| Tab 2         | SB 534             | by <b>Br</b>         | <b>andes</b> ; Pretr  | ial Release                |  |                |
|---------------|--------------------|----------------------|-----------------------|----------------------------|--|----------------|
|               |                    |                      |                       |                            |  |                |
| Tab 3         | SB 776<br>Health ( | -                    | xley (CO-IN           | ITRODUCERS) Bracy;         | (Identical to H 00665) Sexual Misconduct | Reporting in   |
| 201438        | D                  | S                    | RCS                   | CJ, Baxley                 | Delete everything after                  | 03/11 05:11 PM |
| Tab 4         | SB 800             | by <b>Pi</b> z       | zzo; (Similar         | to H 00147) Duty to Assi   | st                                       |                |
| Tab 5         | SB 916             | by <b>Pi</b> z       | zzo; (Similar         | to H 00669) Cyberstalkin   | ng                                       |                |
| 497532        | Т                  | S                    | RCS                   | CJ, Pizzo                  | In title, delete L.2:                    | 03/11 05:11 PM |
| Tab 6         | SB 936             | by <b>Br</b>         | acy; (Similar         | to H 00747) Criminal His   | story Records                            |                |
| 561168        | Α                  | S                    | RCS                   | CJ, Bracy                  | Delete L.38:                             | 03/11 05:11 PM |
| Tab 7         | SB 938             | by <b>Br</b>         | acy; (Similar         | to H 00749) Public Reco    | rds/Criminal History Records             |                |
| 557354        | Α                  | S                    | RCS                   | CJ, Bracy                  | Delete L.180:                            | 03/11 05:11 PM |
| Tab 8         | SB 106             | <b>8</b> by <b>B</b> | <b>Sean</b> ; (Simila | r to H 00785) Crime Victi  | m Assistance                             |                |
| 412986        | D                  | S                    | UNFAV                 | CJ, Bean                   | Delete everything after                  | 03/11 05:11 PM |
| Tab 9         | SB 108             | <b>0</b> by <b>B</b> | <b>sook</b> ; (Simila | r to H 00727) Hazing       |  |                |
| 361142        | D                  | S                    | RCS                   | CJ, Book                   | Delete everything after                  | 03/11 05:11 PM |
| 472838        | AA                 | S                    | RCS                   | CJ, Book                   | Delete L.130:                            | 03/11 05:11 PM |
| <b>Tab 10</b> | SB 113             | <b>4</b> by <b>S</b> | <b>immons</b> ; (S    | imilar to H 00569) Electro | onic Monitoring Devices                  |                |
| 611842        | Α                  | S                    | RCS                   | CJ, Simmons                | Delete L.33 - 41:                        | 03/11 05:11 PM |
| <b>Tab 11</b> | SB 113             | <b>6</b> by <b>H</b> | larrell (CO-          | INTRODUCERS) Perry;        | ; (Similar to H 01043) Cyberharassment   |                |

#### The Florida Senate

## **COMMITTEE MEETING EXPANDED AGENDA**

CRIMINAL JUSTICE Senator Perry, Chair Senator Brandes, Vice Chair

MEETING DATE: Monday, March 11, 2019

**TIME:** 1:30—3:30 p.m.

PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Perry, Chair; Senator Brandes, Vice Chair; Senators Bracy, Flores, and Pizzo

TAB OFFICE and APPOINTMENT (HOME CITY)

FOR TERM ENDING

**COMMITTEE ACTION** 

**Senate Confirmation Hearing:** A public hearing will be held for consideration of the belownamed executive appointment to the office indicated.

#### **Secretary of Juvenile Justice**

1 Marstiller, Simone ()

Pleasure of Governor

Recommend Confirm Yeas 4 Nays 0

| TAB | BILL NO. and INTRODUCER               | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION           |
|-----|---------------------------------------|---|----------------------------|
| 2   | SB 534 Brandes (Compare S 1334)       | Pretrial Release; Authorizing each county to establish a supervised bond program with the concurrence of the chief judge of the judicial circuit, the county's chief correctional officer, the state attorney, and the public defender; authorizing the chief judge of each circuit, with the concurrence of the county's chief correctional officer, the state attorney, and the public defender, to enter an administrative order for the use of a risk assessment instrument in pretrial release determinations; providing that a court retains sole discretion to determine the appropriateness of pretrial release and any necessary pretrial release conditions, etc.  CJ 03/04/2019 Temporarily Postponed CJ 03/11/2019 Favorable ACJ AP | Favorable<br>Yeas 5 Nays 0 |
| 3   | SB 776<br>Baxley<br>(Identical H 665) | Sexual Misconduct Reporting in Health Care; Requiring specified health care facilities, as a condition of obtaining or maintaining licensure, to enact policies requiring employees, contractors, volunteers, and interns of such licensees to report actual or suspected sexual misconduct involving a patient to the licensee, the Department of Children and Families, and the appropriate local law enforcement agency, etc.  CJ 03/11/2019 Fav/CS AHS AP   | Fav/CS<br>Yeas 4 Nays 0    |

### **COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice
Monday, March 11, 2019, 1:30—3:30 p.m.

| TAB | BILL NO. and INTRODUCER  | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION           |
|-----|--|---|----------------------------|
| 4   | SB 800<br>Pizzo<br>(Similar H 147)                                 | Duty to Assist; Requiring certain persons under specified circumstances to provide reasonable assistance to another person who is exposed to or has suffered serious bodily injury, etc.  CJ 03/11/2019 Favorable   | Favorable<br>Yeas 4 Nays 1 |
|     |  | JU<br>RC  |                            |
| 5   | SB 916<br>Pizzo<br>(Similar H 669)                                 | Cyberstalking; Redefining the term "cyberstalk" as the term relates to prohibited acts; providing that a person commits an offense against users of certain electronic devices if he or she willfully, knowingly, and exceeding authorization performs specified acts, etc.                                     | Fav/CS<br>Yeas 4 Nays 1    |
|     |  | CJ 03/11/2019 Fav/CS<br>ACJ<br>AP   |                            |
| 6   | SB 936<br>Bracy<br>(Similar H 747, Compare H 749,<br>Linked S 938) | Criminal History Records; Requiring the Criminal Justice Information Program to administratively seal the criminal history records of a minor upon notification by the clerk of the court under specified circumstances, etc.   | Fav/CS<br>Yeas 5 Nays 0    |
|     |  | CJ 03/11/2019 Fav/CS<br>GO<br>RC  |                            |
| 7   | SB 938 Bracy (Similar H 749, Compare H 747, Linked S 936)          | Public Records/Criminal History Records; Expanding an existing public records exemption to include the administrative sealing of specified criminal history records; providing for future review and repeal of the expanded exemption; providing a statement of public necessity, etc.                          | Fav/CS<br>Yeas 5 Nays 0    |
|     |  | CJ 03/11/2019 Fav/CS<br>GO<br>RC  |                            |
| 8   | <b>SB 1068</b> Bean (Similar H 785)                                | Crime Victim Assistance; Redefining the term "crime" to include the commission of certain lewd or lascivious offenses; increasing the maximum amount the Crime Victims' Services Office of the Department of Legal Affairs is required to pay for certain medical expenses of victims of specified crimes, etc. | Favorable<br>Yeas 5 Nays 0 |
|     |  | CJ 03/11/2019 Favorable<br>ACJ<br>AP  |                            |

S-036 (10/2008) Page 2 of 3

### **COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, March 11, 2019, 1:30—3:30 p.m.

| TAB | BILL NO. and INTRODUCER                | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION           |
|-----|--|---|----------------------------|
| 9   | <b>SB 1080</b> Book (Similar H 727)    | Hazing; Expanding the crime of hazing, a third degree felony, to include when a person solicits others to commit or is actively involved in the planning of hazing; expanding the crime of hazing, a first degree misdemeanor, to include when a person solicits others to commit or is actively involved in the planning of hazing, etc.  CJ 03/11/2019 Fav/CS ED AP | Fav/CS<br>Yeas 4 Nays 0    |
| 10  | SB 1134<br>Simmons<br>(Similar H 569)  | Electronic Monitoring Devices; Specifying the jurisdictions under which certain prohibited acts relating to electronic monitoring devices may be prosecuted, etc.  CJ 03/11/2019 Fav/CS JU RC   | Fav/CS<br>Yeas 4 Nays 0    |
| 11  | SB 1136<br>Harrell<br>(Similar H 1043) | Cyberharassment; Redefining the terms "personal identifying information" and "sexually cyberharass"; providing criminal penalties, etc.  CJ 03/11/2019 Favorable JU RC  | Favorable<br>Yeas 4 Nays 1 |

S-036 (10/2008) Page 3 of 3

# The Florida Senate Committee Notice Of Hearing

IN THE FLORIDA SENATE TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Simone Marstiller

Secretary of Juvenile Justice

#### NOTICE OF HEARING

TO: Ms. Simone Marstiller

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Monday, March 11, 2019, in the Mallory Horne Committee Room, 37 Senate Building, commencing at 1:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing. DATED this the 6th day of March, 2019

Committee on Criminal Justice

Senator Keith Perry

As Chair and by authority of the committee

cc: Members, Committee on Criminal Justice

Office of the Sergeant at Arms



## RON DESANTIS GOVERNOR

RECEIVED

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HYIS:OH FILLECTIONS TALLAHASSEF, FL

February 21, 2019

Secretary Laurel Lee Department of State R.A. Gray Building, Room 316 500 South Bronough Street Tallahassee, FL 32399-0250

Dear Secretary Lee:

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

Ms. Simone Martstiller

as the Secretary of the Florida Department of Juvenile Justice, subject to confirmation by the Senate. This appointment is effective January 9, 2019, for a term ending at the pleasure of the Governor.

Sincerely,

Ron DeSantis

Governor

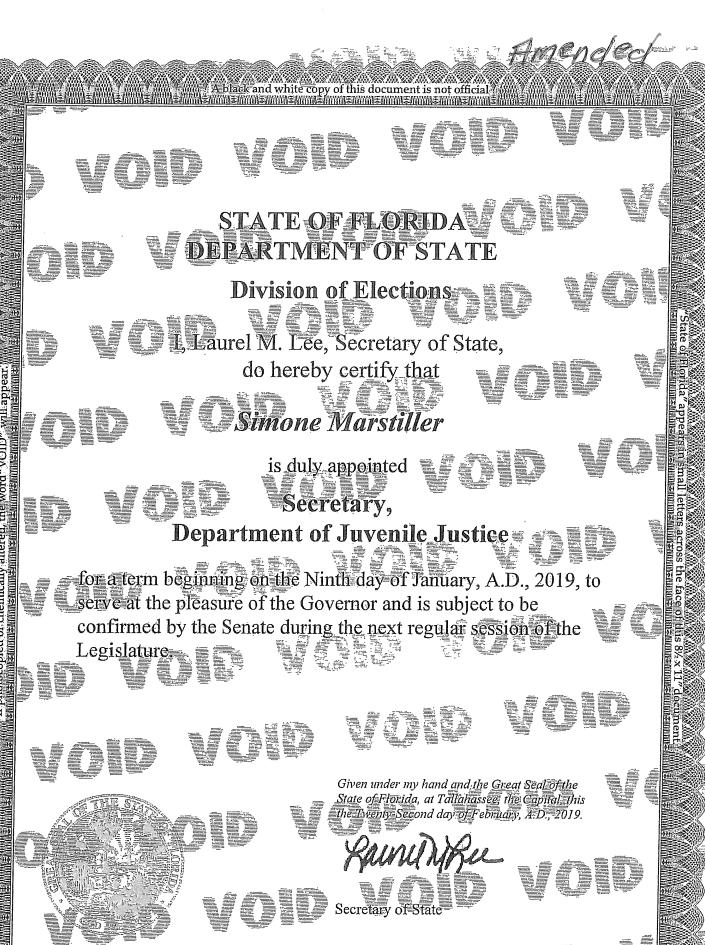
RD/mm

# HAND DELIVERED

## OATH OF OFFICE

(Art. II. § 5(b), Fla. Const.)

| STATE OF FLORIDA   | 2019 FE"   1 Pti 2: 13   |
|--|--|
| County of LEON   |  |
| Government of the United States and of the office under the Constitution of the State, and t | support, protect, and defend the Constitution and State of Florida; that I am duly qualified to hold that I will well and faithfully perform the duties of the of of Office) |
| on which I am now about to enter, so help me (   | God.   |
| Signature Sworn to and subscribed  | OR Produced Identification   |
| ACCEP  | TANCE  |
| I accept the office listed in the above Oath of  Mailing Address: Home Goffice               | Office.  |
|  | Simone Marstillor  |
| Street or Post Office Box  | Dimone Marstiller Print Name Li More Wart  |
| City, State: Zin Code  | Signature  |



DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking,

### THE FLORIDA SENATE

## APPEARANCE RECORD

2/11/10

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

| <b>3/11/1</b> (Same 2011)                 | spice of the form to the conditi | Tot Condito i Totocolonar e  | run oonaaoung    | , (110 1110011119)                      |
|---|----------------------------------|--|------------------|---|
| Meeting Date                              |                                  |  |                  | Bill Number (if applicable)             |
| Topic Confirmati                          | ion                              |  | -                | Amendment Barcode (if applicable)       |
| Name Simone Man                           | stiller                          |  | _                |   |
| Job Title <u>Secretary</u>                |                                  |  | _                |   |
| Address 2737 Cent                         | terview D                        | Control of the contro | Phone            | 850-717-2716                            |
| Street TLH                                | FL                               | 32308  | _ Email <u> </u> | achel·moscoscabji.states                |
| City  Speaking: For Against               | State<br>Information             |  | Speaking:        | - · · · · · · · · · · · · · · · · · · · |
| Representing Depart                       | Ament or                         | Juvenila   | e Ju             | stice                                   |
| Appearing at request of Chair:            | Yes No                           | Lobbyist regis   | tered with       | Legislature: No                         |
| While it is a Senate tradition to encoura | ge public testimony, tim         | e may not permit al  | ll persons w     | vishing 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.)

|             | Prepare      | ed By: The | Professional St | aff of the Committee | on Criminal Jus  | tice   |
|-------------|--------------|------------|-----------------|----------------------|------------------|--------|
| BILL:       | SB 534       |            |                 |                      |                  |        |
| INTRODUCER: | Senator Bra  | andes      |                 |                      |                  |        |
| SUBJECT:    | Pretrial Rel | lease      |                 |                      |                  |        |
| DATE:       | March 1, 20  | 019        | REVISED:        |                      |                  |        |
| ANAL        | YST          | STAF       | F DIRECTOR      | REFERENCE            |                  | ACTION |
| 1. Cox      |              | Jones      |                 | CJ                   | <b>Favorable</b> |        |
| 2.          |              |            |                 | ACJ                  |                  |        |
| 3.          |              |            |                 | AP                   |                  |        |

## I. Summary:

SB 534 creates two new programs that provide more tools for courts to use in the determination of whether it is appropriate to release a defendant from custody pending trial and what conditions are necessary to ensure pretrial release compliance.

First, the bill creates s. 907.042, F.S., authorizing counties, through the concurrence of specified entities, to establish a supervised bond program (Bond Program). Any circuit that establishes a Bond Program must allow eligible defendants to be released on active electronic monitoring, continuous alcohol monitoring, or both pending trial. The Bond Program utilizes evidence-based methods to provide a more consistent and accurate assessment of a defendant's ability to successfully comply with specified pretrial release conditions. The bill specifies components of the Bond Program, which, in part, include to:

- Use the results of a validated pretrial risk assessment instrument that has been administered to the defendant for specified purposes.
- Assess the defendant's behavioral characteristics and needs that increase the likelihood of criminal activity and that are able to be addressed through the placement of services.
- Coordinate necessary services and supervision through the Bond Program to reduce the likelihood of criminal activity and to increase the likelihood of compliance with pretrial release conditions.
- Require the appropriate court to make a final determination regarding whether a defendant will be placed into the Bond Program and if release if appropriate, to impose an individualized release plan.

This Bond Program will provide pretrial release to certain defendants who may not otherwise be eligible for pretrial release on unsupervised nonmonetary conditions and who cannot afford to satisfy the bond imposed by the court.

Additionally, the bill creates s. 907.0421, F.S., authorizing each judicial circuit to enter an administrative order, in concurrence with specified entities, to administer a risk assessment instrument (RAI) in preparation for first appearance or within 72 hours after arrest for use in pretrial release determinations. The bill requires that the RAI results be used as supplemental factors for the court to consider when determining the appropriateness of first appearance pretrial release and in determining the conditions of release which are appropriate based on the predicted level of risk and failure of pretrial release conditions. The bill also requires the court to impose the least restrictive conditions necessary to reasonably ensure that the defendant will be present at subsequent hearings.

The bill requires any circuits that choose to establish a program created by s. 907.042, F.S., s. 907.0421, F.S., or both, to report specified data about the programs to the Office of Program Policy and Government Accountability (OPPAGA) and requires the OPPAGA to include such data in its annual report addressing pretrial release programs.

The bill requires the RAI used in either program to be independently validated by the Department of Corrections (DOC) and the bill provides necessary rulemaking authority to the DOC to ensure compliance with this provision.

The bill authorizes counties to implement a Bond Program, which allows an eligible defendant to be released on active supervision and some form of bond while awaiting trial. Additionally, the bill authorizes judicial circuits to utilize RAIs for pretrial determination decisions. To the extent that such programs are created and defendants that would otherwise remain in custody pending trial are released, local governments may experience reduced costs due to not paying the full daily county jail per diem for such inmates. Additionally, the DOC and the OPPAGA have reported that there is no fiscal impact from the bill. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

#### **II.** Present Situation:

#### **Pretrial Release Subsequent to an Arrest**

The Florida Constitution provides that every person charged with a crime is entitled to pretrial release with reasonable conditions. There are three types of pretrial release for a person who is awaiting trial: the posting of a bail or surety bond, pretrial release conditions, or the release on his or her own recognizance. <sup>2</sup>

### Bail and Surety Bond

The purpose of a bail determination in criminal proceedings is to ensure the appearance of a defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.<sup>3</sup> Bail is a common monetary condition of pretrial release, governed by

<sup>&</sup>lt;sup>1</sup> Article I, s. 14, FLA CONST. This right does not apply to persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. *Id*.

<sup>&</sup>lt;sup>2</sup> See art. I, s. 14. Fla. Const.; See also ss. 903.046 and 907.041. F.S.

<sup>&</sup>lt;sup>3</sup> Section 903.046(1), F.S.

ch. 903, F.S. <sup>4</sup> For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond to ensure that he or she will return for trial and any other required court appearances. <sup>5</sup>

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond<sup>6</sup> executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf pays the bail bond agent a nonrefundable fee equal to 10 percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond.<sup>7</sup>

#### **Pretrial Release Conditions**

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance;<sup>8</sup>
- Execute an unsecured appearance bond in an amount specified by the judge;
- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant:
- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
- Comply with any other condition deemed reasonably necessary to assure required appearance, including a condition requiring the defendant to return to custody after specified hours.<sup>9</sup>

A judge also can release a defendant to a pretrial release program. Generally, judges allow a defendant to be released to a pretrial release program without posting a bond; however, a judge can require a defendant to post a bond and participate in the program. Described precipitally, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime. These

<sup>&</sup>lt;sup>4</sup> "Bail," BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.

<sup>&</sup>lt;sup>5</sup> Universal Bail Bonds v. State, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

<sup>&</sup>lt;sup>6</sup> Sections 903.011 and 903.105, F.S.

<sup>&</sup>lt;sup>7</sup> Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2017*, Report No. 18-06, at 2. (November 2018) available at <a href="http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1806rpt.pdf">http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1806rpt.pdf</a> (last visited February 21, 2019)(hereinafter cited as "OPPAGA Pretrial Report").

<sup>&</sup>lt;sup>8</sup> A defendant released on his or her own recognizance (ROR) is released without a monetary requirement and without any conditions of release or supervision of any type. Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).

<sup>&</sup>lt;sup>9</sup> Rule 3.131(b)(1), Fla. R. Crim. Pro.

<sup>&</sup>lt;sup>10</sup> *Id.* If a monetary bail is required, the judge must determine a separate amount for each charge or offense. Rule 3.131(b)(2), Fla. R. Crim. Pro.

<sup>&</sup>lt;sup>11</sup> See s. 907.041, F.S., for a list of enumerated felonies that are included in the definition of a dangerous crime.

programs supervise defendants with various methods, including electronic monitoring <sup>12</sup> or phone contact. <sup>13</sup>

## A Court's Determination of Pretrial Release

The judge must consider all available relevant factors during the first appearance hearing to determine what form of release is necessary to assure the defendant's appearance and the community's safety, including factors such as:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger which the defendant's release poses to the community. 14

Section 903.047, F.S., provides additional conditions that a defendant must comply with upon release from custody pending trial, including:

- Refrain from criminal activity of any kind;
- Refrain from contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure, if applicable; <sup>15</sup> and
- Comply with all conditions of pretrial release.

#### Standard Bond Schedule

Florida does not have a statewide bond schedule, but each circuit has developed a standard bond schedule. Courts create uniform bail bond schedules to ensure that alleged offenders are provided equal treatment when charged with similar crimes and generally apply to all felonies, misdemeanors, and county or municipal ordinance violations as the presumptive bond to be set unless ordered differently by a judge. <sup>16</sup> Even though a county may have an established standard

<sup>&</sup>lt;sup>12</sup> An electronic monitoring device (EM) is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed by the person. EM systems can be either "passive" or "active" and are typically operated through ratio frequency or global positioning system (GPS) monitoring. Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October, 2014, available at <a href="https://www.ojjdp.gov/mpg/litreviews/Home\_Confinement\_EM.pdf">https://www.ojjdp.gov/mpg/litreviews/Home\_Confinement\_EM.pdf</a> (last visited February 21, 2019). <sup>13</sup> *See* OPPAGA Pretrial Report, at 9.

<sup>&</sup>lt;sup>14</sup> Section 903.046(2), F.S. See also Rule 3.131(b)(3), Fla. R. Crim. Pro.

<sup>&</sup>lt;sup>15</sup> Section 903.047(1)(b), F.S., provides that in a case where the court imposes a no contact order, the defendant must be informed in writing of the order of no contact, including the specified prohibited acts, before the defendant is released from custody on pretrial release. Section 903.047(2), F.S., also provides that a no contact order may be modified by the court upon motion of the defendant.

<sup>&</sup>lt;sup>16</sup> Some common ways to address the bond schedules are to either have a standard based on the degree of the offense (for example a \$5,000 bond for all second degree felonies, as seen in the Tenth Judicial Circuit) or a specific amount agreed upon for a specific offense, as seen in the Sixth Judicial Circuit. See Tenth Judicial Circuit, In and For Hardee, Highlands, and Polk Counties, Administrative Order No. 2-49.8, IN RE: Uniform Bond Schedule, available at <a href="http://www.jud10.flcourts.org/sites/default/files/adminOrders/2-49.8.pdf">http://www.jud10.flcourts.org/sites/default/files/adminOrders/2-49.8.pdf</a>; Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, Administrative Order No. 2009-021 PA-CIR, RE: Uniform Bond Schedule – Pasco County, available at <a href="http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm">http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm</a> (last visited all sites February 20, 2019).

bond schedule, a judge has the discretion to impose a bond that is above or below such schedule if he or she deems it is necessary based upon the circumstances of the case. 17

## Violation of Pretrial Release Conditions

A defendant who does not comply with the terms of the pretrial release can have his or her bond forfeited if certain factors are proven. <sup>18</sup> Under s. 903.0471, F.S., the court may revoke, on its own motion, pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.<sup>19</sup>

### Supervised Bond Programs in Florida

There is a movement towards bail reform in the United States, with some circuits, including Pinellas County in Florida, implementing a new model for releasing defendants while awaiting trial. The new programs typically require the administration of a risk assessment instrument (RAI), which is then utilized to determine the release conditions for the defendant.

Pinellas County created a supervised bond program which has been operating since 2014.<sup>20</sup> Sheriff Gualtieri, the chief correctional officer for Pinellas County, testified in the Senate Criminal Justice Committee on January 8, 2018, that this program was created in an effort to reduce the jail population in Pinellas County and avoid the need to build a larger facility.<sup>21</sup> Sheriff Gualtieri reported that while the bond amounts imposed by the court were proper to ensure public safety and compliance the judges could not lower the bail while still ensuring public safety and compliance without more oversight. As a result, a number of defendants remained in custody for months unable to meet the bail amount imposed.<sup>22</sup>

Upon agreement from the judiciary and in partnership with the bail bond industry, the Pinellas County Sheriff's Office established the supervised bond program that requires active electronic monitoring, continuous alcohol monitoring, <sup>23</sup> or both. <sup>24</sup>

<sup>&</sup>lt;sup>17</sup> Mehaffie v. Rutherford, 143 So.3d 432, 434 (Fla. 1st DCA 2014). Section 903.286, F.S., authorizes the clerk of the court to withhold from the return of a cash bond posted on behalf of a criminal defendant sufficient funds to pay any unpaid costs of prosecution, costs of representation, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs associated with the criminal case, the clerk of the court must immediately obtain payment from the defendant or enroll the defendant in a payment plan. This section does not apply to the portion that is paid by a licensed bail bond agent. <sup>18</sup> See s. 903.26, F.S.

<sup>&</sup>lt;sup>19</sup> This discretion is provided regardless of the conditions for granting pretrial release provided for in s. 907.041, F.S.

<sup>&</sup>lt;sup>20</sup> Presentation by Sheriff Bob Gualtieri, Pinellas County Sheriff's Office, in the Senate Criminal Justice Committee, January 8, 2018 (hereinafter cited as "Committee Presentation"); See also Sheriff Bob Gualtieri, PowerPoint Presentation, ROR and Supervised Bond Presentation (on file with the Criminal Justice Committee)(hereinafter cited as "Supervised Bond PowerPoint").

<sup>&</sup>lt;sup>21</sup> Sheriff Gualtieri testified that the Pinellas County jail was crowded in 2014 with approximately 70 percent of the inmates being pretrial detainees. Supervised Bond PowerPoint, p. 3.

<sup>&</sup>lt;sup>22</sup> Supervised Bond PowerPoint, p. 2-4.

<sup>&</sup>lt;sup>23</sup> Continuous Alcohol Monitoring systems are tamper-resistant automated alcohol-monitoring devices that use transdermal testing to measure the amount of alcohol in a person's body, known as transdermal alcohol content (TAC). When alcohol is consumed, ethanol migrates through the skin and is excreted through perspiration. See National Institute of Justice, Secure Continuous Remote Alcohol Monitoring (SCRAM) Technology Evaluability Assessment, available at https://www.ncjrs.gov/pdffiles1/nij/secure-continuous-remote-alcohol.pdf (last visited February 20, 2019).

<sup>&</sup>lt;sup>24</sup> *Id*. at p. 4-5.

The Pinellas County Sheriff's Office averages approximately 200 people per day on active supervision through the supervised bond program. Sheriff Gualtieri reported that of all the defendants that have been released on the supervised bond program, 99.5 percent have appeared for court hearings as required and 94.9 percent did not commit a new crime while in the program. Of the total cases supervised on the Supervised Bond Program, 45 percent were felonies, 30 percent were misdemeanors, and 25 percent were for the offense of driving under the influence (both felonies and misdemeanors). Sheriff Gualtieri reported that these programs have resulted in a savings of \$38.9 million annually.

#### Evidence-Based Risk Assessment Tools

RAIs measure a defendant's criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.<sup>29</sup> RAIs consist of a set of questions that guide face-to-face interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminals reoffending. The questioner typically supplements the interview with an official records check. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.<sup>30</sup>

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors<sup>31</sup> do not change, while dynamic risk factors<sup>32</sup> either can change on their own or change through an intervention. The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment.<sup>33</sup> The RNR principle refers to predicting which inmates have a higher probability of recidivating, and treating the criminogenic needs of those higher risk inmates with appropriate programming and services based on their level of need. In general, research suggests that the most commonly used assessment instruments can, with a moderate level of accuracy, predict who is at risk for violent recidivism. It also suggests that no single instrument is superior to any other when it comes to predictive validity.<sup>34</sup>

<sup>&</sup>lt;sup>25</sup> Supervised Bond PowerPoint, p. 7.

<sup>&</sup>lt;sup>26</sup> *Id.* at p. 9.

<sup>&</sup>lt;sup>27</sup> *Id*. at p. 10.

<sup>&</sup>lt;sup>28</sup> *Id.* at p. 16. This savings takes into account the cost it would require to house an additional 900 inmates per day with the current per diem rate and the cost to run the program.

<sup>&</sup>lt;sup>29</sup> Congressional Research Service, *Risk and Needs Assessment in the Federal Prison System*, Nathan James, p. 3 (July 10, 2018), available at <a href="https://fas.org/sgp/crs/misc/R44087.pdf">https://fas.org/sgp/crs/misc/R44087.pdf</a> (last visited February 26, 2019)(hereinafter cited at CRS Report) <sup>30</sup> *Id.* 2-4.

<sup>&</sup>lt;sup>31</sup> Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a past history of violating terms of supervision. CRS Report, Summary Page.

<sup>32</sup> Dynamic risk factors, also called "criminogenic needs," can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence. "Criminogenic" is commonly understood to mean factors that can contribute to criminal behavior. *Id.* 

<sup>&</sup>lt;sup>33</sup> The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender. *Id*.

<sup>&</sup>lt;sup>34</sup> *Id*.

#### Use of Risk Assessment Instruments by the Department of Corrections

The Department of Corrections (DOC) has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.<sup>35</sup> Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.<sup>36</sup> Spectrum has been independently verified through the School of Criminology at the Florida State University.<sup>37</sup>

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.<sup>38</sup> Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains<sup>39</sup> and three core program areas.<sup>40</sup>

The DOC utilizes the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during the administration of Spectrum is also used to assist with transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.<sup>41</sup> Spectrum was completed in September, 2016, and subsequently deployed throughout the state.<sup>42</sup>

## III. Effect of Proposed Changes:

## **Supervised Bond Program**

The bill creates s. 907.042, F.S., authorizing each county to create a supervised bond program (Bond Program). The terms of each county's Bond Program must be developed with the concurrence of the chief judge of the circuit, the sheriff, the state attorney (SA), and the public defender (PD). However, a county that has already established and implemented a Bond Program may continue to operate without such concurrence if the program complies with the specified program and RAI requirements discussed below.

<sup>&</sup>lt;sup>35</sup> DOC, Spectrum Video, available at <a href="https://www.youtube.com/watch?v=F1sQsOE6BgM">https://www.youtube.com/watch?v=F1sQsOE6BgM</a> (last visited February 26, 2019) (hereinafter cited as "Spectrum Video"); DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee)(hereinafter cited as "DOC Program Information").

<sup>36</sup> Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018)(on file with Senate Criminal Justice Committee).

<sup>&</sup>lt;sup>37</sup> Letter from Dr. William D. Bales and Jennifer M. Brown, ABD to DOC Secretary, Julie Jones, (January 19, 2018)(on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."

<sup>&</sup>lt;sup>38</sup> DOC Program Information.

<sup>&</sup>lt;sup>39</sup> The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video.

<sup>&</sup>lt;sup>40</sup> The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018)(on file with the Senate Criminal Justice Committee).

<sup>41</sup> Id.

<sup>&</sup>lt;sup>42</sup> See WFSU, Florida Prison Officials Go Statewide With New Program To Better Help Rehabilitate Inmates, Sarah Cordner, September 23, 2016, available at <a href="http://news.wfsu.org/post/florida-prison-officials-go-statewide-new-program-better-help-rehabilitate-inmates">http://news.wfsu.org/post/florida-prison-officials-go-statewide-new-program-better-help-rehabilitate-inmates</a> (last visited February 26, 2019).

A Bond Program established pursuant to this bill must, at a minimum:

- Require the sheriff to administer the Bond Program.
- Use the results of a validated pretrial RAI that has been administered to the defendant for the purposes of pretrial release or supervision determinations.
- Assess the defendant's behavioral characteristics and needs that increase the likelihood of criminal activity and that are able to be addressed through the placement of services.
- Coordinate necessary services and supervision through the Bond Program to reduce the likelihood of criminal activity and to increase the likelihood of compliance with pretrial release conditions.
- Require the appropriate court to make a final determination regarding whether a defendant will be placed into the Bond Program. If such a determination is made, the court must also:
  - O Determine the conditions of the individualized supervision plan with which the defendant must comply, including, but not limited to, the requirement that the defendant must:
    - Be placed on active electronic monitoring or active continuous alcohol monitoring, or both, dependent upon the level of risk indicated by the risk assessment instrument;
       and
    - Communicate weekly, via telephone or in-person contact, as determined by the court, with the Sheriff's office.
  - Review the bond of a defendant who is being accepted into the Bond Program to determine if a reduction of the court-ordered bond, up to and including its entirety, is appropriate.
- Establish procedures for reassessing or terminating from the Bond Program defendants who do not comply with the terms of the individualized supervision plan imposed through the program.

Each county that establishes a Bond Program must use a RAI that is validated by the DOC. A RAI that is used for other pretrial release determinations in accordance with s. 907.0421, F.S., discussed below, and that has previously been validated by the DOC does not need to be validated for use in the Bond Program. Additionally, the bill provides that a Bond Program may continue to operate while the DOC validates the RAI used by such program if the Bond Program is in operation on October 1, 2019.

The bill requires each county that establishes a Bond Program under the bill, or that has an existing Bond Program that operates in compliance with the bill, to provide an annual report to the Office of Program Policy Analysis and Government Accountability (OPPAGA). The bill requires the reports beginning in 2020 and then by October 1 of each year thereafter. The reports must include:

- The results of the administration of the risk assessment instrument;
- The programming used for defendants who received the assessment and were accepted into the supervised bond program;
- The success rate of the program; and
- Any savings realized by the county as a result of such defendants being released from custody pending trial.

The bill also requires OPPAGA to compile the results of such county reports and include this data in an independent section of its annual pretrial release report developed and submitted to the President of the Senate and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.

Lastly, the bill provides legislative findings in support of the need for the creation of Bond Programs throughout the state, including the finding that:

- Using evidence-based methods to identify defendants who can successfully comply with specified pretrial release conditions provides a more consistent and accurate assessment of a defendant's risk of noncompliance.
- Both the community and a defendant are better served when a low-risk defendant is provided
  the opportunity to maintain employment and familial responsibilities in the community under
  a structured pretrial release plan that ensures the best chance of complying with all pretrial
  conditions.
- Providing pretrial release to certain defendants who may not otherwise be eligible for pretrial
  release on unsupervised nonmonetary conditions and who do not have the ability to satisfy
  the bond imposed by the court is beneficial.
- The creation of Bond Programs will reduce the likelihood that defendants will remain unnecessarily in custody pending trial.

#### **Risk Assessment Instruments in Pretrial Decisions**

The bill also creates s. 907.0421, F.S., authorizing the chief judge of each judicial circuit, with the concurrence of the county's chief correctional officer, the SA, and the PD, to administer a RAI in preparation for first appearance or within 72 hours after arrest for use in pretrial release determinations. To utilize the provisions of the bill, the circuit must enter an administrative order to authorize the use of RAIs.

The bill further provides that the RAI must be objective, standardized, and based on analysis of empirical data and risk factors relevant to failure of pretrial release conditions. The bill further provides that the risk factors considered must be those that:

- Evaluate the likelihood of failure to appear in court and the likelihood of rearrest during the pretrial release period; and
- Have been validated through data based on the pretrial population.

For circuits that enter into an administrative order in accordance with s. 907.0421, F.S., the bill requires that the RAI results be used as supplemental factors for the court to consider when determining the appropriateness of first appearance pretrial release. Further, the RAI results must be used to determine the conditions of release which are appropriate based on predicted level of risk and failure of pretrial release conditions. The bill requires the court to impose the least restrictive conditions necessary to reasonably ensure that the defendant will be present at subsequent hearings.

The bill retains the court's sole discretion to impose any pretrial conditions.

The bill requires that the DOC independently validate any RAI used by a circuit in pretrial release determinations. A circuit may begin to use the specified RAI in pretrial release

determinations immediately after validation and implementation of training all local staff who will administer the RAI to defendants.

As is required of circuits that establish the above mentioned Bond Program, the bill requires each circuit that establishes an administrative order for the use of RAI in first appearance pretrial release determinations, beginning in 2020 and every October 1 thereafter, to provide an annual report to the OPPAGA which details:

- The risk assessment instrument used:
- The results of the administration of the risk assessment instrument, including the results of defendants who were detained in custody awaiting trial and those who were released from custody awaiting trial;
- The frequency at which released defendants failed to appear at one or more subsequent court hearings; and
- The level of risk determined in the risk assessment instrument associated with a defendant that failed to appear for any court hearings.

The OPPAGA must compile the results of such reports and include the data in an independent section of its annual report developed and submitted to the President of the Senate and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.

The bill also provides findings to support the use of RAIs in considering pretrial release decisions, including the finding that:

- There is a need to use evidence-based methods to identify defendants who can successfully comply with specified pretrial release conditions.
- The use of actuarial instruments that classify offenders according to the likelihood of failure to appear at subsequent hearings or to engage in criminal conduct while awaiting trial provides a more consistent and accurate assessment of a defendant's risk of noncompliance while on pretrial release pending trial.
- Research indicates that using RAIs ensure successful compliance with pretrial release conditions imposed on a defendant and reduces the likelihood of a defendant remaining unnecessarily in custody pending trial.

The bill also provides rulemaking authority to the DOC to administer the relevant provisions of the bill.

The bill is effective October 1, 2019.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

| C.   | Truct | Funde        | Restrictions: |
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None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the DOC to validate the RAI used in both of the programs created in the bill. The DOC reports that the bill does not have a direct impact on the agency. Additionally, the OPPAGA reports that the bill does not have an impact and the tasks assigned to the OPPAGA in the bill can be achieved within existing resources.

#### **Supervised Bond Program**

Local governments may experience reduced costs as a result of the implementation of the Bond Program. A county may implement a supervised bond program, which allows an eligible defendant to be released on active supervision and some form of bond or ROR while awaiting trial. As a result, the county's costs to supervise the participants may be decreased from the full daily county jail per diem to the much lower per diem rates for active electronic monitoring or continuous alcohol monitoring technologies, or both.

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

None.

<sup>&</sup>lt;sup>43</sup> The DOC, SB 534 Agency Analysis, January 31, 2019 (on file with the Senate Committee on Criminal Justice).

<sup>&</sup>lt;sup>44</sup> The OPPAGA, SB 534 Agency Analysis, February 11, 2019 (on file with the Senate Committee on Criminal Justice).

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

This bill creates the following sections of the Florida Statutes: 907.042 and 907.0421.

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

A.

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

None.

B. Amendments:

None.

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

By Senator Brandes

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A bill to be entitled An act relating to pretrial release; creating s. 907.042, F.S.; providing legislative findings; authorizing each county to establish a supervised bond program with the concurrence of the chief judge of the judicial circuit, the county's chief correctional officer, the state attorney, and the public defender; providing an exception for a county that has already established and implemented a supervised bond program that uses a risk assessment instrument; providing minimum program requirements; requiring each county that establishes a supervised bond program to have the risk assessment instrument validated by the Department of Corrections; requiring each county that establishes a supervised bond program to submit an annual report by a certain date to the Office of Program Policy Analysis and Government Accountability; requiring the Office of Program Policy Analysis and Government Accountability to compile such reports and include such information in a specified report sent to the Legislature; authorizing the department to adopt rules; creating s. 907.0421, F.S.; providing legislative findings; authorizing the chief judge of each circuit, with the concurrence of the county's chief correctional officer, the state attorney, and the public defender, to enter an administrative order for the use of a risk assessment instrument in pretrial release determinations; requiring the risk assessment instrument results to be used as

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 ${\bf CODING:}$  Words  ${\bf stricken}$  are deletions; words  ${\bf \underline{underlined}}$  are additions.

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| 30 | supplemental factors for the court's evaluation of          |
| 31 | appropriate pretrial release conditions; requiring the      |
| 32 | court to impose the least restrictive conditions            |
| 33 | necessary to reasonably ensure the defendant's              |
| 34 | appearance at subsequent hearings; providing that a         |
| 35 | court retains sole discretion to determine the              |
| 36 | appropriateness of pretrial release and any necessary       |
| 37 | pretrial release conditions; requiring a circuit that       |
| 38 | uses a risk assessment instrument to have the               |
| 39 | instrument validated by the department; authorizing         |
| 40 | the circuit to implement the risk assessment                |
| 41 | instrument immediately after validation and                 |
| 42 | implementation of training of all local staff who will      |
| 43 | administer the risk assessment instrument; requiring        |
| 44 | each circuit that enters an administrative order to         |
| 45 | use risk assessment instruments in pretrial release         |
| 46 | determinations to submit an annual report by a certain      |
| 47 | date to the Office of Program Policy Analysis and           |
| 48 | Government Accountability; requiring the Office of          |
| 49 | Program Policy Analysis and Government Accountability       |
| 50 | to compile the reports and include such information in      |
| 51 | a specified report sent to the Legislature;                 |
| 52 | authorizing the department to adopt rules; providing        |
| 53 | an effective date.  |
| 54 |   |
| 55 | Be It Enacted by the Legislature of the State of Florida:   |
| 56 |   |
| 57 | Section 1. Section 907.042, Florida Statutes, is created to |
| 58 | read:   |

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907.042 Supervised bond program.-

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(1) LEGISLATIVE FINDINGS.—The Legislature finds that there is a need to use evidence-based methods to identify defendants who can successfully comply with specified pretrial release conditions. The Legislature finds that the use of actuarial instruments that evaluate criminogenic-based needs and classify defendants according to levels of risk provides a more consistent and accurate assessment of a defendant's risk of noncompliance while on pretrial release pending trial. The Legislature also finds that both the community and a defendant are better served when a defendant who poses a low risk to society is provided the opportunity to fulfill employment and familial responsibilities in the community under a structured pretrial release plan that ensures the best chance of remaining compliant with all pretrial conditions, rather than remaining in custody. The Legislature finds that there is a benefit to establishing a supervised bond program in each county for the purpose of providing pretrial release to certain defendants who may not otherwise be eligible for pretrial release on unsupervised nonmonetary conditions and who do not have the ability to satisfy the bond imposed by the court. The Legislature finds that the creation of such a program will reduce the likelihood of defendants remaining unnecessarily in custody pending trial.

(2) CREATION.—A supervised bond program may be established in each county with the terms of each program to be developed with concurrence of the chief judge of the judicial circuit, the county's chief correctional officer, the state attorney, and the public defender. A county that has already established and

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| 88  | implemented a supervised bond program that uses a validated risk |
| 89  | assessment instrument for similar pretrial or supervision        |
| 90  | determinations may continue to operate without such concurrence, |
| 91  | as long as the program meets all other requirements of this      |
| 92  | section.   |
| 93  | (3) PROGRAM REQUIREMENTS.—A supervised bond program, at a        |
| 94  | minimum, shall:  |
| 95  | (a) Require the county's chief correctional officer to           |
| 96  | administer the supervised bond program.                          |
| 97  | (b) Use the results of a validated pretrial risk assessment      |
| 98  | instrument that has been administered to the defendant for the   |
| 99  | purposes of pretrial release or supervision determinations.      |
| 100 | (c) Assess the defendant's behavioral characteristics and        |
| 101 | needs that increase the likelihood of criminal activity and that |
| 102 | are able to be addressed through the placement of services.      |
| 103 | (d) Coordinate necessary services and supervision through        |
| 104 | the program to reduce the likelihood of criminal activity and to |
| 105 | increase the likelihood of compliance with pretrial release      |
| 106 | <pre>conditions.</pre>   |
| 107 | (e) Require the appropriate court to make a final                |
| 108 | determination regarding whether a defendant will be placed into  |
| 109 | the supervised bond program. If such a determination is made,    |
| 110 | the court must also:   |
| 111 | 1. Determine the conditions of the individualized                |
| 112 | supervision plan with which the defendant must comply as a part  |
| 113 | of the supervised bond program, including, but not limited to,   |
| 114 | the requirement that the defendant must:                         |
| 115 | a. Be placed on active electronic monitoring or active           |
| 116 | continuous alcohol monitoring, or both, dependent upon the level |

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of risk indicated by the risk assessment instrument; and

b. Communicate weekly, via telephone or in-person contact,
as determined by the court, with the office of the county's
chief correctional officer.

2. Review the bond of a defendant who is being accepted
into the supervised bond program to determine if a reduction of
the court-ordered bond, up to and including its entirety, is
appropriate.

- (f) Establish procedures for reassessing or terminating from the supervised bond program defendants who do not comply with the terms of the individualized supervision plan imposed through the program.
- (4) VALIDATION.—Each county that establishes a supervised bond program in accordance with this section must use a risk assessment instrument that is validated by the Department of Corrections. A risk assessment instrument that is used for other pretrial release determinations in accordance with s. 907.0421 and that has previously been validated by the department does not need to be validated for use in the supervised bond program. A supervised bond program that is in operation on October 1, 2019, and that uses a risk assessment instrument may continue to operate while the department validates the risk assessment instrument used by the program.
  - (5) REPORTING.-

(a) Each county that establishes a supervised bond program in accordance with this section, or that has an existing supervised bond program that operates in compliance with this section, shall provide an annual report to the Office of Program Policy Analysis and Government Accountability which details:

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| 146 | 1. The results of the administration of the risk assessment      |
|-----|--|
| 147 | <pre>instrument;</pre>   |
| 148 | 2. The programming used for defendants who received the          |
| 149 | assessment and were accepted into the supervised bond program;   |
| 150 | 3. The success rate of the program; and                          |
| 151 | 4. Any savings realized by the county as a result of such        |
| 152 | defendants being released from custody pending trial.            |
| 153 | (b) Beginning in 2020, and by each October 1 thereafter,         |
| 154 | the annual report from the county must be submitted to the       |
| 155 | Office of Program Policy Analysis and Government Accountability. |
| 156 | The Office of Program Policy Analysis and Government             |
| 157 | Accountability shall compile the results of such reports for     |
| 158 | inclusion in an independent section of its annual report         |
| 159 | developed and submitted to the President of the Senate and the   |
| 160 | Speaker of the House of Representatives in accordance with $s.$  |
| 161 | 907.044.   |
| 162 | (6) RULEMAKING.—The department may adopt rules to                |
| 163 | administer this section.   |
| 164 | Section 2. Section 907.0421, Florida Statutes, is created        |
| 165 | to read:   |
| 166 | 907.0421 Use of risk assessment instruments in pretrial          |
| 167 | release determinations   |
| 168 | (1) The Legislature finds that there is a need to use            |
| 169 | evidence-based methods to identify defendants who can            |
| 170 | successfully comply with specified pretrial release conditions.  |
| 171 | The Legislature finds that the use of actuarial instruments that |
| 172 | classify offenders according to the likelihood of failure to     |
| 173 | appear at subsequent hearings or to engage in criminal conduct   |
| 174 | while awaiting trial provides a more consistent and accurate     |

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175 assessment of a defendant's risk of noncompliance while on 176 pretrial release pending trial. The Legislature also finds that 177 research indicates that using accurate risk and needs assessment 178 instruments ensures successful compliance with pretrial release 179 conditions imposed on a defendant and reduces the likelihood of 180 a defendant remaining unnecessarily in custody pending trial. 181 (2) The chief judge of each judicial circuit, with the 182 concurrence of the county's chief correctional officer, the 183 state attorney, and the public defender, may enter an 184 administrative order to administer a risk assessment instrument 185 in preparation for first appearance or within 72 hours after 186 arrest for use in pretrial release determinations. The risk assessment instrument must be objective, standardized, and based 187 188 on analysis of empirical data and risk factors relevant to 189 failure of pretrial release conditions which evaluates the 190 likelihood of failure to appear in court and the likelihood of 191 rearrest during the pretrial release period and which is 192 validated on the pretrial population. 193 (3) (a) The risk assessment instrument results must be used 194 as supplemental factors for the court to consider when 195 determining the appropriateness of first appearance pretrial 196 release and, if applicable, the conditions of release which are 197 appropriate based on predicted level of risk and failure of 198 pretrial release conditions. Based on the risk assessment 199 instrument results, the court shall impose the least restrictive 200 conditions necessary to reasonably ensure that the defendant 201 will be present at subsequent hearings. 202 (b) A court that uses the results from a risk assessment 203 instrument in first appearance pretrial release determinations

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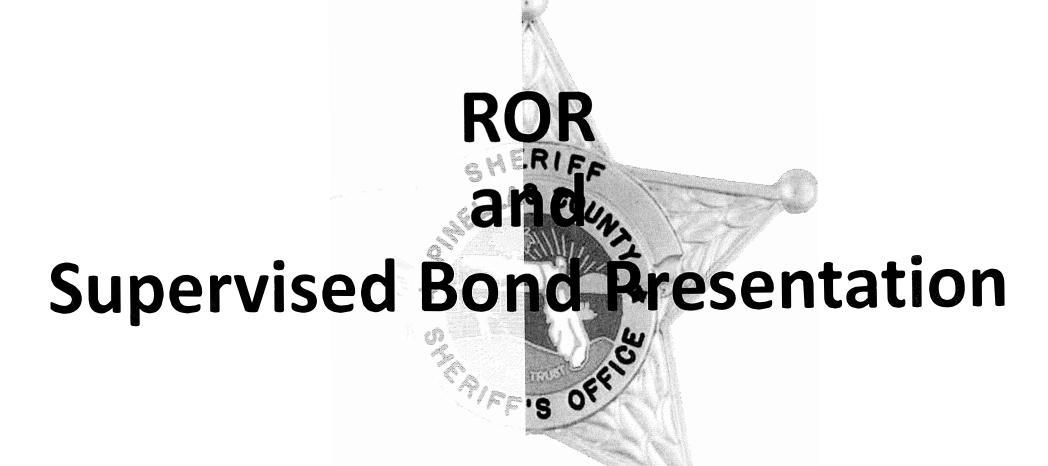
| 204 | retains sole discretion to impose any pretrial conditions it                          |
|-----|---|
| 205 | deems necessary to ensure the defendant's subsequent appearance                       |
| 206 | at hearings.  |
| 207 | (4) A circuit that intends to use a risk assessment                                   |
| 208 | instrument in pretrial release determinations must have such                          |
| 209 | instrument independently validated by the Department of                               |
| 210 | Corrections. A circuit may begin to use such instrument in                            |
| 211 | pretrial release determinations immediately after validation of                       |
| 212 | such instrument and implementation of training of all local                           |
| 213 | staff who will administer the risk assessment instrument.                             |
| 214 | (5)(a) Each circuit that establishes an administrative                                |
| 215 | order for the use of risk assessment instruments in first                             |
| 216 | appearance pretrial release determinations shall provide an                           |
| 217 | annual report to the Office of Program Policy Analysis and                            |
| 218 | Government Accountability which details:  |
| 219 | 1. The risk assessment instrument used;   |
| 220 | 2. The results of the administration of the risk assessment                           |
| 221 | instrument, including the results of defendants who were                              |
| 222 | detained in custody awaiting trial and those who were released                        |
| 223 | <pre>from custody awaiting trial;</pre>   |
| 224 | 3. The frequency at which released defendants failed to                               |
| 225 | appear at one or more subsequent court hearings; and                                  |
| 226 | 4. The level of risk determined in the risk assessment                                |
| 227 | $\underline{\text{instrument associated with a defendant that failed to appear for}}$ |
| 228 | any court hearings.   |
| 229 | (b) Beginning in 2020, and by each October 1 thereafter,                              |
| 230 | $\underline{\text{the annual report from each circuit must be submitted to the}}$     |
| 231 | $\underline{\text{Office of Program Policy Analysis and Government Accountability.}}$ |
| 232 | The Office of Program Policy Analysis and Government                                  |

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|--|--|--|
| 233 Accountability shall com                                       | mpile the results of such reports for  |  |
| 34 <u>inclusion in an independent section of its annual report</u> |  |  |
| 235 developed and submitted  | to the President of the Senate and the |  |
| 236 Speaker of the House of  | Representatives in accordance with s.  |  |
| 907.044.   |  |  |
| (6) The department   | may adopt rules to administer this     |  |
| 239 <u>section.</u>  |  |  |
| Section 3. This act  | shall take effect October 1, 2019.     |  |
|  |  |  |

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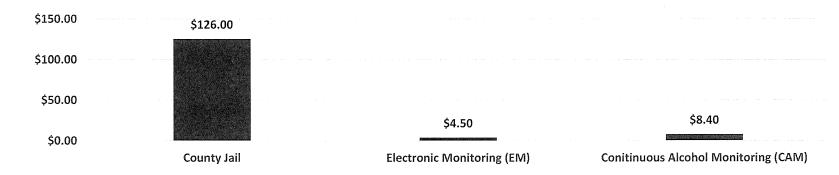


## **Bail Purpose**

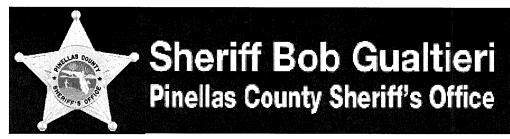
- Bail is to ensure those released from jail pending disposition of their criminal case are not a danger to the community or risk of flight.
- The challenge for judges is to set a proper bail amount that ensures someone will not reoffend, appear for court and generally comply with the terms of release.
- 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.



## **Daily Supervision Costs**

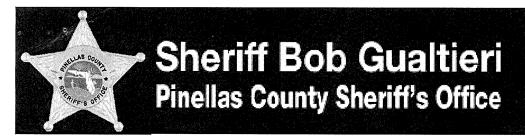


- Bail is not and should not be punitive.
- Our goal is public safety, compliance with the terms of release, and effectively managing the jail population.
- In 2014 we had a crowded jail with about 70% of the inmates being pre-trial detainees (those awaiting disposition of their cases).



## **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.



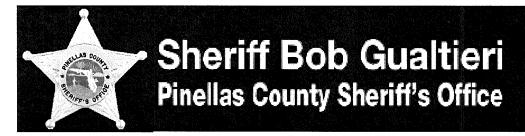
## **Example:**

- 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.



# **Savings & Success**

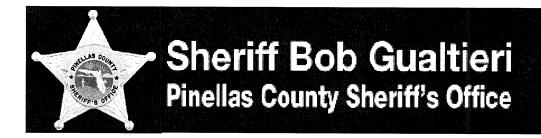
| Average                      | <b>Daily Cost (Total)</b> | Annual Cost (Total) |
|------------------------------|---------------------------|---------------------|
| 200 (Jail, \$126/day)        | \$25,200                  | \$9,200,000         |
| 200 (Monitoring, \$4.50/day) | \$900                     | \$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).



# **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.

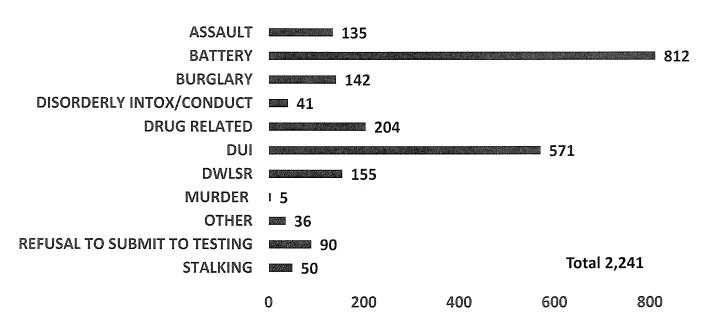


# **Savings & Success**

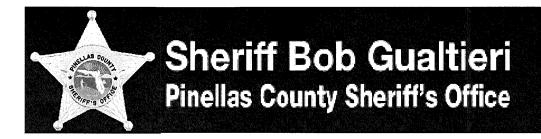
- 80% fully complied with all terms of the Supervised Bond program.
- The program's effectiveness is due to: proper case evaluation and good decision-making by the judges; the program being ACTIVE monitoring with immediate consequences; and the program being run by the sheriff's office (law enforcement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



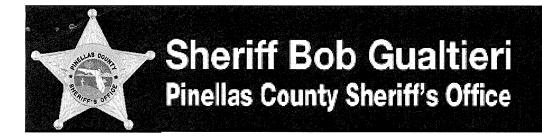
# <u>Supervised Bond by Case Type – October 2014 to October 2017</u>



| 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%     |  |  |  |



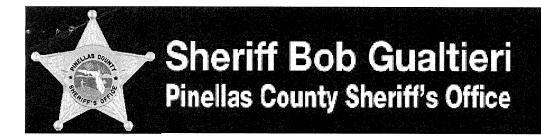
- In addition to the Supervised Bail program we also operate a Release on Recognizance (ROR) program.
- ROR is where a person charged with a crime is released without any monetary conditions.
- This is different from the Supervised Bond program because under supervised bond there is a combination of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



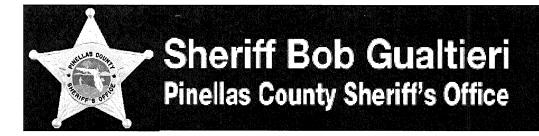
- In addition to the 200 people per day on Supervised Bail, we average 700 per day on supervised ROR. This is in addition to the people who are released from the booking desk at the jail on unsupervised ROR.
- A person is arrested and under the Bail Schedule we have the option in many cases of releasing 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.



- 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.

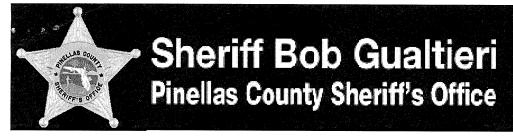


- We self-initiate initiate ROR investigations without a referral from the court and if we believe the person is a good candidate for ROR we take the file to a judge and recommend release on supervised ROR.
- Putting the ROR and Supervised Bond programs together, we have an average of 900 people per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



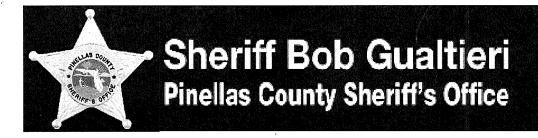
# Release on Recognizance (ROR) Savings

- 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.





Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED

## Compass 100

Compass 100 meets the statutory requirement that, "each inmate released from incarceration by the department must complete a 100-hour comprehensive transition course that covers job readiness and life management skills." Compass 100 integrates a comprehensive, standardized program of career, life and community readiness skills into the existing academic and vocational programs already offered by the Florida Department of Corrections (FDC). Individuals who do not have an academic or vocational need will be enrolled in a hybrid section that contains a combination of self-directed instruction and weekly meetings with the Bureau of Programs' staff to track progress and offer assistance.

To effectively deliver career and community readiness skills, the Compass 100 curriculum contains a modular system of lessons and supporting materials. In addition to the modules, participants will engage in lessons, assignments and discussions on a variety of life and career readiness skills. They include topics such as punctuality, workplace etiquette, interpersonal communication and problem solving, to name a few.

Compass 100 participants will be required to complete the *Thinking for a Change* (T4C) program. T4C is a nationally recognized cognitive-behavioral intervention course specifically designed to assist incarcerated individuals, by changing their thinking and providing skills to effectively communicate and solve problems. For those who cannot complete T4C, there will be an alternate module of lessons to satisfy in order to receive the 24 points/hours. Throughout the program participants will build a *Readiness Portfolio* which will contain items such as well-developed plans/goals, resume, current community resources, scheduled community appointments, program completion certificates and other pertinent documents that will assist in transition back into the community.

### **Spectrum**

Spectrum is an advanced evidence-driven assessment and screening system designed to follow an inmate from community supervision, through institutions and back to the community. This enables FDC to provide data-driven, informed decisions regarding the continuum of care for an individual within our custody. Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education. Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains and 3 core program areas. Through motivational interviewing and individualized case planning, FDC maps resources to identified needs to reduce an individual's risk of recidivism.

### Academic and Workforce education/GED

Programs encompasses 3 areas:

1. Core Programs

## Florida Department of Corrections

Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED

- a. Literacy
- b. Academic/workforce education
- c. Substance abuse treatment
- 2. Domain Programs
  - a. Cognitive Behavioral Treatment, i.e. Thinking for a Change
- 3. Elective Programs
  - a. A wide array of evidence driven, promising programs that influence pro-social behavior and support FDC curriculum
    - i. Labs that support Cognitive Behavioral Treatment coursework, i.e. Babies to Brains for Parenting module of Thinking for a Change
    - ii. Dog training
    - iii. Volunteer support programs, i.e. Toast Masters

## Cox, Ryan

From:

Cox, Ryan

Sent:

Thursday, January 25, 2018 4:59 PM

To:

Torres, Jared

Subject:

RE: Spectrum

Jared,

Thank you so much!!

Sincerely,

## Ryan C. Cox

Senior Attorney Senate Committee on Criminal Justice (850) 487-5192

From: Torres, Jared [mailto:Jared.Torres@fdc.myflorida.com]

**Sent:** Thursday, January 25, 2018 4:58 PM **To:** Cox, Ryan < Cox.Ryan@flsenate.gov>

Cc: Vaughan, Scotti < Scotti. Vaughan@fdc.myflorida.com>

Subject: Re: Spectrum

Ryan,

Please find below Department staff:

Spectrum, as well as its predecessor CINAS, is based on the Risk – Needs – Responsivity (RNR) model and they both contain responsivity elements.

Core programming refers to GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors.

On Jan 25, 2018, at 3:27 PM, Cox, Ryan < Cox.Ryan@flsenate.gov > wrote:

Hey guys – one more thing from Abe...

I saw this sentence on your Program information background document – "Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains and 3 core program areas"

What are the three core program areas? Is this the Risk-Needs-Responsivity Model I was asking about earlier?

Sincerely,

Ryan C. Cox

Senior Attorney Senate Committee on Criminal Justice (850) 487-5192

From: Cox, Ryan

Sent: Thursday, January 25, 2018 2:50 PM

To: 'Torres, Jared' < <u>Jared.Torres@fdc.myflorida.com</u>>; 'Vaughan, Scotti' < <u>Scotti.Vaughan@fdc.myflorida.com</u>>

Subject: Spectrum

Can you also send me an email about who independently verified Spectrum risk assessment tool? Thanks!

Sincerely,

Ryan C. Cox

Senior Attorney Senate Committee on Criminal Justice (850) 487-5192



January 19, 2018

Secretary Julie L. Jones Florida Department of Corrections 501 South Calhoun Street Tallahassee, FL 32399-2500

Dear Secretary Jones,

The purpose of this letter is to communicate the findings from our independent assessment of the Department's Corrections Integrated Needs Assessment System (CINAS). The primary function of CINAS is to empirically determine an inmate's post-release risk of recidivism so the Department can prioritize high-risk inmates for programming.

Our validation report finds that the components of CINAS are performing as intended. Specifically, CINAS produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States. We hope the findings and recommendations provided in the attached report will be helpful in the transition to the Department's revised risk assessment system—Spectrum.

We wish to express our gratitude to the following individuals for sharing their tremendous knowledge of the development and implementation of CINAS: Abe Uccello, Patrick Mahoney, Brad Locke, Kerensa Lockwood, and others in the Division of Development as well as Rusty McLaughlin in the Bureau of Classification Management. We also wish to extend our gratitude to David Ensley, Dena French, Lori Nolting, and Jami Dunsford in the Bureau of Research and Data Analysis for providing us with the requisite data and valuable insights regarding the construction of the system data and algorithm. By our estimates, these individuals and others have contributed significant time and effort to the internal design, development, and implementation of CINAS. Our report concludes that their efforts have produced commendable results.

If you or your team has questions or needs clarification on the information provided in the attached report, please do not hesitate to contact us.

Sincerely,

William D. Bales, Ph.D.

Wind. Balan

Jennifer M. Brown, ABD

#### FDC - BACKGROUND INFORMATION ON RE-ENTRY PROGRAMMING AND TRANSITIONAL SERVICES

#### **RELEASE OFFICERS**

The release/transition process is comprised of 8 phases beginning 240 days before the sentence ends. In phase 1, release officers provide the health services administrator with a list of inmates scheduled for release within 240 days for the purpose of identifying inmates who may require continuity of care planning. In phase 2 Release Officers interview the inmates and review their records to determine what their needs are and what resources they have available. Based on this assessment, the release officer develops a release plan which includes community referrals for housing, employment, transportation, medical/mental health, substance abuse transitional housing, faith based services, etc. The Release Officer provides each inmate with corresponding community resource information. In addition, the Release Officer ensures compliance with many statutory requirements pertaining to releasing inmates such as, sexually violent predator referral, sexual offender notices, career offender notices, victim notification, 100-hour Transition Program, DNA requirements, post-release supervision requirements, outstanding warrants checks, etc. In addition, we have a Medical Release unit that assists in the identification of inmates with significant post-release medical needs, the preparation of benefit applications to pay for post-release care, and with coordinating community placement based on the assessed level of need.

#### IN-PRISON RESIDENTIAL THERAPEUTIC COMMUNITIES – SUBSTANCE USE DISORDER TREAMENT

A 9-12 month Residential Therapeutic Community, emphasizes structure, responsibility, credibility, accountability, discipline, consistency and consequences/limit setting. Inmates participate in daily structured activities which include a minimum of 10 hours per week of group or individual counseling. Counselor to inmate ratio is 1:15.

#### COMMUNITY-BASED THERAPEUTIC COMMUNITIES – SUBSTANCE USE DISORDER TREAMENT

Inmates must be community custody and are released directly to the community from the program. A 6-12 month modified Residential Therapeutic Community, emphasizes structure, responsibility, credibility, accountability, discipline, consistency and consequences/limit setting. Inmates participate in daily structured activities which include a minimum of 10 hours per week of group or individual counseling. Counselor to inmate ratio is 1:15.

#### SUBSTANCE ABUSE TRANSITIONAL RE-ENTRY PROGRAMS – SUBSTANCE USE DISORDER TREAMENT

This modified therapeutic community model offers a continuum of substance abuse services including prevention, outpatient and aftercare services, as well as education/vocational services. There are two components, a primary programming component and a community based work release or prison based work component. The focus of this program model is on learning, developing and practicing skills necessary for a successful re-entry into the community upon release from prison, abstinent from drug use.

#### INTENSIVE OUTPATIENT PROGRAMS - SUBSTANCE USE DISORDER TREAMENT

A 4-6 month program where inmates are involved in substance abuse programming for half a day and participate in a minimum of twelve (12) hours of counselor-supervised activities per week to include group and individual counseling. Counselor to inmate ratio does not exceed 1:25.

#### **OUTPATIENT/AFTERCARE PROGRAMS – SUBSTANCE USE DISORDER TREAMENT**

Outpatient/Aftercare Services provide individual and group counseling, can be a step-down program for the more intensive Residential Therapeutic Community or an initial program for those whose time is

limited for pre-release services and they need other types of services while still incarcerated in order to have the best opportunity. Groups meet twice weekly with an individual session held monthly, at minimum. Program Duration is four to six months.

#### SUBSTANCE USE DISORDER TREAMENT AT DC OPERATED WORK RELEASE CENTERS

These programs offer intervention, outpatient and aftercare. Outpatient services are a minimum of four months and Aftercare/alumni services are provided until the inmate is released. Intervention services are provided to inmates with less than 4 months to serve. The counselor to client ratio is 1:50.

#### PREVENTION PROGRAMS

Prevention services include, but are not limited to, cognitive-behavioral programs, substance abuse education and family reunification programs.

#### **COMPASS 100**

Compass 100 integrates a comprehensive, standardized program of career and community readiness skills into the existing academic and career and technical education programs offered by the Department and is facilitated by a Career Development Specialist contracted through Tallahassee Community College for inmates who are not enrolled in the aforementioned program types. The program consists of a series of modular lessons and supporting materials that results in a well-developed, thorough, Readiness Portfolio that is built throughout the modules. Incorporated within the modules are a variety of life skills that are required for success in the workplace, community, and home. Further, each module includes objectives that specifically align with and satisfy the most current Florida Curriculum Frameworks related to College and Career Readiness.

#### RESTRICTIVE HOUSING TRANSITION PROGRAMMING

Targeted intervention, in the form of evidence-informed, cognitive behavioral programming for prosocial development in-cell as well as in congregate settings is currently being piloted at Florida State Prison and Santa Rosa Correctional Institution. Participants are interviewed and selected using a multi-disciplinary approach and goals for their individual progression through the levels of Restrictive Housing are developed. Participants are first given some exploratory and reflective assignments in-cell prior to participating in out-of-cell, congregate programming. Secure program chairs are utilized for individuals in the most restrictive levels of Restrictive Housing, which that allows them to be brought out of their secure cell and participate in cognitive behavioral programming with small groups of their peers while secured in individual desk-type chairs. Participants in the least restrictive level of Restrictive Housing participate in small groups in designated program space unrestrained. The multi-disciplinary approach is used throughout the length of the pilot.

#### **CAREER & TECHNICAL EDUCATION (CTE) PROGRAMS**

Educational programs that prepare individuals for occupations important to Florida's economic development. Each program is aligned to a career cluster. With partners from education, business and industry, and trade associations, the program standards are both academically integrated and responsive to business and industry.

#### THE ADULT BASIC EDUCATION (ABE) PROGRAM

Includes content standards that describe what students should know and be able to do in Mathematics, Language Arts (language, speaking and listening, and writing), and Reading. The content standards support provision of basic skills instruction (grade level equivalents 0.0 - 8.9) and critical thinking skills to prepare students for the GED® Preparation Program (grade level equivalents 9.0 - 12.9),

postsecondary education, and employment. The ABE content standards include the College and Career Readiness (CCR) standards. The integration of CCR standards into ABE programs is intended to provide the foundation of knowledge and skills that students will need to transition to adult secondary programs with the goal of continuing on to postsecondary education.

#### THE GED® PREPARATION PROGRAM

Consists of four content-area assessments: Reasoning through Language Arts, Mathematics Reasoning, Science, and Social Studies. The purpose of the program is to prepare students to obtain the knowledge and skills necessary to pass the Official GED® Tests and be awarded a State of Florida High School Diploma. An additional performance level will certify that the adult student is career and college ready. This program strives to motivate students not only to obtain a GED® diploma, but to enroll in a career and technical course simultaneously and continue their education to earn a postsecondary degree, certificate, or industry certification. In order to be enrolled in the GED® Integrated Comprehensive course number, students must pretest at or above the 9th grade level in at least two of the content areas (reading, language arts, or math).

### COMMUNITY RELEASE PROGRAM UNIT (BUREAU OF CLASSIFICATION MANAGEMENT)

The Community Release Program Unit is divided into two entities:

- 1) The Community Release Center Unit which provides oversight and guidance in the application of the Community Release Programs (Any program that allows inmates to work at paid employment or a center work assignment or to participate in education, training, substance abuse treatment programs, or any other transitional program to facilitate re-entry into the community while in a community release center) for Community Release Centers statewide, and contract management for vendor operated centers.
- 2) The Community Release Center Electronic Monitoring Unit which is responsible for the oversight and monitoring of the Global Positioning Satellite (GPS) system utilized at community release centers.

Within the Community Release Centers there are four distinct types of assignments:

- Community Work Release (CWR): The portion of the community release program that allows inmates to work at paid employment in the community while continuing as inmates of the facility where they are confined. Inmates with non-advanceable release dates (85% sentence) must be within 14 months of their tentative release date. Inmates with advanceable release dates must be within 19 months of release.
- Center Work Assignment (CWA): The portion of the community release program for inmates which allow placement at a community release center to assist with the maintenance, food service duties, or assignment on outside work squads while confined at the facility. They are allowed to earn a small stipend while in this status. Inmates with non-advanceable release dates (85% sentence) must be within 19 months of release. Inmates with advanceable release dates must be within 28 months of release.
- <u>Transition (PWR)</u>: The portion of the community release program that provides inmates substance abuse programming and skills necessary for employment and re-entry into their communities prior to being assigned to work release. Inmates with non-advanceable release dates (85% sentence) must be within 28 months of release. Inmates with advanceable release dates must be within 36 months of release.
- Community-based Therapeutic Program (CTP): The portion of the community release program
  for inmates that provides transitional services which includes substance abuse treatment,
  educational/vocational services, and self-betterment programs, while in the community, in lieu

of placement into paid employment (CWR) or center work assignment (CWA). The inmates' release dates must be not shorter than six months and no longer than twelve months.

#### PRIVATELY OPERATED WORK RELEASE CENTERS

These programs provide housing, meals, job placement opportunities, substance abuse treatment, education and other transitional services for employed inmates nearing re-entry back into society. The Substance abuse treatment programming offers a continuum of licensed services including outpatient, aftercare and intervention. Outpatient services are a minimum of four months and Aftercare/alumni services are provided until the inmate is released. Intervention services are provided to inmates with less than 4 months to serve. Inmates in this program must be community custody and are released directly to the community from the program.



Governor

**RON DESANTIS** 

Secretary

MARK S. INCH

501 South Calhoun Street, Tallahassee, FL 32399-2500

www.dc.state.fl.us

## To whom it may concern:

A request was made to the Florida Department of Corrections to complete an analysis of SB 534–Pretrial Release. Please be advised that SB 534 does not have direct impact on the Florida Department of Corrections.



## The Florida Legislature

# OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



R. Philip Twogood, Coordinator

February 11, 2019

SB0534

SB0534 has no policy impact on OPPAGA. The tasks assigned to OPPAGA in the proposed legislation may be accomplished with existing resources.

## **APPEARANCE RECORD**

| (Deliver BOTH copies of this form to   | the Senator or Senate Professional Staff conducting the meeting)   | 534                                |
|--|--|------------------------------------|
| Meeting Date   | B  | ill Number (if applicable)         |
| Topic Pretrial Release   | Amendme  | nt Barcode (if applicable)         |
| Name SAM Westey  |  |                                    |
| Job Title Ball Bonds   |  |                                    |
| Address 739 NW 5th AVE   | Phone <u>3523</u>  | 777135                             |
| G'ville FL   |  | Peyil agmaild                      |
| Speaking: For Against Information  | /  |                                    |
| Representing Alachua Count   | Y Bail Bonks ASSOCIATION   |                                    |
| Appearing at request of Chair: Yes N   | Lobbyist registered with Legislature   | : Yes No                           |
| While it is a Senate tradition to encourage public testime meeting. Those who do speak may be asked to limit the | nony, time may not permit all persons wishing to spea<br>eir remarks so that as many persons as possible can | k to be heard at this<br>be heard. |
| This form is part of the public record for this meeting  | ng.  | S-001 (10/14/14)                   |

## APPEARANCE RECORD

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

| Meeting Date  | SBS34<br>Bill Number (if applicable)   |
|---|--|
| Topic Pre Trial Release   | Amendment Barcode (if applicable)  |
| Name Blass Harvey   |  |
| Job Title Vice President  |  |
| Address 407 N Nimes Ave   | Phone 813 6 of 2789  |
| TAMP9 FL 33607  | Email blaif 6 rochesurety.com  |
| Speaking: For Against Information Waive S   | peaking: In Support Against ir will read this information into the record.)    |
| Representing Roche Sweety + C   | asualty, Inc   |
|   | ered with Legislature: Yes No  |
| While it is a Senate tradition to encourage public testimony, time may not permit all meeting. Those who do speak may be asked to limit their remarks so that as many | persons wishing to speak to be heard at this persons as possible can be heard. |
| This form is part of the public record for this meeting.  | S-001 (10/14/14)   |

## APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) Bill Number (if applicable) Amendment Barcode (if applicable) Job Title Consultan Address Against Speaking: Information Waive Speaking: In Support (The Chair will read this information into the record.) Financial Casually + Swet Appearing at request of Chair: Lobbyist registered with Legislature: 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)

## APPEARANCE RECORD

| Meeting Date (Deliver BOTH copies of this form to the Senator or Senate Professional St.   | SB 384   |
|--|--|
| Topic Pretrial Release   | Bill Number (if applicable)  Amendment Barcode (if applicable)                 |
| Name Kodney J War & BAIL Bond  |  |
| Job Title LONG & WONG Agents, tole   |  |
| Address 1712 NE Waldo Road   | Phone 351-371-4566   |
| Street  GANESUL, Fe 32609  City State Zip  | Email rodney long agmail.com   |
| Speaking: For Against Information Waive Speaking: (The Chair   | peaking: In Support Against r will read this information into the record.)     |
| Representing Self  |  |
| Appearing at request of Chair: Yes No Lobbyist register While it is a Senate tradition to encourage public testimony, time may not permit all meeting. Those who do speak may be asked to limit their remarks so that as many permit all processing in the second sec | persons wishing to speak to be heard at this persons as possible can be heard. |
| This form is part of the public record for this meeting.   | S-001 (10/14/14)   |

## APPEARANCE RECORD

| 03-11-2019 (Deliver BOTH copies of this form to the Senator of Senate Professional St   | taπ conducting the meeting)  |
|---|--|
| Meeting Date  | Bill Number (if applicable)  |
| Topic   | Amendment Barcode (if applicable)  |
| Name_Judy Mandrell  |  |
| Job Title Concerned Citizen/Paster  |  |
| Address 1911 Chowkee 6. W Court   | Phone 850-2/2-8805   |
| Street  Tallahassee PC 3230  City State Zip   | Email Quanglody 10 Chotnails   |
| Speaking: For Against Information Waive Speaking:   | peaking: In Support Against ir will read this information into the record.)    |
| Representing  |  |
| Appearing at request of Chair: Yes No Lobbyist register   | ered with Legislature: Yes No  |
| While it is a Senate tradition to encourage public testimony, time may not permit all meeting. Those who do speak may be asked to limit their remarks so that as many | persons wishing to speak to be heard at this persons as possible can be heard. |
| This form is part of the public record for this meeting.  | S-001 (10/14/14)   |

## APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 3.11.19

534 Meeting Date Bill Number (if applicable) **Pretrial Release** Topic Amendment Barcode (if applicable) Name Barney Bishop III Job Title President & CEO Address 2215 Thomaville Road Phone 850.510.9922 Street Email barney@barneybishop.com Tallahassee FL 32308 City State Zip Speaking: Information Waive Speaking: In Support Against (The Chair will read this information into the record.) Florida Smart Justice Alliance Representing Lobbyist registered with Legislature: Appearing at request of Chair: 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)

## APPEARANCE RECORD

| (Deliver BOTH copies of this form to the Senator of   | or Senate Professional Staff conducting the meeting)  |
|---|---|
| Meeting Date  | Bill Number (if applicable)   |
| Topic Pretrial Release  | Amendment Barcode (if applicable)   |
| Name Emy Curtiss  |   |
| Job Title Bare Agent  |   |
| Address 2724 S. Orlando Dr  | Phone 407.600.7454  |
| Street Ord F  | 32773 Email Emilysbailbonds@gmail   |
| Speaking: State  Speaking: Against Information  | Waive Speaking: In Support Against (The Chair will read this information into the record.)                          |
| Representing  |   |
| Appearing at request of Chair: Yes No   | Lobbyist registered with Legislature: Yes No  |
| While it is a Senate tradition to encourage public testimony, time meeting. Those who do speak may be asked to limit their remark | may not permit all persons wishing to speak to be heard at this s 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)  |
|   |   |

## APPEARANCE RECORD

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

| 3-11-19 (Deliver BOTH copies of this form to the Senator or Senate Professional St  | taff conducting the meeting) \$\instyle \square 34                             |
|---|--|
| Meeting Date  | Bill Number (if applicable)  |
| Topic Pre Trial Release   | Amendment Barcode (if applicable)  |
| Name Matthew Jenes  |  |
| Job Title President   |  |
| Address 3/2 Weg St  | Phone 239-892-284  |
| Purk Gorde Fl. 33950 City State Zip   | Emailmateaurepartbailbands.crg   |
| Speaking: For Against Information Waive S   | peaking: In Support Against ir will read this information into the record.)    |
| Representing Florda Bail Agents Association   |  |
| Appearing at request of Chair: Yes No Lobbyist register   | ered with Legislature: Yes No  |
| While it is a Senate tradition to encourage public testimony, time may not permit all meeting. Those who do speak may be asked to limit their remarks so that as many | persons wishing to speak to be heard at this persons as possible can be heard. |
| This form is part of the public record for this meeting.  | S-001 (10/14/14)   |

## APPEARANCE RECORD

| (Deliver BOTH copies of this form to the Senator of Senate Professional Staff conducting the meeting)  | 25 534                       |
|--|------------------------------|
| Meeting Date   | Bill Number (if applicable)  |
| Topic 5B 534 Pre-Arrial Release Amend  | ment Barcode (if applicable) |
| Name Timberly Yalmer   |                              |
| Job Title Bail Agest   |                              |
| Address 2724 S. Hando Dure Phone 407   | -688-822                     |
| State Zip Email Keal Mess  | - 9869 Ogmail G              |
| Speaking: For Against Information Waive Speaking: In Su  | • • • •                      |
| Representing   |                              |
| Appearing at request of Chair: Yes No Lobbyist registered with Legislatu   | ure: Yes No                  |
| While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to sp<br>meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible o |                              |
| 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.)

| INTRODUCER: | Criminal Justice Committee and Senators Baxley and Bracy |            |                |            |        |        |
|-------------|--|------------|----------------|------------|--------|--------|
| SUBJECT:    | Sexual Mis   | sconduct 1 | Reporting in H | ealth Care |        |        |
| DATE:       | March 11,  | 2019       | REVISED:       |            |        |        |
| ANAL        | YST.   | STAF       | F DIRECTOR     | REFERENCE  |        | ACTION |
| 1. Storch   |  | Jones      |                | CJ         | Fav/CS |        |
| 2.          |  |            |                | AHS        |        |        |
| 3.          |  |            |                | AP         |        |        |

## Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/SB 776 requires each entity licensed by the Agency for Healthcare Administration (AHCA) to enact a policy that requires sexual misconduct reporting in its facility in order to maintain its license.

Pursuant to the policy, any employee, contractor, volunteer, or intern of the licensee who witnesses sexual misconduct involving a patient in the care of the licensee, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct involving a patient in the care of the licensee, must immediately report such misconduct to the licensee, the AHCA's toll-free complaint number, and the appropriate local law enforcement agency. The bill requires the person who reported the sexual misconduct to prepare an independent report, to the best of his or her ability, that describes the nature, location, and time of the incident, and the persons involved. The person who prepares such report must date and sign it and provide it to the licensee.

The bill provides the following penalties for:

- Failure of the licensee to enact or enforce the sexual misconduct policy required is a Class II violation as established in s. 408.813, F.S.;
- A person who is required to make a report and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a first degree misdemeanor;

• A person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a required report commits a first degree misdemeanor; and

 A person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct commits a third degree felony.

The fiscal impact for the bill is indeterminate at this time. However, health care facilities that are licensed by the AHCA may incur costs associated with the implementation of the sexual misconduct reporting required by the bill. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

## **II.** Present Situation:

## **Health Care Facility Licensure Requirements**

The AHCA is responsible for health facility licensure, inspection, and regulatory enforcement, in addition to the investigation of consumer complaints related to health care facilities and managed care plans. Currently, it is unlawful to provide services that require licensure, or operate or maintain a provider that offers or provides services that require licensure, without first obtaining a license from the AHCA. The Bureau of Health Facility Regulation within the AHCA is tasked with handling the 48,500 licensed health care facilities throughout the state.

The following entities must be licensed by the AHCA:

- Laboratories authorized to perform testing under the Drug-Free Workplace Act;
- Birth centers:
- Abortion clinics:
- Crisis stabilization units;
- Short-term residential treatment facilities;
- Residential treatment facilities:
- Residential treatment centers for children and adolescents;
- Hospitals;
- Ambulatory surgical centers;
- Nursing homes;
- Assisted living facilities;
- Home health agencies;
- Nurse registries;
- Companion services or homemaker services providers;
- Adult day care centers;
- Hospices;

<sup>&</sup>lt;sup>1</sup> Section 20.42, F.S.

<sup>&</sup>lt;sup>2</sup> "Services that require licensure" means those services, including residential services, which require a valid license before those services may be provided in accordance with authorizing statutes and agency rules. Section 408.803(13), F.S. <sup>3</sup> Section 408.804(1), F.S.

<sup>&</sup>lt;sup>4</sup> The Agency for Health Care Administration, *About the Agency for Health Care Administration*, available at <a href="http://www.fdhc.state.fl.us/Inside">http://www.fdhc.state.fl.us/Inside</a> AHCA/index.shtml (last visited March 5, 2019).

- Adult family-care homes;
- Homes for special services;
- Transitional living facilities;
- Prescribed pediatric extended care centers;
- Home medical equipment providers;
- Intermediate care facilities for persons with developmental disabilities;
- Health care services pools;
- Health care clinics;
- Multiphasic health testing centers; and
- Organ, tissue, and eye procurement organizations.<sup>5</sup>

To obtain a license, each applicant must complete and submit an application to the AHCA.<sup>6</sup> In addition to the application, each applicant and licensee<sup>7</sup> must complete minimum licensure requirements in order to obtain and maintain a license.<sup>8</sup> Among those is the requirement for the licensee to inform the client and his or her immediate family or representative of the right to report complaints, abusive, neglectful, or exploitative practices, and Medicaid fraud.

Additionally, the licensee must provide the client with the phone number to call depending on the type of issue experienced. To report a complaint, there is a statewide toll-free telephone number; to report abuse, neglect, or exploitation, the client must call the Department of Children and Families' (DCF) central abuse hotline (hotline); to report suspected Medicaid fraud, the client must call the central Medicaid fraud hotline.<sup>9</sup>

Failure to comply with licensure requirements is considered a violation, and could result in the imposition of an administrative fine. Violations are classified as either I, II, III, or IV, according to the nature of the violation and the gravity of its probable effect on clients. A violation may result in a fine regardless of whether or not the violation is corrected.<sup>10</sup>

### **Sexual Misconduct in Health Care**

Sexual misconduct by health care practitioners adversely affects the public welfare and harms patients both individually and collectively. Such misconduct can cause both mental and physical harm to the patient and exploits the relationship between the patient and the health care professional. Despite countless protections and policies in place in health care facilities, incidents of sexual abuse continue to occur in these settings. In January 2018, a 23-year-old

<sup>&</sup>lt;sup>5</sup> Section 408.802, F.S.

<sup>&</sup>lt;sup>6</sup> Section 408.806, F.S.

<sup>&</sup>lt;sup>7</sup> "Licensee" means an individual, corporation, partnership, firm, association, governmental entity, or other entity that is issued a permit, registration, certificate, or license by the AHCA. The licensee is legally responsible for all aspects of the provider operation. Section 408.803(9), F.S.

<sup>&</sup>lt;sup>8</sup> Section 408.810, F.S.

<sup>&</sup>lt;sup>9</sup> Section 408.810(5), F.S.

<sup>&</sup>lt;sup>10</sup> Section 408.813, F.S.

<sup>&</sup>lt;sup>11</sup> Federation of State Medical Boards, *Addressing Sexual Boundaries: Guidelines for State Medical Boards*, (May 2006), available at <a href="https://www.fsmb.org/siteassets/advocacy/policies/grpol\_sexual-boundaries.pdf">https://www.fsmb.org/siteassets/advocacy/policies/grpol\_sexual-boundaries.pdf</a> (last visited March 6, 2019).

<sup>&</sup>lt;sup>12</sup> CMS.gov, *Protecting the Health and Safety of all Americans*, (March 5, 2019) available at https://www.cms.gov/blog/protecting-health-and-safety-all-americans (last visited March 6, 2019).

non-verbal, immobile woman was sexually assaulted and impregnated while under the care of a health care facility in Pensacola, Florida. Physical injuries to the woman and other signs of abuse were noticed and subsequently reported by employees of the school she attended. A lawsuit filed by the woman's family alleged that the health care facility in which she was being treated failed to report injuries to the hotline and failed to seek medical treatment.<sup>13</sup>

Sexual contact with a patient is considered sexual misconduct and is prohibited in the context of the patient-physician relationship. <sup>14</sup> Currently, there are no sexual misconduct reporting requirements within facilities licensed by the AHCA. In contrast, an employee of the DCF who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person engaged in sexual misconduct, is required to immediately report the incident to the DCF's hotline and to the appropriate local law enforcement agency. <sup>15</sup> Any person who fails to make such a report commits a first degree misdemeanor. <sup>16</sup>

#### Florida Abuse Hotline

The hotline is operated by the DCF and serves as the central reporting center for allegations of abuse, neglect, and/or exploitation for all children and vulnerable adults in the state. <sup>17</sup> For purposes of the hotline, a child is any born, unmarried person less than 18 years of age who has not been emancipated by the court and a vulnerable adult is a person 18 years of age or older who has a disability or is suffering from the infirmities of aging. <sup>18</sup> The hotline is tasked with assessing the information provided by the caller and determining if such information meets statutory criteria in order to require the DCF to conduct an investigation. <sup>19</sup>

## III. Effect of Proposed Changes:

The bill requires each entity licensed by the AHCA to enact a policy requiring the reporting of sexual misconduct in its facility in order to maintain its license.

The bill defines "sexual misconduct" in the same manner as s. 394.4593(1), F.S., to mean any sexual activity between an employee and a patient, regardless of the consent of the patient. An act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee is not prohibited conduct within the definition.

Pursuant to the policy, any employee, contractor, volunteer, or intern of the licensee who witnesses sexual misconduct involving a patient in the care of the licensee, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct

<sup>&</sup>lt;sup>13</sup> WBTW News 13, *Lawsuit: Disabled woman sexually assaulted, impregnated at Florida health care facility*, (January 17, 2019), available at <a href="https://www.wbtw.com/news/state-regional/lawsuit-disabled-woman-sexually-assaulted-impregnated-at-florida-health-care-facility/1708513002">https://www.wbtw.com/news/state-regional/lawsuit-disabled-woman-sexually-assaulted-impregnated-at-florida-health-care-facility/1708513002</a> (last visited March 6, 2019).

<sup>&</sup>lt;sup>14</sup> Fla. Admin. Code R. 64B-9.008 (1997). See s. 458.329, F.S.

<sup>&</sup>lt;sup>15</sup> Section 395.4593(5), F.S.

<sup>&</sup>lt;sup>16</sup> Section 395.4593(6), F.S.

<sup>&</sup>lt;sup>17</sup> Florida Department of Children and Families, *Abuse Hotline*, available at <a href="https://www.dcf.state.fl.us/service-programs/abuse-hotline/">https://www.dcf.state.fl.us/service-programs/abuse-hotline/</a> (last visited March 7, 2019).

<sup>&</sup>lt;sup>18</sup> Florida Department of Children and Families, *Abuse Hotline: How to Report – Definition for Reporting Abuse*, available at <a href="https://www.dcf.state.fl.us/service-programs/abuse-hotline/report/definitions.shtml">https://www.dcf.state.fl.us/service-programs/abuse-hotline/report/definitions.shtml</a> (last visited March 7, 2019).

<sup>&</sup>lt;sup>19</sup> Supra, n 16.

involving a patient in the care of the licensee, must immediately report such misconduct to the licensee, the AHCA's toll-free complaint number, and the appropriate local law enforcement agency.

The bill also requires the person who reported the sexual misconduct to prepare an independent report, to the best of his or her ability, that describes the nature, location, and time of the incident, and the persons involved. The person who prepares such report must date and sign it and provide it to the licensee.

The bill provides the following penalties for:

- Failure of the licensee to enact or enforce the sexual misconduct policy required is a Class II violation as established in s. 408.813, F.S.;<sup>20</sup>
- A person who is required to make a report and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a first degree misdemeanor;<sup>21</sup>
- A person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a required report commits a first degree misdemeanor; and
- A person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct commits a third degree felony.<sup>22</sup>

Current law requires reports about abuse, neglect, or exploitative practices by a person employed by the licensee to be reported to the DCF's hotline. However, the hotline is only tasked with accepting calls regarding children or vulnerable adults. Therefore, the bill changes this, to require such reports to be made to the AHCA's statewide toll-free complaint number.

The bill is effective October 1, 2019.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

<sup>&</sup>lt;sup>20</sup> Class "II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines directly threaten the physical or emotional health, safety, or security of the clients, other than class I violations. The agency shall impose an administrative fine as provided by law for a cited class II violation. A fine shall be levied notwithstanding the correction of the violation. Section 408.813(2)(b), F.S.

<sup>&</sup>lt;sup>21</sup> A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year, a fine of \$1,000, or both. Sections 775.082 and 775.083, F.S.

<sup>&</sup>lt;sup>22</sup> A third degree felony is punishable by a term of imprisonment not exceeding 5 years, a fine of \$5,000, or both. Sections 775.082 and 775.083, F.S.

| C. | Truct | Funde  | Restrictions |    |
|----|-------|--------|--------------|----|
| U. | 11051 | Tunus. | RESIDENCIA   | ١. |

None.

### D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None identified.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The fiscal impact for the bill is indeterminate at this time. However, private entities that are licensed by the AHCA may incur costs associated with the implementation of the sexual misconduct reporting required by the bill.

## C. Government Sector Impact:

The fiscal impact for the bill is indeterminate at this time. However, public entities that are licensed by the AHCA may incur costs associated with the implementation of the sexual misconduct reporting required by the bill.

## VI. Technical Deficiencies:

None.

### VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 408.810 of the Florida Statutes.

## IX. Additional Information:

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

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

## CS by Criminal Justice on March 11, 2019:

The Committee Substitute:

- Requires reports of abusive, neglectful, exploitative practices, and sexual misconduct at a licensed health care facility to be made to the AHCA's complaint number;
- Specifies that the sexual misconduct that is required to be reported is limited to conduct that occurs on a patient in the care of the licensee;
- Provides that the independent report is required to be completed by the person who made the sexual misconduct report to the best of his or her ability;
- Modifies the effective date of the bill to October 1, 2019; and
- Corrects a drafting error in the title.

### B. Amendments:

None.

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

201438

# LEGISLATIVE ACTION Senate House Comm: RCS 03/11/2019

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

### Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (5) of section 408.810, Florida Statutes, is amended to read:

408.810 Minimum licensure requirements.—In addition to the licensure requirements specified in this part, authorizing statutes, and applicable rules, each applicant and licensee must comply with the requirements of this section in order to obtain

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and maintain a license.

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- (5) (a) On or before the first day services are provided to a client, a licensee must inform the client and his or her immediate family or representative, if appropriate, of the right to report:
- 1. Complaints. The statewide toll-free telephone number for reporting complaints to the agency must be provided to clients in a manner that is clearly legible and must include the words: "To report a complaint regarding the services you receive, please call toll-free (phone number)."
- 2. Abusive, neglectful, or exploitative practices. The statewide toll-free telephone number for reporting complaints to the agency the central abuse hotline must be provided to clients in a manner that is clearly legible and must include the words: "To report abuse, neglect, or exploitation, please call tollfree (phone number)."
- 3. Medicaid fraud. An agency-written description of Medicaid fraud and the statewide toll-free telephone number for the central Medicaid fraud hotline must be provided to clients in a manner that is clearly legible and must include the words: "To report suspected Medicaid fraud, please call toll-free (phone number)."

The agency shall publish a minimum of a 90-day advance notice of a change in the toll-free telephone numbers.

- (b) Each licensee shall establish appropriate policies and procedures for providing such notice to clients.
- (c) Each licensee shall enact a policy that requires all employees, contractors, volunteers, and interns of the licensee



40 who witness sexual misconduct, as defined in s. 394.4593(1), involving a patient in the care of the licensee or who otherwise 41 42 know or have reasonable cause to suspect that a person has 43 engaged in sexual misconduct involving a patient in the care of 44 the licensee to immediately report the sexual misconduct to the 45 licensee, the statewide toll-free complaint telephone number of the department, and the appropriate local law enforcement 46 47 agency. The policy shall require the employee, contractor, 48 volunteer, or intern to prepare, to the best of his or her 49 ability, an independent report that specifically describes the 50 nature of the sexual misconduct, the location and time of the 51 incident, and the persons involved in the incident. The 52 employee, contractor, volunteer, or intern who prepares such 53 report shall date and sign the report and provide it to the 54 licensee.

- 1. Failure of the licensee to enact or enforce the policy required under this paragraph is a Class II violation as established in s. 408.813.
- 2. Any person who is required to make a report under this paragraph and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- 3. Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report required under this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
  - 4. Any person who knowingly or willfully coerces or

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threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect October 1, 2019. ======== 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 sexual misconduct reporting in health care; amending s. 408.810, F.S.; requiring specified health care facilities, as a condition of maintaining licensure, to enact policies requiring employees, contractors, volunteers, and interns of such licensees to report actual or suspected sexual misconduct involving a patient to the licensee, the statewide toll-free complaint telephone number of the Agency for Healthcare Administration, and the appropriate local law enforcement agency; requiring such persons to prepare an incident report that includes specified information; providing that a violation of the reporting requirements is a class II violation, subject to an administrative fine; providing criminal penalties; providing an effective date.

By Senator Baxley

12-01157-19 2019776\_ A bill to be entitled

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An act relating to sexual misconduct reporting in health care; amending s. 408.810, F.S.; requiring specified health care facilities, as a condition of obtaining or maintaining licensure, to enact policies requiring employees, contractors, volunteers, and interns of such licensees to report actual or suspected sexual misconduct involving a patient to the licensee, the Department of Children and Families, and the appropriate local law enforcement agency; requiring such persons to prepare an incident report that includes specified information; providing that a violation of the reporting requirements is a class II violation, subject to an administrative fine; providing criminal penalties; providing an effective date.

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

Section 1. Subsection (5) of section 408.810, Florida Statutes, is amended to read:

408.810 Minimum licensure requirements.—In addition to the licensure requirements specified in this part, authorizing statutes, and applicable rules, each applicant and licensee must comply with the requirements of this section in order to obtain and maintain a license.

(5) (a) On or before the first day services are provided to a client, a licensee must inform the client and his or her immediate family or representative, if appropriate, of the right

Page 1 of 3

 ${\bf CODING:}$  Words  ${\bf stricken}$  are deletions; words  ${\bf \underline{underlined}}$  are additions.

Florida Senate - 2019 SB 776

12-01157-19 2019776

30 to report:

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- 1. Complaints. The statewide toll-free telephone number for reporting complaints to the agency must be provided to clients in a manner that is clearly legible and must include the words: "To report a complaint regarding the services you receive, please call toll-free (phone number)."
- 2. Abusive, neglectful, or exploitative practices. The statewide toll-free telephone number for the central abuse hotline must be provided to clients in a manner that is clearly legible and must include the words: "To report abuse, neglect, or exploitation, please call toll-free (phone number)."
- 3. Medicaid fraud. An agency-written description of Medicaid fraud and the statewide toll-free telephone number for the central Medicaid fraud hotline must be provided to clients in a manner that is clearly legible and must include the words: "To report suspected Medicaid fraud, please call toll-free (phone number)."

The agency shall publish a minimum of a 90-day advance notice of a change in the toll-free telephone numbers.

- (b) Each licensee shall establish appropriate policies and procedures for providing such notice to clients.
- (c) Each licensee shall enact a policy that requires all employees, contractors, volunteers, and interns of the licensee who witness sexual misconduct, as defined in s. 394.4593(1), or who otherwise know or have reasonable cause to suspect that a person has engaged in sexual misconduct to immediately report the sexual misconduct to the licensee, the Department of Children and Families' central abuse hotline, and the

Page 2 of 3

|    | 12-01157-19 2019776  |
|----|--|
| 59 | appropriate local law enforcement agency. The employee,          |
| 60 | contractor, volunteer, or intern also must prepare, date, sign,  |
| 61 | and provide to the licensee an independent report that           |
| 62 | specifically describes the nature of the sexual misconduct, the  |
| 63 | location and time of the incident, and the persons involved in   |
| 64 | the incident.  |
| 65 | 1. Failure of the licensee to enact or enforce the policy        |
| 66 | required under this paragraph is a Class II violation as         |
| 67 | established in s. 408.813.                                       |
| 68 | 2. Any person who is required to make a report under this        |
| 69 | paragraph and who knowingly or willfully fails to do so, or who  |
| 70 | knowingly or willfully prevents another person from doing so,    |
| 71 | commits a misdemeanor of the first degree, punishable as         |
| 72 | provided in s. 775.082 or s. 775.083.                            |
| 73 | 3. Any person who knowingly or willfully submits                 |
| 74 | inaccurate, incomplete, or untruthful information with respect   |
| 75 | to a report required under this paragraph commits a misdemeanor  |
| 76 | of the first degree, punishable as provided in s. 775.082 or s.  |
| 77 | <u>775.083.</u>  |
| 78 | 4. Any person who knowingly or willfully coerces or              |
| 79 | threatens any other person with the intent to alter testimony of |
| 30 | a written report regarding an incident of sexual misconduct      |
| 31 | commits a felony of the third degree, punishable as provided in  |
| 32 | s. 775.082, s. 775.083, or s. 775.084.                           |
| 33 | Section 2. This act shall take effect July 1, 2019.              |
|    |  |
|    |  |
|    |  |

Page 3 of 3

 ${\tt CODING:}$  Words  ${\tt stricken}$  are deletions; words  ${\tt \underline{underlined}}$  are additions.

## **APPEARANCE RECORD**

| 3.11.19   | (Deliver BOTH copie               | es of this form to the Senato                   | or or Senate Professional S                  | taff conducting the r           | meeting) 776  |
|---|-----------------------------------|---|--|---------------------------------|---|
| Meeting Date  | •                                 |   |  |                                 | Bill Number (if applicable)                             |
| Topic Sexual Miscon                                     | duct Reportin                     | g   |  | _                               | Amendment Barcode (if applicable)                       |
| Name Barney Bishop                                      | III                               |   | 1.00   |                                 |   |
| Job Title President &                                   | CEO                               |   |  |                                 |   |
| Address 2215 Thoma                                      | ville Road                        |   |  | Phone 850                       | 0.510.9922  |
| Street<br>Tallahassee                                   |                                   | FL  | 32308  | Email barn                      | ey@barneybishop.com                                     |
| City Speaking: For                                      | Against                           | State Information                               |  | peaking: 🗾                      | In Support Against information into the record.)        |
| Representing Flor                                       | ida Smart Ju                      | stice Alliance                                  |  |                                 |   |
| Appearing at request                                    | of Chair:                         | Yes No  | Lobbyist regist                              | ered with Le                    | gislature: Yes No                                       |
| While it is a Senate tradition meeting. Those who do sp | on to encourage<br>eak may be ask | public testimony, tin<br>ed to limit their rema | ne may not permit al<br>arks so that as many | persons wishii<br>persons as po | ng to speak to be heard at this<br>ssible can be heard. |
| This form is part of the p                              | ublic record fo                   | r this meeting.                                 |  |                                 | S-001 (10/14/14)  |

## APPEARANCE RECORD

| (Deliver BOTH copies of this form to the Senato   | or or Senate Professional Staff conducting the meeting)   |
|---|---|
| Meeting Date  | Bill Number (if applicable)   |
| Topic   | Amendment Barcode (if applicable)   |
| Name Ed Bowlingn  |   |
| Job Title   |   |
| Address 6862 Road Like Rd   | Phone   |
| City State  | 32757 Email   |
| Speaking: For Against Information   | Waive Speaking: In Support Against (The Chair will read this information into the record.)                                |
| Representing  |   |
| Appearing at request of Chair: Yes No   | Lobbyist registered with Legislature: Yes No  |
| While it is a Senate tradition to encourage public testimony, timeeting. Those who do speak may be asked to limit their remarks | ne may not permit all persons wishing to speak to be heard at this arks 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)  |



COMMITTEES:
Ethics and Elections, Chair
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 19, 2019

The Honorable Chairman Keith Perry 316 Senate Office Building 404 South Monroe Street Tallahassee, Florida 32399

Dear Chairman Perry,

I would like to request SB 776 Sexual Misconduct Reporting in Health Care in your next Criminal Justice Committee meeting.

This bill requires health care facilities to enact a policy that requires all employees, contractors, volunteers, and interns of the licensee who witness sexual misconduct or have reasonable cause to suspect that a person has engaged in sexual misconduct to immediately report the sexual misconduct to the licensee, the Department of Children and Families and the appropriate law enforcement agency.

This bill will be known as "Clara's Law", named in honor of Clara Bowman. She was sexually abused by an intensive-care-unit nurse at a Florida hospital in 2006. Her abuser resigned from the hospital and went to work at another, where he later abused another patient. The latter hospital was unaware of the allegations when they hired him. This bill will hopefully prevent this from happening again.

I appreciate your favorable consideration.

Onward & Upward,

Senator Dennis K Baxley

Senate District 12

DKB/dd

cc: Lauren Jones, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 ● (850) 487-5012 Email: baxley.dennis@flsenate.gov

Bill Galvano President of the Senate

David Simmons President Pro Tempore

# The Florida Senate BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

|             | Prepare      | d By: The | Professional St | aff of the Committee | on Criminal Just | ice    |
|-------------|--------------|-----------|-----------------|----------------------|------------------|--------|
| BILL:       | SB 800       |           |                 |                      |                  |        |
| INTRODUCER: | Senator Pizz | ZO        |                 |                      |                  |        |
| SUBJECT:    | Duty to Ass  | sist      |                 |                      |                  |        |
| DATE:       | March 8, 20  | )19       | REVISED:        |                      |                  |        |
| ANAL        | YST          | STAF      | F DIRECTOR      | REFERENCE            |                  | ACTION |
| 1. Erickson |              | Jones     |                 | CJ                   | <b>Favorable</b> |        |
| 2           |              |           |                 | JU                   |                  |        |
| 3.          |              |           |                 | RC                   |                  |        |

## I. Summary:

SB 800 amends s. 768.13, F.S., Florida's "Good Samaritan Act," to provide that a person who is at the scene of an emergency and who knows that another person is exposed to or has suffered serious bodily injury shall, to the extent that he or she can do so without causing danger or peril to oneself or others, provide reasonable assistance to the exposed or injured person. Reasonable assistance includes contacting, obtaining, or attempting to contact or obtain aid from law enforcement or medical personnel. A person who violates the requirement to provide reasonable assistance commits a second degree misdemeanor.

The Criminal Justice Impact Conference estimates that the bill will not have a prison bed impact. The bill may have an indeterminate impact on county jails. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

## **II.** Present Situation:

#### **Duty to Assist**

Florida law imposes some duties to assist, primarily in the form of reporting. However, Florida law does not impose upon the general public a duty to assist an endangered person in an emergency situation.

Florida law imposes upon the general public a duty to report some criminal activity or a death, and punishes failure to comply with reporting requirements:

• Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, or that the child is in need of supervision and care and has no parent,

legal custodian, or responsible adult relative immediately known and available to provide supervision and care must report such knowledge or suspicion to the Department of Children and Families.<sup>1</sup>

- Any person who knows, or who has reasonable cause to suspect, that a child is abused by an
  adult other than a parent, legal custodian, caregiver, or other person responsible for the
  child's welfare must report such knowledge or suspicion to the Department of Children and
  Families.<sup>2</sup>
- Any person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender must report such knowledge or suspicion to the Department of Children and Families.<sup>3</sup>
- Any person who knows or has reasonable cause to suspect that a vulnerable adult has been or
  is being abused, neglected, or exploited must immediately report such knowledge or
  suspicion to the central abuse hotline of the Department of Children and Families.<sup>4</sup>
- A person has a qualified duty to report a sexual battery. A person who has reason to believe he or she observed the commission of a sexual battery, has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer, and fails to seek such assistance, commits a first degree misdemeanor, unless a specified exception applies.<sup>5</sup>
- Any person in the district where a death occurs, including all municipalities and
  unincorporated and federal areas, who becomes aware of the death of any person occurring
  under specified circumstances in s. 406.11, F.S. (circumstances in which a medical examiner
  must determine the cause of death), must report such death and circumstances forthwith to
  the district medical examiner.<sup>6</sup>

These laws apply to all Floridians in contrast to laws which only impose reporting requirements (or other assistance requirements) on Floridians who engage in certain activities like driving a motor vehicle.<sup>7</sup>

<sup>&</sup>lt;sup>1</sup> Section 39.201(1)(a), F.S. A person commits a third degree felony if he or she is required to report known or suspected child abuse, abandonment, or neglect and knowingly and willfully fails to do so, or knowingly and willfully prevents another person from doing so. Section 39.205(1), F.S. Unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist, a person who is 18 years of age or older and lives in the same house or living unit as a child who is known or suspected to be a victim of child abuse, neglect of a child, or aggravated child abuse, commits a third degree felony if he or she knowingly and willfully fails to report the child abuse. Section 39.205(2), F.S.

<sup>&</sup>lt;sup>2</sup> Section 39.201(1)(b), F.S. See footnote 1, supra, regarding penalties.

<sup>&</sup>lt;sup>3</sup> Section 39.201(1)(c), F.S. See footnote 1, supra, regarding penalties.

<sup>&</sup>lt;sup>4</sup> Section 415.1034(1)(a), F.S. A person commits a second degree misdemeanor if he or she knowingly and willfully fails to report a case of known or suspected abuse, neglect, or exploitation of a vulnerable adult, or knowingly and willfully prevents another person from doing so. Section 415.111(1), F.S.

<sup>&</sup>lt;sup>5</sup> Section 794.027, F.S. The specified exceptions are that the person would be exposed to a threat of physical violence for seeking assistance; the person is the husband, wife, parent, grandparent, child, grandchild, brother, or sister of the offender or victim, by consanguinity or affinity; or the person is the victim of the sexual battery. Section 794.027(4)-(6), F.S.

<sup>&</sup>lt;sup>6</sup> Section 406.12, F.S. Any person who knowingly fails or refuses to report such death and circumstances commits a second degree misdemeanor. *Id.* 

<sup>&</sup>lt;sup>7</sup> See, e.g., s. 316.0662(1), F.S. (imposing duties to give information and render aid on the driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property).

#### Florida's Good Samaritan Act and the General Public

Section 768.13, F.S., is Florida's "Good Samaritan Act." This section provides immunity from civil damages, as specified in the section, to certain health care practitioners and entities, and to persons in general, who provide emergency care or treatment in certain emergency situations. Specifically, this section applies to the following persons who are not listed practitioners:

- Any person who gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations related to and arising out of certain declared emergencies<sup>9</sup> or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without objection of the injured victim or victims;<sup>10</sup>
- Any person whose acts or omissions are not otherwise covered by s. 768.13, F.S., and who participates in emergency response activities under the direction of or in connection with a community emergency response team, local emergency management agencies, the Division of Emergency Management, or the Federal Emergency Management Agency;<sup>11</sup> and
- A person who gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency on or adjacent to a roadway. 12

Florida's Good Samaritan Act does not impose upon the general public a duty to assist an endangered person in an emergency situation.

#### **Duty to Assist Laws in Other States**

At least three states impose upon the general public a duty to assist an endangered person in an emergency situation.

Vermont law provides that a person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to himself or herself or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others. A person who willfully violates this requirement shall be fined not more than \$100.00.<sup>13</sup>

Minnesota law provides that a person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can

<sup>9</sup> A public health emergency declared pursuant to s. 381.00315, F.S., or a state of emergency which has been declared pursuant to s. 252.36, F.S. Section 768.13(2)(a), F.S.

<sup>&</sup>lt;sup>8</sup> Section 768.13(1), F.S.

<sup>&</sup>lt;sup>10</sup> *Id.* The person shall not be held liable for any civil damages as a result of: such care or treatment; or any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances. *Id.* 

<sup>&</sup>lt;sup>11</sup> Section 768.13(2)(d), F.S. The person shall not be held liable for any civil damages as a result of care, treatment, or services provided gratuitously in such capacity and resulting from any act or failure to act in such capacity in providing or arranging further care, treatment, or services, if such person acts as a reasonably prudent person would have acted under the same or similar circumstances. *Id*.

<sup>&</sup>lt;sup>12</sup> Section 768.13(3), F.S. The person shall not be held liable for any civil damages as a result of: such care or treatment; or any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances. *Id*.

<sup>&</sup>lt;sup>13</sup> Vt. Stat. Ann. tit. 12, s. 519(a), available at <a href="https://legislature.vermont.gov/statutes/section/12/023/00519">https://legislature.vermont.gov/statutes/section/12/023/00519</a> (last visited on March 4, 2019).

do so without danger or peril to self or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel. A person who violates this requirement is guilty of a petty misdemeanor.<sup>14</sup>

Rhode Island law provides that any person at the scene of an emergency who knows that another person is exposed to, or has suffered, grave physical harm shall, to the extent that he or she can do so without danger or peril to himself or herself or to others, give reasonable assistance to the exposed person. Any person violating this requirement shall be guilty of a petty misdemeanor and shall be subject to imprisonment for a term not exceeding six months, or by a fine of not more than \$500, or both.<sup>15</sup>

## III. Effect of Proposed Changes:

As previously noted, s. 768.13(2)(a), F.S., provides immunity from civil damages, as specified in the section, to persons who provide emergency care or treatment in certain emergency situations. The bill amends s. 768.13, F.S., to provide that, notwithstanding s. 768.13(2), F.S., a person who is at the scene of an emergency and who knows that another person is exposed to or has suffered serious bodily injury<sup>16</sup> shall, to the extent that he or she can do so without causing danger or peril to oneself or others, provide reasonable assistance to the exposed or injured person. Reasonable assistance includes contacting, obtaining, or attempting to contact or obtain aid from law enforcement or medical personnel. A person who violates the requirement to provide reasonable assistance commits a second degree misdemeanor.<sup>17</sup>

The bill is effective October 1, 2019.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

<sup>14</sup> Minn. Stat. s. 604A.01(1), available at <a href="https://www.revisor.mn.gov/statutes/cite/604A.01">https://www.revisor.mn.gov/statutes/cite/604A.01</a> (last visited on March 4, 2019).

<sup>&</sup>lt;sup>15</sup> R.I. Gen. Laws s. 11-56-1, available at <a href="http://webserver.rilin.state.ri.us/Statutes/TITLE11/11-56/11-56-1.HTM">http://webserver.rilin.state.ri.us/Statutes/TITLE11/11-56/11-56-1.HTM</a> (last visited on March 4, 2019).

<sup>&</sup>lt;sup>16</sup> The bill specifies that the term "serious bodily injury" has the same meaning as provided in s. 790.155, F.S. Section 790.155(1)(b), F.S., defines "serious bodily injury" as a physical condition which creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

<sup>&</sup>lt;sup>17</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and fine of up to \$500. Sections 775.082 and 775.083, F.S.

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|---------------|-------|---------|-----------------|------------|
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|               | >toto | I DV Ar | $-\Delta\Delta$ | Incrascaci |
| D.            | Sidic | ומא טו  | 1 66            | Increases: |

None.

#### E. Other Constitutional Issues:

None identified.

## 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 not have a prison bed impact.<sup>18</sup> The bill may have an indeterminate impact on county jails.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

#### VIII. Statutes Affected:

This bill substantially amends section 768.13 of the Florida Statutes.

## IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

<sup>&</sup>lt;sup>18</sup> The CJIC estimate is available at <a href="http://edr.state.fl.us/content/conferences/criminaljusticeimpact/HB147.pdf">http://edr.state.fl.us/content/conferences/criminaljusticeimpact/HB147.pdf</a> (last visited on March 4, 2019).

| R | Amendme | nts: |
|---|---------|------|
|   |         |      |

None.

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

By Senator Pizzo

38-01908A-19 2019800 A bill to be entitled

assistance to another person who is exposed to or has suffered serious bodily injury; defining terms; providing penalties; providing an effective date.

An act relating to the duty to assist; amending s. 768.13, F.S.; requiring certain persons under specified circumstances to provide reasonable

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

scene of an emergency and who knows that another person is

to oneself or others, provide reasonable assistance to the

exposed to or has suffered serious bodily injury shall, to the

extent that he or she can do so without causing danger or peril

(3) is added to that section, to read:

Section 1. Subsection (3) of section 768.13, Florida

Statutes, is renumbered as subsection (4), and a new subsection

768.13 Good Samaritan Act; immunity from civil liability.-

(3) Notwithstanding subsection (2), a person who is at the

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exposed or injured person. Reasonable assistance includes contacting, obtaining, or attempting to contact or obtain aid from law enforcement or medical personnel. For purposes of this 23 subsection, the term "serious bodily injury" has the same 24 meaning as provided in s. 790.155. A person who violates this

subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Page 1 of 1 CODING: Words stricken are deletions; words underlined are additions.

Section 2. This act shall take effect October 1, 2019.

## APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 3.11.19 800 Meeting Date Bill Number (if applicable) Topic Duty to Report Amendment Barcode (if applicable) Name Barney Bishop III Job Title President & CEO Address 2215 Thomaville Road Phone 850.510.9922 Street **Tallahassee** FL Email barney@barneybishop.com 32308 City State Zip Speaking: For **Against** Information In Support Waive Speaking: Against (The Chair will read this information into the record.) Florida Smart Justice Alliance Representing Appearing at request of Chair: Lobbyist registered with Legislature: 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 Keith Perry, Chair<br>Committee on Criminal Justice                  |  |
|------------------------|--|--|
| Subject:               | Committee Agenda Request   |  |
| Date:                  | February 15, 2019  |  |
| I respectfully:        | request that Senate Bill #800, relating to Duty to Assist, be placed on the: |  |
| $\boxtimes$            | committee agenda at your earliest possible convenience.                      |  |
| next committee agenda. |  |  |
|                        |  |  |
|                        |  |  |
|                        | has  |  |
|                        | Senator Jason W.B. Pizzo<br>Florida Senate, District 38                      |  |

# 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.)

| ., ,                             | taff of the Committee   | e on Criminal J  | lustice  |  |
|----------------------------------|---|--|--|--|
| BILL: CS/SB 916                  |   |  |  |  |
| Criminal Justice Committee and S | Senator Pizzo   |  |  |  |
| Technology Crimes                |   |  |  |  |
| March 11, 2019 REVISED:          |   |  |  |  |
| ST STAFF DIRECTOR                | REFERENCE   |  | ACTION   |  |
| Jones                            | CJ  | Fav/CS   |  |  |
|                                  | ACJ   |  |  |  |
|                                  | AP  |  |  |  |
| ,                                | Criminal Justice Committee and Street Technology Crimes  March 11, 2019 REVISED:  ST STAFF DIRECTOR | Criminal Justice Committee and Senator Pizzo  Technology Crimes  March 11, 2019 REVISED:  ST STAFF DIRECTOR REFERENCE Jones CJ ACJ | Criminal Justice Committee and Senator Pizzo  Technology Crimes  March 11, 2019 REVISED:  ST STAFF DIRECTOR REFERENCE Jones CJ Fav/CS  ACJ | Criminal Justice Committee and Senator Pizzo  Technology Crimes  March 11, 2019 REVISED: |

## Please see Section IX. for Additional Information:

**COMMITTEE SUBSTITUTE - Substantial Changes** 

## I. Summary:

CS/SB 916 amends s. 784.048, F.S., which punishes cyberstalking, to redefine the term "cyberstalk" to include accessing or attempting to access the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose.

The bill also amends s. 815.06, F.S., which punishes various acts which are willfully, knowingly, and without authorization, committed against users of computers, computer systems, computer networks, or electronic devices. The bill provides for punishment of these acts when they are committed willfully, knowingly, without authorization, or *exceeding authorization*.

The Criminal Justice Impact Conference estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

## II. Present Situation:

## Cyberstalking (s. 784.048, F.S.)

Section 784.048, F.S., punishes cyberstalking. "Cyberstalking is a type of online harassment that involves using electronic means to stalk a victim, and generally refers to a pattern of threatening or malicious behaviors." Examples of cyberstalking include, but are not limited to, harassing or threatening e-mails, hacking the victim's online accounts, creating false online accounts, posting victim's sensitive personal information online, and using the victim's personal information to sign up for mailing lists and services.<sup>2</sup>

"Cyberstalk" means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.<sup>3</sup>

Section 784.048, F.S., in part, provides that a person commits stalking, a first degree misdemeanor, if the person willfully, maliciously, and repeatedly cyberstalks another person.<sup>4</sup>

Section 784.048, F.S., in part, also provides that a person commits aggravated stalking, a third degree felony, if the person:

- Willfully, maliciously, and repeatedly cyberstalks another person and makes a credible threat to that person;
- After an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, F.S., or an injunction for protection against domestic violence pursuant to s. 741.30, F.S., or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly cyberstalks another person;
- Willfully, maliciously, and repeatedly cyberstalks a child under 16 years of age; or
- After having been sentenced for a violation of s. 794.011, F.S. (sexual battery), s. 800.04, F.S. (lewd offenses against certain children), s. 847.0135(5), F.S. (lewd computer transmissions against certain children), and prohibited from contacting the victim of the offense under s. 921.244, F.S. (no-contact order), willfully, maliciously, and repeatedly cyberstalks the victim.<sup>5</sup>

<sup>&</sup>lt;sup>1</sup> Online Harassment & Cyberstalking (Revised Oct. 25, 2018), Privacy Rights Clearinghouse, available at <a href="https://www.privacyrights.org/consumer-guides/online-harassment-cyberstalking">https://www.privacyrights.org/consumer-guides/online-harassment-cyberstalking</a> (last visited on March 5, 2019).

<sup>&</sup>lt;sup>2</sup> Id.

<sup>&</sup>lt;sup>3</sup> Section 784.048(1)(d), F.S.

<sup>&</sup>lt;sup>4</sup> Section 784.048(2), F.S.

<sup>&</sup>lt;sup>5</sup> Section 784.048(3)-(5) and (7), F.S. The punishment imposed under s. 748.048, F.S., runs consecutive to any former sentence imposed for a conviction for any offense under s. 794.011, F.S., s. 800.04, F.S., or s. 847.135(5), F.S. Section 784.048(8), F.S.

# Offenses Against Users of Computers, Computer Systems, Computer Networks, and Electronic Devices (s. 815.06, F.S.)

Section 815.06, F.S., punishes cybercrime. Broadly defined, "cybercrime" is "any fraud or crime committed through or with the aid of computer programming or internet-related communications such as Web sites, e-mail, and chat rooms[.]"

Section 815.06(2), F.S., provides that a person commits an offense against users<sup>7</sup> of computers, computer systems, computer networks, or electronic devices if he or she willfully, knowingly, and without authorization:

- Accesses or causes to be accessed any computer, computer system, computer network, or electronic device with knowledge that such access is unauthorized;
- Disrupts or denies or causes the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;
- Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;
- Destroys, injures, or damages any computer, computer system, computer network, or electronic device;
- Introduces any computer contaminant into any computer, computer system, computer network, or electronic device; or
- Engages in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.<sup>8</sup>

Generally, commission of any of these acts is a third degree felony. However, it is a second degree felony, if the person commits any of the acts described in s. 815.06(2), F.S., and:

- Damages a computer, computer equipment or supplies, a computer system, or a computer network and the damage or loss is at least \$5,000;
- Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property;
- Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or public service; or
- Intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit.<sup>10</sup>

<sup>&</sup>lt;sup>6</sup> Damien Odunze, "Cyber Victimization by Hackers: A Criminological Analysis, v. 1, n. 1 (2018), p. 9, *Public Policy and Administration Research*, available at <a href="https://pdfs.semanticscholar.org/fd89/f6fa17c03a639b7d7b9f5b3ddc492b6b49a8.pdf">https://pdfs.semanticscholar.org/fd89/f6fa17c03a639b7d7b9f5b3ddc492b6b49a8.pdf</a> (last visited on March 5, 2019).

<sup>&</sup>lt;sup>7</sup> "User" means a person with the authority to operate or maintain a computer, computer system, computer network, or electronic device. Section 815.06(1), F.S.

<sup>&</sup>lt;sup>8</sup> Section 815.06(2)(a)-(f), F.S.

<sup>&</sup>lt;sup>9</sup> Section 815.06(3)(a), F.S.

<sup>&</sup>lt;sup>10</sup> Section 815.06(3)(b)1.-4., F.S.

Further, it is a first degree felony if the person commits any of the acts described in s. 815.06(2), F.S., and the violation:

- Endangers human life; or
- Disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.<sup>11</sup>

## III. Effect of Proposed Changes:

The bill amends s. 784.048, F.S., which punishes cyberstalking, to redefine the term "cyberstalk" to include accessing or attempting to access the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose.

A cyberstalking violation is punishable as stalking (first degree misdemeanor)<sup>12</sup> or aggravated stalking (a third degree felony),<sup>13</sup> depending upon the circumstances of the cyberstalking.<sup>14</sup>

The bill also amends s. 815.06, F.S., which punishes various acts which are willfully, knowingly, and without authorization, committed against users of computers, computer systems, computer networks, or electronic devices. The bill provides for punishment of these acts when they are committed willfully, knowingly, without authorization, or *exceeding authorization*.

Generally, a violation of s. 815.06, F.S., is a third degree felony, but a violation may be a second degree felony. The first degree felony, depending upon the circumstances of the violation. The violation of the violation of the violation.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

<sup>&</sup>lt;sup>11</sup> Section 815.06(3)(c)1.-2., F.S.

<sup>&</sup>lt;sup>12</sup> A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>&</sup>lt;sup>13</sup> A third degree felony is punishable by up to five years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>&</sup>lt;sup>14</sup> See "Present Situation" section of this analysis for a detailed description of prohibited acts and penalties.

<sup>&</sup>lt;sup>15</sup> A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083 F.S.

<sup>&</sup>lt;sup>16</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>&</sup>lt;sup>17</sup> See "Present Situation" section of this analysis for a detailed description of prohibited acts and penalties.

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| D.            | Sidic | ומא טו  | 1 66            | Increases: |

None.

#### E. Other Constitutional Issues:

None identified.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation, estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).<sup>18</sup>

#### VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 784.048 and 815.06.

This bill reenacts the following sections of the Florida Statutes: 790.065, 794.056, 847.0141, 901.41, 938.08, 938.085, 943.325, 960.001, 985.265, 1006.147, 775.30, 775.33, 782.04, and 934.07.

<sup>&</sup>lt;sup>18</sup> The CJIC estimate is available at <a href="http://edr.state.fl.us/content/conferences/criminaljusticeimpact/HB669.pdf">http://edr.state.fl.us/content/conferences/criminaljusticeimpact/HB669.pdf</a> (last visited on March 5, 2019).

## IX. Additional Information:

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

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

## CS by Criminal Justice on March 11, 2019:

The committee substitute changes the subject of the bill from "cyberstalking" to "technology crimes."

## B. Amendments:

None.

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  | •                  |       |
| 03/11/2019 | •                  |       |
|            | •                  |       |
|            | •                  |       |
|            | •                  |       |
|            |                    |       |

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

## Senate Amendment

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In title, delete line 2 and insert:

> An act relating to technology crimes; amending s. 784.048,

By Senator Pizzo

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A bill to be entitled An act relating to cyberstalking; amending s. 784.048, F.S.; redefining the term "cyberstalk" as the term relates to prohibited acts; reenacting and amending s. 815.06, F.S.; providing that a person commits an offense against users of certain electronic devices if he or she willfully, knowingly, and exceeding authorization performs specified acts; providing criminal penalties; reenacting ss. 790.065(2)(c), 794.056(1), 847.0141(4), 901.41(5), 938.08, 938.085, 943.325(2)(g), 960.001(1)(b), 985.265(3)(b), and 1006.147(3)(e), all relating to the crime of stalking, to incorporate the amendment made to s. 784.048, F.S., in references thereto; reenacting ss. 775.30(1) and (2), 775.33(2), 782.04(5), and 934.07(3), F.S., all relating to a violation of s. 815.06, F.S., to incorporate the amendment made to s. 815.06, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 784.048, Florida Statutes, is amended, and subsections (2) through (5), and (7) of that section are republished, to read:

784.048 Stalking; definitions; penalties.-

- (1) As used in this section, the term:
- (d) "Cyberstalk" means:

 $\underline{\text{1.}}$  To engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or

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| 30 | through the use of electronic mail or electronic communication,  |
|----|--|
| 31 | directed at a specific person; or                                |
| 32 | 2. To access or attempt to access the online accounts or         |
| 33 | Internet-connected home electronic systems of another person     |
| 34 | without that person's permission,                                |
| 35 |  |
| 36 | causing substantial emotional distress to that person and        |
| 37 | serving no legitimate purpose.                                   |
| 38 | (2) A person who willfully, maliciously, and repeatedly          |
| 39 | follows, harasses, or cyberstalks another person commits the     |
| 40 | offense of stalking, a misdemeanor of the first degree,          |
| 41 | punishable as provided in s. 775.082 or s. 775.083.              |
| 42 | (3) A person who willfully, maliciously, and repeatedly          |
| 43 | follows, harasses, or cyberstalks another person and makes a     |
| 44 | credible threat to that person commits the offense of aggravated |
| 45 | stalking, a felony of the third degree, punishable as provided   |
| 46 | in s. 775.082, s. 775.083, or s. 775.084.                        |
| 47 | (4) A person who, after an injunction for protection             |
| 48 | against repeat violence, sexual violence, or dating violence     |
| 49 | pursuant to s. 784.046, or an injunction for protection against  |
| 50 | domestic violence pursuant to s. 741.30, or after any other      |
| 51 | court-imposed prohibition of conduct toward the subject person   |
| 52 | or that person's property, knowingly, willfully, maliciously,    |
| 53 | and repeatedly follows, harasses, or cyberstalks another person  |
| 54 | commits the offense of aggravated stalking, a felony of the      |
| 55 | third degree, punishable as provided in s. 775.082, s. 775.083,  |
| 56 | or s. 775.084.   |
| 57 | (5) A person who willfully, maliciously, and repeatedly          |

follows, harasses, or cyberstalks a child under 16 years of age  $Page \ 2$  of 19

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or s. 775.084.

(7) A person who, after having been sentenced for a violation of s. 794.011, s. 800.04, or s. 847.0135(5) and prohibited from contacting the victim of the offense under s. 921.244, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Subsection (2) of section 815.06, Florida Statutes, is amended, subsection (3) of that section is reenacted, and subsection (1) of that section is republished, to read:

815.06 Offenses against users of computers, computer systems, computer networks, and electronic devices.—

- (1) As used in this section, the term "user" means a person with the authority to operate or maintain a computer, computer system, computer network, or electronic device.
- (2) A person commits an offense against users of computers, computer systems, computer networks, or electronic devices if he or she willfully, knowingly, and without authorization  $\underline{\text{or}}$  exceeding authorization:
- (a) Accesses or causes to be accessed any computer, computer system, computer network, or electronic device with knowledge that such access is unauthorized;
- (b) Disrupts or denies or causes the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which,

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38-00973-19 2019916 in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another; 90 (c) Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device; 93 (d) Destroys, injures, or damages any computer, computer system, computer network, or electronic device; (e) Introduces any computer contaminant into any computer, 96 computer system, computer network, or electronic device; or 97 (f) Engages in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, 99 including accessing the data or information of a computer, 100 101 computer system, computer network, or electronic device that is stored by a third party. 103 (3) (a) Except as provided in paragraphs (b) and (c), a person who violates subsection (2) commits a felony of the third 104 105 degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. 106 107 (b) A person commits a felony of the second degree, 108 punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she violates subsection (2) and: 110 1. Damages a computer, computer equipment or supplies, a 111 computer system, or a computer network and the damage or loss is at least \$5,000: 112 113 2. Commits the offense for the purpose of devising or 114 executing any scheme or artifice to defraud or obtain property; 115 3. Interrupts or impairs a governmental operation or public

communication, transportation, or supply of water, gas, or other  $$\operatorname{\mathtt{Page}}$ 4 of 19$ 

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public service; or

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- 4. Intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit, as defined in s. 341.031.
- (c) A person who violates subsection (2) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation:
  - 1. Endangers human life; or
- 2. Disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.

Section 3. For the purpose of incorporating the amendment made by this act to section 784.048, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 790.065, Florida Statutes, is reenacted to read:

790.065 Sale and delivery of firearms.-

- (2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:
- (c)1. Review any records available to it to determine whether the potential buyer or transferee has been indicted or has had an information filed against her or him for an offense that is a felony under either state or federal law, or, as mandated by federal law, has had an injunction for protection against domestic violence entered against the potential buyer or transferee under s. 741.30, has had an injunction for protection against repeat violence entered against the potential buyer or transferee under s. 784.046, or has been arrested for a

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38-00973-19 2019916 146 dangerous crime as specified in s. 907.041(4)(a) or for any of 147 the following enumerated offenses: 148 a. Criminal anarchy under ss. 876.01 and 876.02. 149 b. Extortion under s. 836.05. 150 c. Explosives violations under s. 552.22(1) and (2). d. Controlled substances violations under chapter 893. 151 152 e. Resisting an officer with violence under s. 843.01. 153 f. Weapons and firearms violations under this chapter. 154 g. Treason under s. 876.32. 155 h. Assisting self-murder under s. 782.08. 156 i. Sabotage under s. 876.38. 157 j. Stalking or aggravated stalking under s. 784.048. 158 159 If the review indicates any such indictment, information, or arrest, the department shall provide to the licensee a 161 conditional nonapproval number. 162 2. Within 24 working hours, the department shall determine the disposition of the indictment, information, or arrest and 163 164 inform the licensee as to whether the potential buyer is 165 prohibited from receiving or possessing a firearm. For purposes of this paragraph, "working hours" means the hours from 8 a.m. 166 to 5 p.m. Monday through Friday, excluding legal holidays. 167 168 3. The office of the clerk of court, at no charge to the 169 department, shall respond to any department request for data on 170 the disposition of the indictment, information, or arrest as 171 soon as possible, but in no event later than 8 working hours. 172 4. The department shall determine as quickly as possible 173 within the allotted time period whether the potential buyer is prohibited from receiving or possessing a firearm. 174

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- 5. If the potential buyer is not so prohibited, or if the department cannot determine the disposition information within the allotted time period, the department shall provide the licensee with a conditional approval number.
- 6. If the buyer is so prohibited, the conditional nonapproval number shall become a nonapproval number.

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- 7. The department shall continue its attempts to obtain the disposition information and may retain a record of all approval numbers granted without sufficient disposition information. If the department later obtains disposition information which indicates:
- a. That the potential buyer is not prohibited from owning a firearm, it shall treat the record of the transaction in accordance with this section; or
- b. That the potential buyer is prohibited from owning a firearm, it shall immediately revoke the conditional approval number and notify local law enforcement.
- 8. During the time that disposition of the indictment, information, or arrest is pending and until the department is notified by the potential buyer that there has been a final disposition of the indictment, information, or arrest, the conditional nonapproval number shall remain in effect.

Section 4. For the purpose of incorporating the amendment made by this act to section 784.048, Florida Statutes, in a reference thereto, subsection (1) of section 794.056, Florida Statutes, is reenacted to read:

794.056 Rape Crisis Program Trust Fund.-

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

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| i   | 38-009/3-19 2019916   |
|-----|---|
| 204 | rape crisis centers in this state. Trust fund moneys shall be       |
| 205 | used exclusively for the purpose of providing services for          |
| 206 | victims of sexual assault. Funds credited to the trust fund         |
| 207 | consist of those funds collected as an additional court             |
| 208 | assessment in each case in which a defendant pleads guilty or       |
| 209 | nolo contendere to, or is found guilty of, regardless of            |
| 210 | adjudication, an offense provided in s. 775.21(6) and (10)(a),      |
| 211 | (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.     |
| 212 | 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.           |
| 213 | 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.     |
| 214 | 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;    |
| 215 | former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.       |
| 216 | 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.       |
| 217 | 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.          |
| 218 | 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.    |
| 219 | 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),         |
| 220 | (13), and (14)(c); or s. $985.701(1)$ . Funds credited to the trust |
| 221 | fund also shall include revenues provided by law, moneys            |
| 222 | appropriated by the Legislature, and grants from public or          |
| 223 | private entities.   |
| 224 | Section 5. For the purpose of incorporating the amendment           |
| 225 | made by this act to section 784.048, Florida Statutes, in a         |
| 226 | reference thereto, subsection (4) of section 847.0141, Florida      |
| 227 | Statutes, is reenacted to read:                                     |
| 228 | 847.0141 Sexting; prohibited acts; penalties.—                      |
| 229 | (4) This section does not prohibit the prosecution of a             |
| 230 | minor for a violation of any law of this state if the photograph    |
| 231 | or video that depicts nudity also includes the depiction of         |
| 232 | sexual conduct or sexual excitement, and does not prohibit the      |

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prosecution of a minor for stalking under s. 784.048.

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Section 6. For the purpose of incorporating the amendment made by this act to section 784.048, Florida Statutes, in a reference thereto, subsection (5) of section 901.41, Florida Statutes, is reenacted to read:

901.41 Prearrest diversion programs.-

(5) ELIGIBILITY.—A violent misdemeanor, a misdemeanor crime of domestic violence, as defined in s. 741.28, or a misdemeanor under s. 741.29, s. 741.31, s. 784.046, s. 784.047, s. 784.048, s. 784.0487, or s. 784.049 does not qualify for a civil citation or prearrest diversion program.

Section 7. For the purpose of incorporating the amendment made by this act to section 784.048, Florida Statutes, in a reference thereto, section 938.08, Florida Statutes, is reenacted to read:

938.08 Additional cost to fund programs in domestic violence.—In addition to any sanction imposed for a violation of s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s. 784.083, s. 784.085, s. 794.011, or for any offense of domestic violence described in s. 741.28, the court shall impose a surcharge of \$201. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of \$85 of the surcharge shall be deposited into the Domestic Violence Trust Fund established in s. 741.01. The clerk of the court shall retain \$1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office. The remainder of the surcharge shall be provided to the governing board of the county and must be used only to

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262 defray the costs of incarcerating persons sentenced under s. 263 741.283 and provide additional training to law enforcement 264 personnel in combating domestic violence. 265 Section 8. For the purpose of incorporating the amendment made by this act to section 784.048, Florida Statutes, in a 266 267 reference thereto, section 938.085, Florida Statutes, is 2.68 reenacted to read: 269 938.085 Additional cost to fund rape crisis centers.-In 270 addition to any sanction imposed when a person pleads guilty or 271 nolo contendere to, or is found guilty of, regardless of 272 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and 273 (q); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 274 275 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s. 277 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s. 278 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 279 280 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 281 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1), the court shall impose a surcharge of 282 \$151. Payment of the surcharge shall be a condition of 284 probation, community control, or any other court-ordered 285 supervision. The sum of \$150 of the surcharge shall be deposited 286 into the Rape Crisis Program Trust Fund established within the 287 Department of Health by chapter 2003-140, Laws of Florida. The 288 clerk of the court shall retain \$1 of each surcharge that the 289 clerk of the court collects as a service charge of the clerk's 290 office.

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38-00973-19 2019916 291 Section 9. For the purpose of incorporating the amendment 292 made by this act to section 784.048, Florida Statutes, in a 293 reference thereto, paragraph (g) of subsection (2) of section 294 943.325, Florida Statutes, is reenacted to read: 295 943.325 DNA database.-(2) DEFINITIONS.—As used in this section, the term: 296 297 (g) "Qualifying offender" means any person, including 298 juveniles and adults, who is: 299 1.a. Committed to a county jail; 300 b. Committed to or under the supervision of the Department 301 of Corrections, including persons incarcerated in a private correctional institution operated under contract pursuant to s. 302 303 944.105; 304 c. Committed to or under the supervision of the Department 305 of Juvenile Justice; 306 d. Transferred to this state under the Interstate Compact 307 on Juveniles, part XIII of chapter 985; or 308 e. Accepted under Article IV of the Interstate Corrections 309 Compact, part III of chapter 941; and who is: 310 2.a. Convicted of any felony offense or attempted felony 311 offense in this state or of a similar offense in another 312 jurisdiction; b. Convicted of a misdemeanor violation of s. 784.048, s. 313 314 810.14, s. 847.011, s. 847.013, s. 847.0135, or s. 877.26, or an offense that was found, pursuant to s. 874.04, to have been 315 316 committed for the purpose of benefiting, promoting, or 317 furthering the interests of a criminal gang as defined in s. 318 874.03; or

c. Arrested for any felony offense or attempted felony  ${\tt Page} \ 11 \ {\tt of} \ 19$ 

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320 offense in this state.

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Section 10. For the purpose of incorporating the amendment made by this act to section 784.048, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 960.001, Florida Statutes, is reenacted to read:

960.001 Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.—

- (1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement s. 16(b), Art. I of the State Constitution and to achieve the following objectives:
- (b) Information for purposes of notifying victim or appropriate next of kin of victim or other designated contact of victim.—In the case of a homicide, pursuant to chapter 782; or a sexual offense, pursuant to chapter 794; or an attempted murder or sexual offense, pursuant to chapter 777; or stalking, pursuant to s. 784.048; or domestic violence, pursuant to s. 25.385:
- 1. The arresting law enforcement officer or personnel of an organization that provides assistance to a victim or to the appropriate next of kin of the victim or other designated contact must request that the victim or appropriate next of kin

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of the victim or other designated contact complete a victim notification card. However, the victim or appropriate next of kin of the victim or other designated contact may choose not to complete the victim notification card.

- 2. Unless the victim or the appropriate next of kin of the victim or other designated contact waives the option to complete the victim notification card, a copy of the victim notification card must be filed with the incident report or warrant in the sheriff's office of the jurisdiction in which the incident report or warrant originated. The notification card shall, at a minimum, consist of:
  - a. The name, address, and phone number of the victim; or
- b. The name, address, and phone number of the appropriate next of kin of the victim; or
- c. The name, address, and telephone number of a designated contact other than the victim or appropriate next of kin of the victim; and
- $\ensuremath{\text{d.}}$  Any relevant identification or case numbers assigned to the case.
- 3. The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact within 4 hours following the release of the defendant on bail or, in the case of a juvenile offender, upon the release from residential detention or commitment. If the chief administrator, or designee, is unable to contact the alleged victim or appropriate next of kin of the alleged victim

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or other designated contact by telephone, the chief administrator, or designee, must send to the alleged victim or appropriate next of kin of the alleged victim or other designated contact a written notification of the defendant's release.

- 4. Unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, the information contained on the victim notification card must be sent by the chief administrator, or designee, of the appropriate facility to the subsequent correctional or residential commitment facility following the sentencing and incarceration of the defendant, and unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, he or she must be notified of the release of the defendant from incarceration as provided by law.
- 5. If the defendant was arrested pursuant to a warrant issued or taken into custody pursuant to s. 985.101 in a jurisdiction other than the jurisdiction in which the defendant is being released, and the alleged victim or appropriate next of kin of the alleged victim or other designated contact does not waive the option for notification of release, the chief correctional officer or chief administrator of the facility releasing the defendant shall make a reasonable attempt to immediately notify the chief correctional officer of the jurisdiction in which the warrant was issued or the juvenile was taken into custody pursuant to s. 985.101, and the chief correctional officer of that jurisdiction shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact,

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407 as provided in this paragraph, that the defendant has been or 408 will be released. 409 Section 11. Upon the amendments made to section 985.265, 410 Florida Statutes, pursuant to section 12 of chapter 2018-86, Laws of Florida, becoming effective and for the purpose of 411 412 incorporating the amendments made by this act to section 413 784.048, Florida Statutes, in a reference thereto, paragraph (b) 414 of subsection (3) of section 985.265, Florida Statutes, is 415 reenacted to read: 416 985.265 Detention transfer and release; education; adult 417 jails.-418 (3) 419 (b) When a juvenile is released from secure detention or 420 transferred to supervised release detention, detention staff 421 shall immediately notify the appropriate law enforcement agency, 422 school personnel, and victim if the juvenile is charged with 423 committing any of the following offenses or attempting to commit 424 any of the following offenses: 425 1. Murder, under s. 782.04; 426 2. Sexual battery, under chapter 794; 427 3. Stalking, under s. 784.048; or 428 4. Domestic violence, as defined in s. 741.28. 429 Section 12. For the purpose of incorporating the amendment 430 made by this act to section 784.048, Florida Statutes, in a 431 reference thereto, paragraph (e) of subsection (3) of section 1006.147, Florida Statutes, is reenacted to read: 432 433 1006.147 Bullying and harassment prohibited.-434 (3) For purposes of this section: 435 (e) Definitions in s. 815.03 and the definition in s.

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|-----|--|--|
| 436 | 784.048(1)(d) relating to stalking are applicable to this        |  |
| 437 | section.   |  |
| 438 | Section 13. For the purpose of incorporating the amendment       |  |
| 439 | made by this act to section 815.06, Florida Statutes, in         |  |
| 440 | references thereto, subsections (1) and (2) of section 775.30,   |  |
| 441 | Florida Statutes, are reenacted to read:                         |  |
| 442 | 775.30 Terrorism; defined; penalties                             |  |
| 443 | (1) As used in this chapter and the Florida Criminal Code,       |  |
| 444 | the terms "terrorism" or "terrorist activity" mean an activity   |  |
| 445 | that:  |  |
| 446 | (a) Involves:  |  |
| 447 | 1. A violent act or an act dangerous to human life which is      |  |
| 448 | a violation of the criminal laws of this state or of the United  |  |
| 449 | States; or   |  |
| 450 | 2. A violation of s. 815.06; and                                 |  |
| 451 | (b) Is intended to:  |  |
| 452 | 1. Intimidate, injure, or coerce a civilian population;          |  |
| 453 | 2. Influence the policy of a government by intimidation or       |  |
| 454 | coercion; or   |  |
| 455 | 3. Affect the conduct of government through destruction of       |  |
| 456 | property, assassination, murder, kidnapping, or aircraft piracy. |  |
| 457 | (2) A person who violates s. 782.04(1)(a)1. or (2), s.           |  |
| 458 | 782.065, s. 782.07(1), s. 782.09, s. 784.045, s. 784.07, s.      |  |
| 459 | 787.01, s. 787.02, s. 787.07, s. 790.115, s. 790.15, s. 790.16,  |  |
| 460 | s. 790.161, s. 790.1615, s. 790.162, s. 790.166, s. 790.19, s.   |  |
| 461 | 806.01, s. 806.031, s. 806.111, s. 815.06, s. 815.061, s.        |  |
| 462 | 859.01, or s. 876.34, in furtherance of intimidating or coercing |  |
| 463 | the policy of a government, or in furtherance of affecting the   |  |
| 464 | conduct of a government by mass destruction, assassination, or   |  |

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465 kidnapping, commits the crime of terrorism, a felony of the 466 first degree, punishable as provided in s. 775.082, s. 775.083, 467 or s. 775.084. 468 Section 14. For the purpose of incorporating the amendment made by this act to section 815.06, Florida Statutes, in a 469 reference thereto, subsection (2) of section 775.33, Florida 470 471 Statutes, is reenacted to read: 472 775.33 Providing material support or resources for 473 terrorism or to terrorist organizations.-474 (2) A person commits a felony of the first degree, 475 punishable as provided in s. 775.082, s. 775.083, or s. 775.084, 476 if the person: (a) Provides material support or resources or conceals or 477 478 disguises the nature, location, source, or ownership of the 479 material support or resources, knowing or intending that the 480 support or resources are to be used in preparation for or in 481 carrying out a violation of s. 775.30, s. 775.32, s. 775.34, s. 775.35, s. 790.16, s. 790.161(2), (3), or (4), s. 790.166, s. 482 483 790.19, s. 815.06, s. 859.01, s. 860.121, s. 860.16, s. 876.32, 484 s. 876.34, or s. 876.36; 485 (b) Conceals an escape from the commission of a violation of paragraph (a); or 486 (c) Attempts or conspires to commit a violation of 487 488 paragraph (a). 489 Section 15. For the purpose of incorporating the amendment made by this act to section 815.06, Florida Statutes, in a 490 491 reference thereto, subsection (5) of section 782.04, Florida 492 Statutes, is reenacted to read: 493 782.04 Murder.-

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| 494 | (5) As used in this section, the term "terrorism" means an       |
| 495 | activity that:   |
| 496 | (a)1. Involves a violent act or an act dangerous to human        |
| 497 | life which is a violation of the criminal laws of this state or  |
| 498 | of the United States; or   |
| 499 | 2. Involves a violation of s. 815.06; and                        |
| 500 | (b) Is intended to:  |
| 501 | 1. Intimidate, injure, or coerce a civilian population;          |
| 502 | 2. Influence the policy of a government by intimidation or       |
| 503 | coercion; or   |
| 504 | 3. Affect the conduct of government through destruction of       |
| 505 | property, assassination, murder, kidnapping, or aircraft piracy. |
| 506 | Section 16. For the purpose of incorporating the amendment       |
| 507 | made by this act to section 815.06, Florida Statutes, in a       |
| 508 | reference thereto, subsection (3) of section 934.07, Florida     |
| 509 | Statutes, is reenacted to read:                                  |
| 510 | 934.07 Authorization for interception of wire, oral, or          |
| 511 | electronic communications  |
| 512 | (3) As used in this section, the term "terrorism" means an       |
| 513 | activity that:   |
| 514 | (a)1. Involves a violent act or an act dangerous to human        |
| 515 | life which is a violation of the criminal laws of this state or  |
| 516 | of the United States; or   |
| 517 | 2. Involves a violation of s. 815.06; and                        |
| 518 | (b) Is intended to:  |
| 519 | 1. Intimidate, injure, or coerce a civilian population;          |
| 520 | 2. Influence the policy of a government by intimidation or       |
| 521 | coercion; or   |
| 522 | 3. Affect the conduct of government through destruction of       |

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38-00973-19 2019916\_\_ 523 property, assassination, murder, kidnapping, or aircraft piracy. 524 Section 17. This act shall take effect October 1, 2019.

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## APPEARANCE RECORD

| (Deliver BOTH copies of this form to the Senat  | or or Senate Professional Staff conducting the meeting)   |
|---|---|
| Meeting Date  | Bill Number (if applicable)   |
| Topic   | Amendment Barcode (if applicable)   |
| Name Christine Hanavan, MSW   |   |
| Job Title Commenty Organizes  |   |
| Address 208 Amuhead Ct  | Phone 1877 776 2004 x 106   |
| Street  Winte Spings FL  City State   | 32708 Email Swopbehindbars.org  |
| Speaking: For Against Information   | Waive Speaking: In Support Against (The Chair will read this information into the record.)                                |
| Representing <u>SWOP Behard Bars</u>  |   |
| Appearing at request of Chair: Yes No   | Lobbyist registered with Legislature: Yes No  |
| While it is a Senate tradition to encourage public testimony, tin meeting. Those who do speak may be asked to limit their remarks | ne may not permit all persons wishing to speak to be heard at this arks 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)  |

## APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 916 3.11.19 Bill Number (if applicable) Meeting Date Topic Cyberstalking Amendment Barcode (if applicable) Name Barney Bishop III Job Title President & CEO Phone 850.510.9922 Address 2215 Thomaville Road Street Email barney@barneybishop.com 32308 FL Tallahassee State Zip City Waive Speaking: In Support For **Against** Information Speaking: (The Chair will read this information into the record.) Representing Florida Smart Justice Alliance Lobbyist registered with Legislature: Appearing at request of Chair: 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.

S-001 (10/14/14)

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



### The Florida Senate

# **Committee Agenda Request**

| То:              | Senator Keith Perry, Chair<br>Committee on Criminal Justice                 |
|------------------|---|
| Subject:         | Committee Agenda Request  |
| Date:            | February 28, 2019   |
| I respectfully r | request that Senate Bill #916, relating to Cyberstalking, be placed on the: |
| $\boxtimes$      | committee agenda at your earliest possible convenience.                     |
|                  | next committee agenda.  |
|                  |   |
|                  |   |

Senator Jason W.B. Pizzo Florida Senate, District 38

# 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.)

| March 11, 2019                               | REVISED:                   | REFERENCE                                   |  | ACTION                                       |
|--|----------------------------|---|--|--|
| March 11, 2019                               | REVISED:                   |   |  |  |
|  |                            |   |  |  |
| Criminal History Records                     |                            |   |  |  |
| Criminal Justice Committee and Senator Bracy |                            |   |  |  |
| CS/SB 936                                    |                            |   |  |  |
|  | CS/SB 936 Criminal Justice | CS/SB 936 Criminal Justice Committee and Se | CS/SB 936 Criminal Justice Committee and Senator Bracy | Criminal Justice Committee and Senator Bracy |

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

**COMMITTEE SUBSTITUTE - Technical Changes** 

## I. Summary:

CS/SB 936 provides for the administrative sealing of certain types of criminal history records of a minor.

Specifically, the bill requires the criminal history record of a minor who is arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance, to be administratively sealed upon notification by the clerk of the court that all charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict at trial.

Additionally, for a criminal history record to be administratively sealed, the bill requires all appeals to have been exhausted by the prosecution or the time to file an appeal must have expired.

The bill provides that the administrative sealing of a criminal history record will have the same effect as a court-ordered sealing pursuant to s. 943.059, F.S.

The Florida Department of Law Enforcement (FDLE) predicts a loss of revenue as a result of the creation of the administrative sealing process created by the bill. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019, but only if CS/SB 938 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

### **II.** Present Situation:

### Accessibility to a Minor's Criminal History Record

Florida law makes adult criminal history records<sup>1</sup> generally accessible to the public. In contrast, criminal history information<sup>2</sup> relating to a minor compiled by the Criminal Justice Information Program<sup>3</sup> (CJIP) is confidential and exempt unless the minor has been:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Charged with a violation of law which, if committed by an adult, would be a felony;
- Found to have committed an offense which, if committed by an adult, would be a felony; or
- Transferred to adult court pursuant to part X of ch. 985, F.S.<sup>4</sup>

However, the criminal history information of a minor that is confidential and exempt will be available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S., for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.<sup>5</sup>

The exceptions to accessibility of a minor's criminal history record do not apply if the record has been sealed or expunged.<sup>6</sup> Expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody of the record.<sup>7</sup> Current law authorizes certain types of expunction processes for

<sup>&</sup>lt;sup>1</sup> "Criminal history record" means any nonjudicial record maintained by a criminal justice agency containing criminal history information. Section 943.045(6), F.S.

<sup>&</sup>lt;sup>2</sup> "Criminal history information" means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system. Section 943.045(5), F.S.

<sup>&</sup>lt;sup>3</sup> The CJIP is created within the Florida Department of Law Enforcement (FDLE) and is tasked with maintaining a system capable of transmitting criminal justice information to and between criminal justice agencies. The CJIP establishes procedures and a format for each criminal justice agency to monitor its records and submit reports to the program. Each clerk of the court is required to submit uniform dispositions to the CJIP at least once a month. *See* ss. 943.05 and 943.052, F.S.

<sup>&</sup>lt;sup>4</sup> Section 943.053(3)(b)1.a.-d., F.S.

<sup>&</sup>lt;sup>5</sup> Section 943.053(3)(c)1.a.-d., F.S.

<sup>&</sup>lt;sup>6</sup> Section 943.053(3)(b), F.S.

<sup>&</sup>lt;sup>7</sup> Criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. Section 943.045(16), F.S.

the criminal history record of a minor.<sup>8</sup> Additionally, there is an administrative expunction process, whereby the FDLE may expunge any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake.<sup>9</sup>

### Sealing of a Criminal History Record

Sealing of a criminal history record refers to the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein.<sup>10</sup>

Section 943.059, F.S., authorizes the sealing of a criminal history record by court order. To qualify for a court-ordered sealing, a person must first obtain a certificate of eligibility (COE) from the FDLE and subsequently petition the court to seal the criminal history record. The petition must include the COE and a sworn statement<sup>11</sup> by the petitioner. A copy of the completed petition is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the petition. There is no statutory right to a court-ordered sealing and any request for sealing of a criminal history record may be denied at the sole discretion of the court.<sup>12</sup>

If the court grants a petition to seal, the clerk of the court then certifies copies of the order to the appropriate state attorney or statewide prosecutor and the arresting agency and any other agency that has received the criminal history record from the court. The arresting agency must provide the sealing order to any agencies that received the criminal history record information from the arresting agency. The FDLE must provide the sealing order to the Federal Bureau of Investigation.<sup>13</sup>

A criminal history record which is ordered sealed by a court is confidential and exempt from public records, and is available only to the person who is the subject of the record, the subject's attorney, criminal justice agencies for their respective criminal justice purposes, and judges in the state courts system for the purpose of assisting them in their case-related decision making responsibilities.<sup>14</sup>

Additionally, a person who has their criminal history record sealed may lawfully deny or fail to acknowledge the records that were sealed, unless he or she is:

<sup>&</sup>lt;sup>8</sup> See s. 943.0515, F.S. (automatic minor), s. 943.0515(1)(b)2., F.S. (early minor), and s. 943.0582, F.S. (minor diversion).

<sup>&</sup>lt;sup>9</sup> See s. 943.0581, F.S.

<sup>&</sup>lt;sup>10</sup> Section 943.045(19), F.S.

<sup>&</sup>lt;sup>11</sup> In the sworn statement, the petitioner must attest that he or she: has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.; has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains; has never secured a prior sealing or expunction of a criminal history record pursuant to ss. 943.059 or 943.0585, F.S., former s. 893.14, F.S., former s. 901.33, F.S., or former s. 943.058, F.S.; and is eligible for such a sealing to the best of his or her knowledge or belief and does not have any other petition to seal or any petition to expunge pending before the court. Section 943.059(1)(b)1.-4., F.S.

<sup>&</sup>lt;sup>12</sup> Section 943.059, F.S.

<sup>&</sup>lt;sup>13</sup> Section 943.059(3)(b), F.S.

<sup>&</sup>lt;sup>14</sup> Section 943.059(4), F.S.

- A candidate for employment with a criminal justice agency;
- A defendant in a criminal prosecution;
- Petitioning to have a court-ordered criminal history record sealed or expunged;<sup>15</sup>
- A candidate for admission to The Florida Bar;
- Seeking appointment as a guardian or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly;
- Seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services or the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm; or
- Attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law.<sup>16</sup>

An employee of an entity listed above may not disclose information relating to a sealed criminal history record, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. <sup>17</sup> Additionally, a person who has been granted a sealing of his or her criminal history record may not be held to commit perjury or otherwise be liable for giving a false statement by failing to recite or acknowledge a sealed criminal history record. <sup>18</sup>

### III. Effect of Proposed Changes:

The bill requires certain criminal history records of minors to be administratively sealed. Specifically, the criminal history record of a minor charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency must be sealed upon notification by the clerk of the court<sup>19</sup> that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi<sup>20</sup> before trial; or
- Resulted in a judgment of acquittal<sup>21</sup> or a not guilty verdict at trial.

The bill requires that all appeals must have been exhausted by the prosecution or the time to file an appeal has expired in order for the record to qualify for administrative sealing.

<sup>&</sup>lt;sup>15</sup> See ss. 943.0583 and 943.0585, F.S.

<sup>&</sup>lt;sup>16</sup> Supra, n 14.

<sup>&</sup>lt;sup>17</sup> Section 943.059(4)(c), F.S.

<sup>&</sup>lt;sup>18</sup> Section 943.059(4)(b), F.S.

<sup>&</sup>lt;sup>19</sup> Each clerk of the court must submit the uniform dispositions to the CJIP or in a manner acceptable to the CJIP. The disposition report must be submitted at least once a month and the report is mandatory for each disposition relating to adult and minor offenders. Section 943.052(2), F.S.

<sup>&</sup>lt;sup>20</sup> Nolle prosequi is a formal entry upon the record that declares that the case will not be further prosecuted. THE LAW DICTIONARY: FEATURING BLACK'S LAW DICTIONARY FREE ONLINE LEGAL DICTIONARY (2nd ed.), available at <a href="https://thelawdictionary.org/nolle-prosequi/">https://thelawdictionary.org/nolle-prosequi/</a> (last visited March 5, 2019).

<sup>&</sup>lt;sup>21</sup> A judgment of acquittal is rendered when a court determines the evidence is insufficient to sustain a conviction. Cornell Law School Legal Information Institute, *Rule 29: Motion for a Judgment of Acquittal*, available at <a href="https://www.law.cornell.edu/rules/frcrmp/rule">https://www.law.cornell.edu/rules/frcrmp/rule</a> 29 (last visited March 5, 2019).

The bill provides that an administrative sealing of a criminal history record will have the same effect as a court-ordered sealing.<sup>22</sup> The bill also specifies that a minor who obtains an administrative sealing of his or her criminal history record is not precluded from seeking a sealing or expunction pursuant to a different section of Florida law, if he or she is otherwise eligible.

This act shall take effect July 1, 2019, but only if CS/SB 938 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The submission of an application to have a criminal history record sealed by court order requires a fee, while the newly-created administrative sealing process does not require the submission of a fee. The FDLE predicts a loss of \$90,000 in revenue for those people

<sup>&</sup>lt;sup>22</sup> Supra, n 14. See discussion in Section II. Present Situation.

who would have submitted an application to have his or her criminal history record sealed by court order, but will instead have such record administratively sealed. The FDLE also expects to incur costs associated with the implementation of the new programming required for the administrative sealing process.<sup>23</sup>

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

Current disposition reporting by the clerk of the court to the FDLE, pursuant to s. 943.052(2), F.S., does not consider whether all appeals have been exhausted by the prosecution or the time to file an appeal has expired. The administrative sealing process created by the bill would require changes to be made to disposition reporting that the FDLE receives from the clerks.<sup>24</sup>

Additionally, the administrative sealing pursuant to the bill would only seal records held by the FDLE. Other records held by the clerk of the court, the office of the state attorney, and the arresting agency would not be impacted.<sup>25</sup>

CS/SB 938 is the related public records bill linked to this bill. CS/SB 938 expands the current public records exemption for criminal history records sealed by court order to include administratively sealed criminal history records within the scope of the exemption.

### VIII. Statutes Affected:

This bill creates section 943.0586 of the Florida Statutes.

#### IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Criminal Justice on March 11, 2019:

The Committee Substitute updates a reference to CS/SB 938.

B. Amendments:

None.

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

<sup>&</sup>lt;sup>23</sup> Florida Department of Law Enforcement, 2019 Legislative Bill Analysis for SB 936, (March 8, 2019) (on file with the Senate Criminal Justice Committee).

<sup>&</sup>lt;sup>24</sup> Email from Timothy Gisecke, Florida Department of Law Enforcement, (March 11, 2019) (on file with the Senate Criminal Justice Committee).

<sup>&</sup>lt;sup>25</sup> Supra, n 23.

561168

|            | LEGISLATIVE ACTION |       |
|------------|--------------------|-------|
| Senate     |                    | House |
| Comm: RCS  |                    |       |
| 03/11/2019 | •                  |       |
|            | •                  |       |
|            | ·                  |       |
|            | •                  |       |
|            |                    |       |

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

### Senate Amendment

Delete line 38

and insert:

1 2 3

4

5

only if SB 938 or similar legislation takes effect, if such

By Senator Bracy

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11-00861-19 2019936

A bill to be entitled
An act relating to criminal history records; creating
s. 943.0586, F.S.; requiring the Criminal Justice
Information Program to administratively seal the
criminal history records of a minor upon notification
by the clerk of the court under specified
circumstances; providing applicability for the
administrative sealing of specified criminal history
records; providing a contingent effective date.

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

Section 1. Section 943.0586, Florida Statutes, is created to read:

 $\underline{943.0586}$  Administrative sealing of criminal history records of minors.—

(1) The Criminal Justice Information Program shall administratively seal the criminal history records pertaining to an arrest or incident of alleged criminal activity of a minor charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency upon notification by the clerk of the court, pursuant to s. 943.052(2), that all the charges related to the arrest or incident of alleged criminal activity were declined to be filed by the state attorney or the statewide prosecutor; were dismissed or nolle prosequi before trial; or resulted in a judgment of acquittal or a verdict of not guilty at trial and that all appeals by the prosecution have been exhausted or the time to file an appeal has expired.

Page 1 of 2

 ${\tt CODING:}$  Words  ${\tt stricken}$  are deletions; words  ${\tt \underline{underlined}}$  are additions.

Florida Senate - 2019 SB 936

2019936

| 30 | (2) The sealing under this section of a criminal history       |
|----|--|
| 31 | record has the same effect as a sealing under s. 943.059(4).   |
| 32 | (3) Sealing granted under this section does not prevent the    |
| 33 | minor who receives such relief from petitioning for the        |
| 34 | expunction or sealing of a criminal history record as provided |
| 35 | for in ss. 943 0582, 943 0583, 943 0585, and 943 059, if the   |

minor is otherwise eligible under those sections.

11-00861-19

38

39

Section 2. This act shall take effect July 1, 2019, but only if SB \_\_\_ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

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



# 2018 FDLE LEGISLATIVE BILL ANALYSIS



| BILL INFORMATION |                          |  |
|------------------|--------------------------|--|
| BILL NUMBER:     | SB 860                   |  |
| BILL TITLE:      | Criminal History Records |  |
| BILL SPONSOR:    | Senator Bracy            |  |
| EFFECTIVE DATE:  | July 1, 2018             |  |

| COMMITTEES OF REFERENCE |
|-------------------------|
| 1) Criminal Justice     |
| 2) Judiciary            |
| 3) Rule                 |
| 4)                      |
| 5)                      |

| PREVIOUS LEGISLATION |  |  |
|----------------------|--|--|
| BILL NUMBER:         |  |  |
| SPONSOR:             |  |  |
| YEAR:                |  |  |
| LAST ACTION:         |  |  |

| CURRENT COMMITTEE |  |
|-------------------|--|
| Criminal Justice  |  |

| SIMILAR BILLS |       |  |
|---------------|-------|--|
| BILL NUMBER:  | 690   |  |
| SPONSOR:      | Bracy |  |

| IDENTICAL BILLS |  |  |
|-----------------|--|--|
| BILL NUMBER:    |  |  |
| SPONSOR:        |  |  |

| Is this bill part of an agency package?  |
|--|
| is time aim part of air agone, pacinage. |
|  |
|  |
| No                                       |

| BILL ANALYSIS INFORMATION |  |  |
|---------------------------|--|--|
| DATE OF ANALYSIS:         | December 6, 2017                             |  |
| LEAD AGENCY ANALYST:      | Charles Schaeffer                            |  |
| ADDITIONAL ANALYST(S):    | Tim Giesecke, Reneé Strickland, Becky Lackey |  |
| LEGAL ANALYST:            | Jason Jones                                  |  |
| FISCAL ANALYST:           | Cynthia Barr                                 |  |

### **POLICY ANALYSIS**

### 1. EXECUTIVE SUMMARY

This bill creates Section 943.0586, FS, to provide for the administrative sealing of criminal history record events associated with a minor.

### 2. SUBSTANTIVE BILL ANALYSIS

- 1. PRESENT SITUATION: Under current s. 943.059, FS, a person applying to have a criminal history record sealed is eligible to do so provided they submit an application to FDLE and have no criminal convictions and/or have not previously secured a prior order to seal or expunge in Florida. The records of a minor may also be expunged through the Juvenile Diversion and Early Juvenile expungement application process and the Automatic Juvenile expungement that occurs when they turn 21 or (if the minor was committed to a juvenile correctional facility or juvenile prison) 26.
- 2. EFFECT OF THE BILL: Provides for the administrative sealing of arrest events within the criminal history records maintained by FDLE for minors in which the charges within the event were not filed on, nolle prosequi, dropped, dismissed, or an acquittal without regard to whether the subject of the record was previously convicted on an unrelated case or has had a previous seal or expunge on another case. An administrative seal under this new statute would not require an application for a Certificate of Eligibility or the payment of a fee.

| 3. | DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO                     |
|----|--|
|    | DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y $\square$ N $\boxtimes$ |

| If yes, explain:   |   |
|--|---|
| What is the expected impact to the agency's core mission?      |   |
| Rule(s) impacted (provide references to F.A.C., etc.):         |   |
| 4. WHAT IS THE POSITION OF                                     | F AFFECTED CITIZENS OR STAKEHOLDER GROUPS?  |
| List any known proponents and opponents:                       |   |
| Provide a summary of the proponents' and opponents' positions: |   |
| 5. ARE THERE ANY REPORTS  If yes, provide a description:       | S OR STUDIES REQUIRED BY THIS BILL? Y \( \simega \) N \( \simega \)   |
| ii yes, provide a description.                                 |   |
| Date Due:  |   |
| Bill Section Number:   |   |
|  | BERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK MISSION, ETC. REQURIED BY THIS BILL? Y $\square$ N $\boxtimes$ |
| Board:   |   |
| Board Purpose:   |   |
| Who Appointments:  |   |

| Appointee Term:   |  |
|---|--|
| Changes:  |  |
| Bill Section Number(s):   |  |
|   | FISCAL ANALYSIS  |
|   | I IOUAL ANAL I OIO   |
| 1. DOES THE BILL HAVE A FIS   | CAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ⊠  |
| Revenues:   |  |
| Expenditures:   |  |
| Does the legislation increase local taxes or fees?  |  |
| If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase? |  |
| 2. DOES THE BILL HAVE A FIS   | CAL IMPACT TO STATE GOVERNMENT? Y ⊠ N □  |
| Revenues:   | Based on the requirements of this bill, 101,914 Florida criminal history record would be subject to administrative sealing. Of those, 50,713 persons with Florida criminal history records would remain eligible to also apply to seal their record and 50,252 persons would be eligible to expunge their record through the current court-order process. These criminal history records would still be eligible for a seal and/or expunge because they contain no prior convictions, and the individual has not already had their criminal history record sealed or expunged via the court-ordered process. |
|   | FDLE receives approximately 24,000 applications annually to court-order seal or expunge a criminal history record. Roughly 5% of the total applications received today are for the court-ordered seal of a criminal history record for a minor. If all of these applicants choose not to apply for a court-order seal and are satisfied with the automatic seal of their criminal history record, the annual loss of revenue is estimated to be \$90,000 (1,200 x \$75 application fee = \$90,000).  |
|   | Also see Technology Impact   |
| Expenditures:   |  |
| Does the legislation contain a State Government appropriation?  |  |
| If yes, was this appropriated last year?  |  |
| 3. DOES THE BILL HAVE A FIS   | CAL IMPACT TO THE PRIVATE SECTOR? Y ☐ N ⊠  |
| Revenues:   |  |

| Expenditures:  |  |
|--|--|
| Other:   |  |
| 4. DOES THE BILL INCREASE  | OR DECREASE TAXES, FEES, OR FINES? Y ☐ N ⊠   |
| Does the bill increase taxes, fees or fines?                                       |  |
| Does the bill decrease taxes, fees or fines?                                       |  |
| What is the impact of the increase or decrease?                                    |  |
| Bill Section Number:   |  |
|  |  |
|  | TECHNOLOGY IMPACT  |
| 1. DOES THE LEGISLATION IM<br>SOFTWARE, DATA STORAGE, E                            | PACTTHE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, ETC.)? Y $\boxtimes$ N $\square$   |
| If yes, describe the anticipated impact to the agency including any fiscal impact. | Programming will be required to implement this legislation. The breadth of the impact requires additional clarification (see additional comments below).   |
|  | The proposed July 1, 2018 effective date would duplicate programming on the legacy CCH system and new system and cause significant delays in implementing the new system. Instead, FDLE can include this work as part of the new CCH project which is anticipated to go-live in November 2018. Until that time the current CCH system will be in place and FDLE recommends a July 1, 2019 effective date.  |
|  | At its simplest, a new type of seal will need to be created in the new Computerized Criminal History (CCH) system, including workflow updates. Programming is necessary to evaluate records to administratively and automatically seal charges meeting the criteria. CCH will manage this process in a manner similar to the automated juvenile expunge process. Records will be evaluated for an administrative seal once a day during off peak hours. Additionally, records will be evaluated and sealed (or unsealed) when a disposition is added or modified that changes the record eligibility.  |
|  | Suppression rules will need to be clearly defined for the criminal history system modifications. The rules will need to be thoroughly tested to validate they are functioning as expected. Given the variety of unique data combinations, a minimum of 2,800 unique RAP sheets will need to be tested. In parallel with operational acceptance activities, we estimate this change could be scheduled, developed, tested and promoted to production in 17 weeks after the project goes live for about \$254,000. This estimate does <u>not</u> include the effort to address the additional comments below and it is based on the assumption this is the only legislative change required in operational acceptance. Additional time and funding will be needed if additional legislative changes are required during operational acceptance and costs could increase based on the responses to the additional comments below. |

**FEDERAL IMPACT** 

| <ol> <li>DOES THE LEGISLATION HA<br/>FEDERAL AGECY INVOLVEMEN</li> <li>If yes, describe the anticipated<br/>impact including any fiscal</li> </ol> | NYE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, IT, ETC.)? Y ☐ N ⊠  |
|--|--|
| impact.  |  |
| LEG  | GAL - GENERAL COUNSEL'S OFFICE REVIEW  |
|  |  |
| Issues/concerns/comments and recommended action:   | If SB 860 and related SB 862 were to both become law, an administrative seal would have the effect of generally rendering the specified class of criminal history record confidential and exempt from public access. It appears that this would apply to not only FDLE's records but also to those held by other criminal justice agencies. The exceptions for allowing limited disclosure of sealed records, as set out in the current law in s. 943.059(4), FS, would be retained. |
|  | Although the bill language does not reference s. 943.053(3)(b), FS, it is noteworthy that under this provision, criminal history information related to juveniles is already generally confidential and exempt from public access, provided the juvenile was not taken into custody for, charged with, or found to have committed, a violation that would be a felony if committed by an adult.  |

### **ADDITIONAL COMMENTS**

The bill states that "all the charges related to the arrest or incident..." should meet select criteria. Disposition reporting, pursuant to s. 943.052(2), FS, does not link "all" charges in an arrest or incident. FDLE believes that an evaluation of charges associated with a specific booking event in CCH will meet this requirement. If not, further clarification on how the clerk of court should identify the charge relationships FDLE is requested.

Current disposition reporting does not consider "that all appeals by the prosecution have been exhausted or the time to file an appeal has expired". Changes to disposition reporting will require that the clerks of court verify this condition has been met so the record can be administratively sealed. This will require a modification to the data submitted to FDLE by the clerks of court.

### Storch, Lauren

From:

Giesecke, Timothy <TimothyGiesecke@fdle.state.fl.us>

Sent:

Monday, March 11, 2019 1:02 PM

To:

Storch, Lauren

Cc:

Truxell, Rachel; Andrews, Jessica

Subject:

Additional Language to include in SB 936

Lauren – per our telephone call, the language below needs to be amended to our bill analysis for SB 936. It is identical to what was included in SB 860 last session.

Current disposition reporting does not consider "that all appeals by the prosecution have been exhausted or the time to file an appeal has expired". Changes to disposition reporting will require that the clerks of court verify this condition has been met so the record can be administratively sealed. This will require a modification to the data submitted to FDLE by the clerks of court.

Sorry for the oversight.

Tim Giesecke Bureau Chief FDLE's Crime Information Bureau <u>timothygiesecke@fdle.state.fl.us</u> 850-410-7980



# 2019 FDLE LEGISLATIVE BILL ANALYSIS



| BILL INFORMATION |                          |  |
|------------------|--------------------------|--|
| BILL NUMBER:     | SB 936                   |  |
| BILL TITLE:      | Criminal History Records |  |
| BILL SPONSOR:    | Bracy                    |  |
| EFFECTIVE DATE:  | July 1, 2019             |  |

| COMMITTEES OF REFERENCE                      |
|--|
| 1) Criminal Justice                          |
| 2) Governmental Oversight and Accountability |
| 3) Rules                                     |
| 4)   |
| 5)   |

| PREVIOUS LEGISLATION |  |
|----------------------|--|
| BILL NUMBER:         |  |
| SPONSOR:             |  |
| YEAR:                |  |
| LAST ACTION:         |  |

| CURRENT COMMITTEE |  |
|-------------------|--|
|                   |  |

| SIMILAR BILLS |  |  |
|---------------|--|--|
| BILL NUMBER:  |  |  |
| SPONSOR:      |  |  |

| IDENTICAL BILLS |        |  |
|-----------------|--------|--|
| BILL NUMBER:    | HB 747 |  |
| SPONSOR:        | Joseph |  |

| Is this bill part of an agency package? |  |
|---|--|
| No                                      |  |

| BILL ANALYSIS INFORMATION |   |  |
|---------------------------|---|--|
| DATE OF ANALYSIS:         | March 8, 2019                               |  |
| LEAD AGENCY ANALYST:      | Charlie Schaeffer                           |  |
| ADDITIONAL ANALYST(S):    | Gernett Rogers, Tim Giesecke, Andrew Branch |  |
| LEGAL ANALYST:            | Jason Jones, Joe White                      |  |
| FISCAL ANALYST:           | Cynthia Barr, Deshawn Byrd                  |  |

#### **POLICY ANALYSIS**

### 1. EXECUTIVE SUMMARY

This legislation creates s. 943.0586, F.S., requiring FDLE's Criminal Justice Information Program to administratively seal the criminal history records of a minor upon notification by the clerk of the court under specified circumstances.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

The Criminal Justice Information Program retains the criminal history records of minors who are classified as serious or habitual juvenile offenders or committed to a juvenile correctional facility or juvenile prison under chapter 985, FS, for five years after the date the offender reaches 21, at which point the record is automatically expunged. If the minor is not classified as a serious or habitual offender or committed to a juvenile correctional facility or juvenile prison under chapter 985, FS, the program retains the minor's criminal history record for two years after the date the minor reaches 19 years of age, at which time the record is automatically expunged. If after the minor reaches 18 years of age or older, and before they reach the age of 21 or 26, they are charged with or convicted of a forcible felony, as an adult or treated as an adult, the person's criminal history record as a minor not expunged, but is merged with the person's adult criminal history record and must be retained as a part of the person's adult record.

In addition to the automatic expunction of a minor's criminal history record, there are currently multiple avenues to seal or expunge juvenile records:

- Persons, who have completed an authorized juvenile diversion program for a misdemeanor, may apply for a Juvenile Diversion Expungement, s. 943.0582, FS.
- Persons between the ages of 18 and 21 may, under certain conditions, apply to have their juvenile criminal history record expunged early, s. 943.0515(1)(b)2, FS.
- Persons who meet the statutory requirements can apply for the court order seal and expunge process through the application for a Certificate of Eligibility, per s. 943.059 and s. 943.0585, FS.

FDLE does not disseminate juvenile misdemeanor charges to the public or non-criminal justice entities. If a criminal history record check is requested on a person who only has a juvenile misdemeanor charge(s) on his/her Florida criminal history record, the requestor would receive a no record found notification.

If a criminal justice entity requests a state and national criminal history record check on a person who has an expunged juvenile misdemeanor record, it will receive notice that an expunged record exists but will not be able to view the arrest event. However, if the person was also arrested for a felony as a minor, the entire juvenile record would be eligible to be released in response to a criminal history check requested by any agency, entity or the public.

Currently, when a juvenile subject is given a civil citation, they are not physically arrested. FDLE's Computerized Criminal History (CCH) only maintains criminal history records of individuals who have been physically arrested and fingerprinted.

#### 2. EFFECT OF THE BILL:

Creates s. 943.0586, FS, requiring the Criminal Justice Information Program to administratively seal the criminal history records of a minor upon notification by the Clerk of the Court under specified circumstances. The program shall administratively seal the arrest or incident of alleged criminal activity of a minor charged with a felony, misdemeanor or violation of a comparable rule or ordinance by a state, county, municipal or other law enforcement agency upon notification by the clerk of the court, pursuant to s. 943.052(2), FS, that all charges related to the arrest or incident of alleged criminal activity were declined to be filed by the state attorney or statewide prosecutor, were dismissed or nolle prosequi before trial, or resulted in a judgement of acquittal or a verdict of not guilty at trial, and all appeals by the prosecution have been exhausted or time to file an appeal has expired.

The administrative seal would only seal the records at FDLE. Other records, to include those maintained at the Clerk of the Court, State Attorney and arresting agency would not be impacted.

There are currently 98,250 person records and 163,838 arrest events in the CCH files that would meet the bill criteria. These person's would still be eligible to pursue a court-ordered seal or expunction for the aforementioned charges if they so desired for the purposes of sealing or expunging the records at the local level.

Expenditures:

This bill would require a dissemination status to be created in CCH to allow for the administrative sealing of the records of a minor who meet the statutory requirements under this new statute.

|  | DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO IMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y ☐ N ☒ |
|--|---|
| If yes, explain:   |   |
| What is the expected impact to the agency's core mission?      |   |
| Rule(s) impacted (provide references to F.A.C., etc.):         |   |
| 4. WHAT IS THE POSITION O                                      | F AFFECTED CITIZENS OR STAKEHOLDER GROUPS?  |
| List any known proponents and opponents:                       |   |
| Provide a summary of the proponents' and opponents' positions: |   |
| 5. ARE THERE ANY REPORT  | S OR STUDIES REQUIRED BY THIS BILL? Y \( \subseteq N \times \)  |
| If yes, provide a description:                                 |   |
| Date Due:  |   |
| Bill Section Number:   |   |
|  | BERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK IMISSION, ETC. REQUIRED BY THIS BILL? Y □ N ⊠            |
| Board:   |   |
| Board Purpose:   |   |
| Who Appointments:  |   |
| Appointee Term:  |   |
| Changes:   |   |
| Bill Section Number(s):  |   |
|  |   |
|  | FISCAL ANALYSIS   |
|  | SCAL IMPACT TO LOCAL GOVERNMENT? Y \( \subseteq N \times \)   |
| Revenues:  |   |

| Does the legislation increase local taxes or fees?  |   |
|---|---|
| If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase? |   |
| 2. DOES THE BILL HAVE A FIS   | SCAL IMPACT TO STATE GOVERNMENT? Y 🖂 N 🗌  |
| Revenues:   | FDLE receives approximately 24,000 applications annually to court-order seal or expunge a criminal history record. Roughly 5% of the total applications received today are for the court-ordered seal of a criminal history record for a minor. If all of these applicants choose not to apply for a court-order seal and are satisfied with the automatic seal of their criminal history record, the annual loss of revenue is estimated to be \$90,000 (1,200 x \$75 application fee = \$90,000). |
| Expenditures:   | Also see Technology Impact.   |
|   |   |
| Does the legislation contain a State Government appropriation?  |   |
| If yes, was this appropriated last year?  |   |
| 3. DOES THE BILL HAVE A FIS   | SCAL IMPACT TO THE PRIVATE SECTOR? Y ☐ N ⊠  |
| Revenues:   |   |
| Expenditures:   |   |
| Other:  |   |
| 4. DOES THE BILL INCREASE   | OR DECREASE TAXES, FEES, OR FINES? Y \( \subseteq N \times \)   |
| Does the bill increase taxes, fees or fines?  |   |
| Does the bill decrease taxes, fees or fines?  |   |
| What is the impact of the increase or decrease?   |   |
| Bill Section Number:  |   |
|   | TECHNOLOGY IMPACT   |
| 1. DOES THE LEGISLATION IN SOFTWARE, DATA STORAGE,  | MPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, ETC.)? Y ⊠ N □  |
| If yes, describe the anticipated impact to the agency including   | This bill would require programming changes to the internal work flow processes and automated batch processing. Currently, CCH has an established workflow  |

| any fiscal impact.   | <ul> <li>for the seal/expunge processes. This change would require an additional requestype. CCH will manage this process in a manner similar to the automated juvenile expunge process. Records will be evaluated for an administrative seal once a day during off peak hours through batch processing. Also, additional complex business rules will have to be included in the workflow with impacts to certificates and other work flow functionalities.</li> <li>The rough order of magnitude cost to implement the changes required by this legislation is estimated at \$100-125,000, including requirement analysis, updating use cases for business rules, creating test cases and integration testing.</li> </ul> |  |  |
|--|--|--|--|
|  | FEDERAL IMPACT   |  |  |
| 1. DOES THE LEGISLATION HA FEDERAL AGECY INVOLVEMEN                  | VE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, T, ETC.)? Y ☐ N ⊠  |  |  |
| If yes, describe the anticipated impact including any fiscal impact. |  |  |  |
|  |  |  |  |
| LEC  | GAL - GENERAL COUNSEL'S OFFICE REVIEW  |  |  |
|  |  |  |  |
| Issues/concerns/comments and recommended action:                     | Lines 32-36 - Because the bill does not list early expunction of juvenile records under s. 943.0515(1)(b)2, FS, a person receiving record seal pursuant to the bill would presumably not be eligible to also seek early expunction of juvenile records under s. 943.0515(1)(b)2, FS. However, it would be helpful if the Legislature's intent on this point was clearly specified.   |  |  |

### **ADDITIONAL COMMENTS**

- This bill does not address the possible conflict with the intent of s. 943.0515(2), FS, which merges the criminal history of a minor with their adult record if they have been charged with or arrested for a forcible felony prior to reaching the age of 21 or 26. The department suggests the bill include language to eliminate the administrative seal on juvenile records that were required to be merged with the adult record.
- It is recommended the title of the bill be reconsidered. Currently, s. 943.0581, FS, allows for the administrative expunction of an arrest made in error or contrary to law. The term "administrative" has a different meaning under s.943.0581, FS, and may cause confusion if used in a different statute. Alternative language to consider may be "Auto Seal" or "Automatic Seal" in replacement of "Administrative Seal."

# APPEARANCE RECORD

| Meeting Date (Deliver BOTH copies of this form to the Senator  | or Senate Professional Staff conducting the meeting)  SB 936  Bill Number (if applicable)   |
|--|---|
| Name Christine Manager MSW   | Amendment Barcode (if applicable)   |
| Address ZOS Arrowhead Ct  Street  City State  Speaking: For Against Information  | Phone 1877 776 2004 x 106  32708 Email Swor behind bors . 05  Zip  Waive Speaking: In Support Against (The Chair will read this information into the record.) |
| Representing SWC Bell By  Appearing at request of Chair: Yes No  While it is a Senate tradition to encourage public testimony, time meeting. Those who do speak may be asked to limit their remark | Lobbyist registered with Legislature: Yes No may not permit all persons wishing to speak to be heard at this  |

S-001 (10/14/14)

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

# APPEARANCE RECORD

| (Deliver BOTH copies of this form to the Senator or Senate Professional S  | Staff conducting the meeting)   |
|--|---|
| Meeting Date Administrative  | Bill Number (if applicable)   |
| Topic EXPUNCTION   | Amendment Barcode (if applicable)   |
| Name SOFAL CHAMITO   | _   |
| Job Title Afformul   | - (m) 1.01 00011  |
| Address 108 SOUTH MONTAL STYLLT  | Phone (300) (ST-UL)   |
| Street MMMMM PL 32307 City State Zip   | _ Email joyel Hapanus un  |
| Speaking: For Against Information Waive S  | Speaking: In Support Against air will read this information into the record.) |
| Representing <u>FIA ASSOCIABLE OF CMM.</u>   | Define Caufets  |
| Appearing at request of Chair: Yes No Lobbyist regis   | tered with Legislature: Yes No  |
| While it is a Senate tradition to encourage public testimony, time may not permit at meeting. Those who do speak may be asked to limit their remarks so that as many | · ·   |

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

S-001 (10/14/14)

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 936 3/11/19 Bill Number (if applicable) Meeting Date Topic Criminal History Records Amendment Barcode (if applicable) Name Carey Haughwout Job Title Public Defender, 15th Judicial Circuit Phone 305-545-1900 Address 421 Third Street Street Email CareyPD@pd15.state.fl.us West Palm Beach State Zip City Against Information Waive Speaking: I In Support Speaking: (The Chair will read this information into the record.) Representing Florida Public Defender Association Lobbyist registered with Legislature: Appearing at request of Chair: 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)

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 936 3.11.19 Bill Number (if applicable) Meeting Date Criminal History Records Amendment Barcode (if applicable) Name Barney Bishop III Job Title President & CEO Phone 850.510.9922 Address 2215 Thomaville Road Street Email barney@barneybishop.com 32308 FL **Tallahassee** State Zip City In Support Against Information Waive Speaking: Speaking: Against (The Chair will read this information into the record.) Representing Florida Smart Justice Alliance Lobbyist registered with Legislature: Appearing at request of Chair: While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

# The Florida Senate BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

|                              | Prepared By:    | The Professional Sta | aff of the Committee | e on Criminal . | Justice |  |
|------------------------------|-----------------|----------------------|----------------------|-----------------|---------|--|
| BILL:                        | CS/SB 938       |                      |                      |                 |         |  |
| INTRODUCER: Criminal Justice |                 | Committee and Se     | enator Bracy         |                 |         |  |
| SUBJECT:                     | Public Records/ | Criminal History F   | Records              |                 |         |  |
| DATE:                        | March 11, 2019  | REVISED:             |                      |                 |         |  |
| ANAL                         | YST S           | STAFF DIRECTOR       | REFERENCE            |                 | ACTION  |  |
| l. Storch                    | Jo              | nes                  | CJ                   | Fav/CS          |         |  |
| 2                            |                 |                      | GO                   |                 |         |  |
| 3.                           |                 |                      | RC                   |                 |         |  |

## Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

## I. Summary:

CS/SB 938, which is linked to the passage of CS/SB 936, expands an existing public records exemption for sealed criminal history records to include *administratively sealed* criminal history records as authorized by CS/SB 936.

An administratively sealed criminal history record is a record of a minor arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency that is sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict.

The fiscal impact of the bill is indeterminate at this time. However, agencies that are responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record may incur costs as a result. See Section V. Fiscal Impact Statement.

The expansion of the exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

Because the bill expands a current public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill is effective on the same date that CS/SB 936 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

### II. Present Situation:

#### **Public Records Law**

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.<sup>3</sup> The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>4</sup>

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.<sup>5</sup> Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."<sup>7</sup>

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

 $<sup>^{2}</sup>$  Id.

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

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

<sup>&</sup>lt;sup>5</sup> Locke v. Hawkes, 595 So. 2d 32 (Fla. 1992). Also see Times Pub. Co. v. Ake, 660 So. 2d 255 (Fla. 1995).

<sup>&</sup>lt;sup>6</sup> Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>&</sup>lt;sup>7</sup> Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc., 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

Only the Legislature may create an exemption to public records requirements. <sup>10</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption. <sup>11</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions <sup>12</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature. <sup>13</sup>

When creating or expanding a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt." Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances. <sup>15</sup>

### Court-ordered Sealing of a Criminal History Record

Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged. A criminal history record that is sealed is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.059, F.S., authorizes a court-ordered sealing process, which places a criminal history record under highly restricted access pursuant to court order.

A person seeking to have his or her criminal history record sealed must obtain a certificate of eligibility for sealing pursuant to requirements set forth in s. 943.059(2), F.S., and subsequently petition the court to seal the record.<sup>18</sup>

<sup>&</sup>lt;sup>8</sup> Section 119.07(1)(a), F.S.

<sup>&</sup>lt;sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>&</sup>lt;sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>&</sup>lt;sup>11</sup> *Id*.

<sup>&</sup>lt;sup>12</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>&</sup>lt;sup>13</sup> FLA. CONST., art. I, s. 24(c).

<sup>&</sup>lt;sup>14</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV*, *Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

<sup>&</sup>lt;sup>15</sup> Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>&</sup>lt;sup>16</sup> Florida Department of Law Enforcement, *Seal and Expunge Process*, available at <a href="http://www.fdle.state.fl.us/cms/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx">http://www.fdle.state.fl.us/cms/Seal-and-Expunge-Home.aspx</a> (last visited March 4, 2019). *See* s. 943.053, F.S.

<sup>&</sup>lt;sup>17</sup> Section 943.045(19), F.S.

<sup>&</sup>lt;sup>18</sup> Section 943.059, F.S.

A criminal history record of a minor or an adult which is ordered sealed by a court pursuant to s. 943.059, F.S., is confidential and exempt from the provisions of s. 119.07(1), F.S., and Article I, s. 24(a) of the State Constitution. <sup>19</sup> Such record is available only to:

- The person who is the subject of the record;
- The subject's attorney;
- Criminal justice agencies for their respective criminal justice purposes;
- Judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities; and
- Entities set forth in s. 943.059(4)(a), F.S.<sup>20</sup>

Additionally, a person who has their criminal history record sealed may lawfully deny or fail to acknowledge the records that were sealed, unless he or she is:

- A candidate for employment with a criminal justice agency;
- A defendant in a criminal prosecution;
- Petitioning to have a court-ordered criminal history record sealed or expunged;<sup>21</sup>
- A candidate for admission to The Florida Bar;
- Seeking appointment as a guardian or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly;
- Seeking to be licensed by the Division of Insurance Agent and Agency Services within the
  Department of Financial Services or the Bureau of License Issuance of the Division of
  Licensing within the Department of Agriculture and Consumer Services to carry a concealed
  weapon or concealed firearm; or
- Attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law.<sup>22</sup>

The Florida Department of Law Enforcement must disclose the sealed criminal history record to the entities listed above for their respective licensing, access authorization, and employment purposes. An employee of an entity listed above may only disclose information relating to the existence of a sealed criminal history record to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions.<sup>23</sup>

If a person has his or her criminal record sealed, he or she may not be held under any provision of law of this state to commit perjury or otherwise be liable for giving a false statement for failure to acknowledge a sealed criminal history record.<sup>24</sup>

<sup>&</sup>lt;sup>19</sup> Section 943.059(4), F.S.

<sup>&</sup>lt;sup>20</sup> Section 943.059(4), F.S.

<sup>&</sup>lt;sup>21</sup> See ss. 943.0583 and 943.0585, F.S.

<sup>&</sup>lt;sup>22</sup> Supra, n 20.

<sup>&</sup>lt;sup>23</sup> Section 943.059(4)(c), F.S.

<sup>&</sup>lt;sup>24</sup> This is subject to the exceptions enumerated in s. 943.059(4)(a), F.S., whereby a person must acknowledge a sealed criminal history record under certain circumstances. *See* s. 943.059(4)(b), F.S.

### Administrative Sealing of a Criminal History Record

CS/SB 936, which is linked to CS/SB 938, creates a process for the administrative sealing of certain criminal history records of a minor.

Specifically, CS/SB 936 requires a criminal history record of a minor arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency to be administratively sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict.

Additionally, all appeals must have been exhausted by the prosecution or the time to file an appeal must have expired in order for a record to be administratively sealed.

### III. Effect of Proposed Changes:

The bill expands the public records exemption for sealed criminal history records in s. 943.059, F.S., to include records *administratively sealed* pursuant to s. 943.0586, F.S.

An administratively sealed criminal history record would be treated the same as a record sealed pursuant to s. 943.059, F.S., making such record confidential and exempt and only available to certain entities. Additionally, the person who is the subject of the criminal history record that is administratively sealed would be permitted to lawfully deny or fail to acknowledge the existence of the record, with limited exceptions.<sup>25</sup>

The bill provides a statement of public necessity as required by the State Constitution.<sup>26</sup> The statement provides that the presence of a criminal history record in a minor's past which has not been validated through criminal proceedings can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to becoming a productive, contributing, self-sustaining member of society. Furthermore, such negative consequences are unwarranted in cases in which a minor was not found to have committed the offense that is the subject of the sealed criminal history record.

The bill repeals the expansion of the exemption on October 2, 2024, unless reviewed and saved from repeal by the Legislature.

The bill provides that s. 943.059, F.S., shall revert to that in existence on June 30, 2019, if the expansion of the exemption is not saved from repeal. The bill provides that any amendments made to s. 943.059, F.S., shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which are not saved from repeal.

<sup>&</sup>lt;sup>25</sup> Supra, n 20.

<sup>&</sup>lt;sup>26</sup> FLA CONST., art. I, s. 24(c).

The bill is effective on the same date that CS/SB 936 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

### **Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill expands a current exemption for sealed criminal history records. Thus, the bill requires a two-thirds vote to be enacted.

### **Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding exemptions to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the expansion.

### **Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect minors from having his or her ability to obtain education, employment, and other opportunities jeopardized by a criminal history record from his or her past that has not been validated through criminal proceedings. The law protects such minors by narrowly expanding the public records exemption to apply to criminal history records that have been administratively sealed. There are substantial legislative findings in the statement of public necessity in support of the public records exemption expansion. For these reasons, the bill appears to be no broader than necessary to accomplish its stated purpose.

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None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a fiscal impact on agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record. However, these costs should be able to be absorbed with existing resources.

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

CS/SB 936 is the related bill linked to this bill. CS/SB 936 establishes an administrative sealing process for certain criminal history records of a minor.

### VIII. Statutes Affected:

This bill substantially amends section 943.059 of the Florida Statutes.

### IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

### CS by Criminal Justice on March 11, 2019:

The Committee Substitute updates a reference to CS/SB 936.

B. Amendments:

None.

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  | •                  |       |
| 03/11/2019 |                    |       |
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The Committee on Criminal Justice (Bracy) recommended the following:

### Senate Amendment

Delete line 180

and insert:

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SB 936 or similar legislation takes effect, if such legislation

By Senator Bracy

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A bill to be entitled
An act relating to public records; amending s.
943.059, F.S.; expanding an existing public records
exemption to include the administrative sealing of
specified criminal history records; conforming
provisions to changes made by the act; providing for
future review and repeal of the expanded exemption;
providing for reversion of specified language if the
exemption is not saved from repeal; providing a
statement of public necessity; providing a contingent
effective date.

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

Section 1. Subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—
The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection

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11-00957-19 2019938 30 (2). A criminal history record that relates to a violation of s. 31 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, 32 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any 35 violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether 37 that offense alone is sufficient to require such registration, 38 or for registration as a sexual offender pursuant to s. 39 943.0435, may not be sealed, without regard to whether 40 adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled 42 4.3 guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. 46 The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if 49 the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the 51 order. A criminal justice agency may not seal any record 53 pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records 55 pertaining to more than one arrest. This section does not 56 prevent the court from ordering the sealing of only a portion of 57 a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law

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to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

- (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.-A criminal history record of a minor sealed administratively pursuant to s. 943.0586 or a criminal history record of a minor or an adult which is ordered sealed by a court pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., 8., 9., and 10. for their respective licensing, access authorization, and employment purposes.
- (a) The subject of a criminal history record sealed under s. 943.0586 or this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the

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| 88   | record:  |
| 89   | 1. Is a candidate for employment with a criminal justice         |
| 90   | agency;  |
| 91   | 2. Is a defendant in a criminal prosecution;                     |
| 92   | 3. Concurrently or subsequently petitions for relief under       |
| 93   | this section, s. 943.0583, or s. 943.0585;                       |
| 94   | 4. Is a candidate for admission to The Florida Bar;              |
| 95   | 5. Is seeking to be employed or licensed by or to contract       |
| 96   | with the Department of Children and Families, the Division of    |
| 97   | Vocational Rehabilitation within the Department of Education,    |
| 98   | the Agency for Health Care Administration, the Agency for        |
| 99   | Persons with Disabilities, the Department of Health, the         |
| 100  | Department of Elderly Affairs, or the Department of Juvenile     |
| 101  | Justice or to be employed or used by such contractor or licensee |
| 102  | in a sensitive position having direct contact with children, the |
| 103  | disabled, or the elderly;  |
| 104  | 6. Is seeking to be employed or licensed by the Department       |
| 105  | of Education, a district school board, a university laboratory   |
| 106  | school, a charter school, a private or parochial school, or a    |
| 107  | local governmental entity that licenses child care facilities;   |
| 108  | 7. Is attempting to purchase a firearm from a licensed           |
| 109  | importer, licensed manufacturer, or licensed dealer and is       |
| 110  | subject to a criminal history check under state or federal law;  |
| 111  | 8. Is seeking to be licensed by the Division of Insurance        |
| 112  | Agent and Agency Services within the Department of Financial     |
| 113  | Services;  |
| 114  | 9. Is seeking to be appointed as a guardian pursuant to s.       |
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10. Is seeking to be licensed by the Bureau of License  $Page \ 4 \ of \ 7$ 

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Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm. This subparagraph applies only in the determination of an applicant's eligibility under s. 790.06.

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- (b) Subject to the exceptions in paragraph (a), a person who has been granted a sealing under  $\underline{s.943.0586}$ , this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge a sealed criminal history record.
- (c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., 6., 8., 9., and 10. for their respective licensing, access authorization, and employment purposes. An employee of an entity set forth in subparagraph (a) 1., subparagraph (a) 4., subparagraph (a) 5., subparagraph (a) 6., subparagraph (a) 8., subparagraph (a) 9., or subparagraph (a) 10. may not disclose information relating to the existence of a sealed criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. A person who violates the provisions of this paragraph commits a misdemeanor

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| L46 | of the first degree, punishable as provided in s. 775.082 or s.  |
| L47 | 775.083.   |
| L48 | (d) The expansion of the public records exemption under          |
| L49 | this subsection to include records sealed administratively       |
| L50 | pursuant to s. 943.0586 is subject to the Open Government Sunset |
| 151 | Review Act in accordance with s. 119.15 and shall stand repealed |
| L52 | on October 2, 2024, unless reviewed and saved from repeal        |
| L53 | through reenactment by the Legislature. If the expansion of the  |
| L54 | exemption is not saved from repeal, this subsection shall revert |
| L55 | to that in existence on June 30, 2019, except that any           |
| L56 | amendments to this subsection other than by this act shall be    |
| L57 | preserved and continue to operate to the extent that such        |
| L58 | amendments are not dependent upon the portions of this           |
| L59 | subsection which expire pursuant to this paragraph.              |
| L60 | Section 2. The Legislature finds that it is a public             |
| L61 | necessity that the criminal history records of a minor which     |
| L62 | have been administratively sealed pursuant to s. 943.0586,       |
| L63 | Florida Statutes, because a case was not filed, was dismissed or |
| L64 | nolle prosequi, or resulted in the granting of a judgment of     |
| L65 | acquittal or verdict of not guilty be made confidential and      |
| L66 | exempt from s. 119.07(1), Florida Statutes, and s. 24(a),        |
| L67 | Article I of the State Constitution. The presence of a criminal  |
| L68 | history record in a minor's past which has not been validated    |
| L69 | through criminal proceedings can jeopardize his or her ability   |
| L70 | to obtain education, employment, and other opportunities         |
| 171 | necessary to becoming a productive, contributing, self-          |
| L72 | sustaining member of society. Such negative consequences are     |
| L73 | unwarranted in cases in which the minor was not found to have    |
| 71  | committed the effence that is the subject of the scaled animinal |

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| 75 | history record. For these reasons, the Legislature finds that it |
| 76 | is a public necessity that the criminal history records of       |
| 77 | minors which have been administratively sealed be confidential   |
| 78 | and exempt from public records requirements.                     |
| 79 | Section 3. This act shall take effect on the same date that      |
| 80 | SB or similar legislation takes effect, if such legislation      |
| 81 | is adopted in the same legislative session or an extension       |
| 82 | thereof and becomes a law.                                       |
|    |  |

Page 7 of 7

 ${f CODING:}$  Words  ${f stricken}$  are deletions; words  ${f underlined}$  are additions.

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 3.11.19 938 Meeting Date Bill Number (if applicable) Public Records/Criminal History Records Amendment Barcode (if applicable) Name Barney Bishop III Job Title President & CEO Address 2215 Thomaville Road Phone 850.510.9922 Street **Tallahassee** Emajl barney@barneybishop.com FL 32308 City State Zip Speaking: **Against** Information Waive Speaking: In Support (The Chair will read this information into the record.) Representing Florida Smart Justice Alliance Lobbyist registered with Legislature: Appearing at request of Chair: 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)

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) Meeting Date Bill Number (if applicable) Topic Amendment Barcode (if applicable) MSW avava Address Street State Zip Against Information Speaking: For Waive Speaking: (The Chair will read this information into the record.) Representing Appearing at request of Chair: Lobbyist registered with Legislature: Yes 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)

# APPEARANCE RECORD

| 3/11/19  | (Deliver BOTH copies of this form to the Senator                                | or Senate Professional Staff conducting the meeting                                  | 938  |
|--|---|--|--|
| Meeting Date   | _   |  | Bill Number (if applicable)                  |
| Topic Criminal Histor                                  | ry Records  | Amen   | dment Barcode (if applicable)                |
| Name Carey Haughv                                      | vout  |  |  |
| Job Title Public Defe                                  | nder, 15th Judicial Circuit   |  |  |
| Address 421 Third S                                    | treet   | Phone 305-545  | 5-1900                                       |
| Street West Palm I                                     | Beach   | Email CareyPD  | @pd15.state.fl.us                            |
| City  Speaking: For                                    | State Against Information   | Zip Waive Speaking: In S (The Chair will read this inform                            |  |
| Representing Flo                                       | orida Public Defender Associatio  | on   |  |
| Appearing at request                                   | of Chair: Yes Vo  | Lobbyist registered with Legisla   | uture: Yes No                                |
| While it is a Senate tradit<br>meeting. Those who do s | ion to encourage public testimony, tim<br>peak may be asked to limit their rema | ne may not permit all persons wishing to<br>arks so that as many persons as possible | speak to be heard at this<br>e can be heard. |
|  | ,   |  |  |

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

S-001 (10/14/14)

# The Florida Senate BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

| Prepared By: The Professional Staff of the Committee on Criminal Justice |             |           |          |           |                  |        |
|--|-------------|-----------|----------|-----------|------------------|--------|
| BILL:  | SB 1068     |           |          |           |                  |        |
| INTRODUCER:  | Senator Bea | ın        |          |           |                  |        |
| SUBJECT:   | Crime Victi | m Assista | ance     |           |                  |        |
| DATE:  | March 8, 20 | )19       | REVISED: |           |                  |        |
| ANAL   | YST         | STAFF     | DIRECTOR | REFERENCE |                  | ACTION |
| 1. Storch  |             | Jones     |          | CJ        | <b>Favorable</b> |        |
| 2.   |             |           |          | ACJ       |                  |        |
| 3.   |             |           |          | AP        |                  |        |

### I. Summary:

SB 1068 expands the definition of crime for the purposes of providing assistance to a victim of a crime to include a violation of lewd or lascivious conduct, as described in s. 800.04, F.S.

The bill further specifies that intentionally touching of a person 16 or 17 years of age in a lewd or lascivious manner, or forcing or enticing a person 16 or 17 years of age to touch the actor, when such act is without the person's consent and directly results in psychiatric or psychological injury, is considered a crime for the purposes of providing assistance to a victim of a crime.

The bill also increases the maximum payment from \$500 to \$1000 that can be made for a victim of sexual battery or a lewd or lascivious offense to obtain an initial forensic physical examination.

The fiscal impact of the bill is indeterminate at this time. However, the Department of Legal Affairs (DLA) may incur costs associated with providing financial assistance to additional crime victims due to the expansion of the definition of crime. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

### II. Present Situation:

### **Assistance for Victims of a Crime**

Florida law provides extensive assistance to victims of crimes. The Crime Victim's Services Office (Office) within the DLA is tasked with advocating for victims of crimes and informing them of their rights, among other things. Current law defines a victim as:

- A person who suffers personal physical injury or death as a result of a crime;
- A person younger than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime but who was not physically injured;
- A person younger than 18 years of age who was the victim of a felony or misdemeanor offense of child abuse that resulted in a mental injury, but who was not physically injured;
- A person against whom a forcible felony was committed and who suffers a psychiatric or
  psychological injury as a direct result of that crime who does not otherwise sustain a personal
  physical injury or death; or
- An emergency responder who is killed answering a call for service in the line of duty.<sup>2</sup>

For the purposes of providing assistance to victims of a crime, the term crime is defined as:

- A felony or misdemeanor offense committed by an adult or a juvenile which results in a physical injury or death;
- A forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury;
- A felony or misdemeanor offense of child abuse committed by an adult or a juvenile which results in a mental injury to a person younger than 18 years of age who was not physically injured by the criminal act;
- A violation of certain enumerated offenses<sup>3</sup> that results in physical injury or death;
- An act involving the operation of a motor vehicle, boat, or aircraft that results in another person's injury or death that is intentionally inflicted through the use of the vehicle, boat, or aircraft;
- A criminal act committed outside the state against a resident of the state which would have been compensable if it had occurred in the state and which occurred in a jurisdiction that does not have an eligible crime victim compensation program;
- A violation of an enumerated offense<sup>4</sup> related to online sexual exploitation and child pornography;
- A felony or misdemeanor that results in the death of an emergency responder while answering a call for service in the line of duty.<sup>5</sup>

In addition to providing advocacy and assistance to crime victims, the Office also administers a compensation program to ensure financial assistance is provided to victims of a crime. Injured

<sup>&</sup>lt;sup>1</sup> Section 960.05, F.S.

<sup>&</sup>lt;sup>2</sup> Section 960.03(14), F.S.

<sup>&</sup>lt;sup>3</sup> See ss. 316.027(2), 316.193, 316.1935, 327.35(1), 327.35(1), 782.071(1)(b), and 860.13(1)(a), F.S.

<sup>&</sup>lt;sup>4</sup> See ss. 827.071, 847.0135, 847.0137, and 847.0138, F.S.

<sup>&</sup>lt;sup>5</sup> Section 960.03(3)(a)-(f), F.S.

crime victims may be eligible for financial aid for medical care, lost income, mental health services, funeral expenses, and other expenses related to the injury.<sup>6</sup>

Among the types of financial aid a victim of a crime can receive is payment for medical expenses. Specifically, payment is made for a victim of sexual battery as defined in ch. 794, F.S., or a lewd or lascivious offense as defined in ch. 800, F.S., to obtain an initial forensic physical examination. A payment of up to \$500 will be made to cover the victim's examination, regardless of whether or not the victim is covered by health or disability insurance and whether the victim participates in the criminal justice system or cooperates with law enforcement. The defendant or juvenile offender of the crime for which the victim is obtaining a physical examination must make restitution to the Crimes Compensation Trust Fund in an amount equal to the compensation paid for the victim's exam.

### **Lewd or Lascivious Conduct**

Section 800.04, F.S., prohibits lewd or lascivious acts on a person under 16 years of age. The terms "lewd" and "lascivious" are synonymous and mean wicked, lustful or unchaste, licentious, or sensual intent on the person committing the act. <sup>10</sup> Current law prohibits a person from committing a lewd or lascivious battery, which is defined as engaging in sexual activity with a person 12 years of age or older but less than 16 years of age, or encouraging, forcing, or enticing any person less than 16 years of age to engage in sexual activity. <sup>12</sup> Additionally, intentionally touching in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forcing or enticing a person under 16 years of age to touch the perpetrator in such a manner, is lewd or lascivious molestation and is prohibited. <sup>13</sup> In all instances of the commission of a lewd or lascivious offense, the victim's consent cannot be used as a defense. <sup>14</sup> The law does not prohibit such conduct for people who are 16 or 17 years of age.

## III. Effect of Proposed Changes:

The bill expands the definition of crime for the purposes of providing assistance to a victim of a crime to include a violation of lewd or lascivious conduct, as described in s. 800.04, F.S.

<sup>&</sup>lt;sup>6</sup> Florida Office of the Attorney General, *Division of Victim Services*, available at <a href="http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument">http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument</a> (last visited March 7, 2019).

<sup>&</sup>lt;sup>7</sup> Section 960.28(2), F.S.

<sup>&</sup>lt;sup>8</sup> The DLA is tasked with administering the Crimes Compensation Trust Fund, which is created for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of the DLA and the payment of claims. Money recovered through restitution is one source of funding for the Crimes Compensation Trust Fund. Section 960.21, F.S. <sup>9</sup> Section 960.28(5), F.S.

<sup>&</sup>lt;sup>10</sup> HG.org Legal Resources, *Statutory Definition of Lewd or Lascivious Conduct and Potential Punishments in Florida*, available at <a href="https://www.hg.org/legal-articles/statutory-definition-of-lewd-or-lascivious-conduct-and-potential-punishments-in-florida-43848">https://www.hg.org/legal-articles/statutory-definition-of-lewd-or-lascivious-conduct-and-potential-punishments-in-florida-43848</a> (last visited March 7, 2019).

<sup>&</sup>quot;Sexual activity" means the oral, anal, or vagina penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. However, sexual activity does not include an act done for a bona fide medical purpose. Section 800.04(1)(a), F.S.

<sup>&</sup>lt;sup>12</sup> Section 800.04(4), F.S.

<sup>&</sup>lt;sup>13</sup> Section 800.04(5), F.S.

<sup>&</sup>lt;sup>14</sup> Section 800.04(2), F.S.

The bill further specifies that intentionally touching the breasts, genitals, genital area, or buttocks, or the clothing covering those areas, of a person 16 or 17 years of age in a lewd or lascivious manner, or forcing or enticing a person 16 or 17 years of age to touch the actor, when such act is without the person's consent and directly results in psychiatric or psychological injury, is considered a crime for the purposes of providing assistance to a victim of a crime.

The bill also increases the maximum payment from \$500 to \$1000 that can be made for a victim of sexual battery or a lewd or lascivious offense to obtain an initial forensic physical examination.

The bill is effective July 1, 2019.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact of the bill is indeterminate at this time. However, the bill increases the maximum payment that can be made for the purposes of a victim of a crime of sexual battery or a lewd or lascivious offense to obtain an initial forensic physical examination. In such an instance, the defendant or juvenile offender of the crime for which the victim is obtaining a physical examination must make restitution in the amount equal to the

payment made to cover the medical cost. As a result, such defendant or juvenile offender may be ordered by the court to pay more money in restitution.

### C. Government Sector Impact:

The fiscal impact of the bill is indeterminate at this time. However, the bill expands the definition of a crime to include lewd or lascivious offenses. With this, the DLA may incur costs associated with providing financial assistance to victims of such additional crimes.

The bill also increases the maximum payment that can be made for the purposes of a victim of a crime of sexual battery or a lewd or lascivious offense to obtain an initial forensic physical examination. In fiscal year 2017-18, the DLA approved 4,065 claims for sexual battery examinations. An increase in the amount of money that may be paid to a victim for such an examination may have a fiscal impact on the DLA by reducing the funds available in the Crimes Compensation Trust Fund, which is used to finance such medical costs, in those instances where a defendant or juvenile offender is ordered by the court to make restitution, but fails to do so.

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

The bill seeks to expand the definition of "crime" for the purposes of providing assistance to victims of enumerated crimes. Specifically, lines 35-41 of the bill describes conduct that is not currently a crime. Therefore, the bill establishes eligibility for assistance to victims of an act that cannot currently be prosecuted. Section 800.04, F.S., prohibits the commission of a lewd or lascivious offense against a person *less than 16 years of age*. A commission of the offense described in lines 35-41 of the bill is not a crime because a lewd or lascivious offense committed against a person *16 or 17 years of age* does not fall within the ambit of s. 800.04, F.S. Therefore, the DLA would be tasked with providing assistance to "victims" of a crime that does not currently exist.

### VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 960.03 and 960.28.

### IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

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<sup>&</sup>lt;sup>15</sup> Office of Attorney General Pam Bondi Department of Legal Affairs, *Division of Victim Services and Criminal Justice Programs*, pg. 13, (December 20, 2018), available at <a href="http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B7THCX/\$file/FINAL+ANNUAL+REPORT+2017-18+12-14-18.pdf">http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B7THCX/\$file/FINAL+ANNUAL+REPORT+2017-18+12-14-18.pdf</a> (last visited March 8, 2019).

| R   | Amend | ments.                                  |
|-----|-------|---|
| 1). |       | 111111111111111111111111111111111111111 |

None.

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

# LEGISLATIVE ACTION Senate House Comm: UNFAV 03/11/2019

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

### Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 800.04, Florida Statutes, is amended to read

800.04 Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.-

- (1) DEFINITIONS.—As used in this section:
- (a) "Sexual activity" means the oral, anal, or vaginal

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penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

- (b) "Consent" means intelligent, knowing, and voluntary consent, and does not include submission by coercion.
- (c) "Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.
- (d) "Victim" means a person upon whom an offense described in this section was committed or attempted or a person who has reported a violation of this section to a law enforcement officer.
- (2) PROHIBITED DEFENSES.—Except as provided in paragraph (5) (f), neither the victim's lack of chastity nor the victim's consent is a defense to the crimes proscribed by this section.
- (3) IGNORANCE OR BELIEF OF VICTIM'S AGE.—The perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense in a prosecution under this section.
  - (4) LEWD OR LASCIVIOUS BATTERY.-
  - (a) A person commits lewd or lascivious battery by:
- 1. Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or
- 2. Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

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- (b) Except as provided in paragraph (c), an offender who commits lewd or lascivious battery commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (c) A person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 if the person is an offender 18 years of age or older who commits lewd or lascivious battery and was previously convicted of a violation of:
- 1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under chapter 794 or a lewd act under this section or s. 847.0135(5);
  - 2. Section 787.01(3)(a)2. or 3.;
  - 3. Section 787.02(3)(a)2. or 3.;
  - 4. Chapter 794, excluding s. 794.011(10);
  - 5. Section 825.1025;
  - 6. Section 847.0135(5); or
    - 7. This section.
    - (5) LEWD OR LASCIVIOUS MOLESTATION. -
- (a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.
- (b) An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of

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age commits a life felony, punishable as provided in s. 775.082(3)(a)4.

- (c) 1. An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age; or
- 2. An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age

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

- (d) An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (e) A person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 if the person is 18 years of age or older and commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age and the person was previously convicted of a violation of:
- 1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed against the minor a sexual battery under chapter 794 or a lewd act under this section or s. 847.0135(5);
  - 2. Section 787.01(3)(a)2. or 3.;
  - 3. Section 787.02(3)(a)2. or 3.;



98 4. Chapter 794, excluding s. 794.011(10); 5. Section 825.1025; 99 100 6. Section 847.0135(5); or 7. This section. 101 102 (f) A person who intentionally touches in a lewd or 103 lascivious manner the breasts, genitals, genital area, or 104 buttocks, or the clothing covering them, of a person 16 or 17 105 years of age, without that person's consent, or forces or 106 entices a person 16 or 17 years of age to so touch the 107 perpetrator, commits lewd or lascivious molestation, a felony of 108 the third degree, punishable as provided in s. 775.082, s. 109 775.083, or s. 775.084. 110 (6) LEWD OR LASCIVIOUS CONDUCT.-111 (a) A person who: 112 1. Intentionally touches a person under 16 years of age in 113 a lewd or lascivious manner; or 2. Solicits a person under 16 years of age to commit a lewd 114 115 or lascivious act 116 117 commits lewd or lascivious conduct. 118 (b) An offender 18 years of age or older who commits lewd 119 or lascivious conduct commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. 120 121 (c) An offender less than 18 years of age who commits lewd 122 or lascivious conduct commits a felony of the third degree, 123 punishable as provided in s. 775.082, s. 775.083, or s. 775.084. 124 (7) LEWD OR LASCIVIOUS EXHIBITION. 125 (a) A person who: 126 1. Intentionally masturbates;



- 2. Intentionally exposes the genitals in a lewd or lascivious manner; or
  - 3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity

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- 135 in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition. 136
  - (b) An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
  - (c) An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
  - (8) EXCEPTION.—A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this section.
  - Section 2. Paragraph (g) is added to subsection (3) of section 960.03, Florida Statutes, to read:
  - 960.03 Definitions; ss. 960.01-960.28.—As used in ss. 960.01-960.28, unless the context otherwise requires, the term:
    - (3) "Crime" means:
- 152 (g) A violation of s. 800.04, related to lewd or lascivious 153 offenses.
- 154 Section 3. Subsection (2) of section 960.28, Florida 155 Statutes, is amended to read:



960.28 Payment for victims' initial forensic physical examinations.-

(2) The Crime Victims' Services Office of the department shall pay for medical expenses connected with an initial forensic physical examination of a victim of sexual battery as defined in chapter 794 or a lewd or lascivious offense as defined in chapter 800. Such payment shall be made regardless of whether the victim is covered by health or disability insurance and whether the victim participates in the criminal justice system or cooperates with law enforcement. The payment shall be made only out of moneys allocated to the Crime Victims' Services Office for the purposes of this section, and the payment may not exceed \$1000 \$500 with respect to any violation. The department shall develop and maintain separate protocols for the initial forensic physical examination of adults and children. Payment under this section is limited to medical expenses connected with the initial forensic physical examination, and payment may be made to a medical provider using an examiner qualified under part I of chapter 464, excluding s. 464.003(14); chapter 458; or chapter 459. Payment made to the medical provider by the department shall be considered by the provider as payment in full for the initial forensic physical examination associated with the collection of evidence. The victim may not be required to pay, directly or indirectly, the cost of an initial forensic physical examination performed in accordance with this section.

Section 4. This act shall take effect July 1, 2019.

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> ======= T I T L E A M E N D M E N T ===== And the title is amended as follows:

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|     | Delete  | everything | before | the | enacting | clause |
|-----|---------|------------|--------|-----|----------|--------|
| and | insert: |            |        |     |          |        |

A bill to be entitled An act relating to sex crimes; amending s. 800.04, F.S.; providing an exception for when consent can be used as a defense; prohibiting certain lewd or lascivious acts on specified persons; amending s. 960.03, F.S.; redefining the term "crime" to include the commission of lewd or lascivious offenses; amending s. 960.28, F.S.; increasing the maximum amount the Crime Victims' Services Office of the Department of Legal Affairs is required to pay for certain medical expenses of victims of specified crimes; providing an effective date.

Florida Senate - 2019 SB 1068

By Senator Bean

4-01278A-19 20191068\_ A bill to be entitled

An act relating to crime victim assistance; amending

include the commission of certain lewd or lascivious

maximum amount the Crime Victims' Services Office of

the Department of Legal Affairs is required to pay for

Section 1. Paragraph (a) of subsection (3) of section

960.03, Florida Statutes, is amended, and paragraph (g) is added

offenses; amending s. 960.28, F.S.; increasing the

certain medical expenses of victims of specified

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

crimes; providing an effective date.

s. 960.03, F.S.; redefining the term "crime" to

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to that subsection, to read:

960.03 Definitions; ss. 960.01-960.28.—As used in ss.

960.01-960.28, unless the context otherwise requires, the term:

(3) "Crime" means:

(a) A felony or misdemeanor offense committed by an adult or a juvenile which results in physical injury or death, a violation of s. 800.04 or a forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury, or a felony or misdemeanor offense of child abuse committed by an adult or a juvenile which results in a mental injury, as defined in s. 827.03, to a person younger than 18 years of age who was not physically injured by the criminal act. The mental injury to the minor must be verified by a psychologist licensed under chapter 490, by a physician licensed in this state under chapter 458 or chapter 459 who has

Page 1 of 3

CODING: Words  $\underline{\textbf{stricken}}$  are deletions; words  $\underline{\textbf{underlined}}$  are additions.

Florida Senate - 2019 SB 1068

4-01278A-19 20191068 completed an accredited residency in psychiatry, or by a 31 physician who has obtained certification as an expert witness 32 pursuant to s. 458.3175. The term also includes a criminal act that is committed within this state but that falls exclusively within federal jurisdiction. 35 (g) An act of intentionally touching in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering those areas, of a person 16 or 17 years of age or forcing or enticing a person 16 or 17 38 39 years of age to so touch the actor, when such act is without the person's consent and directly results in psychiatric or psychological injury. Section 2. Subsection (2) of section 960.28, Florida 42 Statutes, is amended to read: 960.28 Payment for victims' initial forensic physical examinations .-(2) The Crime Victims' Services Office of the department 46 shall pay for medical expenses connected with an initial forensic physical examination of a victim of sexual battery as 49 defined in chapter 794 or a lewd or lascivious offense as defined in chapter 800. Such payment shall be made regardless of whether the victim is covered by health or disability insurance and whether the victim participates in the criminal justice 53 system or cooperates with law enforcement. The payment shall be 54 made only out of moneys allocated to the Crime Victims' Services Office for the purposes of this section, and the payment may not 56 exceed \$1,000 \$500 with respect to any violation. The department

Page 2 of 3

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

shall develop and maintain separate protocols for the initial

forensic physical examination of adults and children. Payment

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Florida Senate - 2019 SB 1068

under this section is limited to medical expenses connected with the initial forensic physical examination, and payment may be made to a medical provider using an examiner qualified under

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part I of chapter 464, excluding s. 464.003(14); chapter 458; or

chapter 459. Payment made to the medical provider by the department shall be considered by the provider as payment in

full for the initial forensic physical examination associated with the collection of evidence. The victim may not be required

to pay, directly or indirectly, the cost of an initial forensic

physical examination performed in accordance with this section.

Section 3. This act shall take effect July 1, 2019.

Page 3 of 3

 ${\bf CODING:}$  Words  ${\bf stricken}$  are deletions; words  ${\bf \underline{underlined}}$  are additions.

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) Meetina Date Topic Amendment Barcode (if applicable) Address Zip Information Speaking: Against Waive Speaking: (The Chair will read this information into the record.) Appearing at request of Chair: Lobbyist registered with Legislature: 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.

S-001 (10/14/14)

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

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1068 3.11.19 Bill Number (if applicable) Meeting Date **Crime Victim Assistance** Amendment Barcode (if applicable) Name Barney Bishop III Job Title President & CEO Phone 850.510.9922 Address 2215 Thomaville Road Street Email barney@barneybishop.com 32308 FL Tallahassee City State Zip In Support Information Waive Speaking: Speaking: **Against** (The Chair will read this information into the record.) Florida Smart Justice Alliance Representing Lobbyist registered with Legislature: Appearing at request of Chair: 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)

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) March 11, 2019 1068 Bill Number (if applicable) Meeting Date Crime Victim Assistance Amendment Barcode (if applicable) Name Gary Hester Job Title Phone 850-219-3631 Address P.O. Box 14038 Street Email ghester@fpca.com Tallahassee FM 32317 Zip City State Waive Speaking: In Support Information Against Speaking: (The Chair will read this information into the record.) Representing Florida Police Chiefs Association Lobbyist registered with Legislature: Appearing at request of Chair: 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)

# APPEARANCE RECORD

| Meeting Date (Deliver BOTH copies of this form to the Senator | or Senate Professional Staff conducting the meeting)    1() 68   as called Bill Number (if applicable)                  |
|---|---|
| Topic   | Amendment Barcode (if applicable)   |
| Name Oanie Olsan  |   |
| Job Title   |   |
| Address 400 S - Monree  | Phone 850-245-0155  |
| Tallahs spec FL City State                                    | <u> </u>  |
| Speaking: For Against Information                             | Waive Speaking: In Support Against (The Chair will read this information into the record.)                              |
| Representing Attorney General                                 |   |
| Appearing at request of Chair: Yes No                         | Lobbyist registered with Legislature: Yes No  |
|   | e may not permit all persons wishing to speak to be heard at this rks so that as many persons as possible can be heard. |

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

S-(

S-001 (10/14/14)

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) Bill Number (if applicable) Amendment Barcode (if applicable) **Topic** Job Title Address Email State In Support Against Information Waive Speaking: Speaking: (The Chair will read this information into the record.) Representing Lobbyist registered with Legislature: Appearing at request of Chair: 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**

| То:                 | Senator Keith Perry, Chair<br>Committee on Criminal Justice                        |  |  |  |
|---------------------|--|--|--|--|
| Subject:            | Committee Agenda Request   |  |  |  |
| Date:               | March 4, 2019  |  |  |  |
| I respectfully the: | request that Senate Bill # 1068, relating to Crime Victim Assistance, be placed on |  |  |  |
|                     | committee agenda at your earliest possible convenience.                            |  |  |  |
| $\boxtimes$         | next committee agenda.   |  |  |  |
|                     |  |  |  |  |
|                     | aaron Bean   |  |  |  |

Senator Aaron Bean Florida Senate, District 4

# 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: T                              | he Professional Sta | aff of the Committee | e on Criminal J | ustice |  |
|-------------|---|---------------------|----------------------|-----------------|--------|--|
| BILL:       | CS/SB 1080                                  |                     |                      |                 |        |  |
| INTRODUCER: | Criminal Justice Committee and Senator Book |                     |                      |                 |        |  |
| SUBJECT:    | Hazing                                      |                     |                      |                 |        |  |
| DATE:       | March 11, 2019                              | REVISED:            |                      |                 |        |  |
| ANAL        | YST ST.                                     | AFF DIRECTOR        | REFERENCE            |                 | ACTION |  |
| . Cellon    | Jone  | es                  | CJ                   | Fav/CS          |        |  |
| ···         |   | _                   | ED                   |                 |        |  |
| 3.          |   | _                   | AP                   |                 |        |  |

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

COMMITTEE SUBSTITUTE - Substantial Changes

# I. Summary:

CS/SB 1080 amends the definition of hazing in s. 1006.63, F.S., to include the perpetuation or furtherance of a tradition or ritual of any organization operating under the sanction of a postsecondary institution.

Currently, s. 1006.63, F.S., protects persons who are members of or applicants to a student organization from hazing. The bill adds a person who is a former member of the organization as a person who is protected under s. 1006.63, F.S.

Persons who solicit others to commit the crime of hazing or who plan any act of hazing may be prosecuted as if they actively participated in the hazing event under the provisions in the bill.

If the hazing results in a permanent injury to the victim, the crime is a third degree felony.

Finally, the bill provides that a person who is the first to call 911 seeking medical attention for a hazing victim, and who otherwise cooperates with and assists first responders may not be prosecuted for the crime of hazing.

The bill is expected to have a positive insignificant prison bed impact, which means there may be an increase of 10 or fewer prison beds. See Section V. Fiscal Impact.

The bill is effective October 1, 2019.

#### II. Present Situation:

Hazing is defined in s. 1006.63(1), F.S., as any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a student for purposes including, but not limited to, initiation or admission into or affiliation with, any organization operating under the sanction of a postsecondary institution.

The act of hazing includes, but is not limited to:

- Pressuring or coercing the student into violating state or federal law;
- Any brutality of a physical nature, such as:
  - o Whipping,
  - o Beating,
  - o Branding,
  - o Exposure to the elements,
  - o Forced consumption of any food, liquor, drug, or other substance, or
  - Other forced physical activity that could adversely affect the physical health or safety of the student;
- Any activity that would subject the student to extreme mental stress, such as:
  - Sleep deprivation,
  - o Forced exclusion from social contact,
  - o Forced conduct that could result in extreme embarrassment, or
  - o Forced activity that could adversely affect the mental health or dignity of the student.<sup>1</sup>

The crime of hazing is currently either a third degree felony<sup>2</sup> or a first degree misdemeanor,<sup>3</sup> depending upon the degree of injury inflicted upon the victim. The third degree felony offense occurs when a person intentionally or recklessly commits any act of hazing upon another person who is a member of or an applicant to any type of student organization, and the hazing results in serious bodily injury or death of the victim.<sup>4</sup> Hazing is a first degree misdemeanor if the act, committed under the same circumstances as the felony, creates a substantial risk of physical injury or death of the victim rather than actually inflicting that injury or death.<sup>5</sup>

It is not a defense to the crime of hazing that:

- The consent of the victim had been obtained;
- The conduct or activity that resulted in the death or injury of a person was not part of an
  official organizational event or was not otherwise sanctioned or approved by the
  organization; or
- The conduct or activity that resulted in death or injury of the person was not done as a condition of membership to an organization.<sup>6</sup>

<sup>&</sup>lt;sup>1</sup> Section 1006.63(1), F.S. Note that hazing does not include customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective. Section 1006.63(1), F.S.

<sup>&</sup>lt;sup>2</sup> A third degree felony is punishable by up to 5 years in state prison and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>&</sup>lt;sup>3</sup> A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>&</sup>lt;sup>4</sup> Section 1006.63(2), F.S.

<sup>&</sup>lt;sup>5</sup> Section 1006.63(3), F.S.

<sup>&</sup>lt;sup>6</sup> Section 1006.63(5), F.S.

Public and nonpublic postsecondary educational institutions whose students receive state student financial assistance must adopt a written anti-hazing policy and under such policy must adopt rules prohibiting students or other persons associated with any student organization from engaging in hazing.<sup>7</sup>

### III. Effect of Proposed Changes:

The bill amends the definition of hazing in s. 1006.63, F.S., to include the perpetuation or furtherance of a tradition or ritual of any organization operating under the sanction of a postsecondary institution.

The bill creates a third degree felony hazing crime under circumstances where the victim sustains a permanent injury from the hazing.

Currently, s. 1006.63, F.S., protects persons who are members of or applicants to a student organization from hazing. The bill adds a person who is a former member of the organization as a person who is protected under s. 1006.63, F.S.

Additionally, the bill would allow the prosecution of a person for the crime of hazing if the person solicits others to commit hazing or is actively involved in the planning of any act of hazing.<sup>8</sup> Therefore, the bill would provide for prosecution of persons who were known to have planned the hazing or recruited others to participate in hazing but who could not otherwise be identified as having actively participated in the act of hazing itself.

Finally, the bill states that if a person establishes all of the following, he or she may not be prosecuted<sup>9</sup> for the crime of hazing under s. 1006.63, F.S.:

- The person was present at an event where, as a result of hazing as defined in s. 1006.63(1), F.S., another person appeared to be in need of immediate medical assistance;
- The person was the first to call 911 or campus security to report the need for immediate medical assistance;
- The person provided his or her name, the address where the medical assistance was needed, and a description of the medical issue to the 911 operator or campus security during the call;
- The person who called 911 or campus security remained at the scene with the other person in need of immediate medical assistance until a provider of medical assistance or law enforcement personnel arrived at the scene; and

<sup>&</sup>lt;sup>7</sup> Section 1006.63(7), F.S. For example, *see* Rule 6C6-3.018, F.A.C., Prohibition of Hazing -- Procedures and Penalties. *See also* Tallahassee Democrat, Byron Dobson, *Florida Board of Governors approve adding anti-hazing policy in its operating guidelines*, February 1, 2019, available at <a href="https://www.tallahassee.com/story/news/2019/02/01/florida-board-governors-approve-adding-anti-hazing-policy-its-operating-guidelines/2734129002/">https://www.tallahassee.com/story/news/2019/02/01/florida-board-governors-approve-adding-anti-hazing-policy-its-operating-guidelines/2734129002/</a> (last viewed March 6, 2019).

<sup>&</sup>lt;sup>8</sup> Presumably it would be an affirmative defense to the crime of soliciting an act of hazing that the defendant under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose, after soliciting another person to commit the offense, persuaded such other person not to do so or otherwise prevented commission of the offense. *See* s. 777.04(5), F.S., and Fl.Std.Crim.JuryInstr.5.2, Criminal Solicitation.

<sup>&</sup>lt;sup>9</sup> Although the bill provides that the person cannot be prosecuted, practically speaking, the case will have to be reviewed by the State Attorney's Office with jurisdiction over the offense for a determination that the statutory criteria establishing entitlement to immunity are met.

• The person cooperated with the provider of medical assistance and law enforcement personnel at the scene. 10

The bill is effective October 1, 2019.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) considered the potential prison bed impact that may result from the bill at its meeting on February 27, 2019. The bill is

<sup>&</sup>lt;sup>10</sup> The Florida Statutes provide for immunity from prosecution in another area of the law where swift action on the part of a potential suspect could save a life. Section 893.21(1), F.S., part of the "911 Good Samaritan Act" (Ch. 2012-36, L.O.F.), states: 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 if the evidence for possession of a controlled substance was obtained as a result of the person's seeking medical assistance. *See Pope v. State*, 246 So.3d 1282 (Fla. 1st DCA 2018).

expected to have a positive insignificant fiscal impact, which means there may be an increase of 10 or fewer prison beds. 11

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

None.

### VIII. Statutes Affected:

This bill substantially amends section 1006.63 of the Florida Statutes.

The bill reenacts section 1001.64 of the Florida Statutes.

### IX. Additional Information:

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

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

### CS by Criminal Justice on March 11, 2019:

The Committee Substitute amends the bill by:

- Including a *former member* of a student organization in those that are protected from hazing and eliminates any reference to a person who is *affiliated with* an organization.
- Eliminating any reference to *immunity from prosecution* in the bill to specify that a person *may not be prosecuted* for hazing if the person is the one who makes the first call to 911 for help and cooperates with first responders.
- Changing the effective date from July 1, 2019 to October 1, 2019.

### B. Amendments:

None.

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

<sup>&</sup>lt;sup>11</sup> The CJIC estimate is available at <a href="http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB727.pdf">http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB727.pdf</a> (last viewed March 7, 2019).

|            | LEGISLATIVE ACTION |       |
|------------|--------------------|-------|
| Senate     |                    | House |
| Comm: RCS  |                    |       |
| 03/11/2019 |                    |       |
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The Committee on Criminal Justice (Book) recommended the following:

### Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 1006.63, Florida Statutes, is amended to read:

1006.63 Hazing prohibited.-

(1) As used in this section, the term "hazing" means any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a student for

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purposes including, but not limited to, initiation or admission into or affiliation with, or the perpetuation or furtherance of a tradition or ritual of, any organization operating under the sanction of a postsecondary institution. The term "Hazing" includes, but is not limited to, pressuring or coercing the student into violating state or federal law; any brutality of a physical nature, such as whipping, beating, branding, exposure to the elements, forced consumption of any food, liquor, drug, or other substance, or other forced physical activity that could adversely affect the physical health or safety of the student; or, and also includes any activity that would subject the student to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct that could result in extreme embarrassment, or other forced activity that could adversely affect the mental health or dignity of the student. The term Hazing does not include customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective.

- (2) A person commits hazing, a third degree felony, punishable as provided in s. 775.082 or s. 775.083, when he or she intentionally or recklessly commits, solicits a person to commit, or is actively involved in the planning of any act of hazing as defined in subsection (1) upon another person who is a member or former member of or an applicant to any type of student organization and the hazing results in a permanent injury, serious bodily injury, or death of such other person.
- (3) A person commits hazing, a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, when he or she intentionally or recklessly commits, solicits a person to

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commit, or is actively involved in the planning of any act of hazing as defined in subsection (1) upon another person who is a member or former member of or an applicant to any type of student organization and the hazing creates a substantial risk of physical injury or death to such other person.

- (4) As a condition of any sentence imposed pursuant to subsection (2) or subsection (3), the court shall order the defendant to attend and complete a 4-hour hazing education course and may also impose a condition of drug or alcohol probation.
  - (5) It is not a defense to a charge of hazing that:
  - (a) The consent of the victim had been obtained;
- (b) The conduct or activity that resulted in the death or injury of a person was not part of an official organizational event or was not otherwise sanctioned or approved by the organization; or
- (c) The conduct or activity that resulted in death or injury of the person was not done as a condition of membership to an organization.
- (6) This section shall not be construed to preclude prosecution for a more general offense resulting from the same criminal transaction or episode.
- (7) Public and nonpublic postsecondary educational institutions whose students receive state student financial assistance must adopt a written antihazing policy and under such policy must adopt rules prohibiting students or other persons associated with any student organization from engaging in hazing.
  - (8) Public and nonpublic postsecondary educational

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institutions must provide a program for the enforcement of such rules and must adopt appropriate penalties for violations of such rules, to be administered by the person at the institution responsible for the sanctioning of such organizations.

- (a) Such penalties at Florida College System institutions and state universities may include the imposition of fines; the withholding of diplomas or transcripts pending compliance with the rules or pending payment of fines; and the imposition of probation, suspension, or dismissal.
- (b) In the case of an organization at a Florida College System institution or state university that authorizes hazing in blatant disregard of such rules, penalties may also include rescission of permission for that organization to operate on campus property or to otherwise operate under the sanction of the institution.
- (c) All penalties imposed under the authority of this subsection shall be in addition to any penalty imposed for violation of any of the criminal laws of this state or for violation of any other rule of the institution to which the violator may be subject.
- (9) Rules adopted pursuant hereto shall apply to acts conducted on or off campus whenever such acts are deemed to constitute hazing.
- (10) Upon approval of the antihazing policy of a Florida College System institution or state university and of the rules and penalties adopted pursuant thereto, the institution shall provide a copy of such policy, rules, and penalties to each student enrolled in that institution and shall require the inclusion of such policy, rules, and penalties in the bylaws of

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every organization operating under the sanction of the institution.

- (11) A person may not be prosecuted under this section if he or she establishes all of the following:
- (a) That he or she was present at an event where, as a result of hazing, a person appeared to be in need of immediate medical assistance.
- (b) That he or she was the first person to call 911 or campus security to report the need for immediate medical assistance.
- (c) That he or she provided his or her own name, the address where immediate medical assistance was needed, and a description of the medical issue to the 911 operator or campus security at the time of the call.
- (d) That he or she remained at the scene with the person in need of immediate medical assistance until such medical assistance, law enforcement, or campus security arrived and that he or she cooperated with such personnel on the scene.

Section 2. For the purpose of incorporating the amendment made by this act to section 1006.63, Florida Statutes, in a reference thereto, paragraph (e) of subsection (8) of section 1001.64, Florida Statutes, is reenacted to read:

- 1001.64 Florida College System institution boards of trustees; powers and duties.-
- (8) Each board of trustees has authority for policies related to students, enrollment of students, student records, student activities, financial assistance, and other student services.
  - (e) Each board of trustees must adopt a written antihazing



policy, provide a program for the enforcement of such rules, and adopt appropriate penalties for violations of such rules pursuant to the provisions of s. 1006.63.

Section 3. This act shall take effect July 1, 2019.

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

133 And the title is amended as follows:

> Delete everything before the enacting clause and insert:

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A bill to be entitled

An act relating to hazing; amending s. 1006.63, F.S.; redefining the term "hazing"; expanding the crime of hazing, a third degree felony, to include when a person solicits others to commit or is actively involved in the planning of hazing; expanding the crime of hazing, a first degree misdemeanor, to include when a person solicits others to commit or is actively involved in the planning of hazing; providing that a person may not be prosecuted if certain conditions are met; reenacting s. 1001.64(8)(e), F.S., relating to Florida College System institution boards of trustees and related powers and duties, to incorporate the amendment made to s. 1006.63, F.S., in a reference thereto; providing an effective date.

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|            | LEGISLATIVE ACTION |       |
|------------|--------------------|-------|
| Senate     | •                  | House |
| Comm: RCS  | •                  |       |
| 03/11/2019 | •                  |       |
|            | •                  |       |
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The Committee on Criminal Justice (Book) recommended the following:

#### Senate Amendment to Amendment (361142)

Delete line 130

and insert:

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Section 3. This act shall take effect October 1, 2019.

By Senator Book

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A bill to be entitled

An act relating to hazing; amending s. 1006.63, F.S.; redefining the term "hazing"; expanding the crime of hazing, a third degree felony, to include when a person solicits others to commit or is actively involved in the planning of hazing; expanding the crime of hazing, a first degree misdemeanor, to include when a person solicits others to commit or is actively involved in the planning of hazing; providing for a person's immunity from prosecution if certain conditions are met; reenacting s. 1001.64(8)(e), F.S., relating to Florida College System institution boards of trustees and related powers and duties, to incorporate the amendment made to s. 1006.63, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 1006.63, Florida Statutes, is amended to read:

1006.63 Hazing prohibited.-

(1) As used in this section, "hazing" means any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a student for purposes including, but not limited to, initiation or admission into or affiliation with any organization operating under the sanction of a postsecondary institution, or to perpetuate or further a tradition or ritual of any organization operating under the sanction of a postsecondary institution. "Hazing" includes, but

Page 1 of 6

 ${\tt CODING:}$  Words  ${\tt stricken}$  are deletions; words  ${\tt \underline{underlined}}$  are additions.

Florida Senate - 2019 SB 1080

20191080

is not limited to, pressuring or coercing the student into violating state or federal law, any brutality of a physical 32 nature, such as whipping, beating, branding, exposure to the elements, forced consumption of any food, liquor, drug, or other substance, or other forced physical activity that could 35 adversely affect the physical health or safety of the student, and also includes any activity that would subject the student to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct that could result 38 39 in extreme embarrassment, or other forced activity that could 40 adversely affect the mental health or dignity of the student. Hazing does not include customary athletic events or other similar contests or competitions or any activity or conduct that 42 4.3 furthers a legal and legitimate objective.

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- (2) A person commits hazing, a third degree felony, punishable as provided in s. 775.082 or s. 775.083, when he or she intentionally or recklessly commits, solicits others to commit, or is actively involved in the planning of any act of hazing as defined in subsection (1) upon another person who is a member of, affiliated with, or an applicant to any type of student organization and the hazing results in a permanent injury, serious bodily injury, or death of such other person.
- (3) A person commits hazing, a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, when he or she intentionally or recklessly commits, solicits others to commit, or is actively involved in the planning of any act of hazing as defined in subsection (1) upon another person who is a member of, affiliated with, or an applicant to any type of student organization and the hazing creates a substantial risk

Page 2 of 6

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of physical injury or death to such other person.

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- (4) As a condition of any sentence imposed pursuant to subsection (2) or subsection (3), the court shall order the defendant to attend and complete a 4-hour hazing education course and may also impose a condition of drug or alcohol probation.
  - (5) It is not a defense to a charge of hazing that:
  - (a) The consent of the victim had been obtained;
- (b) The conduct or activity that resulted in the death or injury of a person was not part of an official organizational event or was not otherwise sanctioned or approved by the organization; or
- (c) The conduct or activity that resulted in death or injury of the person was not done as a condition of membership to an organization.
- (6) This section shall not be construed to preclude prosecution for a more general offense resulting from the same criminal transaction or episode.
- (7) Public and nonpublic postsecondary educational institutions whose students receive state student financial assistance must adopt a written antihazing policy and under such policy must adopt rules prohibiting students or other persons associated with any student organization from engaging in hazing.
- (8) Public and nonpublic postsecondary educational institutions must provide a program for the enforcement of such rules and must adopt appropriate penalties for violations of such rules, to be administered by the person at the institution responsible for the sanctioning of such organizations.

Page 3 of 6

 ${\tt CODING:}$  Words  ${\tt stricken}$  are deletions; words  ${\tt \underline{underlined}}$  are additions.

Florida Senate - 2019 SB 1080

32-01496-19 20191080

(a) Such penalties at Florida College System institutions and state universities may include the imposition of fines; the withholding of diplomas or transcripts pending compliance with the rules or pending payment of fines; and the imposition of probation, suspension, or dismissal.

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- (b) In the case of an organization at a Florida College System institution or state university that authorizes hazing in blatant disregard of such rules, penalties may also include rescission of permission for that organization to operate on campus property or to otherwise operate under the sanction of the institution.
- (c) All penalties imposed under the authority of this subsection shall be in addition to any penalty imposed for violation of any of the criminal laws of this state or for violation of any other rule of the institution to which the violator may be subject.
- (9) Rules adopted pursuant hereto shall apply to acts conducted on or off campus whenever such acts are deemed to constitute hazing.
- (10) Upon approval of the antihazing policy of a Florida College System institution or state university and of the rules and penalties adopted pursuant thereto, the institution shall provide a copy of such policy, rules, and penalties to each student enrolled in that institution and shall require the inclusion of such policy, rules, and penalties in the bylaws of every organization operating under the sanction of the institution.
- (11) A person shall be immune from prosecution under this section if the person establishes all of the following:

Page 4 of 6

32-01496-19 20191080

(a) The person was present at an event where, as a result of hazing as defined in subsection (1), another person appeared to be in need of immediate medical assistance.

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- (b) The person was the first to call 911 or campus security to report the need for immediate medical assistance.
- (c) The person provided his or her name, the address where the medical assistance was needed, and a description of the medical issue to the 911 operator or campus security during the call.
- (d) The person who called 911 or campus security remained at the scene with the other person in need of immediate medical assistance until a provider of medical assistance or law enforcement personnel arrived at the scene.
- (e) The person cooperated with the provider of medical assistance and law enforcement personnel at the scene.

Section 2. For the purpose of incorporating the amendment made by this act to section 1006.63, Florida Statutes, in a reference thereto, paragraph (e) of subsection (8) of section 1001.64, Florida Statutes, is reenacted to read:

1001.64 Florida College System institution boards of trustees; powers and duties.—

- (8) Each board of trustees has authority for policies related to students, enrollment of students, student records, student activities, financial assistance, and other student services.
- (e) Each board of trustees must adopt a written antihazing policy, provide a program for the enforcement of such rules, and adopt appropriate penalties for violations of such rules pursuant to the provisions of s. 1006.63.

Page 5 of 6

 ${f CODING: Words \ \underline{stricken} \ are \ deletions; \ words \ \underline{underlined} \ are \ additions.}$ 

Florida Senate - 2019 SB 1080

32-01496-19 20191080\_ 146 Section 3. This act shall take effect July 1, 2019.

Page 6 of 6

## APPEARANCE RECORD

| (Deliver BOTH copies of this form to the Senator or Se   | nate Professional Staff conducting the meeting)  |
|--|--|
| Meetling Date  | Bill Number (if applicable)  |
| Topic HAZING Bill  | Amendment Barcode (if applicable)  |
| Name DAVID W BIANCHO   |  |
| Job Title Attarney   |  |
| Address 5275 OAK LANG  | Phone 305358 6644  |
| CORAL GABLES FL City State   | Email abranchiest Blan.  |
| Speaking: For Against Information  | Waive Speaking: In Support Against (The Chair will read this information into the record.)                     |
| Representing Coffey Family   |  |
| Appearing at request of Chair: Yes No Lo   | bbyist registered with Legislature: Yes No   |
| While it is a Senate tradition to encourage public testimony, time ma<br>meeting. Those who do speak may be asked to limit their remarks s | y not permit all persons wishing to speak to be heard at this o 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)   |

## APPEARANCE RECORD

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

4000

| 3.11.19   |                   |                | 1080   |
|---|-------------------|----------------|--|
| Meeting Date  |                   |                | Bill Number (if applicable)  |
| Topic Hazing  |                   |                | Amendment Barcode (if applicable)  |
| Name Barney Bishop III  |                   |                |  |
| Job Title President & CEO   |                   |                | •  |
| Address 2215 Thomaville Road  |                   |                | Phone 850.510.9922   |
| Street<br>Tallahassee   | FL                | 32308          | Email barney@barneybishop.com  |
| City  | State             | Zip            |  |
| Speaking: For Against   | Information       |                | peaking: In Support Against hir will read this information into the record.)     |
| Representing Florida Smart J  | ustice Alliance   |                |  |
| Appearing at request of Chair:  | Yes No            | Lobbyist regis | tered with Legislature: Yes No   |
| While it is a Senate tradition to encourage meeting. Those who do speak may be as | •                 |                | I persons wishing to speak to be heard at this persons as possible can be heard. |
| This form is part of the public record  | for this meeting. |                | S-001 (10/14/14)   |

### APPEARANCE RECORD

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

| (Deliver BOTH copies of this form to the Senator of Senate Professional St  | an conducting the meeting)  |
|---|---|
| Meeting Date  | Bill Number (if applicable)   |
| Topic HAZING  Name Tou Coffee   | Amendment Barcode (if applicable)   |
| Job Title   |   |
| Address 4001 NE 03 ANE LIGHTHOUSE A   | Phone <u>454</u> 849 7456   |
| Street  ANTHOUSE PF F1 35044  City State Zip  | Email_SCHAT @ BENERRY NES   |
| Speaking: For Against Information Waive Speaking: (The Chair  | peaking: In Support Against ir will read this information into the record.) |
| Representing SEA  |   |
| Appearing at request of Chair: Yes No Lobbyist register   | ered with Legislature: Yes No   |
| While it is a Senate tradition to encourage public testimony, time may not permit all meeting. Those who do speak may be asked to limit their remarks so that as many | • •   |
| This form is part of the public record for this meeting.  | S-001 (10/14/14)  |



Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, Chair
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human
Services
Health Policy

JOINT COMMITTEE:
Joint Legislative Budget Commission

Rules

#### SENATOR LAUREN BOOK

32nd District

March 5, 2019

Chair Keith Perry Committee on Criminal Justice 510 Knott Building 404 S. Monroe Street Tallahassee, FL 32399-1100

#### Chair Perry:

I respectfully request that **SB 1080—Hazing** be placed on the agenda for the next Committee on Criminal Justice meeting.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

Senator Lauren Book Senate District 32

Cc: Lauren Jones, Staff Director

Sue Arnold, Administrative Assistant

# 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: T     | he Professional Sta | aff of the Committee | on Criminal | Justice |  |
|-------------|--------------------|---------------------|----------------------|-------------|---------|--|
| BILL:       | CS/SB 1134         |                     |                      |             |         |  |
| INTRODUCER: | Criminal Justice C | Committee and So    | enator Simmons       |             |         |  |
| SUBJECT:    | Electronic Monito  | oring Devices       |                      |             |         |  |
| DATE:       | March 11, 2019     | REVISED:            |                      |             |         |  |
| ANAL        | YST ST             | AFF DIRECTOR        | REFERENCE            |             | ACTION  |  |
| l. Cox      | Jone               | es                  | CJ                   | Fav/CS      |         |  |
| 2.          |                    |                     | JU                   |             |         |  |
| 3.          |                    | _                   | RC                   |             |         |  |

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

**COMMITTEE SUBSTITUTE - Technical Changes** 

#### I. Summary:

CS/SB 1134 amends s. 843.23, F.S., authorizing a violation of tampering with an electronic monitoring device, which is a third degree felony, to be prosecuted in the jurisdiction:

- Of the court or authority that entered the order for electronic monitoring, regardless of where the device is located as a result of any removal, destruction, tampering, or damage;
- Where the electronic monitoring device was located upon the discovery of its removal, destruction, tampering, or damage; or
- Where the actual removal or destruction of, tampering with, or damage to, the electronic monitoring device occurred.

Tampering with an electronic monitoring device includes a range of actions that result in a person intentionally and without authorization removing or damaging an electronic monitoring device worn by himself, herself, or another person.

To the extent the bill allows prosecutions of this offense that would otherwise be barred, the bill will likely result in an indeterminate positive bed impact (i.e. an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

#### II. Present Situation:

#### Use of Electronic Monitoring in Florida's Criminal Justice System

There are several stages of the criminal justice system in which a court or another authorized entity may order a person to wear an electronic monitoring device. An electronic monitoring device (EM) is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed. Electronic monitoring systems can be either "passive" or "active" and are typically operated through ratio frequency or global positioning system (GPS) monitoring. Some of the instances where a person may be placed on an EM include:

- A court order allowing the release from custody to a pretrial release program while the defendant awaits trialing trial.<sup>2</sup>
- A judge placing an offender on probation<sup>3</sup> or community control<sup>4</sup> in lieu of or in addition to incarceration.<sup>5</sup>
- Supervision by the Florida Commission on Offender Review.<sup>6</sup>

Section 843.23, F.S., makes it a third degree felony<sup>7</sup> to tamper with an EM, which includes any device that is used to track the location of a person. Tampering in violation of this section includes when a person intentionally and without authority:

- Removes, destroys, alters, tampers with, damages, or circumvents the operation of an
  electronic monitoring device that must be worn or used by that person or another person
  pursuant to a specified order; or
- Requests, authorizes, or solicits a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device.

<sup>&</sup>lt;sup>1</sup> Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October, 2014, available at <a href="https://www.ojjdp.gov/mpg/litreviews/Home\_Confinement\_EM.pdf">https://www.ojjdp.gov/mpg/litreviews/Home\_Confinement\_EM.pdf</a> (last visited March 7, 2019).

<sup>&</sup>lt;sup>2</sup> Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2017*, Report No. 18-06, at 1, 2, and 8-9, November 2018, available at

http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1806rpt.pdf (last visited March 7, 2019); See also s. 907.041, F.S., which provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with an enumerated dangerous crime.

<sup>&</sup>lt;sup>3</sup> Section 948.001(8), F.S. Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose. Standard conditions of probation are enumerated in s. 948.03, F.S., and are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

<sup>&</sup>lt;sup>4</sup> Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

Sections 948.01 and 948.11, F.S. The Department of Corrections (DOC) supervises more than 166,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control. DOC, *Introduction to Community Corrections*, available at <a href="http://www.dc.state.fl.us/cc/index.html">http://www.dc.state.fl.us/cc/index.html</a> (last visited March 7, 2019).

<sup>&</sup>lt;sup>6</sup> Section 947.1405(7), (8), and (10), F.S.

<sup>&</sup>lt;sup>7</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.

To be in violation of this section, the electronic monitoring must be ordered by a court or pursuant to an order by the Florida Commission on Offender Review.<sup>8</sup>

#### Venue

Criminal prosecutions must be tried in the county where the offense was committed. If the county is not known, the indictment or information may charge venue in two or more counties and proof that the crime was committed in that area is sufficient. If a defendant is charged in more than one county, he or she must elect the county in which he or she will be tried. Additionally, the State is required by rule to allege the venue of the crime charged. 10

Chapter 910, F.S., provides various laws related to the prosecution of criminal offenses in Florida. In part, a person may be prosecuted for a violation of law for an offense that she or he commits, 11 while either within or outside the state, if the:

- Offense is committed wholly or partly within the state;
- Conduct outside the state constitutes an attempt to commit an offense within the state;
- Conduct outside the state constitutes a conspiracy to commit an offense within the state, and an act in furtherance of the conspiracy occurs in the state; or
- Conduct within the state constitutes an attempt or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction.<sup>12</sup>

An offense is considered to occur within the state for purposes of venue when:

- Either the conduct that is an element of the offense or the result that is an element occurs within the state.
- The conduct of the defendant is based on an omission to perform a duty imposed by the laws of Florida, regardless of the location of the offender at the time of the omission. <sup>13</sup>

A number of specified circumstances are addressed to clarify the county or counties with which a person may be prosecuted for a crime, including that a person who:

- Aids, abets, or procures the commission of an offense in another county may be tried in
  either the county where the aiding, etc., occurred or the county where the crime occurred.<sup>14</sup>
- Counsels, hires, or procures a felony to be committed may be tried in the same county in which the principal felon might be tried, regardless of whether the person is within or outside Florida.<sup>15</sup>

<sup>&</sup>lt;sup>8</sup> Section 843.23(2), F.S.

<sup>&</sup>lt;sup>9</sup> FLA. CONST. art. 1, s. 16(a) and s. 910.03, F.S. One exception to this is found in s. 910.035, F.S., which allows a defendant to consent to the disposition of a case, by plea, sentence, or participation in a problem-solving court, in the county where he or she is held, rather than charged. Another exception is when a court orders a change of venue to protect the defendant's due process rights pursuant to s. 910.03(2), F.S.

<sup>&</sup>lt;sup>10</sup> Fla. R. Crim. Pro. 3.140(d)(3), provides, in part, that each count of an indictment must contain allegations stating as definitely as possible the time and place of the commission of the offense.

<sup>&</sup>lt;sup>11</sup> Section 910.005, F.S., provides that this conduct may also include actions done by another person for which the defendant is legally accountable.

<sup>&</sup>lt;sup>12</sup> Section 910.005, F.S.

<sup>&</sup>lt;sup>13</sup> Section 910.005(3), F.S.

<sup>&</sup>lt;sup>14</sup> Section 910.04, F.S.

<sup>&</sup>lt;sup>15</sup> Section 910.12, F.S.

• Becomes an accessory after the fact<sup>16</sup> to a felony may be tried in the county in which he or she became an accessory or in any county in which the principal in the first-degree<sup>17</sup> might be tried.<sup>18</sup>

- Commits any acts constituting one offense in two or more counties may be tried in any county in which any of the acts occurred. 19
- Is in one county and commits an offense in another county may be tried in either county.<sup>20</sup>
- Commits a homicide may be tried in the county in which:
  - o The physical contact that causes death occurs;
  - The death itself occurs.<sup>21</sup>

#### III. Effect of Proposed Changes:

The bill amends s. 843.23, F.S., allowing an offense of tampering with an EM to be prosecuted in the jurisdiction:

- Of the court or authority that entered the order for electronic monitoring, regardless of where the device is located as a result of any removal, destruction, tampering, or damage;
- Where the EM was located upon the discovery of its removal, destruction, tampering, or damage; or
- Where the actual removal or destruction of, tampering with, or damage to, the EM occurred.

The bill is effective October 1, 2019.

#### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

<sup>&</sup>lt;sup>16</sup> Section 777.03, F.S., provides that an "accessory after the fact" means any person not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, who maintains or assists the principal or an accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a specified crime. Provisions of the section address specific degrees or types of offenses.

<sup>&</sup>lt;sup>17</sup> Section 777.011, F.S., provides that "principal in the first degree" means a person who commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed, and such offense is committed or is attempted to be committed. A principal in the first degree may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense.

<sup>&</sup>lt;sup>18</sup> Section 910.13, F.S.

<sup>&</sup>lt;sup>19</sup> Section 910.05, F.S.

<sup>&</sup>lt;sup>20</sup> Section 910.06, F.S.

<sup>&</sup>lt;sup>21</sup> Section 910.005(2), F.S. It is specifically provided that in homicide, the "result" is either the physical contact that causes death, or the death itself. Additionally, if the body of a homicide victim is found within the state then the death is presumed to have occurred within the state.

| C. | Truct | Funde  | Restrictions |  |
|----|-------|--------|--------------|--|
| U. | 11051 | Tunus. | RESILICIONS  |  |

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill permits the offense of tampering with an EM to be prosecuted in specified locations. To the extent this provision allows prosecutions of this offense that would otherwise be barred due to lack of jurisdiction, there could be additional persons convicted and sentenced to prison under the bill. However, the bill will likely result in an insignificant positive bed impact (i.e. an increase of 10 or fewer prison beds).<sup>22</sup>

#### VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

#### VIII. Statutes Affected:

This bill substantially amends section 843.23 of the Florida Statutes.

<sup>&</sup>lt;sup>22</sup> The Office of Economic and Demographic Research (EDR) reports that there were 34 offenders sentenced in FY 2017-18 for tampering with an electronic monitoring device, four of which were sentenced to prison. Further, EDR provides that the mean sentence length of such offenders is equal to 33.8 months. Email from EDR Staff, Re: SB 1134, March 7, 2019 (on file with the Senate Criminal Justice Committee).

#### IX. Additional Information:

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

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

#### CS by Criminal Justice on March 11, 2019:

The Committee Substitute changes the effective date to October 1, 2019, and makes technical changes to ensure the language is:

- Consistent throughout with the term "electronic monitoring device."
- Clear related to the instances of when the offense of tampering with an electronic monitoring device may be prosecuted.

#### B. Amendments:

None.

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



|            | LEGISLATIVE ACTION |       |
|------------|--------------------|-------|
| Senate     |                    | House |
| Comm: RCS  |                    |       |
| 03/11/2019 | •                  |       |
|            | •                  |       |
|            | •                  |       |
|            | •                  |       |
|            |                    |       |

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

#### Senate Amendment

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9 10 Delete lines 33 - 41

and insert: 4

> (b) The jurisdiction where the electronic monitoring device was located upon the discovery of its removal, destruction, tampering, or damage; or

(c) The jurisdiction where the actual removal or destruction of, tampering with, or damage to, the electronic monitoring device occurred.

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(4) A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect October 1, 2019.

By Senator Simmons

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9-01162-19 20191134

A bill to be entitled

An act relating to electronic monitoring devices;

amending s. 843.23, F.S.; specifying the jurisdictions

under which certain prohibited acts relating to

electronic monitoring devices may be prosecuted;

providing an effective date.

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

Section 1. Section 843.23, Florida Statutes, is amended to read:

843.23 Tampering with an electronic monitoring device.-

- (1) As used in this section, the term "electronic monitoring device" includes any device that is used to track the location of a person.
- (2) It is unlawful for a person to intentionally and without authority:
- (a) Remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or pursuant to an order by the Florida Commission on Offender Review; or
- (b) Request, authorize, or solicit a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device required to be worn or used pursuant to a court order or pursuant to an order by the Florida Commission on Offender Review.
  - (3) A violation of this section may be prosecuted in:
    (a) The jurisdiction of the court or authority that entered

Page 1 of 2

CODING: Words  $\underline{\textbf{stricken}}$  are deletions; words  $\underline{\textbf{underlined}}$  are additions.

Florida Senate - 2019 SB 1134

|    | 9-01162-19 20191134  |
|----|--|
| 30 | the order for electronic monitoring, regardless of where the     |
| 31 | device is located as a result of any removal, destruction,       |
| 32 | tampering, or damage;  |
| 33 | (b) The jurisdiction where the electronic device was             |
| 34 | located after or upon the discovery of its removal, destruction, |
| 35 | tampering, or damage; or   |
| 36 | (c) The jurisdiction where the actual removal, destruction,      |
| 37 | tampering, or damage of the electronic device took place.        |
| 38 | (4) $(3)$ A person who violates this section commits a felony    |
| 39 | of the third degree, punishable as provided in s. 775.082, s.    |
| 40 | 775.083, or s. 775.084.  |
| 41 | Section 2. This act shall take effect July 1, 2019.              |
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Page 2 of 2

#### Cox, Ryan

From:

Hasbrouck, Matthew

Sent:

Thursday, March 7, 2019 11:55 AM

To:

Cox, Ryan Baker, Amy

Cc: Subject:

RE: SB 1134

Per DOC, in FY 17-18, 34 (adj.) offenders were sentenced for tampering with an electronic monitoring device, with 4 (adj.) sentenced to prison (mean sentence length=33.8 m, incarceration rate: 11.8% adj.-12.5% unadj.).

From: Cox, Ryan < Cox.Ryan@flsenate.gov> Sent: Thursday, March 7, 2019 11:53 AM

To: Hasbrouck, Matthew < HASBROUCK.MATTHEW@leg.state.fl.us>

Subject: SB 1134

Good morning, Matt:

Can you please provide me with data on the number of people sentenced pursuant to s. 943.23, F.S., during last fiscal year, as well as the types of sentences received? Thank you and have a wonderful day.

Sincerely,

Ryan C. Cox

Senior Attorney Senate Committee on Criminal Justice (850) 487-5192

### APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 3.11.19 1134 Meeting Date Bill Number (if applicable) **Electronic Monitoring Devices** Amendment Barcode (if applicable) Name Barney Bishop III Job Title President & CEO Phone 850.510.9922 2215 Thomaville Road Address Street **Tallahassee** FL Email barney@barneybishop.com 32308 City State Zip Speaking: For Information **Against** Waive Speaking: In Support Against (The Chair will read this information into the record.) Florida Smart Justice Alliance Representing Appearing at request of Chair: Lobbyist registered with Legislature: 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.

S-001 (10/14/14)

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

### APPEARANCE RECORD

| 2619 (Deliver BOTH copies of this form to the Senator of Senate Professional S  | stall conducting the meeting)   |
|---|---|
| Meeting Date  | Bill Number (if applicable)   |
| Topic Tampering with an Electronic Monitoring   | Amendment Barcode (if applicable)   |
| Job Title Lobbyist  | -<br>-  |
| Address 205 S. Adams St.  | Phone 931-265-8999  |
| Street  Tallahassee FL 32301  City State Zip  | Email lauren@ericles consultants Con  |
| Speaking: For Against Information Waive S   | speaking: In Support Against hir will read this information into the record.)                                   |
| Representing <u>Seminole</u> County Shevits Office  |   |
|   | tered with Legislature: Yes No  |
| While it is a Senate tradition to encourage public testimony, time may not permit all<br>meeting. Those who do speak may be asked to limit their remarks so that as many  | l persons wishing to speak to be heard at this persons as possible can be heard.                                |
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# The Florida Senate BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

|             | Prepare     | ed By: The | Professional Sta | aff of the Committee | on Criminal Just | tice   |
|-------------|-------------|------------|------------------|----------------------|------------------|--------|
| BILL:       | SB 1136     |            |                  |                      |                  |        |
| INTRODUCER: | Senators Ha | arrell and | Perry            |                      |                  |        |
| SUBJECT:    | Cyberharas  | sment      |                  |                      |                  |        |
| DATE:       | March 8, 20 | 019        | REVISED:         |                      |                  |        |
| ANAL        | YST         | STAF       | DIRECTOR         | REFERENCE            |                  | ACTION |
| 1. Erickson |             | Jones      |                  | CJ                   | <b>Favorable</b> |        |
| 2           |             |            |                  | JU                   |                  |        |
| 3.          |             |            |                  | RC                   |                  |        |

#### I. Summary:

SB 1136 amends s. 784.049, F.S., which prohibits and punishes sexual cyberharassment. Currently, this section prohibits willfully and maliciously publishing a sexually explicit image of another person that contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. The bill provides that sexual cyberharassment also includes the willful and malicious dissemination of such images via electronic means in the manner described.

The bill also amends current legislative findings in s. 784.049, F.S., to indicate that sexual cyberharassment includes dissemination of such sexually explicit images of another person via electronic means in the manner described, makes conforming changes to the definition of the term "sexually cyberharass," and defines "personal identification information."

The Legislature's Office of Economic and Demographic Research preliminarily estimates that HB 1043 (2019), which is similar to SB 1136, will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

#### II. Present Situation:

Section 784.049, F.S., prohibits and punishes sexual cyberharassment. The term "sexually cyberharass" means to publish a sexually explicit image<sup>1</sup> of a person that contains or conveys the

<sup>&</sup>lt;sup>1</sup> "Sexually explicit image" means any image depicting nudity or depicting any person engaging in sexual conduct. Section 784.049(2)(d), F.S.

BILL: SB 1136 Page 2

personal identification information<sup>2</sup> of the depicted person to an Internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.<sup>3</sup>

A person who willfully and maliciously sexually cyberharasses another person generally commits a first degree misdemeanor. However, a person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a third degree felony. 5

Further, an aggrieved person may initiate a civil action against a person who violates s. 784.049, F.S., to obtain all appropriate relief in order to prevent or remedy a violation of this section, including:

- Injunctive relief;
- Monetary damages to include \$5,000 or actual damages incurred as a result of a violation of this section, whichever is greater; and
- Reasonable attorney fees and costs.<sup>6</sup>

The criminal and civil penalties of this section do not apply to:

- A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), information service as defined in 47 U.S.C. s. 153, or communications service as defined in s. 202.11, F.S., that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person; or
- A law enforcement officer, as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that publishes a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer, or law enforcement agency.<sup>7</sup>

#### III. Effect of Proposed Changes:

The bill amends s. 784.049, F.S., which prohibits and punishes sexual cyberharassment. Currently, this section prohibits willfully and maliciously publishing a sexually explicit image of another person that contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. The bill provides that sexual cyberharassment also includes the willful and malicious dissemination of such images via electronic means in the manner described.

<sup>&</sup>lt;sup>2</sup> Section 784.049(2)(b), F.S., defines "personal identification information" by reference to the definition of that term in s. 817.568, F.S. Section 817.568(1)(f), F.S., defines "personal identification information" as any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, and includes an extensive list of specific information such as name, postal or electronic mail address, telephone number, social security number, date of birth, driver license or identification number, bank account number, and credit or debit card number.

<sup>&</sup>lt;sup>3</sup> Section 784.049(2)(c), F.S.

<sup>&</sup>lt;sup>4</sup> Section 784.049(3)(a), F.S.

<sup>&</sup>lt;sup>5</sup> Section 784.049(3)(b), F.S.

<sup>&</sup>lt;sup>6</sup> Section 784.049(5), F.S.

<sup>&</sup>lt;sup>7</sup> Section 784.049(6), F.S.

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A sexual cyberharassment violation is generally a first degree misdemeanor.<sup>8</sup> However, a person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a third degree felony.<sup>9</sup>

An aggrieved person may initiate a civil action against a person who violates s. 784.049, F.S., to obtain all appropriate relief.<sup>10</sup>

The bill amends current legislative findings in s. 784.049, F.S., to indicate that sexual cyberharassment includes dissemination of sexual such images of another person via electronic means in the manner described.

The bill amends the definition of "sexually cyberharass." As amended, "sexually cyberharass" means to publish on an Internet website or to disseminate via electronic means to another person a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.

Currently, "personal identification information" is defined by reference to a definition of that term in s. 817.568, F.S. The bill defines "personal identification information" as any information that identifies an individual, including, but not limited to, a name, a postal or an e-mail address, a telephone number, a social security number, a date of birth, or any unique physical representation.

The bill is effective July 1, 2019.

#### IV. Constitutional Issues:

| A. | Municipality/County | Mandates | Restrictions: |
|----|---------------------|----------|---------------|
|----|---------------------|----------|---------------|

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

<sup>&</sup>lt;sup>8</sup> A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>&</sup>lt;sup>9</sup> A third degree felony is punishable by up to five years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>&</sup>lt;sup>10</sup> See "Present Situation" section of this analysis for a detailed description of some of the available relief.

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|----|----------|---------------|--------------|
| _  | ()thor   | ( `AMAtitutia | anal laguage |
| E. | Omer     | CONSILIUIC    | nal Issues:  |

None identified.

#### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that HB 1043 (2019), which is similar to SB 1136, will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).<sup>11</sup>

#### VI. Technical Deficiencies:

None.

#### VII. Related Issues:

None.

#### VIII. Statutes Affected:

This bill substantially amends section 784.049 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 901.15, 901.41, and 933.18.

#### IX. Additional Information:

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

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

None.

B. Amendments:

None.

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

<sup>&</sup>lt;sup>11</sup> The EDR estimate is on file with the Senate Committee on Criminal Justice.

By Senator Harrell

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25-01198-19 20191136

A bill to be entitled
An act relating to cyberharassment; amending s.
784.049, F.S.; revising legislative intent; redefining
the terms "personal identifying information" and
"sexually cyberharass"; providing criminal penalties;
reenacting ss. 901.15(16), 901.41(5), and 933.18(11),
F.S., relating to lawful arrests by officers without a
warrant, prearrest diversion programs, and when a
warrant may be issued for the search of a private
dwelling, respectively, to incorporate the amendment
made to s. 784.049, F.S., in references thereto;
providing an effective date.

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

Section 1. Section 784.049, Florida Statutes, is amended to read:

784.049 Sexual cyberharassment.-

- (1) The Legislature finds that:
- (a) A person depicted in a sexually explicit image taken with the person's consent has a reasonable expectation that the image will remain private.
- (b) It is becoming a common practice for persons to publish a sexually explicit image of another to Internet websites or to disseminate such sexually explicit image of another by electronic means without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.
  - (c) When such images are published on Internet websites or

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 ${\tt CODING:}$  Words  ${\tt stricken}$  are deletions; words  ${\tt \underline{underlined}}$  are additions.

Florida Senate - 2019 SB 1136

|   | 25-01198-19 20191136_  |
|---|--|
| 0 | disseminated via electronic means, they are able to be viewed    |
| 1 | indefinitely by persons worldwide and are able to be easily      |
| 2 | reproduced and shared.   |
| 3 | (d) The publication of such images on Internet websites or       |
| 4 | the dissemination of such images via electronic means creates a  |
| 5 | permanent record of the depicted person's private nudity or      |
| 6 | private sexually explicit conduct.                               |
| 7 | (e) The existence of such images on Internet websites or         |
| 8 | the dissemination of such images without the consent of all      |
| 9 | parties depicted causes those depicted in such images            |
| 0 | significant psychological harm.                                  |
| 1 | (f) Safeguarding the psychological well-being of persons         |
| 2 | depicted in such images is compelling.                           |
| 3 | (2) As used in this section, the term:                           |
| 4 | (a) "Image" includes, but is not limited to, any                 |
| 5 | photograph, picture, motion picture, film, video, or             |
| 6 | representation.  |
| 7 | (b) "Personal identification information" means any              |
| 8 | information that identifies an individual, including, but not    |
| 9 | limited to, a name, a postal or an e-mail address, a telephone   |
| 0 | number, a social security number, a date of birth, or any unique |
| 1 | physical representation has the same meaning as provided in s.   |
| 2 | <del>817.568</del> .   |
| 3 | (c) "Sexually cyberharass" means to publish on an Internet       |
| 4 | website or to disseminate via electronic means to another person |
| 5 | a sexually explicit image of a person that contains or conveys   |
| 6 | the personal identification information of the depicted person   |
| 7 | to an Internet website without the depicted person's consent,    |

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for no legitimate purpose, with the intent of causing

25-01198-19 20191136

substantial emotional distress to the depicted person.

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- (d) "Sexually explicit image" means any image depicting nudity, as defined in s. 847.001, or depicting a person engaging in sexual conduct, as defined in s. 847.001.
- (3) (a) Except as provided in paragraph (b), a person who willfully and maliciously sexually cyberharasses another person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (b) A person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (4)(a) A law enforcement officer may arrest, without a warrant, any person that he or she has probable cause to believe has violated this section.
- (b) Upon proper affidavits being made, a search warrant may be issued to further investigate violations of this section, including warrants issued to search a private dwelling.
- (5) An aggrieved person may initiate a civil action against a person who violates this section to obtain all appropriate relief in order to prevent or remedy a violation of this section, including the following:
  - (a) Injunctive relief.
- (b) Monetary damages to include \$5,000 or actual damages incurred as a result of a violation of this section, whichever is greater.
  - (c) Reasonable attorney fees and costs.
- (6) The criminal and civil penalties of this section do not apply to:

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

Florida Senate - 2019 SB 1136

25-01198-19 20191136 (a) A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), information service as defined 90 in 47 U.S.C. s. 153, or communications service as defined in s. 202.11, that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or 93 content provided by another person; or (b) A law enforcement officer, as defined in s. 943.10, or any local, state, federal, or military law enforcement agency, 96 97 that publishes a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer, or law enforcement agency. (7) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs 103 within this state. 104 Section 2. For the purpose of incorporating the amendment made by this act to section 784.049, Florida Statutes, in a 105 106 reference thereto, subsection (16) of section 901.15, Florida Statutes, is reenacted to read: 108 901.15 When arrest by officer without warrant is lawful.-A law enforcement officer may arrest a person without a warrant 109 110 when: 111 (16) There is probable cause to believe that the person has committed a criminal act of sexual cyberharassment as described 112 in s. 784.049. 113 Section 3. For the purpose of incorporating the amendment 115 made by this act to section 784.049, Florida Statutes, in a

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reference thereto, subsection (5) of section 901.41, Florida

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117 Statutes, is reenacted to read:

901.41 Prearrest diversion programs.-

(5) ELIGIBILITY.—A violent misdemeanor, a misdemeanor crime of domestic violence, as defined in s. 741.28, or a misdemeanor under s. 741.29, s. 741.31, s. 784.046, s. 784.047, s. 784.048, s. 784.0487, or s. 784.049 does not qualify for a civil citation or prearrest diversion program.

Section 4. For the purpose of incorporating the amendment made by this act to section 784.049, Florida Statutes, in a reference thereto, subsection (11) of section 933.18, Florida Statutes, is reenacted to read:

933.18 When warrant may be issued for search of private dwelling.—No search warrant shall issue under this chapter or under any other law of this state to search any private dwelling occupied as such unless:

(11) An instrumentality or means by which sexual cyberharassment has been committed in violation of s. 784.049, or evidence relevant to proving that sexual cyberharassment has been committed in violation of s. 784.049, is contained therein.

If, during a search pursuant to a warrant issued under this section, a child is discovered and appears to be in imminent danger, the law enforcement officer conducting such search may remove the child from the private dwelling and take the child into protective custody pursuant to chapter 39. The term "private dwelling" shall be construed to include the room or rooms used and occupied, not transiently but solely as a residence, in an apartment house, hotel, boardinghouse, or lodginghouse. No warrant shall be issued for the search of any

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CODING: Words  $\underline{\textbf{stricken}}$  are deletions; words  $\underline{\textbf{underlined}}$  are additions.

Florida Senate - 2019 SB 1136

|     | _ 23-01190-19   |
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| 146 | private dwelling under any of the conditions hereinabove        |
| 147 | mentioned except on sworn proof by affidavit of some creditable |
| 148 | witness that he or she has reason to believe that one of said   |
| 149 | conditions exists, which affidavit shall set forth the facts on |
| 150 | which such reason for belief is based.                          |
| 151 | Section 5. This act shall take effect July 1, 2019.             |

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Page 6 of 6

### HB 1043 – Cyberharassment (Similar SB 1136)

This bill amends s. 784.049, F.S., expanding the definition of "sexually cyberharass" to include the following (in bold): "to publish to an Internet website or disseminate through electronic means to another person a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person." Internet website was already included in a different part of the definition, so the actual expansion is in the dissemination through electronic means." Additionally, this now defines "personal identification information" as "any information that identifies an individual, and includes, but is not limited to, any name, postal or electronic mail address, telephone number, social security number, date of birth, or any unique physical representation." Originally, the definition was the same meaning as provided in s. 817.568, F.S. While that definition included these terms and others, this definition adds that personal identification information is not limited to these terms. Currently, an unranked, 3rd degree felony exists for "a person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment."

Per FDLE, in FY 17-18, there were 48 arrests, with 16 guilty convictions and 8 adjudications withheld for a violation of s. 784.049, F.S. Of these, only one was arrested who had a prior arrest for a violation of the same statute, and none of those with convictions/adjudications withheld had a prior conviction/adjudication withheld for this statute. Per DOC, in FY 17-18, nobody was sentenced for a second or subsequent sexual cyberharassment offense.

**EDR PROPOSED ESTIMATE: Positive Insignificant** 

# APPEARANCE RECORD

| Meeting Date (Deliver BOTH copies of this form to the Senator or Senate Professional St  | taff conducting the meeting)  SB \ \(\frac{36}{Bill Number (if applicable)}\)                                |
|--|--|
| Topic & Hanguan, MSW   | Amendment Barcode (if applicable)  |
| Job Title Cama Oganze  |  |
|  | Phone 1877 776 200H & 106  Email Support Against ir will read this information into the record.)             |
| Representing   |  |
| Appearing at request of Chair: Yes No Lobbyist register No While it is a Senate tradition to encourage public testimony, time may not permit all meeting. Those who do speak may be asked to limit their remarks so that as many | ered with Legislature: Yes No persons wishing to speak to be heard at this persons as possible can be heard. |
| This form is part of the public record for this meeting.   | S-001 (10/14/14)   |

### APPEARANCE RECORD

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

S-001 (10/14/14)

### **CourtSmart Tag Report**

Room: LL 37 Case No.: Type:

**Caption:** Senate Criminal Justice Committee Judge:

Started: 3/11/2019 1:34:50 PM

Ends: 3/11/2019 3:02:58 PM Length: 01:28:09

1:34:51 PM Roll call

1:35:11 PM Tab 1- Confirmation Hearing for Simone Marstiller to Secretary of Juvenile Justice

1:40:12 PM Roll call on the confirmation of Simone Marstiller

1:41:11 PM Tab 9- SB 1080 Hazing by Senator Book

**1:43:32 PM** Amendment Barcode 361142

**1:44:34 PM** Amendment Barcode 472838 to the amendment **1:44:47 PM** Back on Amendment Barcode 361142 as amended

**1:45:03 PM** Back on SB 1080 as amended

1:45:34 PM Speaker Tom Coffey

1:46:56 PM Speaker David Bianchi attorney to the Coffey family

1:53:19 PM Senator Pizzo with a question regarding the "eggshell skull" rule

**1:57:58 PM** Close on SB 1080 **1:58:59 PM** Roll call on SB 1080

1:59:20 PM Tab 3- SB 776 Sexual Misconduct Reporting in Health Care by Senator Baxley

**1:59:45 PM** Amendment Barcode 201438 **2:01:24 PM** Back on SB 776 as amended

2:02:23 PM Speaker Ed Bowman

2:05:21 PM Senator Bracy commending Mr. Bowman

**2:06:20 PM** Close on SB 776 **2:06:54 PM** Roll call on SB 776

2:07:17 PM Tab 10- SB 1134 Electronic Monitoring Devices by Senator Simmons

2:08:40 PM Amendment Barcode 611842
2:09:40 PM Back on SB 1134 as amended
2:10:22 PM Speakers waive in support
2:10:41 PM Roll call on SB 1134

**2:10:46 PM** Tab 2- SB 534 Pretrial Release by Senator Brandes **2:12:00 PM** Speaker Kimberly Palmer, Bail Agent in the State of FL

2:13:25 PM Speaker Mathew Jones President from the Florida Bail Agents Association

2:16:40 PM Speaker Barney Bishop from Florida Smart Justice Alliance

2:18:43 PM Speaker Judy Mandrell
2:22:23 PM Speaker Rodney Long
2:28:19 PM Close on SB 534
2:30:39 PM Roll call on SB 534

2:31:40 PM Tab 11- SB 1136 Cyberharassment by Senator Harrell

**2:34:49 PM** Close on SB 1136 Roll call on SB 1136

2:35:58 PM Tab 8- SB 1068 Crime Victim Assistance by Senator Bean

2:36:37 PM Amendment Barcode 412986
2:41:27 PM Back on SB 1068 as not amended

2:42:27 PM Speaker Daniel Olson from the Attorney General's Office

2:43:07 PM Speaker Emery Gainey

2:45:38 PM Speaker Gary Hester from Florida Police Chiefs Association Speaker Barney Bishop from Florida Smart Justice Alliance Speaker Christine Hanavan from SWOP Behind Bars

**2:52:18 PM** Close on SB 1068 Roll call on SB 1068

**2:53:46 PM** Tab 6- SB 936 Criminal History Records by Senator Bracy

2:54:46 PM Amendment Barcode 561168
2:55:44 PM Back on SB 936 as amended
2:56:01 PM Speakers waive in support
2:56:31 PM Roll call on SB 936

2:56:43 PM Tab 7- SB 938 Public Records/Criminal History Records by Senator Bracy

| Amendment Barcode 557354<br>Roll call on SB 938 |
|---|
| Tab 4- SB 800 Duty to Assist by Senator Pizzo   |
| Close on SB 800                                 |
| Roll call on SB 800                             |
| Tab 5- SB 916 Cyberstalking by Senator Pizzo    |
| Amendment Barcode 497532                        |
| Back on SB 916 as amended                       |
| Roll call on SB 916                             |
| Senator Bracy moves to adjourn                  |
|   |