings to determine sentence.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that trafficking in cocaine or opiates carries a grave risk of death or danger to the public; that a reckless disregard for human life is implicit in knowingly trafficking in cocaine or opiates; and that persons who traffic in cocaine or opiates may be determined by the trier of fact to have a culpable mental state of reckless indifference or disregard for human life.

(b) The Legislature finds that the Florida Supreme Court decided in *Asay v. State*, No. SC16-223, SC16-102, and SC16-628 (Fla., December 22, 2016), that *Hurst v. State*, No. SC12-1947 (Fla., October 14, 2016), will not apply in cases in which the death sentence became final prior to June 24, 2002, the day that the United States Supreme Court issued its opinion in *Ring v. Arizona*, 536 U.S. 584 (2002). The Legislature finds that the court's decision not to apply *Hurst v. State* in the cases of inmates whose death sentences became final before June 24, 2002, will result in a miscarriage of justice for those inmates. The Legislature further finds that the retroactive application of *Hurst v. State* to death row cases in which the death sentence became final before June 24, 2002, will provide a more just and final resolution in those cases. Therefore, it is the intent of



11-00587-18

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59 the Legislature that *Hurst v. State*, No. SC12-1947 (Fla.,  
60 October 14, 2016), apply in cases in which the death sentence  
61 became final before June 24, 2002.

62 Section 3. This act shall take effect July 1, 2018.

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

1/09/2018

*Meeting Date*

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

SB 870

*Bill Number (if applicable)*

Topic Capital Felonies

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P. O. Box 10788

Phone 850-521-3042

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Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/9/18  
Meeting Date

SB 870  
Bill Number (if applicable)

Topic Capital Felonies

Amendment Barcode (if applicable)

Name Christine Henderson

Job Title Organizer (Florida)

Address \_\_\_\_\_

Phone 904-513-8332

Street

Jacksonville, FL 32256  
City State Zip

Email christineh@ejusa.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Equal Justice USA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/9/18  
Meeting Date

870  
Bill Number (if applicable)

Topic Capital Felonies

Amendment Barcode (if applicable)

Name BILLY H. NOLAS

Job Title Chief, Capital Unit, Federal Public Defender

Address 227 N. Bronough Street, 420 Phone 850 942 8818  
Street

Tallahassee FL 32301 Email \_\_\_\_\_  
City State Zip

Speaking: ☐ For ☐ Against ☒ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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

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

1/9/18

Meeting Date

83 8570

Bill Number (if applicable)

Topic Capital Felonies

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor

Address 115 S. Andrews #426

Phone 954.789.9293

Street

Ft. Lauderdale

FL

33301

City

State

Zip

Email devest@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County (BCC)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

1/5/18

Meeting Date

870

Bill Number (if applicable)

Topic Capital Felonies

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Phone \_\_\_\_\_  
Street

Tallahassee FL 32301 Email \_\_\_\_\_  
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

1/9/18

SB 870

*Meeting Date*

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Hon. Stacy Scott

Job Title Public Defender

Address 151 SW 2nd Street

Phone 352-338-7370

*Street*

Gainesville

FL

32601

*City*

*State*

*Zip*

Email \_\_\_\_\_

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.*

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S-001 (10/14/14)

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

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

870

Meeting Date \_\_\_\_\_

Bill Number (if applicable) \_\_\_\_\_

Topic Capital Felony Sentencing

Amendment Barcode (if applicable) \_\_\_\_\_

Name Jorge Chamizo

Job Title Attorney

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Phone 850-681-0024

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Email jorge@flapartners.com

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla Assoc. of Crim. Defense Lawyers

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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: CS/SB 928

INTRODUCER: Criminal Justice Committee and Senators Bracy and Rouson

SUBJECT: Theft

DATE: January 10, 2018

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 928 amends provisions related to criminal theft offenses. Primarily, the bill:

- Increases the property dollar values that form the basis of levels of theft crimes and penalties:
  - From less than \$100 to less than \$500 (second degree misdemeanor);
  - From \$100 or more to \$500 or more and from less than \$300 to less than \$1,500 (first degree misdemeanor); and
  - From \$300 or more to \$1,500 or more (third degree felony theft and retail theft).
- Changes enhancements in the degree of crime and penalties for repeat theft offenses by:
  - Limiting the third degree felony petit theft and second degree felony retail theft enhancements to adult offenders;
  - Requiring that the third theft offense that qualifies an adult for the third degree felony petit theft enhancement be a first degree misdemeanor offense; and
  - Creating a time frame after which the qualifying theft offense must be committed in order to trigger the enhancements.
- Eliminates theft of specific property as automatic third degree felony offenses. These properties include:
  - A will, codicil, or other testamentary instrument;
  - Any fire extinguisher;
  - Property taken from a posted construction site;
  - Any stop sign; and
  - Anhydrous ammonia.

A preliminary review of the bill by the Office of Economic and Demographic Research staff indicates that the prison bed impact of the bill may result in a decrease of more than 25 prison beds.

The bill amends s. 921.0022, F.S., to make conforming changes to the Criminal Punishment Code severity ranking chart to changes made by the bill, and amends s. 985.557, F.S., to conform cross-references.

Multiple sections of law are reenacted by the bill to incorporate the changes made by the bill.

The bill is effective October 1, 2018.

## II. Present Situation:

There are approximately 3,300 people currently incarcerated in the Department of Corrections for felony theft convictions and 21,000 on state community supervision for a felony theft crime in Florida.<sup>1</sup> Since 2005, at least 26 states have increased the threshold dollar amounts for felony theft crimes.<sup>2</sup> These states had various reasons for increasing the thresholds, including ensuring that the “amounts keep pace with inflation and the increase in the price of consumer goods.”<sup>3</sup> Such increases ensure that associated “criminal sentences don’t become more severe over time simply because of natural increases in the prices of consumer goods.”<sup>4</sup> “Raising felony thresholds also complements state reforms designed to focus prison beds on the most serious offenders, rather than relatively low-level ones.”<sup>5</sup>

The majority of states (30 states) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between \$500 and \$950, and five states, including Florida, have thresholds below \$500.<sup>6</sup> Between 2003 and 2015, nine states, including Alabama, Mississippi, and Louisiana, raised their felony thresholds twice.<sup>7</sup>

### Property Theft

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the

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<sup>1</sup> Department of Corrections, *2015-2016 Agency Statistics: Inmate Population and Community Supervision Population*, data of population by primary offenses, as of June 30, 2016, available at [http://www.dc.state.fl.us/pub/annual/1516/stats/ip\\_primary.html](http://www.dc.state.fl.us/pub/annual/1516/stats/ip_primary.html) and [http://www.dc.state.fl.us/pub/annual/1516/stats/csp\\_primary.html](http://www.dc.state.fl.us/pub/annual/1516/stats/csp_primary.html) (last visited December 13, 2017).

<sup>2</sup> Lawrence, Alison, *Making Sense of Sentencing: State Systems and Policies* (June 2015), p. 2, National Conference of State Legislatures, available at <http://www.ncsl.org/documents/cj/sentencing.pdf> (last visited December 13, 2017).

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

<sup>4</sup> Gramlich, John, and Zafft, Katie, *Updating State Theft Laws Can Bring Less Incarceration – and Less Crime* (March 31, 2016), Stateline, Pew Charitable Trusts, available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/31/updating-state-theft-laws-can-bring-less-incarceration-and-less-crime> (last visited December 13, 2017).

<sup>5</sup> *Supra* n. 2.

<sup>6</sup> Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (April 2017), available at <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/04/the-effects-of-changing-felony-theft-thresholds> (last visited December 13, 2017).

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

property taken by the defendant, the defendant's history of theft convictions or, in some cases, the type of property taken. A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.<sup>8</sup>

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than \$100.<sup>9</sup> First degree petit theft, a first degree misdemeanor, is theft of property valued at \$100 or more but less than \$300.<sup>10</sup> Second degree petit theft incurs greater penalties if there is a prior theft conviction: a first degree misdemeanor if there is one prior conviction,<sup>11</sup> and a third degree felony if there are two or more prior convictions.<sup>12</sup>

Third degree grand theft, a third degree felony,<sup>13</sup> is theft of:

- Property valued at \$300 or more, but less than \$20,000.
- Specified property including:
  - A will, codicil, or testamentary instrument;
  - A firearm;
  - A motor vehicle;
  - Any commercially farmed animal, bee colony, aquaculture species or citrus fruit of over 2,000 pieces;
  - Any fire extinguisher;
  - Any stop sign;
  - Anhydrous ammonia;
  - Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit;
  - Property taken from a designated, posted construction site; and
  - Any amount of a controlled substance as defined in s. 893.02, F.S.<sup>14</sup>
- Property from a dwelling or its unenclosed curtilage if the property is valued at \$100 or more, but less than \$300.<sup>15</sup>

Second degree grand theft, a second degree felony,<sup>16</sup> is theft of:

- Property valued at \$20,000 or more, but less than \$100,000;
- Cargo valued at less than \$50,000 in specified circumstances; or

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<sup>8</sup> Section 812.014(1), F.S.

<sup>9</sup> Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>10</sup> Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>11</sup> Section 812.014(3)(b), F.S.

<sup>12</sup> Section 812.014(3)(c), F.S.

<sup>13</sup> A third degree felony is punishable by up to 5 years' incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>14</sup> Section 812.014(2)(c), F.S.

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

<sup>16</sup> A second degree felony is punishable by up to 15 years' incarceration and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

- Emergency medical equipment or law enforcement equipment valued at \$300 or more in specified circumstances.<sup>17</sup>

First degree grand theft, a first degree felony,<sup>18</sup> is theft of:

- Property valued at \$100,000 or more;
- A semitrailer deployed by a law enforcement officer; or
- Cargo valued at \$50,000 or more in specified circumstances.<sup>19</sup>

First degree grand theft also includes any grand theft in which, in the course of committing the offense, a motor vehicle is used as specified or the offender causes damage to the real or personal property of another in excess of \$1,000.<sup>20</sup>

The last time the Legislature increased the minimum threshold property value for third degree grand theft was in 1986.<sup>21</sup> The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996. The petit theft provisions were amended, including the thresholds, in 1996.<sup>22</sup>

### **Retail Theft**

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

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

Theft defined as retail theft is punishable under s. 812.014, F.S., and like any other type of theft, must meet the elements of the applicable theft offense under that statute. However, s. 812.015, F.S., also provides that retail theft is a third degree felony if the theft involves property valued at \$300 or more and the person commits the theft in a specified manner (e.g., commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen).<sup>23</sup>

Retail theft is a second degree felony if the person has previously been convicted of third degree felony retail theft or individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen

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<sup>17</sup> Section 812.014(2)(b), F.S. However, this theft is reclassified from a second degree felony to a first degree felony if the theft occurs within a county subject to a state of emergency declared by the Governor, is committed after the declaration is made, and is facilitated by conditions arising from the emergency.

<sup>18</sup> A first degree felony is punishable by up to 30 years' incarceration and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>19</sup> Section 812.014(2)(a), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Chapter 86-161, s. 1, L.O.F.

<sup>22</sup> Chapter 96-388, s. 49, L.O.F.

<sup>23</sup> Section 812.015(8), F.S.

property has a value in excess of \$3,000.<sup>24</sup> The statute also requires a fine of not less than \$50 and no more than \$1,000 for a second or subsequent conviction for petit theft from a merchant, farmer, or transit agency<sup>25</sup> and provides that it is a third degree felony to possess, or use or attempt to use, any antishoplifting or inventory control device countermeasure within any premises used for the retail purchase or sale of any merchandise.<sup>26</sup>

The thresholds for third degree felony retail theft were created and set by the Legislature in 2001.<sup>27</sup>

### **Farm Theft and Transit Fare Evasion**

Farm theft is defined as taking possession of any items grown or produced on land owned, rented, or leased by another person. It includes equipment and materials used to grow or produce farm products.<sup>28</sup> Farm theft is punishable under s. 812.014, F.S.

Transit fare evasion is classified as a petit theft and is the unlawful refusal to pay the appropriate fare for transportation upon a mass transit vehicle, or to evade the payment of such fare, or to enter any mass transit vehicle or facility by any door, passageway, or gate, except as provided for the entry of fare-paying passengers.<sup>29</sup>

### **Degree of Crime and Penalty Enhancements for Second or Subsequent Theft Offenses**

Current law provides that a person who commits a petit theft (a misdemeanor offense) and who has any other theft conviction commits a first degree misdemeanor.<sup>30</sup> A person who commits a petit theft and who has been previously convicted two or more times of any theft commits a third degree felony.<sup>31</sup> A person who commits retail theft and has been previously convicted of retail theft commits a second degree felony.<sup>32</sup>

There are no time limits between theft convictions related to theft crime level and penalty enhancements.

Juvenile offenders who are adjudicated delinquent for theft offenses are considered to have been “convicted” of theft and are treated the same as adult offenders for purposes of these penalty enhancements.<sup>33</sup>

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<sup>24</sup> Section 812.015(9), F.S.

<sup>25</sup> Section 812.015(2), F.S.

<sup>26</sup> Section 812.014(7), F.S.

<sup>27</sup> Chapter 2001-115, s. 3, L.O.F.

<sup>28</sup> Section 812.015(1)(g), F.S. Farm products is defined in s. 823.14(3)(c), F.S., as any plant, as defined in s. 581.011, or animal or insect useful to humans and includes, but is not limited to, any product derived therefrom. Section 581.011, F.S., defines plants and plant products as trees, shrubs, vines, forage and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from them, unless specifically excluded by the rules of the Department of Agriculture.

<sup>29</sup> Section 812.015(1)(j), F.S.

<sup>30</sup> Section 812.014(3)(b), F.S.

<sup>31</sup> Section 812.014(3)(c), F.S.

<sup>32</sup> Section 812.015(9)(a), F.S.

<sup>33</sup> *T.S.W. v. State*, 489 So.2d 1146 (Fla. 2nd DCA 1986); *R.D.D. v. State*, 493 So.2d 534 (Fla. 5th DCA 1986).

### III. Effect of Proposed Changes:

The bill increases the minimum threshold values for several theft provisions in the Florida Statutes. The bill alters the application of the crime level and penalty enhancements for repeat theft convictions. It also eliminates theft of certain items of property as specific theft crimes.

#### Property Theft

The bill amends misdemeanor and third degree felony property theft provisions in s. 812.014, F.S., to increase the values that are the basis for the level of crime and penalties for these offenses:

- Second degree misdemeanor petit theft property value is changed (by default) to any value less than \$500.<sup>34</sup>
- First degree misdemeanor petit theft property value threshold is changed to \$500 or more from \$100 or more.<sup>35</sup> Under the bill it would be a first degree misdemeanor petit theft if the property value is between \$500 or more but less than \$1,500.
- Third degree felony theft property value threshold is changed to \$1,500 or more from \$300 or more.<sup>36</sup> Under the bill a third degree felony theft would be a theft where the property value is \$1,500 or more but less than \$20,000.<sup>37</sup>

Certain property items specifically set forth in s. 812.014(2)(c), F.S., are eliminated as third degree felony theft offenses, although a person can be charged with theft for unlawfully taking these items based upon their actual values. The items eliminated by the bill are:

- A will, codicil, or other testamentary instrument.
- Any fire extinguisher.
- Property taken from a posted construction site.
- Any stop sign.
- Anhydrous ammonia.

The value threshold amounts related to property taken from a dwelling or from the unenclosed curtilage of a dwelling specified in s. 812.014(2)(d), F.S., as a third degree felony offense, are increased by the bill:

- From \$100 or more to \$1,500 or more; and
- From less than \$300 to less than \$5,000 in value.<sup>38</sup>

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<sup>34</sup> Section 812.014(3)(a), F.S.

<sup>35</sup> Section 812.014(2)(e), F.S.

<sup>36</sup> Sections 812.014(2)(c)1., and 812.014(2)(d), F.S.

<sup>37</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in November 1986 (when the grand theft valuation was last increased) has the same buying power as \$670.30 in November 2017 dollars. [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited January 5, 2018).

<sup>38</sup> The theft provisions related to the theft of property from a dwelling or unenclosed curtilage thereof were created in 1996. In November 1996, according to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$100 had the same buying power as \$155.53 in November 2017; In November 1996, \$300 had the same buying power as \$466.59 in November 2017 dollars. [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited January 5, 2018).

**Retail Theft**

The bill amends s. 812.015, F.S., to increase the value that is the basis for the third degree felony retail theft offense under s. 812.015, F.S., to \$1,500 or more, instead of \$300.<sup>39</sup>

**Degree of Crime and Penalty Enhancements for Second or Subsequent Theft Offenses**

The bill changes the level of crime and penalty enhancements for repeat theft and retail theft offenders.

Under current law a person who commits a first or second degree misdemeanor level petit theft and who has previously been convicted two or more times of any theft commits a third degree felony.<sup>40</sup> The bill changes the petit theft enhancements to apply when:

- An adult who has been previously convicted two or more times of any theft as an adult and who commits a first degree misdemeanor petit theft within 3 years of his or her most recent theft conviction commits a third degree felony theft.

Therefore, the bill limits the enhancement to adult offenders who commit a new first degree misdemeanor within three years of his or her last theft conviction.

Similarly, under current law a person who has previously been convicted of a third degree felony retail theft and who commits another retail theft is subject to second degree felony penalties for the second conviction.<sup>41</sup> The bill changes the current retail theft second degree felony enhancement to apply when:

- An adult who has previously been convicted as an adult for a retail theft commits another retail theft within 3 years of his or her prior retail theft conviction.

In a similar way to the petit theft enhancement change, the retail theft enhancement applies only to adults who commit a subsequent retail theft within the specified time frame.

Both the retail theft and the petit theft enhancement changes appear to be limited to adult offenders although it could be argued that a juvenile who has “previously been convicted as an adult” may be subject to the retail theft enhancement.

**Other**

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

The bill amends s. 985.557, F.S., to conform cross-references.

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<sup>39</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor’s Bureau of Labor Statistics, \$300 in November 2001 had the same buying power as \$417.14 in November 2017 dollars. [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited January 5, 2018).

<sup>40</sup> Section 812.014(3)(c), F.S.

<sup>41</sup> Section 812.015(9)(a), F.S.

The bill reenacts ss. 95.18, 373.6055, 400.9935, 409.910, 489.126, 538.09, 538.23, 550.6305, 634.319, 634.421, 636.238, 642.038, 705.102, 718.111, 812.015, 812.0155, 812.14, 893.138, 943.051, and 985.11, F.S., to incorporate the changes made by the bill.

The bill is effective October 1, 2018.

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

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Florida Department of Corrections submitted its 2018 Agency Legislative Bill Analysis on January 8, 2018. The analysis states that the overall inmate and community supervision population fiscal impact resulting from this bill is indeterminate.<sup>42</sup>

The Criminal Justice Impact Conference (CJIC), which provides the final, official prison bed impact, if any, reviewed the bill on January 8, 2018. CJIC determined that the prison bed impact of the bill will likely be negative significant, meaning that the bill will result in a decrease of more than 25 prison beds.<sup>43</sup>

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

None.

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<sup>42</sup> Department of Corrections, 2018 Agency Legislative Bill Analysis for Senate Bill 928, p. 3, (January 4, 2018) (on file with the Senate Committee on Criminal Justice).

<sup>43</sup> Telephonic communication between the Senate Committee on Criminal Justice staff and the Office of Economic and Demographic Research staff, January 9, 2018.



**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 812.014, 812.015, 921.0022, and 985.557.

This bill reenacts the following sections of the Florida Statutes: 95.18, 373.6055, 400.9935, 409.910, 489.126, 538.09, 538.23, 550.6305, 634.319, 634.421, 636.238, 642.038, 705.102, 718.111, 812.0155, 812.14, 893.138, 943.051, and 985.11.

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

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

**CS by Criminal Justice on January 9, 2018:**

The Committee Substitute specifies the last theft conviction rather than the end of sentence on the most recent theft as the reference point for calculating the time limitations related to prior theft offenses for the purpose of crime level and penalty enhancements.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/09/2018	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 120 - 156  
and insert:  
or subsequent petit theft offense occurs within 3 years of his  
or her most recent theft conviction.

Section 2. Subsections (8) and (9) of section 812.015,  
Florida Statutes, are amended to read:

812.015 Retail and farm theft; transit fare evasion;  
mandatory fine; alternative punishment; detention and arrest;



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11 exemption from liability for false arrest; resisting arrest;  
12 penalties.—

13 (8) Except as provided in subsection (9), a person who  
14 commits retail theft commits a felony of the third degree,  
15 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
16 if the property stolen is valued at \$1,500 ~~\$300~~ or more, and the  
17 person:

18 (a) Individually, or in concert with one or more other  
19 persons, coordinates the activities of one or more individuals  
20 in committing the offense, in which case the amount of each  
21 individual theft is aggregated to determine the value of the  
22 property stolen;

23 (b) Commits theft from more than one location within a 48-  
24 hour period, in which case the amount of each individual theft  
25 is aggregated to determine the value of the property stolen;

26 (c) Acts in concert with one or more other individuals  
27 within one or more establishments to distract the merchant,  
28 merchant's employee, or law enforcement officer in order to  
29 carry out the offense, or acts in other ways to coordinate  
30 efforts to carry out the offense; or

31 (d) Commits the offense through the purchase of merchandise  
32 in a package or box that contains merchandise other than, or in  
33 addition to, the merchandise purported to be contained in the  
34 package or box.

35 (9) A person commits a felony of the second degree,  
36 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
37 if the person:

38 (a) Violates subsection (8) as an adult and within 3 years  
39 prior to the violation he or she has previously been convicted



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40 | as an adult of a violation of subsection (8); or

By Senator Bracy

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1 A bill to be entitled  
 2 An act relating to theft; amending s. 812.014, F.S.;  
 3 revising threshold amounts and types of property which  
 4 qualify for theft offenses; amending s. 812.015, F.S.;  
 5 revising threshold amounts for retail theft; amending  
 6 s. 921.0022, F.S.; conforming provisions to changes  
 7 made by the act; conforming a cross-reference;  
 8 amending s. 985.557, F.S.; conforming cross-  
 9 references; reenacting ss. 95.18(10), 373.6055(3)(c),  
 10 400.9935(3), 409.910(17)(g), 489.126(4), 538.09(5),  
 11 538.23(2), 550.6305(10), 634.319(2), 634.421(2),  
 12 636.238(3), 642.038(2), 705.102(4), 718.111(1)(d),  
 13 812.015(2), 812.0155(1) and (2), 812.14(4), (7), and  
 14 (8), 893.138(3), 943.051(3)(b), and 985.11(1)(b),  
 15 F.S., relating to adverse possession without color of  
 16 title, criminal history checks for certain water  
 17 management district employees and others, clinic  
 18 responsibilities, responsibility for payments on  
 19 behalf of Medicaid-eligible persons when other parties  
 20 are liable, moneys received by contractors, secondhand  
 21 dealer registration, secondary metals recycler  
 22 violations and penalties, intertrack wagering,  
 23 diversion or appropriation of funds by warranty  
 24 association sales representatives, collection of fees  
 25 for purported membership in discount plan  
 26 organizations, diversion or appropriation of funds by  
 27 legal expense insurance sales representatives,  
 28 reporting lost or abandoned property, condominium  
 29 associations, retail and farm theft, suspension of

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30 driver license following an adjudication of guilt for  
 31 theft, trespass and larceny with relation to utility  
 32 fixtures and theft of utility services, local  
 33 administrative action to abate drug-related,  
 34 prostitution-related, or stolen-property-related  
 35 public nuisances and criminal gang activity,  
 36 fingerprinting of certain minors, and fingerprinting  
 37 and photographing of certain children, respectively,  
 38 to incorporate the amendments made by the act in  
 39 cross-references to amended provisions; providing an  
 40 effective date.  
 41  
 42 Be It Enacted by the Legislature of the State of Florida:  
 43  
 44 Section 1. Paragraphs (c), (d), and (e) of subsection (2)  
 45 and paragraphs (a), (b), and (c) of subsection (3) of section  
 46 812.014, Florida Statutes, are amended to read:  
 47 812.014 Theft.—  
 48 (2)  
 49 (c) It is grand theft of the third degree and a felony of  
 50 the third degree, punishable as provided in s. 775.082, s.  
 51 775.083, or s. 775.084, if the property stolen is:  
 52 1. Valued at \$1,500 ~~\$300~~ or more, but less than \$5,000.  
 53 2. Valued at \$5,000 or more, but less than \$10,000.  
 54 3. Valued at \$10,000 or more, but less than \$20,000.  
 55 ~~4. A will, codicil, or other testamentary instrument.~~  
 56 ~~4.5-~~ A firearm.  
 57 ~~5.6-~~ A motor vehicle, except as provided in paragraph (a).  
 58 ~~6.7-~~ Any commercially farmed animal, including any animal

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of the equine, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a \$10,000 fine shall be imposed.

~~8. Any fire extinguisher.~~

~~7.9-~~ Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

~~10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).~~

~~11. Any stop sign.~~

~~12. Anhydrous ammonia.~~

~~8.13-~~ Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at \$5,000 or more, but less than \$10,000, as

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provided under subparagraph 2., or if the property is valued at \$10,000 or more, but less than \$20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(d) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at \$1,500 ~~\$100~~ or more, but less than \$5,000 ~~\$300~~, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

(e) Except as provided in paragraph (d), if the property stolen is valued at \$500 ~~\$100~~ or more, but less than \$1,500 ~~\$300~~, the offender commits petit theft of the first degree, punishable as a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(3) (a) Theft of any property not specified in subsection (2) is petit theft of the second degree and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and as provided in subsection (5), as applicable.

(b) A person who commits petit theft and who has previously been convicted of any theft commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person who commits petit theft of the first degree

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and who has previously been convicted two or more times of any theft as an adult commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, if the third or subsequent petit theft offense occurs within 3 years after the expiration of his or her sentence for the most recent theft conviction.

Section 2. Subsections (8) and (9) of section 812.015, Florida Statutes, are amended to read:

812.015 Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(8) Except as provided in subsection (9), a person who commits retail theft commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at \$1,500 ~~\$300~~ or more, and the person:

(a) Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(b) Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(c) Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate

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efforts to carry out the offense; or

(d) Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

(9) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person:

(a) Violates subsection (8) and has previously been convicted as an adult of a violation of subsection (8) within 3 years after the expiration of the sentence; or

(b) Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of \$3,000.

Section 3. Paragraphs (a), (b), (d), (e), and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3) (a)	3rd	Counterfeit or altered state lottery ticket.

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171	212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
172	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
173	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
174	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
175	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
176	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
	322.212(1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.

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177	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
178	322.212(5)(a)	3rd	False application for driver license or identification card.
179	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
180	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
181	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
182	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
183	562.27(1)	3rd	Possess still or still apparatus.

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184 713.69 3rd Tenant removes property upon  
which lien has accrued,  
value more than \$50.

185 812.014(3)(c) 3rd Petit theft as adult (3rd or  
subsequent conviction)  
within certain time; theft  
of any property not  
specified in subsection (2).

186 812.081(2) 3rd Unlawfully makes or causes  
to be made a reproduction of  
a trade secret.

187 815.04(5)(a) 3rd Offense against intellectual  
property (i.e., computer  
programs, data).

188 817.52(2) 3rd Hiring with intent to  
defraud, motor vehicle  
services.

189 817.569(2) 3rd Use of public record or  
public records information  
or providing false  
information to facilitate  
commission of a felony.

190

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191 826.01 3rd Bigamy.

192 828.122(3) 3rd Fighting or baiting animals.

831.04(1) 3rd Any erasure, alteration,  
etc., of any replacement  
deed, map, plat, or other  
document listed in s. 92.28.

193 831.31(1)(a) 3rd Sell, deliver, or possess  
counterfeit controlled  
substances, all but s.  
893.03(5) drugs.

194 832.041(1) 3rd Stopping payment with intent  
to defraud \$150 or more.

195 832.05(2)(b) & 3rd Knowing, making, issuing  
(4)(c) worthless checks \$150 or  
more or obtaining property  
in return for worthless  
check \$150 or more.

196 838.15(2) 3rd Commercial bribe receiving.

197 838.16 3rd Commercial bribery.

198 843.18 3rd Fleeing by boat to elude a  
law enforcement officer.

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199

847.011(1)(a) 3rd Sell, distribute, etc.,  
obscene, lewd, etc.,  
material (2nd conviction).

200

849.01 3rd Keeping gambling house.

201

849.09(1)(a)-(d) 3rd Lottery; set up, promote,  
etc., or assist therein,  
conduct or advertise drawing  
for prizes, or dispose of  
property or money by means  
of lottery.

202

849.23 3rd Gambling-related machines;  
"common offender" as to  
property rights.

203

849.25(2) 3rd Engaging in bookmaking.

204

860.08 3rd Interfere with a railroad  
signal.

205

860.13(1)(a) 3rd Operate aircraft while under  
the influence.

206

893.13(2)(a)2. 3rd Purchase of cannabis.

207

893.13(6)(a) 3rd Possession of cannabis (more

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208

than 20 grams).

934.03(1)(a) 3rd Intercepts, or procures any  
other person to intercept,  
any wire or oral  
communication.

209

210

211

(b) LEVEL 2

212

Florida Statute	Felony Degree	Description
--------------------	------------------	-------------

213

379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
----------------------	-----	--

214

379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
----------------------	-----	--

215

403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial
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purposes, or hazardous  
waste.

216

517.07(2)

3rd

Failure to furnish a  
prospectus meeting  
requirements.

217

590.28(1)

3rd

Intentional burning of  
lands.

218

784.05(3)

3rd

Storing or leaving a  
loaded firearm within  
reach of minor who uses  
it to inflict injury or  
death.

219

787.04(1)

3rd

In violation of court  
order, take, entice,  
etc., minor beyond state  
limits.

220

806.13(1)(b)3.

3rd

Criminal mischief;  
damage \$1,000 or more to  
public communication or  
any other public  
service.

221

810.061(2)

3rd

Impairing or impeding  
telephone or power to a

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dwelling; facilitating  
or furthering burglary.

222

810.09(2)(e)

3rd

Trespassing on posted  
commercial horticulture  
property.

223

812.014(2)(c)1.

3rd

Grand theft, 3rd degree;  
\$1,500 ~~\$300~~ or more but  
less than \$5,000.

224

812.014(2)(d)

3rd

Grand theft, 3rd degree;  
\$1,500 ~~\$100~~ or more but  
less than \$5,000 ~~\$300~~,  
taken from unenclosed  
curtilage of dwelling.

225

812.015(7)

3rd

Possession, use, or  
attempted use of an  
antishoplifting or  
inventory control device  
countermeasure.

226

817.234(1)(a)2.

3rd

False statement in  
support of insurance  
claim.

227

817.481(3)(a)

3rd

Obtain credit or  
purchase with false,

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			expired, counterfeit, etc., credit card, value over \$300.	
228				
	817.52(3)	3rd	Failure to redeliver hired vehicle.	
229				
	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.	
230				
	817.60(5)	3rd	Dealing in credit cards of another.	
231				
	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.	
232				
	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.	
233				
	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.	
234				
	831.01	3rd	Forgery.	
235				

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	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.	
236				
	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.	
237				
	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.	
238				
	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.	
239				
	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.	
240				
	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.	
241				
	843.08	3rd	False personation.	
242				
	893.13(2)(a)2.	3rd	Purchase of any s.	

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			893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
243	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
244	(d) LEVEL 4		
245	Florida	Felony	
246	Statute	Degree	Description
247	316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
248	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or

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	11-00432A-18		2018928
			transaction statements.
249	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
250	517.07(1)	3rd	Failure to register securities.
251	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
252	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
253	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
254	784.075	3rd	Battery on detention or commitment facility staff.
255	784.078	3rd	Battery of facility

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	11-00432A-18		2018928	
			employee by throwing,	
			tossing, or expelling	
			certain fluids or	
256			materials.	
	784.08 (2) (c)	3rd	Battery on a person 65	
			years of age or older.	
257	784.081 (3)	3rd	Battery on specified	
			official or employee.	
258	784.082 (3)	3rd	Battery by detained	
			person on visitor or	
			other detainee.	
259	784.083 (3)	3rd	Battery on code	
			inspector.	
260	784.085	3rd	Battery of child by	
			throwing, tossing,	
			projecting, or expelling	
			certain fluids or	
261			materials.	
	787.03 (1)	3rd	Interference with	
			custody; wrongly takes	
			minor from appointed	
262			guardian.	

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	787.04 (2)	3rd	Take, entice, or remove	
			child beyond state	
			limits with criminal	
			intent pending custody	
			proceedings.	
263	787.04 (3)	3rd	Carrying child beyond	
			state lines with	
			criminal intent to avoid	
			producing child at	
			custody hearing or	
			delivering to designated	
			person.	
264	787.07	3rd	Human smuggling.	
265	790.115 (1)	3rd	Exhibiting firearm or	
			weapon within 1,000 feet	
			of a school.	
266	790.115 (2) (b)	3rd	Possessing electric	
			weapon or device,	
			destructive device, or	
			other weapon on school	
			property.	
267	790.115 (2) (c)	3rd	Possessing firearm on	
			school property.	
268				

	11-00432A-18		2018928
269	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
270	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
271	810.06	3rd	Burglary; possession of tools.
272	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
273	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
274	<u>812.014</u> <u>(2) (c) 4.-7.</u>	3rd	Grand theft, 3rd degree, a <del>will</del> , firearm, motor

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	<del>812.014</del> <del>(2) (c) 4.-10.</del>		vehicle, livestock, <u>bee colony, aquaculture species, citrus fruit etc.</u>
275	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
276	817.505 (4) (a)	3rd	Patient brokering.
277	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
278	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
279	817.625 (2) (a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
280	817.625 (2) (c)	3rd	Possess, sell, or deliver skimming device.

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	11-00432A-18		2018928__
281	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
282	837.02(1)	3rd	Perjury in official proceedings.
283	837.021(1)	3rd	Make contradictory statements in official proceedings.
284	838.022	3rd	Official misconduct.
285	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
286	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
287	843.021	3rd	Possession of a concealed handcuff key by a person in custody.

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	11-00432A-18		2018928__
288	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
289	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
290	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
291	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
292	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
293	914.14(2)	3rd	Witnesses accepting

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bribes.

294

914.22(1)

3rd

Force, threaten, etc.,  
witness, victim, or  
informant.

295

914.23(2)

3rd

Retaliation against a  
witness, victim, or  
informant, no bodily  
injury.

296

918.12

3rd

Tampering with jurors.

297

934.215

3rd

Use of two-way  
communications device to  
facilitate commission of  
a crime.

298

299

300

(e) LEVEL 5

Florida  
Statute

Felony  
Degree

Description

301

316.027(2) (a)

3rd

Accidents involving  
personal injuries other  
than serious bodily  
injury, failure to stop;  
leaving scene.

302

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316.1935(4) (a)

2nd

Aggravated fleeing or  
eluding.

303

316.80(2)

2nd

Unlawful conveyance of  
fuel; obtaining fuel  
fraudulently.

304

322.34(6)

3rd

Careless operation of  
motor vehicle with  
suspended license,  
resulting in death or  
serious bodily injury.

305

327.30(5)

3rd

Vessel accidents  
involving personal  
injury; leaving scene.

306

379.365(2) (c)1.

3rd

Violation of rules  
relating to: willful  
molestation of stone  
crab traps, lines, or  
buoys; illegal  
bartering, trading, or  
sale, conspiring or  
aiding in such barter,  
trade, or sale, or  
supplying, agreeing to  
supply, aiding in  
supplying, or giving

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away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

307

379.367(4)

3rd

Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

308

379.407(5) (b) 3.

3rd

Possession of 100 or more undersized spiny lobsters.

309

381.0041(11) (b)

3rd

Donate blood, plasma, or organs knowing HIV positive.

310

440.10(1) (g)

2nd

Failure to obtain

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workers' compensation coverage.

311

440.105(5)

2nd

Unlawful solicitation for the purpose of making workers' compensation claims.

312

440.381(2)

2nd

Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

313

624.401(4) (b) 2.

2nd

Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.

314

626.902(1) (c)

2nd

Representing an unauthorized insurer; repeat offender.

315

790.01(2)

3rd

Carrying a concealed firearm.

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316	11-00432A-18	2018928	
	790.162	2nd	Threat to throw or discharge destructive device.
317	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
318	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
319	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
320	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
321	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
322	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18

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	11-00432A-18	2018928	
			years of age or older.
323	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
324	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
325	812.015(8)	3rd	Retail theft; property stolen is valued at <u>\$1,500</u> <del>\$300</del> or more and one or more specified acts.
326	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
327	812.131(2)(b)	3rd	Robbery by sudden snatching.
328	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
329	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to

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	11-00432A-18		2018928__
			\$50,000.
330	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
331	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
332	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
333	817.611 (2) (a)	2nd	Traffic in or possess 5

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			to 14 counterfeit credit cards or related documents.
334	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
335	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
336	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
337	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.

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338	11-00432A-18	2018928	
	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
339	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
340	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
341	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
342	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
343	874.05(1)(b)	2nd	Encouraging or recruiting another to

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	11-00432A-18	2018928	
			join a criminal gang; second or subsequent offense.
344	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
345	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
346	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned

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recreational facility or  
community center.

347

893.13(1)(d)1.

1st

Sell, manufacture, or  
deliver cocaine (or  
other s. 893.03(1)(a),  
(1)(b), (1)(d), (2)(a),  
(2)(b), or (2)(c)4.  
drugs) within 1,000 feet  
of university.

348

893.13(1)(e)2.

2nd

Sell, manufacture, or  
deliver cannabis or  
other drug prohibited  
under s. 893.03(1)(c),  
(2)(c)1., (2)(c)2.,  
(2)(c)3., (2)(c)5.,  
(2)(c)6., (2)(c)7.,  
(2)(c)8., (2)(c)9., (3),  
or (4) within 1,000 feet  
of property used for  
religious services or a  
specified business site.

349

893.13(1)(f)1.

1st

Sell, manufacture, or  
deliver cocaine (or  
other s. 893.03(1)(a),  
(1)(b), (1)(d), or  
(2)(a), (2)(b), or

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(2)(c)4. drugs) within  
1,000 feet of public  
housing facility.

350

893.13(4)(b)

2nd

Use or hire of minor;  
deliver to minor other  
controlled substance.

351

893.1351(1)

3rd

Ownership, lease, or  
rental for trafficking  
in or manufacturing of  
controlled substance.

352

353

354

(f) LEVEL 6

Florida  
Statute

Felony  
Degree

Description

355

316.027(2)(b)

2nd

Leaving the scene of a  
crash involving serious  
bodily injury.

356

316.193(2)(b)

3rd

Felony DUI, 4th or  
subsequent conviction.

357

400.9935(4)(c)

2nd

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

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358 499.0051 (2) 2nd Knowing forgery of  
transaction history,  
transaction information,  
or transaction  
statement.

359 499.0051 (3) 2nd Knowing purchase or  
receipt of prescription  
drug from unauthorized  
person.

360 499.0051 (4) 2nd Knowing sale or transfer  
of prescription drug to  
unauthorized person.

361 775.0875 (1) 3rd Taking firearm from law  
enforcement officer.

362 784.021 (1) (a) 3rd Aggravated assault;  
deadly weapon without  
intent to kill.

363 784.021 (1) (b) 3rd Aggravated assault;  
intent to commit felony.

364 784.041 3rd Felony battery; domestic  
battery by  
strangulation.

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365 784.048 (3) 3rd Aggravated stalking;  
credible threat.

366 784.048 (5) 3rd Aggravated stalking of  
person under 16.

367 784.07 (2) (c) 2nd Aggravated assault on  
law enforcement officer.

368 784.074 (1) (b) 2nd Aggravated assault on  
sexually violent  
predators facility  
staff.

369 784.08 (2) (b) 2nd Aggravated assault on a  
person 65 years of age  
or older.

370 784.081 (2) 2nd Aggravated assault on  
specified official or  
employee.

371 784.082 (2) 2nd Aggravated assault by  
detained person on  
visitor or other  
detainee.

372 784.083 (2) 2nd Aggravated assault on

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	11-00432A-18		2018928__
			code inspector.
373	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
374	790.115(2) (d)	2nd	Discharging firearm or weapon on school property.
375	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
376	790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
377	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
378			

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	11-00432A-18		2018928__
	794.011(8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
379	794.05(1)	2nd	Unlawful sexual activity with specified minor.
380	800.04(5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
381	800.04(6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
382	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
383	810.02(3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
384	810.145(8) (b)	2nd	Video voyeurism; certain

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minor victims; 2nd or  
subsequent offense.

385

812.014 (2) (b) 1.

2nd

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

386

812.014 (6)

2nd

Theft; property stolen  
\$3,000 or more;  
coordination of others.

387

812.015 (9) (a)

2nd

Retail theft as adult;  
property stolen \$1,500  
~~\$300~~ or more; second or  
subsequent conviction  
within certain time.

388

812.015 (9) (b)

2nd

Retail theft; property  
stolen \$3,000 or more;  
coordination of others.

389

812.13 (2) (c)

2nd

Robbery, no firearm or  
other weapon (strong-arm  
robbery).

390

817.4821 (5)

2nd

Possess cloning  
paraphernalia with  
intent to create cloned

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cellular telephones.

391

817.505 (4) (b)

2nd

Patient brokering; 10 or  
more patients.

392

825.102 (1)

3rd

Abuse of an elderly  
person or disabled  
adult.

393

825.102 (3) (c)

3rd

Neglect of an elderly  
person or disabled  
adult.

394

825.1025 (3)

3rd

Lewd or lascivious  
molestation of an  
elderly person or  
disabled adult.

395

825.103 (3) (c)

3rd

Exploiting an elderly  
person or disabled adult  
and property is valued  
at less than \$10,000.

396

827.03 (2) (c)

3rd

Abuse of a child.

397

827.03 (2) (d)

3rd

Neglect of a child.

398

827.071 (2) &amp; (3)

2nd

Use or induce a child in  
a sexual performance, or

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	11-00432A-18		2018928	
			promote or direct such	
			performance.	
399				
	836.05	2nd	Threats; extortion.	
400				
	836.10	2nd	Written threats to kill	
			or do bodily injury.	
401				
	843.12	3rd	Aids or assists person	
			to escape.	
402				
	847.011	3rd	Distributing, offering	
			to distribute, or	
			possessing with intent	
			to distribute obscene	
			materials depicting	
			minors.	
403				
	847.012	3rd	Knowingly using a minor	
			in the production of	
			materials harmful to	
			minors.	
404				
	847.0135(2)	3rd	Facilitates sexual	
			conduct of or with a	
			minor or the visual	
			depiction of such	
			conduct.	
405				

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	914.23	2nd	Retaliation against a	
			witness, victim, or	
			informant, with bodily	
			injury.	
406				
	944.35(3)(a)2.	3rd	Committing malicious	
			battery upon or	
			inflicting cruel or	
			inhuman treatment on an	
			inmate or offender on	
			community supervision,	
			resulting in great	
			bodily harm.	
407				
	944.40	2nd	Escapes.	
408				
	944.46	3rd	Harboring, concealing,	
			aiding escaped	
			prisoners.	
409				
	944.47(1)(a)5.	2nd	Introduction of	
			contraband (firearm,	
			weapon, or explosive)	
			into correctional	
			facility.	
410				
	951.22(1)	3rd	Intoxicating drug,	
			firearm, or weapon	
			introduced into county	

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facility.

Section 4. Paragraph (a) of subsection (1) and paragraph (c) of subsection (2) of section 985.557, Florida Statutes, are amended to read:

985.557 Direct filing of an information; discretionary and mandatory criteria.—

(1) DISCRETIONARY DIRECT FILE.—

(a) With respect to any child who was 14 or 15 years of age at the time the alleged offense was committed, the state attorney may file an information when in the state attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, attempt to commit, or conspiracy to commit:

1. Arson;
2. Sexual battery;
3. Robbery;
4. Kidnapping;
5. Aggravated child abuse;
6. Aggravated assault;
7. Aggravated stalking;
8. Murder;
9. Manslaughter;
10. Unlawful throwing, placing, or discharging of a destructive device or bomb;
11. Armed burglary in violation of s. 810.02(2)(b) or specified burglary of a dwelling or structure in violation of s. 810.02(2)(c), or burglary with an assault or battery in

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violation of s. 810.02(2)(a);

12. Aggravated battery;

13. Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;

14. Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;

15. Grand theft in violation of s. 812.014(2)(a);

16. Possessing or discharging any weapon or firearm on school property in violation of s. 790.115;

17. Home invasion robbery;

18. Carjacking; or

19. Grand theft of a motor vehicle in violation of s. 812.014(2)(c)5. ~~s. 812.014(2)(c)6.~~ or grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b) if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)5. ~~s. 812.014(2)(c)6.~~ or s. 812.014(2)(b).

(2) MANDATORY DIRECT FILE.—

(c) The state attorney must file an information if a child, regardless of the child's age at the time the alleged offense was committed, is alleged to have committed an act that would be a violation of law if the child were an adult, that involves stealing a motor vehicle, including, but not limited to, a violation of s. 812.133, relating to carjacking, or s. 812.014(2)(c)5. ~~s. 812.014(2)(c)6.~~, relating to grand theft of a motor vehicle, and while the child was in possession of the stolen motor vehicle the child caused serious bodily injury to or the death of a person who was not involved in the underlying offense. For purposes of this section, the driver and all

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468 willing passengers in the stolen motor vehicle at the time such  
 469 serious bodily injury or death is inflicted shall also be  
 470 subject to mandatory transfer to adult court. "Stolen motor  
 471 vehicle," for the purposes of this section, means a motor  
 472 vehicle that has been the subject of any criminal wrongful  
 473 taking. For purposes of this section, "willing passengers" means  
 474 all willing passengers who have participated in the underlying  
 475 offense.

476 Section 5. For the purpose of incorporating the amendment  
 477 made by this act to section 812.014, Florida Statutes, in a  
 478 reference thereto, subsection (10) of section 95.18, Florida  
 479 Statutes, is reenacted to read:

480 95.18 Real property actions; adverse possession without  
 481 color of title.—

482 (10) A person who occupies or attempts to occupy a  
 483 residential structure solely by claim of adverse possession  
 484 under this section and offers the property for lease to another  
 485 commits theft under s. 812.014.

486 Section 6. For the purpose of incorporating the amendment  
 487 made by this act to section 812.014, Florida Statutes, in a  
 488 reference thereto, paragraph (c) of subsection (3) of section  
 489 373.6055, Florida Statutes, is reenacted to read:

490 373.6055 Criminal history checks for certain water  
 491 management district employees and others.—

492 (3)

493 (c) In addition to other requirements for employment or  
 494 access established by any water management district pursuant to  
 495 its water management district's security plan for buildings,  
 496 facilities, and structures, each water management district's

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497 security plan shall provide that:

498 1. Any person who has within the past 7 years been  
 499 convicted, regardless of whether adjudication was withheld, for  
 500 a forcible felony as defined in s. 776.08; an act of terrorism  
 501 as defined in s. 775.30; planting of a hoax bomb as provided in  
 502 s. 790.165; any violation involving the manufacture, possession,  
 503 sale, delivery, display, use, or attempted or threatened use of  
 504 a weapon of mass destruction or hoax weapon of mass destruction  
 505 as provided in s. 790.166; dealing in stolen property; any  
 506 violation of s. 893.135; any violation involving the sale,  
 507 manufacturing, delivery, or possession with intent to sell,  
 508 manufacture, or deliver a controlled substance; burglary;  
 509 robbery; any felony violation of s. 812.014; any violation of s.  
 510 790.07; any crime an element of which includes use or possession  
 511 of a firearm; any conviction for any similar offenses under the  
 512 laws of another jurisdiction; or conviction for conspiracy to  
 513 commit any of the listed offenses may not be qualified for  
 514 initial employment within or authorized regular access to  
 515 buildings, facilities, or structures defined in the water  
 516 management district's security plan as restricted access areas.

517 2. Any person who has at any time been convicted of any of  
 518 the offenses listed in subparagraph 1. may not be qualified for  
 519 initial employment within or authorized regular access to  
 520 buildings, facilities, or structures defined in the water  
 521 management district's security plan as restricted access areas  
 522 unless, after release from incarceration and any supervision  
 523 imposed as a sentence, the person remained free from a  
 524 subsequent conviction, regardless of whether adjudication was  
 525 withheld, for any of the listed offenses for a period of at

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least 7 years prior to the employment or access date under consideration.

Section 7. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (3) of section 400.9935, Florida Statutes, is reenacted to read:

400.9935 Clinic responsibilities.—

(3) A charge or reimbursement claim made by or on behalf of a clinic that is required to be licensed under this part but that is not so licensed, or that is otherwise operating in violation of this part, regardless of whether a service is rendered or whether the charge or reimbursement claim is paid, is an unlawful charge and is noncompensable and unenforceable. A person who knowingly makes or causes to be made an unlawful charge commits theft within the meaning of and punishable as provided in s. 812.014.

Section 8. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (g) of subsection (17) of section 409.910, Florida Statutes, is reenacted to read:

409.910 Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—

(17)

(g) The agency may investigate and request appropriate officers or agencies of the state to investigate suspected criminal violations or fraudulent activity related to third-party benefits, including, without limitation, ss. 414.39 and 812.014. Such requests may be directed, without limitation, to the Medicaid Fraud Control Unit of the Office of the Attorney

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General or to any state attorney. Pursuant to s. 409.913, the Attorney General has primary responsibility to investigate and control Medicaid fraud.

Section 9. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (4) of section 489.126, Florida Statutes, is reenacted to read:

489.126 Moneys received by contractors.—

(4) Any person who violates any provision of this section is guilty of theft and shall be prosecuted and punished under s. 812.014.

Section 10. For the purpose of incorporating the amendment made by this act to section 812.015, Florida Statutes, in a reference thereto, subsection (5) of section 538.09, Florida Statutes, is reenacted to read:

538.09 Registration.—

(5) In addition to the fine provided in subsection (4), registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if the department determines that the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made pursuant to this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with any purchase or sale or has been or is engaged in or is about to engage in any practice, purchase, or sale which is fraudulent or in violation of the law;

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584 (d) Has made a misrepresentation or false statement to, or  
 585 concealed any essential or material fact from, any person in  
 586 making any purchase or sale;  
 587 (e) Is making purchases or sales through any business  
 588 associate not registered in compliance with the provisions of  
 589 this chapter;  
 590 (f) Has, within the preceding 10-year period for new  
 591 registrants who apply for registration on or after October 1,  
 592 2006, been convicted of, or has entered a plea of guilty or nolo  
 593 contendere to, or had adjudication withheld for, a crime against  
 594 the laws of this state or any other state or of the United  
 595 States which relates to registration as a secondhand dealer or  
 596 which involves theft, larceny, dealing in stolen property,  
 597 receiving stolen property, burglary, embezzlement, obtaining  
 598 property by false pretenses, possession of altered property, any  
 599 felony drug offense, any violation of s. 812.015, or any  
 600 fraudulent dealing;  
 601 (g) Has had a final judgment entered against her or him in  
 602 a civil action upon grounds of fraud, embezzlement,  
 603 misrepresentation, or deceit; or  
 604 (h) Has failed to pay any sales tax owed to the Department  
 605 of Revenue.  
 606  
 607 In the event the department determines to deny an application or  
 608 revoke a registration, it shall enter a final order with its  
 609 findings on the register of secondhand dealers and their  
 610 business associates, if any; and denial, suspension, or  
 611 revocation of the registration of a secondhand dealer shall also  
 612 deny, suspend, or revoke the registration of such secondhand

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613 dealer's business associates.  
 614 Section 11. For the purpose of incorporating the amendment  
 615 made by this act to section 812.014, Florida Statutes, in a  
 616 reference thereto, subsection (2) of section 538.23, Florida  
 617 Statutes, is reenacted to read:  
 618 538.23 Violations and penalties.—  
 619 (2) A secondary metals recycler is presumed to know upon  
 620 receipt of stolen regulated metals property in a purchase  
 621 transaction that the regulated metals property has been stolen  
 622 from another if the secondary metals recycler knowingly and  
 623 intentionally fails to maintain the information required in s.  
 624 538.19 and shall, upon conviction of a violation of s. 812.015,  
 625 be punished as provided in s. 812.014(2) or (3).  
 626 Section 12. For the purpose of incorporating the amendment  
 627 made by this act to section 812.014, Florida Statutes, in a  
 628 reference thereto, subsection (10) of section 550.6305, Florida  
 629 Statutes, is reenacted to read:  
 630 550.6305 Intertrack wagering; guest track payments;  
 631 accounting rules.—  
 632 (10) All races or games conducted at a permitholder's  
 633 facility, all broadcasts of such races or games, and all  
 634 broadcast rights relating thereto are owned by the permitholder  
 635 at whose facility such races or games are conducted and  
 636 constitute the permitholder's property as defined in s.  
 637 812.012(4). Transmission, reception of a transmission,  
 638 exhibition, use, or other appropriation of such races or games,  
 639 broadcasts of such races or games, or broadcast rights relating  
 640 thereto without the written consent of the permitholder  
 641 constitutes a theft of such property under s. 812.014; and in

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addition to the penal sanctions contained in s. 812.014, the permitholder has the right to avail itself of the civil remedies specified in ss. 772.104, 772.11, and 812.035 in addition to any other remedies available under applicable state or federal law.

Section 13. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 634.319, Florida Statutes, is reenacted to read:

634.319 Reporting and accounting for funds.—

(2) Any sales representative who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to her or his own use is, upon conviction, guilty of theft, punishable as provided in s. 812.014.

Section 14. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 634.421, Florida Statutes, is reenacted to read:

634.421 Reporting and accounting for funds.—

(2) Any sales representative who, not being entitled thereto, diverts or appropriates funds or any portion thereof to her or his own use commits theft as provided in s. 812.014.

Section 15. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (3) of section 636.238, Florida Statutes, is reenacted to read:

636.238 Penalties for violation of this part.—

(3) A person who collects fees for purported membership in a discount plan but purposefully fails to provide the promised benefits commits a theft, punishable as provided in s. 812.014.

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Section 16. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 642.038, Florida Statutes, is reenacted to read:

642.038 Reporting and accounting for funds.—

(2) Any sales representative who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to his or her own use commits theft as provided in s. 812.014.

Section 17. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (4) of section 705.102, Florida Statutes, is reenacted to read:

705.102 Reporting lost or abandoned property.—

(4) Any person who unlawfully appropriates such lost or abandoned property to his or her own use or refuses to deliver such property when required commits theft as defined in s. 812.014, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 18. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 718.111, Florida Statutes, is reenacted to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(d) As required by s. 617.0830, an officer, director, or agent shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she

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700 reasonably believes to be in the interests of the association.  
 701 An officer, director, or agent shall be liable for monetary  
 702 damages as provided in s. 617.0834 if such officer, director, or  
 703 agent breached or failed to perform his or her duties and the  
 704 breach of, or failure to perform, his or her duties constitutes  
 705 a violation of criminal law as provided in s. 617.0834;  
 706 constitutes a transaction from which the officer or director  
 707 derived an improper personal benefit, either directly or  
 708 indirectly; or constitutes recklessness or an act or omission  
 709 that was in bad faith, with malicious purpose, or in a manner  
 710 exhibiting wanton and willful disregard of human rights, safety,  
 711 or property. Forgery of a ballot envelope or voting certificate  
 712 used in a condominium association election is punishable as  
 713 provided in s. 831.01, the theft or embezzlement of funds of a  
 714 condominium association is punishable as provided in s. 812.014,  
 715 and the destruction of or the refusal to allow inspection or  
 716 copying of an official record of a condominium association that  
 717 is accessible to unit owners within the time periods required by  
 718 general law in furtherance of any crime is punishable as  
 719 tampering with physical evidence as provided in s. 918.13 or as  
 720 obstruction of justice as provided in chapter 843. An officer or  
 721 director charged by information or indictment with a crime  
 722 referenced in this paragraph must be removed from office, and  
 723 the vacancy shall be filled as provided in s. 718.112(2)(d)2.  
 724 until the end of the officer's or director's period of  
 725 suspension or the end of his or her term of office, whichever  
 726 occurs first. If a criminal charge is pending against the  
 727 officer or director, he or she may not be appointed or elected  
 728 to a position as an officer or a director of any association and

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729 may not have access to the official records of any association,  
 730 except pursuant to a court order. However, if the charges are  
 731 resolved without a finding of guilt, the officer or director  
 732 must be reinstated for the remainder of his or her term of  
 733 office, if any.

734 Section 19. For the purpose of incorporating the amendment  
 735 made by this act to section 812.014, Florida Statutes, in a  
 736 reference thereto, subsection (2) of section 812.015, Florida  
 737 Statutes, is reenacted to read:

738 812.015 Retail and farm theft; transit fare evasion;  
 739 mandatory fine; alternative punishment; detention and arrest;  
 740 exemption from liability for false arrest; resisting arrest;  
 741 penalties.—

742 (2) Upon a second or subsequent conviction for petit theft  
 743 from a merchant, farmer, or transit agency, the offender shall  
 744 be punished as provided in s. 812.014(3), except that the court  
 745 shall impose a fine of not less than \$50 or more than \$1,000.  
 746 However, in lieu of such fine, the court may require the  
 747 offender to perform public services designated by the court. In  
 748 no event shall any such offender be required to perform fewer  
 749 than the number of hours of public service necessary to satisfy  
 750 the fine assessed by the court, as provided by this subsection,  
 751 at the minimum wage prevailing in the state at the time of  
 752 sentencing.

753 Section 20. For the purpose of incorporating the amendment  
 754 made by this act to section 812.014, Florida Statutes, in a  
 755 reference thereto, subsections (1) and (2) of section 812.0155,  
 756 Florida Statutes, are reenacted to read:

757 812.0155 Suspension of driver license following an

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adjudication of guilt for theft.—

(1) Except as provided in subsections (2) and (3), the court may order the suspension of the driver license of each person adjudicated guilty of any misdemeanor violation of s. 812.014 or s. 812.015, regardless of the value of the property stolen. Upon ordering the suspension of the driver license of the person adjudicated guilty, the court shall forward the driver license of the person adjudicated guilty to the Department of Highway Safety and Motor Vehicles in accordance with s. 322.25.

(a) The first suspension of a driver license under this subsection shall be for a period of up to 6 months.

(b) A second or subsequent suspension of a driver license under this subsection shall be for 1 year.

(2) The court may revoke, suspend, or withhold issuance of a driver license of a person less than 18 years of age who violates s. 812.014 or s. 812.015 as an alternative to sentencing the person to:

(a) Probation as defined in s. 985.03 or commitment to the Department of Juvenile Justice, if the person is adjudicated delinquent for such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

(b) Probation as defined in s. 985.03, commitment to the Department of Juvenile Justice, probation as defined in chapter 948, community control, or incarceration, if the person is convicted as an adult of such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

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Section 21. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsections (4), (7), and (8) of section 812.14, Florida Statutes, are reenacted to read:

812.14 Trespass and larceny with relation to utility fixtures; theft of utility services.—

(4) A person who willfully violates subsection (2) commits theft, punishable as provided in s. 812.014.

(7) An owner, lessor, or sublessor who willfully violates subsection (5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Prosecution for a violation of subsection (5) does not preclude prosecution for theft pursuant to subsection (8) or s. 812.014.

(8) Theft of utility services for the purpose of facilitating the manufacture of a controlled substance is theft, punishable as provided in s. 812.014.

Section 22. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (3) of section 893.138, Florida Statutes, is reenacted to read:

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

(3) Any pain-management clinic, as described in s. 458.3265 or s. 459.0137, which has been used on more than two occasions within a 6-month period as the site of a violation of:

(a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery;

(b) Section 810.02, relating to burglary;

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816 (c) Section 812.014, relating to theft;

817 (d) Section 812.131, relating to robbery by sudden

818 snatching; or

819 (e) Section 893.13, relating to the unlawful distribution

820 of controlled substances,

821

822 may be declared to be a public nuisance, and such nuisance may

823 be abated pursuant to the procedures provided in this section.

824 Section 23. For the purpose of incorporating the amendment

825 made by this act to section 812.014, Florida Statutes, in a

826 reference thereto, paragraph (b) of subsection (3) of section

827 943.051, Florida Statutes, is reenacted to read:

828 943.051 Criminal justice information; collection and

829 storage; fingerprinting.—

830 (3)

831 (b) A minor who is charged with or found to have committed

832 the following offenses shall be fingerprinted and the

833 fingerprints shall be submitted electronically to the

834 department, unless the minor is issued a civil citation pursuant

835 to s. 985.12:

836 1. Assault, as defined in s. 784.011.

837 2. Battery, as defined in s. 784.03.

838 3. Carrying a concealed weapon, as defined in s. 790.01(1).

839 4. Unlawful use of destructive devices or bombs, as defined

840 in s. 790.1615(1).

841 5. Neglect of a child, as defined in s. 827.03(1)(e).

842 6. Assault or battery on a law enforcement officer, a

843 firefighter, or other specified officers, as defined in s.

844 784.07(2)(a) and (b).

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845 7. Open carrying of a weapon, as defined in s. 790.053.

846 8. Exposure of sexual organs, as defined in s. 800.03.

847 9. Unlawful possession of a firearm, as defined in s.

848 790.22(5).

849 10. Petit theft, as defined in s. 812.014(3).

850 11. Cruelty to animals, as defined in s. 828.12(1).

851 12. Arson, as defined in s. 806.031(1).

852 13. Unlawful possession or discharge of a weapon or firearm

853 at a school-sponsored event or on school property, as provided

854 in s. 790.115.

855 Section 24. For the purpose of incorporating the amendment

856 made by this act to section 812.014, Florida Statutes, in a

857 reference thereto, paragraph (b) of subsection (1) of section

858 985.11, Florida Statutes, is reenacted to read:

859 985.11 Fingerprinting and photographing.—

860 (1)

861 (b) Unless the child is issued a civil citation or is

862 participating in a similar diversion program pursuant to s.

863 985.12, a child who is charged with or found to have committed

864 one of the following offenses shall be fingerprinted, and the

865 fingerprints shall be submitted to the Department of Law

866 Enforcement as provided in s. 943.051(3)(b):

867 1. Assault, as defined in s. 784.011.

868 2. Battery, as defined in s. 784.03.

869 3. Carrying a concealed weapon, as defined in s. 790.01(1).

870 4. Unlawful use of destructive devices or bombs, as defined

871 in s. 790.1615(1).

872 5. Neglect of a child, as defined in s. 827.03(1)(e).

873 6. Assault on a law enforcement officer, a firefighter, or

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874 other specified officers, as defined in s. 784.07(2)(a).  
 875 7. Open carrying of a weapon, as defined in s. 790.053.  
 876 8. Exposure of sexual organs, as defined in s. 800.03.  
 877 9. Unlawful possession of a firearm, as defined in s.  
 878 790.22(5).  
 879 10. Petit theft, as defined in s. 812.014.  
 880 11. Cruelty to animals, as defined in s. 828.12(1).  
 881 12. Arson, resulting in bodily harm to a firefighter, as  
 882 defined in s. 806.031(1).  
 883 13. Unlawful possession or discharge of a weapon or firearm  
 884 at a school-sponsored event or on school property as defined in  
 885 s. 790.115.  
 886  
 887 A law enforcement agency may fingerprint and photograph a child  
 888 taken into custody upon probable cause that such child has  
 889 committed any other violation of law, as the agency deems  
 890 appropriate. Such fingerprint records and photographs shall be  
 891 retained by the law enforcement agency in a separate file, and  
 892 these records and all copies thereof must be marked "Juvenile  
 893 Confidential." These records are not available for public  
 894 disclosure and inspection under s. 119.07(1) except as provided  
 895 in ss. 943.053 and 985.04(2), but shall be available to other  
 896 law enforcement agencies, criminal justice agencies, state  
 897 attorneys, the courts, the child, the parents or legal  
 898 custodians of the child, their attorneys, and any other person  
 899 authorized by the court to have access to such records. In  
 900 addition, such records may be submitted to the Department of Law  
 901 Enforcement for inclusion in the state criminal history records  
 902 and used by criminal justice agencies for criminal justice

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903 purposes. These records may, in the discretion of the court, be  
 904 open to inspection by anyone upon a showing of cause. The  
 905 fingerprint and photograph records shall be produced in the  
 906 court whenever directed by the court. Any photograph taken  
 907 pursuant to this section may be shown by a law enforcement  
 908 officer to any victim or witness of a crime for the purpose of  
 909 identifying the person who committed such crime.  
 910 Section 25. This act shall take effect October 1, 2018.

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

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

1/9/2018

928

*Meeting Date*

*Bill Number (if applicable)*

Topic Threshold Theft

*Amendment Barcode (if applicable)*

Name Sal Nuzzo

Job Title VP Policy

Address 100 N Duval Street

Phone 850-322-9941

*Street*

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The James Madison Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

***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)

9 Jan 18

Meeting Date

928

Bill Number (if applicable)

Topic Theft

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone \_\_\_\_\_

Street

Tall

Email \_\_\_\_\_

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

1/09/2018

*Meeting Date*

SB 928

*Bill Number (if applicable)*

Topic Theft

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P. O. Box 10788

Phone 850-521-3042

*Street*

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

928  
Bill Number (if applicable)

Meeting Date

Topic Theft

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe St.

Phone 850-681-0024

Street Tallahassee City FL State 32308 Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla Association of Crim. Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/9/18

Meeting Date

928

Bill Number (if applicable)

Topic Theft

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title VP Government Affairs

Address 227 S Adams St.

Phone 850-570-0269

Street

Tallahassee

City

Fl.

State

32301

Zip

Email Melissa@FRF.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/9/18  
Meeting Date

SB 928  
Bill Number (if applicable)

Topic Theft

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Executive Director

Address 2850 Pablo Ave.  
Street

Phone 321-223-4232

Tallahassee, FL.  
City State Zip

Email cmminor@fjja.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Juvenile Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/9/13

Meeting Date

SB 928

Bill Number (if applicable)

Topic SB 928 Theft by Bracy

Amendment Barcode (if applicable)

Name MATT SACCO

Job Title GOV'T CONSULTANT

Address 112 E JEFFERSON ST

Street

Phone

TALLAHASSEE FL

City

State

Zip

Email SACCOW@RUBINGROUP.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing CAMPAIGN FOR CRIMINAL JUSTICE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

1/9/18

SB 928

*Meeting Date*

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Hon. Bob Dillinger

Job Title Public Defender

Address 14250 49th Street North

Phone 727-464-6119

*Street*

Clearwater

FL

33762

*City*

*State*

*Zip*

Email \_\_\_\_\_

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/9/19

Meeting Date

928

Bill Number (if applicable)

Topic Theft

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

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Street

Phone 954-253-7320

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City State Zip

Email dsainvil@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BROWARD COUNTY GOVT. (BCC)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/9/18  
Meeting Date

928  
Bill Number (if applicable)

Topic Property Theft

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 824 N. Duval St.

Phone 954 557 0014

Street

FL

FL

32303

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1-9-18

Meeting Date

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

928

Bill Number (if applicable)

Topic

Theft

Amendment Barcode (if applicable)

Name

Greg Newburn

Job Title

State Policy Director

Address

PO Box 14293

Phone

352.682.2542

Street

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FL

32614

Email

gnewburn@famm.org

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

FAMM

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

---

BILL: CS/SB 970

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Alcohol and Drug-related Overdoses

DATE: January 10, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 970 substantially amends and expands s. 893.21, F.S., which currently provides that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance. This immunity also extends to a person who experiences a drug-related overdose and is in need of medical assistance.

Specifically, the bill does the following:

- Extends immunity to arrests;
- Includes alcohol overdoses;
- Extends immunity to a person who seeks medical assistance for an individual “believed to be experiencing” an alcohol or drug-related overdose, and to a person who has a “good faith belief that he or she is experiencing” such overdose;
- Expands the list of offenses for which a person may receive immunity to include possession of alcoholic beverages by a person under age 21, first degree murder involving unlawful distribution of a controlled substance, and any controlled substance or drug paraphernalia offense;
- Provides that a person seeking medical assistance in accordance with the statute may not be penalized for a violation of a condition of pretrial release, probation, or parole as a result of seeking such assistance; and

- Provides that protection in s. 893.21, F.S., from arrest, charge, or prosecution for an offense listed in s. 893.21, F.S., may not be grounds for suppression of evidence in other criminal prosecutions.

## II. Present Situation:

### Data on Drug Overdose Deaths in Florida

The Florida Bureau of Vital Statistics reported 102,173 deaths in Florida during the first six months of 2016.<sup>1</sup> Of the cases seen by Florida's medical examiners, toxicology results determined that ethanol (ethyl alcohol) and/or various controlled substances were present at the time of death in 5,392 cases.<sup>2</sup> According to the Florida Medical Examiner's Commission (FMEC), the "vast majority of the 5,392 deaths had more than one drug occurrence," meaning more than one drug was detected in the decedents.<sup>3</sup>

Some general statewide trends noted by the FMEC in its most recent report for the first half of 2016 (January-June) include:

- Total drug-related deaths increased by 13.9 percent (658 more) when compared with the first half of 2015.
- 3,044 individuals (466 more deaths than the first half of 2015) died with one or more prescription drugs in their system. The drugs were identified as both the cause of death and present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol.
- 1,616 individuals (440 more deaths than the first half of 2015) died with at least one prescription drug in their system that was identified as the cause of death. These drugs may have been mixed with other prescription drugs, illicit drugs, and/or alcohol.
- The drugs that caused the most deaths were fentanyl (704), cocaine (643), benzodiazepines (632, including 355 alprazolam deaths), morphine (559), heroin (406), ethyl alcohol (405), oxycodone (324), methadone (156), and fentanyl analogs (149). Of these drugs, heroin (93.5 percent), fentanyl (87.5 percent), fentanyl analogs (81.4 percent), methadone (65.0 percent), morphine (63.7 percent), cocaine (56.2 percent), and oxycodone (51.3 percent) were listed as causing death in more than 50 percent of the deaths in which these drugs were found.<sup>4</sup>

### "Good Samaritan" Laws Regarding Drug Overdoses

According to the National Conference of State Legislatures (NCSL), "[d]rug overdoses are a major cause of preventable death in the United States. Increasingly, this includes prescription opioids, along with illegal opiate drugs like heroin."<sup>5</sup> The NCSL notes that "[o]pioid overdoses can be reversed with the timely administration of a medication called naloxone[.]" an FDA-

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<sup>1</sup> *Drugs Identified in Deceased Persons by Florida Medical Examiners – 2016 Interim Report* (May 2017), p. 1, Florida Medical Examiners Commission, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2016-Interim-Drug-Report.aspx> (last visited on December 12, 2017).

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

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

<sup>4</sup> *Id.* at p. 2.

<sup>5</sup> "Drug Overdose Immunity 'Good Samaritan' Laws" (July 1, 2014), National Conference of State Legislatures (on file with the Senate Committee on Criminal Justice).



approved drug that “can be administered in a number of ways that make it possible for a lay person to use.”<sup>6</sup>

According to the NCSL, “[o]ften family and friends are in the best position to administer this lifesaving drug to their loved ones who overdose. Access to naloxone, however, was relatively limited until legislatures provided specific statutory protections for nonmedical professionals to possess and administer naloxone without a prescription.”<sup>7</sup> Many legislatures have enacted a law allowing naloxone administration and this law is often coupled with a law providing limited immunity from criminal prosecution for providing such medical assistance:

To encourage people to seek out medical attention for an overdose or for follow-up care after naloxone has been administered, 40 states<sup>8</sup> and the District of Columbia have enacted some form of a Good Samaritan or 911 drug immunity law. These laws generally provide immunity from arrest, charge or prosecution for certain controlled substance possession and paraphernalia offenses when a person who is either experiencing an opiate-related overdose or observing one calls 911 for assistance or seeks medical attention. State laws are also increasingly providing immunity from violations of pretrial, probation or parole conditions and violations of protection or restraining orders.

The scope of what offenses and violations are covered by immunity provisions varies by state. Some states have opted for more restricted immunity while others, like Vermont, have provided immunity from a more expansive list of controlled substance offenses.

These laws often require a caller to have a reasonable belief that someone is experiencing an overdose emergency and is reporting that emergency in good faith. Good faith is often defined to exclude seeking help during the course of the execution of an arrest or a search warrant. Some laws also specify that immunity for covered offenses is not ground for suppression of evidence of other crimes. Other requirements frequently include remaining on scene until help arrives and cooperating with emergency personnel when they arrive.<sup>9</sup>

Section 381.887, F.S., is Florida’s law providing civil immunity to a person who administers an “emergency opioid antagonist”<sup>10</sup> in compliance with that section. Section 893.21, F.S., Florida’s “Good Samaritan” overdose immunity law, provides that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged,

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<sup>6</sup> “Drug Overdose Immunity and Good Samaritan Laws” (June 5, 2017), National Conference of State Legislatures, available at <http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx> (last visited on December 12, 2017).

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

<sup>8</sup> According to the NCSL, the following states have an overdose immunity law: Alabama; Alaska; Arkansas; California; Colorado; Connecticut; Delaware; Florida; Georgia; Hawaii; Illinois; Indiana; Kentucky; Louisiana; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Montana; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; New York; North Carolina; North Dakota; Ohio; Oregon; Pennsylvania; Rhode Island; South Dakota; Tennessee; Utah; Virginia; Vermont; Washington; West Virginia; and Wisconsin. *Supra*, n. 6.

<sup>9</sup> *Supra*, n. 6.

<sup>10</sup> “Emergency opioid antagonist” means naloxone hydrochloride or any similarly acting drug that blocks the effects of opioids administered from outside the body and that is approved by the United States Food & Drug Administration for the treatment of an opioid overdose. Section 381.887(1)(d), F.S.

prosecuted, or penalized for possession of a controlled substance. This immunity also extends to a person who experiences a drug-related overdose and is in need of medical assistance.<sup>11</sup>

### **Section 893.21, F.S.**

Section 893.21(1), F.S., provides that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose<sup>12</sup> may not be charged, prosecuted, or penalized pursuant to ch. 893, F.S. (the “Florida Comprehensive Drug Abuse Prevention and Control Act”)<sup>13</sup> for possession of a controlled substance<sup>14</sup> if the evidence for possession of a controlled substance was obtained as a result of the person’s seeking medical assistance.

Section 893.21(2), F.S., provides that a person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized pursuant to this chapter for possession of a controlled substance if the evidence for possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance.

Section 893.21(3), F.S., provides that protection in s. 893.21, F.S., from prosecution for possession offenses under ch. 893, F.S., may not be grounds for suppression of evidence in other criminal prosecutions.

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

The bill substantially amends and expands s. 893.21, F.S., Florida’s overdose immunity statute. Currently, this statute applies only to drug-related overdoses. The bill adds alcohol overdoses.

Currently, s. 893.21(1) and (2), F.S., do not address immunity from arrests. The bill adds arrests.

Currently, s. 893.21(1), F.S., applies to a person acting in good faith who seeks medical assistance for an individual “experiencing” an overdose. The bill expands immunity to a person who seeks such assistance for an individual “believed to be experiencing” an overdose.

Currently, s. 893.21(2), F.S., applies to a person who “experiences” an overdose and is in need of medical assistance. The bill expands immunity to a person who “has a good faith belief that he or she is experiencing” an overdose and is in need of medical assistance.

Currently, the only offense for which a person may obtain immunity under s. 893.21(1) or (2), F.S., is possession under ch. 893, F.S. The bill adds additional offenses:

- Possession of alcoholic beverages by a person under age 21;<sup>15</sup>

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<sup>11</sup> Section 893.21(2), F.S.

<sup>12</sup> “Overdose” is not defined. One Florida appellate court consulted dictionary definitions of the term: “too great a dose (as of a therapeutic agent); *also*: a lethal or toxic amount (as of a drug)” (Merriam-Webster Dictionary); and “[a]n excessive and dangerous dose of a drug” (Oxford Dictionaries). *State v. Silliman*, 168 So.3d 245, 247 (Fla. 5th DCA 2015).

<sup>13</sup> Section 893.01, F.S.

<sup>14</sup> The statute does not specify whether “possession” is limited to simple possession of a controlled substance under s. 893.13(6)(b), F.S.

<sup>15</sup> Section 562.111, F.S.

- For a person seeking medical assistance (s. 893.21(1), F.S.), first degree murder involving unlawful distribution of a specified controlled substance;<sup>16</sup> and
- Any controlled substance or drug paraphernalia offense.<sup>17</sup>

The bill adds a new provision that provides that a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol or a drug-related overdose may not be penalized for a violation of a condition of pretrial release, probation, or parole as a result of the person's seeking medical assistance.

Currently, s. 893.21(3), F.S., only provides that protection in s. 893.21, F.S., from prosecution for possession under ch. 893, F.S., may not be grounds for suppression of evidence in other criminal prosecutions. The bill expands subsection (3) to reference arrests and charges, and to reference "an offense listed in this section." As amended, subsection (3) provides that protection in s. 893.21, F.S., from arrest, charge, or prosecution for an offense listed in s. 893.21, F.S., may not be grounds for suppression of evidence in other criminal prosecutions.

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.

#### **V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

To the extent that alcohol or deaths related to overdoses are reduced based on the changes proposed by the bill, medical and other associated costs relating to such overdoses may be reduced.

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<sup>16</sup> Section 782.04(1)(a)3., F.S. This provision punishes the unlawful killing of a human being which resulted from the unlawful distribution by an adult of any substance listed in the provision, or mixture of such substance, when such substance or mixture is proven to be the proximate cause of the death of the user.

<sup>17</sup> Any controlled substance offense under s. 893.13, F.S., or s. 893.135, F.S. (drug trafficking), and any drug paraphernalia offense under s. 893.147, F.S.

**C. Government Sector Impact:**

To the extent that alcohol or deaths related to overdoses are reduced based on the changes proposed by the bill, costs to local first responders in responding to such overdoses may be reduced.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Most of the changes proposed by the bill are features of the overdose immunity laws of at least one other state,<sup>18</sup> and the inclusion of arrests in s. 893.21, F.S., was a recommendation of Florida's Statewide Drug Policy Advisory Council.<sup>19</sup> However, Senate Criminal Justice Committee staff was unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to s. 782.04(1)(a)3., F.S., which punishes first degree murder involving unlawful distribution of a specified controlled substance. In fact, at least one state, Illinois, specifically states in its overdose immunity law that the law is not intended to prevent arrest or prosecution for drug-induced homicide.<sup>20</sup> As indicated by the NCSL, overdose immunity laws "generally provide immunity from arrest, charge or prosecution for certain controlled substance possession and paraphernalia offenses[.]"<sup>21</sup>

While the bill does not nullify s. 782.04(1)(a)3., F.S., the bill appears to effectively bar arrest or prosecution of a person who distributed a controlled substance to a user that was the proximate cause of the user's death but who also provided medical assistance to the user (albeit the user still died) in accordance with s. 893.21, F.S., as amended by the bill.

Staff was also unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to s. 893.135, F.S., which punishes drug trafficking.<sup>22</sup>

**VIII. Statutes Affected:**

This bill substantially amends section 893.21 of the Florida Statutes.

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<sup>18</sup> Provided are a few examples: Georgia law (Ga. Code Ann. s. 16-13-5) includes arrests; Colorado law (Colo. Rev. Stat. s. 18-1-711) includes alcohol overdose; New York law (N.Y. Penal Law s. 220.78) provides immunity for possession of alcohol by a person under 21 years of age; Mississippi law (Miss. Code. Ann. s. 41-29-149.1) provides immunity for drug paraphernalia offenses; and Tennessee law (Tenn. Code Ann. s. 63-1-156) provides immunity for pretrial, probation, or parole violations.

<sup>19</sup> *Statewide Drug Policy Advisory Council – 2016 Annual Report* (December 1, 2016), p. 15, Florida Department of Health, available at <http://www.floridahealth.gov/provider-and-partner-resources/dpac/DPAC-Annual-Report-2016-FINAL.pdf> (last visited on December 12, 2017).

<sup>20</sup> 720 Ill. Comp. Stat. Ann. 570/414.

<sup>21</sup> *Supra*, n. 6.

<sup>22</sup> The act of "trafficking" can include possession, purchase, sale, manufacture, delivery, or importation.

**IX. Additional Information:**

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

**CS by Criminal Justice on January 9, 2018:**

The Committee Substitute corrects incorrect statutory references and provides for uniform word usage.

- B. **Amendments:**

None.



885704

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/09/2018	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 33 - 43  
and insert:  
893.13, s. 893.135, or s. 893.147, possession of a controlled substance if the evidence for such offense possession of a controlled substance was obtained as a result of the person's seeking medical assistance.

(2) A person who experiences, or has a good faith belief that he or she is experiencing, an alcohol or a drug-related



885704

11 overdose and is in need of medical assistance may not be  
12 arrested, charged, prosecuted, or penalized ~~pursuant to this~~  
13 ~~chapter~~ for a violation of s. 562.111, s. 893.13, s. 893.135, or  
14 s. 893.147, ~~possession of a controlled substance~~ if the evidence  
15 for such offense ~~possession of a controlled substance~~ was  
16 obtained

By Senator Brandes

24-01030-18

2018970\_\_

A bill to be entitled

An act relating to alcohol and drug-related overdoses; amending s. 893.21, F.S.; prohibiting the arrest, charging, prosecution, or penalizing under specified provisions of a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol or a drug-related overdose; prohibiting the arrest, charging, prosecution, or penalizing under specified provisions of a person who experiences, or has a good faith belief that he or she is experiencing, an alcohol or a drug-related overdose; prohibiting a person from being penalized for a violation of a condition of certain programs if that person in good faith seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol or a drug-related overdose; prohibiting the protection from arrest, charge, and prosecution for certain offenses from being grounds for suppression of evidence in other criminal prosecutions; providing an effective date.

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

Section 1. Section 893.21, Florida Statutes, is amended to read:

893.21 Alcohol and drug-related overdoses; medical assistance; immunity from arrest, charge, and prosecution.—

(1) A person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be

Page 1 of 2

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

24-01030-18

2018970\_\_

experiencing, an alcohol or a drug-related overdose may not be ~~arrested, charged, prosecuted, or penalized pursuant to this chapter for a violation of s. 562.111, s. 782.04(1)(a)3., s. 893.13, s. 893.135, or s. 893.145, possession of a controlled substance~~ if the evidence for such crime ~~possession of a controlled substance~~ was obtained as a result of the person's seeking medical assistance.

(2) A person who experiences, or has a good faith belief that he or she is experiencing, an alcohol or a drug-related overdose and is in need of medical assistance may not be arrested, charged, prosecuted, or penalized pursuant to this chapter for a violation of s. 562.111, s. 893.13, s. 893.135, or s. 893.145, possession of a controlled substance if the evidence for such crime ~~possession of a controlled substance~~ was obtained as a result of the person's seeking the overdose and the need for medical assistance.

(3) A person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol or a drug-related overdose may not be penalized for a violation of a condition of pretrial release, probation, or parole as a result of the person's seeking medical assistance.

~~(4)(3)~~ Protection in this section from arrest, charge, and prosecution for an offense listed in this section ~~possession offenses under this chapter~~ may not be grounds for suppression of evidence in other criminal prosecutions.

Section 2. This act shall take effect July 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)

1/9/2018  
Meeting Date

970  
Bill Number (if applicable)

Topic Overdose

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone 850-681-0024

Street Tallahassee, FL 32301  
City State Zip

Email jorge@flapartners.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla Assoc. of Crim. Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-9-18

Meeting Date

970

Bill Number (if applicable)

Topic Overdose

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933

Phone 352.682.2541

Gainesville FL 32614  
City State Zip

Email gnewburn@famm.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FAMM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

1/9/18

*Meeting Date*

SB 970

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Hon. Bob Dillinger

Job Title Public Defender

Address 14250 49th Street North

Phone 727-464-6119

*Street*

Clearwater

FL

33762

*City*

*State*

*Zip*

Email \_\_\_\_\_

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

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S-001 (10/14/14)

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

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

9 Jan 18

Meeting Date

970

Bill Number (if applicable)

Topic Drug Overdose

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone \_\_\_\_\_

Street

Tall

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** December 24, 2017

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I respectfully request that **Senate Bill #970**, relating to **Alcohol and Drug-related Overdoses**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

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

Senator Jeff Brandes  
Florida Senate, District 24

# CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 1/9/2018 4:07:10 PM

Ends: 1/9/2018 5:49:16 PM Length: 01:42:07

4:07:16 PM Meeting called to order by Chair Bracy  
4:07:45 PM CAA calls roll. Quorum is present  
4:08:00 PM Announcements  
4:08:32 PM Tab 1 - Presentation on Pretrial Release Alternatives  
4:08:52 PM Lenard Perry, Assistant Director, Pretrial Services, Alachua Co. Dept. of Court Services  
4:17:01 PM Question from Chair  
4:17:16 PM Mr. Perry answers and continues  
4:25:25 PM Question from Sen. Baxley  
4:25:47 PM Mr. Perry responds to question  
4:26:28 PM Follow up by Sen. Baxley- funded by the County Commission and taxpayers. What is your budget?  
4:26:39 PM Mr. Perry Responds  
4:27:19 PM Another follow-up question - posting of bond and cost  
4:27:27 PM Mr. Perry Responds  
4:28:45 PM Sen. Baxley - one more question - minimal offense for \$500 or \$5000 bond, What is minimal offense?  
4:29:35 PM Mr.. Perry responds to question and continues with presentation.  
4:31:34 PM Chair  
4:31:45 PM Mr. Perry continues  
4:32:07 PM Chair, questions? None.  
4:32:19 PM Tab 2 - Sheriff Gualtieri, Presentation on Pretrial Release Programs in Pinellas County  
4:41:00 PM Question by Senator Bradley  
4:41:59 PM Sheriff responds  
4:42:30 PM Senator Bradley  
4:42:47 PM Sherriff responds  
4:43:41 PM Ssenator Bradley  
4:43:53 PM Sherriff responds  
4:44:12 PM Senator Bradley  
4:44:16 PM Sheriff responds  
4:44:33 PM Sen. Rouson  
4:44:51 PM Sen. Rouson - Question of Sherriff  
4:45:10 PM Sen. Rouson - Question of Sherriff - Violation addressed?  
4:45:18 PM Sherriff responds and continues  
4:50:01 PM Senator Brandes,  
4:50:37 PM Senator Brandes, Are other Sherriffs working with you and what can the Legislature do to help?  
4:51:08 PM Senator Baxley - supervised bond? Explain.  
4:51:55 PM Sherriff responds  
4:53:06 PM Senator Baxley asks about dedicated resources  
4:53:29 PM Tab 4 SB 618 by Senator Baxley regarding Subpoenas in Investigations of Sexual Offenses  
4:53:46 PM Amendment 968614 is explained  
4:56:34 PM Amendment 968614 is adopted  
4:56:48 PM Speaker CJ Johnson from Community Champions, Businesses Against Child Exploitation  
4:58:19 PM Speaker Lt. Rob Vitaliano from Brevard Country Sheriffs Office  
4:59:17 PM Speaker Mike Spadafora from Brevard Country Sheriffs Office  
5:00:33 PM Speakers waive in support  
5:00:55 PM Close on SB 618  
5:02:27 PM Roll call on SB 618  
5:02:51 PM Tab 6 SB 866 by Senator Bracy regarding Sentencing  
5:02:54 PM Chair turned over to Vice Chair Baxley  
5:05:26 PM Speaker Barney Bishop waives in opposition  
5:05:48 PM Speakers waive in support  
5:07:03 PM Roll call on SB 866  
5:07:32 PM Chair turned back to Senator Bracy  
5:07:42 PM Tab 5 SB 854 by Brandes regarding Corrections Specialists

**5:07:53 PM** Amendment 772110 is explained  
**5:08:47 PM** Senator Rouson has a question on the estimate of potential hires this opens up by allowing 18y/o  
**5:11:06 PM** Speaker Jared Torres from Florida Department of Corrections waives in support of the amendment  
**5:12:46 PM** Amendment 72110 adopted  
**5:13:13 PM** Speakers waive in support  
**5:13:31 PM** Roll call on SB 854  
**5:13:54 PM** Tab 9 SB 970 by Senator Brandes regarding Alcohol and Drug-related Overdoses  
**5:15:54 PM** Amendment Barcode 885704 is explained  
**5:16:22 PM** Amendment 885704 is adopted  
**5:16:39 PM** Speakers waive in support  
**5:17:15 PM** Roll call on SB 970  
**5:17:38 PM** Chair handed back over to Vice Chair Baxley  
**5:17:48 PM** Tab 8 SB 928 by Senator Bracy regarding Theft  
**5:19:02 PM** Amendment 524256 is explained  
**5:19:43 PM** Amendment 524256 is adopted  
**5:20:17 PM** Speakers waive in both support and opposition  
**5:21:56 PM** Roll call on SB 928  
**5:23:08 PM** Tab 3 SB 238 by Senator Bracy regarding Conditional Medical Release Program  
**5:23:12 PM** Amendment 829882 is explained  
**5:25:34 PM** Amendment 829882 adopted  
**5:26:08 PM** Speakers waive in support  
**5:28:03 PM** Senator Brandes recognized in debate regarding the elderly inmate population  
**5:28:55 PM** Roll call on SB 238  
**5:29:35 PM** Senator Rouson moves to ajourn this meeting