

<b>Tab 1 SB 618 by Powell; (Similar to CS/H 00421) Detention of Children</b>						
270048	A	S	RCS	CJ, Powell	Delete L.85:	02/11 12:08 PM
<b>Tab 2 CS/SB 688 by EN, Wright; (Identical to CS/H 00327) Illegal Taking, Possession, and Sale of Bears</b>						
436308	A	S	RCS	CJ, Wright	Delete L.76:	02/11 01:30 PM
<b>Tab 3 SB 798 by Rouson (CO-INTRODUCERS) Pizzo; (Identical to H 00563) Procurement of Human Organs and Tissue</b>						
<b>Tab 4 SB 1508 by Taddeo; (Similar to CS/H 01281) Police Vehicles</b>						
868736	A	S	RCS	CJ, Taddeo	Delete L.24 - 28:	02/11 12:08 PM
<b>Tab 5 SB 1552 by Flores; (Compare to CS/H 01055) Law Enforcement Activities</b>						
697978	A	S	RCS	CJ, Flores	Delete L.369 - 495:	02/11 12:08 PM
<b>Tab 6 SB 1594 by Powell; (Identical to H 01263) Firesafety Inspectors</b>						
928606	A	S	RCS	CJ, Powell	Delete L.17 - 20:	02/11 12:08 PM
<b>Tab 7 SB 1690 by Torres; (Identical to H 01251) Preservation of Memorials</b>						
<b>Tab 8 SB 1866 by Pizzo; Assault or Battery</b>						
<b>Tab 9 SB 1880 by Perry; (Compare to CS/H 01225) Restitution for Juvenile Offenses</b>						
461968	D	S	RCS	CJ, Perry	Delete everything after	02/11 12:08 PM
695846	AA	S	RCS	CJ, Perry	Delete L.93 - 96:	02/11 12:08 PM
156254	A	S	WD	CJ, Perry	Delete L.95 - 122:	02/03 07:55 AM

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

**CRIMINAL JUSTICE**  
**Senator Perry, Chair**  
**Senator Brandes, Vice Chair**

**MEETING DATE:** Tuesday, February 11, 2020**TIME:** 10:00 a.m.—12:00 noon**PLACE:** Mallory Horne Committee Room, 37 Senate Building**MEMBERS:** Senator Perry, Chair; Senator Brandes, Vice Chair; Senators Bracy, Flores, and Pizzo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 618</b> Powell (Similar CS/H 421, Compare H 285, S 610)	Detention of Children; Prohibiting the holding of a child awaiting trial who is treated as an adult for purposes of criminal prosecution in a jail or other facility intended or used for the detention of adults; providing an exception; providing a requirement and a prohibition if a court determines that it is in the interest of justice to allow a child to be held in a jail or other facility intended or used for the detention of adults, etc.  CJ      02/11/2020 Fav/CS JU AP	Fav/CS Yeas 5 Nays 0
2	<b>CS/SB 688</b> Environment and Natural Resources / Wright (Identical CS/H 327)	Illegal Taking, Possession, and Sale of Bears; Providing that a person commits specified violations for the illegal taking, possession, and sale of bears; prohibiting the illegal taking, possession, and sale of bears, etc.  EN      02/03/2020 Fav/CS CJ      02/11/2020 Fav/CS RC	Fav/CS Yeas 4 Nays 1
3	<b>SB 798</b> Rouson (Identical H 563)	Procurement of Human Organs and Tissue; Prohibiting for-profit entities from procuring certain human organs and tissue, with certain exceptions; prohibiting for-profit entities from procuring certain human organs and tissue, with certain exceptions, etc.  HP      01/28/2020 Favorable CJ      02/11/2020 Favorable RC	Favorable Yeas 4 Nays 1
4	<b>SB 1508</b> Taddeo (Similar CS/H 1281)	Police Vehicles; Prohibiting a person from knowingly selling, exchanging, or transferring a police vehicle without removing any police markings from the vehicle and certifying that the police markings have been removed, etc.  CJ      02/11/2020 Fav/CS IS RC	Fav/CS Yeas 5 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, February 11, 2020, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 1552</b> Flores (Compare CS/H 1055)	Law Enforcement Activities; Authorizing a citizen support organization for Florida Missing Children's Day to provide grants to law enforcement agencies for specified purposes; authorizing sexual predators and sexual offenders to report online certain information to the Department of Law Enforcement; revising reporting requirements for sexual predators and sexual offenders, etc.  CJ 02/11/2020 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
6	<b>SB 1594</b> Powell (Identical H 1263, Compare CS/H 1077, CS/S 1404)	Firesafety Inspectors; Prohibiting certain actions to influence a firesafety inspector into violating certain provisions; prohibiting a firesafety inspector from knowingly and willfully accepting an attempt to influence the firesafety inspector into violating certain provisions, etc.  CJ 02/11/2020 Fav/CS GO RC	Fav/CS Yeas 5 Nays 0
7	<b>SB 1690</b> Torres (Identical H 1251)	Preservation of Memorials; Citing this act as the "Historical Memorials Protection Act"; prohibiting specified activities concerning memorials by a person or an entity; providing for liability and the award of certain costs and damages for violations of the act; requiring the Secretary of State to provide written approval before the placement of certain materials on or adjacent to certain memorials on public property; providing criminal penalties for damage to or removal of certain memorials, etc.  GO 01/27/2020 Favorable CJ 02/11/2020 Favorable RC	Favorable Yeas 5 Nays 0
8	<b>SB 1866</b> Pizzo	Assault or Battery; Providing for reclassification of assault or battery offenses committed upon certain persons while they are engaged in the lawful performance of their duties, etc.  CJ 02/11/2020 Temporarily Postponed ACJ AP	Temporarily Postponed

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, February 11, 2020, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>SB 1880</b> Perry (Compare CS/H 1225)	Restitution for Juvenile Offenses; Requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; authorizing the child's parent or guardian to be absolved of liability for restitution in certain circumstances; authorizing the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility, etc.  CJ 01/28/2020 Temporarily Postponed CJ 02/04/2020 Temporarily Postponed CJ 02/11/2020 Fav/CS JU AP	Fav/CS Yeas 3 Nays 2

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Other Related Meeting Documents

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

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

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

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BILL: CS/SB 618

INTRODUCER: Criminal Justice Committee and Senator Powell

SUBJECT: Detention of Children

DATE: February 11, 2020

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	Fav/CS
2. _____	_____	JU	_____
3. _____	_____	AP	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 618 amends s. 985.265, F.S., providing that a child who is treated as an adult for purposes of prosecution in criminal court may not be housed in a jail or other facility intended for the detention of adults unless the court holds a hearing and makes written findings, based on specified criteria, that it is in the interest of justice to transfer the child to an adult facility.

The bill requires the court to hold a hearing every 30 days, or 45 days in a rural jurisdiction, to review whether it is in the continued interest of justice to hold the child in an adult facility. A child is prohibited from being held in an adult facility longer than 180 days, unless the court makes a written finding of good cause for an extension, or the child expressly waives the 180 day limit.

Additionally, this bill brings Florida law regarding the detention of children in compliance with the Juvenile Justice and Delinquency Prevention Act (JJDP). The JJDP was first authorized in 1974, to ensure states and territories meet certain common standards for the treatment of children in the juvenile justice system. States must comply with the JJDP to be eligible for federal grant funds. The JJDP was amended in December 2018, to provide new standards for housing children charged as adults in an adult jail or other secure adult facilities.

The bill may have an indeterminate fiscal impact on the DJJ and courts. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

## II. Present Situation:

### Juvenile Justice Reform Act

The JJDP Act was first authorized in 1974, to ensure states and territories meet certain common standards for the treatment of children in the juvenile justice system.<sup>1</sup> The JJDP Act establishes the following four core protections for children involved in the juvenile justice system, which states must comply with to be eligible for grant funds under the JJDP Act:

- A prohibition against incarcerating children charged with a status offense;
- Requiring children to have sight and sound separation from adult inmates;
- A prohibition against housing children in adult facilities while they await a trial; and
- Requiring states to address disproportionate minority contact.<sup>2</sup>

The JJDP Act was last reauthorized in 2002, and expired in 2007. In 2018, the U.S. Congress made major changes to the JJDP Act regarding:

- Racial and Ethnic Disparities.
- Sight and Sound/Jail Removal.
- Deincarceration of Status Offenses.<sup>3</sup>

By December 21, 2021, children who are charged and tried as adults, may not have sight or sound contact with adults, and may not be detained in a jail or adult facility, unless a court finds that such detention is in the interest of justice. In determining whether detention in an adult facility is in the interest of justice, the court must hold a hearing, and make written findings after taking into consideration the child's:

- Age.
- Mental and physical maturity.
- Present mental state.
- History of delinquency.<sup>4</sup>

### Detention of Children in Florida

A child is entitled to a hearing within 24 hours of being taken into custody or placed in detention care. At the hearing, the court may order continued detention care under certain circumstances.<sup>5</sup> "Detention care" means "the temporary care of a child in secure, or supervised release detention, pending a court adjudication or disposition or execution of a court order."<sup>6</sup> There are two types of detention care, including:

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<sup>1</sup> The Coalition for Juvenile Justice and the National Criminal Justice Association, *Summary of the Juvenile Justice Reform Act of 2018*, p.1, available at <http://www.juvjustice.org/sites/default/files/resource-files/Summary%20of%20the%20Juvenile%20Justice%20Reform%20Act%20of%202018.pdf> (last visited February 5, 2020).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *OJJDP Fact Sheet* p.3 (June 2019), available at <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/252961.pdf> (last visited February 5, 2020).

<sup>5</sup> Section 985.255(1), F.S.

<sup>6</sup> Section 985.03(18), F.S.

- “Secure detention” which is the temporary custody of a child while he or she is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- “Supervised release detention” which is the temporary, nonsecure custody of a child while the child is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication or disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters, in addition to other court-imposed requirements.<sup>7</sup>

Generally, a child may not be held in detention care for more than 21 days, unless an adjudicatory hearing for the case has been commenced in good faith by the court. The court may extend the length of detention for an additional 9 days if the child is charged with certain offenses, and there is good cause shown that the nature of the charge requires additional time for the prosecution or defense of the case. Additionally, a prolific juvenile<sup>8</sup> offender must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order.<sup>9</sup>

### ***Children Transferred to Adult Facilities***

Section 985.265(5), F.S., provides when a child may be held in a jail or other adult facility. Children must be housed separately from adult inmates to prohibit regular contact<sup>10</sup> with incarcerated adults. A child must be transferred to an adult jail or other adult facility when he or she:

- Has been transferred or indicted for criminal prosecution as an adult.
  - Except when the child is charged with only a misdemeanor and is being transferred to adult court pursuant to the waiver or direct file process, in which case he or she may not be held in an adult facility, but may be held temporarily in a juvenile detention facility.
  - Is wanted by another jurisdiction for prosecution as an adult.<sup>11</sup>

Currently, Florida’s provisions regarding the transfer of children to jails or other adult facilities are not in compliance with the most recent reenactment of the JJDP. Florida must be in compliance by December 21, 2021, or risk a reduction in funding.<sup>12</sup>

### ***Cost Sharing of Detention Care***

Cost sharing is governed by s. 985.6865, F.S., which provides, notwithstanding s. 985.686, F.S., each fiscal year, every county that is not fiscally constrained<sup>13</sup> and that has dismissed any action

<sup>7</sup> Id.

<sup>8</sup> Section 985.255, F.S., provides that a “prolific juvenile offender” means a child that is charged with a delinquent act that would be a felony if committed by an adult, has a prior adjudication or adjudication withheld for a delinquent act that would be a felony if committed by an adult, and has 5 or more arrests, adjudications, or adjudications withheld, 3 of which must have been felony offenses.

<sup>9</sup> Section 985.26, F.S.

<sup>10</sup> Section 985.265(5)(b), F.S., defines “regular contact” as sight and sound contact.

<sup>11</sup> Section 985.265(5), F.S.

<sup>12</sup> Office of Juvenile Justice and Delinquency Prevention, *OJJDP Fact Sheet* p.3 (June 2019), available at <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/252961.pdf> (last visited February 5, 2020).

<sup>13</sup> Section 985.6865(3)(b), F.S., defines “fiscally constrained county” as a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than

or claim described in s. 985.6865(2), F.S.,<sup>14</sup> must pay 50 percent of the total shared detention cost.<sup>15</sup>

The Department of Juvenile Justice (DJJ) calculates a county's annual percentage share by dividing the total number of detention days for children residing in the non-fiscally constrained county for the most recently completed 12-month period by the total number of detention days for children in all non-fiscally constrained counties. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.<sup>16</sup>

Counties that are required to pay their share of detention costs must incorporate sufficient funds to pay its share of detention costs into its annual budget.<sup>17</sup> Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.<sup>18</sup> The DJJ will determine quarterly whether counties are complying with this section.<sup>19</sup>

The State must pay all costs of detention care for children:

- Residing in a fiscally constrained county.
- Residing out of State.
- Housed in state detention centers from counties that provide their own detention care for children.<sup>20</sup>

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

This bill amends s. 985.265, F.S., providing that a child who is treated as an adult for purposes of prosecution in criminal court may not be housed in a jail or other facility intended for the detention of adults unless the court holds a hearing and makes written findings. In determining whether it is in the interest of justice to allow a child to be held in a jail or adult facility, the court must consider:

- The age of the child.
- The physical and mental maturity of the child.
- The present mental state of the child, including whether the child presents an imminent risk of harm to himself or herself.
- The nature and circumstances of the alleged offense.
- The relative ability of the available adult and child detention facilities to not only meet the specific needs of the child but also to protect the safety of the public as well as other children detained in facilities.
- Any other relevant factor.

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\$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1.

<sup>14</sup> Various counties and the DJJ have engaged in a multitude of legal proceedings, including administrative or judicial claims, regarding detention cost sharing for juveniles. Such litigation has largely focused on how the DJJ calculates the detention costs that the counties are responsible for paying, leading to the overbilling of counties for a period of years. Sections 985.6865(1) and (2), F.S.

<sup>15</sup> Section 985.6865(4), F.S.

<sup>16</sup> Id.

<sup>17</sup> Section 985.6865(6), F.S.

<sup>18</sup> Section 985.6865(7), F.S.

<sup>19</sup> Section 985.6865(8), F.S.

<sup>20</sup> Section 985.6865(5), F.S.

The bill requires the court to hold a hearing every 30 days, or 45 days in a rural jurisdiction, to review whether it is in the continued interest of justice to hold the child in an adult facility. A child is prohibited from being held in an adult facility longer than 180 days, unless the court makes a written finding of good cause for an extension, or the child expressly waives the 180 day limit.

The bill is silent on how a child may be detained if the court does not find it in the interest of justice to transfer a child charged as an adult to a jail or other adult facility. Section 985.26, F.S., as discussed above in Section II, Present Situation, governs the length of detention of children. A child who is charged as an adult and who is not transferred to a jail or other adult facility will likely be subject to the laws governing the detention of children in ch. 985, F.S.

This bill brings Florida law regarding the detention of children in compliance with the JJDPa.

The bill is effective July 1, 2021.

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

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

This bill relates to the housing of children who have been transferred or indicted for criminal prosecution as an adult, and criminal laws are exempt from the requirements of Article VII, Section 18 of the Florida Constitution, relating to unfunded mandates.

##### **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 DJJ has indicated that this bill will have an indeterminate fiscal impact.<sup>21</sup> As previously stated, the bill is silent on how a child may be detained if the court does not find it in the interest of justice to transfer a child charged as an adult to a jail or other adult facility. The DJJ predicts that the majority of children awaiting trial in adult court will be held in its juvenile detention facilities. However, there is nothing in the bill or statute that authorizes the DJJ to hold these children in detention indefinitely, thus s. 985.26, F.S., would likely control.<sup>22</sup>

In FY 2018-19, 861 children were transferred to adult court and based on these numbers the DJJ is estimating that the cost to implement this bill is \$35,829,542 and an additional 447 FTEs.<sup>23</sup>

According to the DJJ, a child transferred to adult court awaits trial for an average of 284 days. Housing 861 children for 284 days will increase the number of detention services days by 244,524. The DJJ estimates the need for 447 additional FTE, including 417 detention officers (\$17,170,541), detention officer supervisors (\$2,631,622), 27 food support workers (\$1,018,304), and 3 operations coordinators (\$179,378).<sup>24</sup>

Using the variable detention cost of \$54.98, which is comprised of food, medical, laundry, and expenses, the DJJ predicts that housing 861 children would cost \$13,443,930. The DJJ estimates a cost of \$1,254,770 non-recurring transportation cost, and \$130,998 recurring cost for gas, maintenance, and repairs.<sup>25</sup>

The cost would be shared by the counties in accordance with detention cost share, pursuant to s. 985.6865, F.S.

The bill may also have an indeterminate fiscal impact on the courts due to the requirement that the court hold a hearing every 30 days, or 45 days in rural areas, to determine whether it is in the continued interest of justice to detain the child in a jail or other adult facility.

**VI. Technical Deficiencies:**

The term “rural” on Line 51 may need clarification, or an appropriate cross reference to define the term.

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<sup>21</sup> Department of Juvenile Justice, 2020 Agency Analysis, February 7, 2020 (on file with the Senate Criminal Justice Committee).

<sup>22</sup> *Id.*

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

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

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

The bill is silent on how a child may be detained if the court does not find it in the interest of justice to transfer a child charged as an adult to a jail or other adult facility. A child who is charged as an adult and who is not transferred to a jail or other adult facility will likely be subject to the laws governing the detention of children in ch. 985, F.S. Clarification on this issue may be necessary.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 985.265 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Criminal Justice on February 11, 2020:**

The committee substitute changes the effective date to July 1, 2021.

- B. **Amendments:**

None.



270048

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
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	.	

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

**Senate Amendment**

Delete line 85  
and insert:  
Section 2. This act shall take effect July 1, 2021.



By Senator Powell

30-00514-20

2020618\_\_

A bill to be entitled

An act relating to the detention of children; amending s. 985.265, F.S.; prohibiting the holding of a child awaiting trial who is treated as an adult for purposes of criminal prosecution in a jail or other facility intended or used for the detention of adults; providing an exception; requiring the court to consider specified factors in making a certain determination; providing a requirement and a prohibition if a court determines that it is in the interest of justice to allow a child to be held in a jail or other facility intended or used for the detention of adults; deleting provisions under which a court is required to order the delivery of a child to a jail or other facility intended or used for the detention of adults; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsection (5) of section 985.265, Florida Statutes, is amended to read:

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

(5)(a) Unless a court finds in writing and after a hearing that it is in the interest of justice, a child awaiting trial or other legal process who is treated as an adult for purposes of prosecution in criminal court and is housed in a secure facility may not be held in a ~~The court shall order the delivery of a~~

Page 1 of 3

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

30-00514-20

2020618\_\_

~~child to a~~ jail or other facility intended or used for the detention of adults. In determining whether it is in the interest of justice to allow a child to be held in a jail or other facility intended or used for the detention of adults, a court shall consider all of the following:

1. The age of the juvenile.

2. The physical and mental maturity of the juvenile.

3. The present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to himself or herself.

4. The nature and circumstances of the alleged offense.

5. The juvenile's history of prior delinquent acts.

6. The relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other juveniles detained in such facilities.

7. Any other relevant factor.

(b) If a court determines that it is in the interest of justice to allow a child to be held in a jail or other facility intended or used for the detention of adults:

1. The court must hold a hearing no less frequently than once every 30 days, or in the case of a rural jurisdiction, no less frequently than once every 45 days, to review whether it is still in the interest of justice to allow the child to be so held; and

2. The child may not be held in a jail or other facility intended or used for the detention of adults for more than 180 days, unless the court in writing determines there is good cause for an extension or the child expressly waives this limitation.

Page 2 of 3

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

30-00514-20

2020618\_\_

~~(a) When the child has been transferred or indicted for criminal prosecution as an adult under part X, except that the court may not order or allow a child alleged to have committed a misdemeanor who is being transferred for criminal prosecution pursuant to either s. 985.556 or s. 985.557 to be detained or held in a jail or other facility intended or used for the detention of adults; however, such child may be held temporarily in a detention facility; or~~

~~(b) When a child taken into custody in this state is wanted by another jurisdiction for prosecution as an adult.~~

The child held in a jail or other facility intended or used for the detention of adults shall be housed separately from adult inmates to prohibit a child from having regular contact with incarcerated adults, including trustees. "Regular contact" means sight and sound contact. Separation of children from adults shall permit no more than haphazard or accidental contact. The receiving jail or other facility shall contain a separate section for children and shall have an adequate staff to supervise and monitor the child's activities at all times. Supervision and monitoring of children includes physical observation and documented checks by jail or receiving facility supervisory personnel at intervals not to exceed 10 minutes. This subsection does not prohibit placing two or more children in the same cell. Under no circumstances shall a child be placed in the same cell with an adult.

Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/11/2020  
Meeting Date

SB 618  
Bill Number (if applicable)

Topic Detention Children

Amendment Barcode (if applicable)

Name Trish Neely

Job Title Consultant

Address 2024 Shangri La Lane  
Street

Phone 850 322 3317

Tally FL 32303  
City State Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing League Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

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

2/11/2020

Meeting Date

SB 0618

Bill Number (if applicable)

Topic Criminal Justice / Detention of Children

Amendment Barcode (if applicable)

Name Albert Balido

Job Title Lobbyist

Address 201 West Park Avenue  
Street

Phone 866.960.5939

Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Center (SPLC)

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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

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

2-11-2020  
Meeting Date

618  
Bill Number (if applicable)

Topic Detention of Children

Amendment Barcode (if applicable)

Name DAWN STEWARD

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

Address 2130 Blossom Lane  
Street  
Winter Park FL 32789  
City State Zip

Phone 407-645-0273

Email stu2130@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

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

2/11/20

*Meeting Date*

618

*Bill Number (if applicable)*

Topic Confinement of Juveniles

*Amendment Barcode (if applicable)*

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 No Gadsden St.

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Tallahassee

FL

32301

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Keith Perry, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** December 5, 2019

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I respectfully request that **Senate Bill #618**, relating to Detention of Children, be placed on the:

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

A handwritten signature in dark ink, appearing to read "Bobby Powell", is written over a horizontal line.

\_\_\_\_\_  
Senator Bobby Powell  
Florida Senate, District 30



## 2020 AGENCY LEGISLATIVE BILL ANALYSIS

**AGENCY: Department of Juvenile Justice**

### BILL INFORMATION

<b>BILL NUMBER:</b>	SB 618
<b>BILL TITLE:</b>	Detention of Children
<b>BILL SPONSOR:</b>	Senator Powell
<b>EFFECTIVE DATE:</b>	July 1, 2020

### COMMITTEES OF REFERENCE

1) Criminal Justice
2) Judiciary
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

### CURRENT COMMITTEE

Criminal Justice
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### SIMILAR BILLS

<b>BILL NUMBER:</b>	HB 285 & SB 610
<b>SPONSOR:</b>	Rep. Bush & Sen. Powell

### PREVIOUS LEGISLATION

<b>BILL NUMBER:</b>	SB 870
<b>SPONSOR:</b>	Senator Powell
<b>YEAR:</b>	2019
<b>LAST ACTION:</b>	Died in committee

### IDENTICAL BILLS

<b>BILL NUMBER:</b>	HB 421
<b>SPONSOR:</b>	Representative Alexander

### Is this bill part of an agency package?

No

### BILL ANALYSIS INFORMATION

<b>DATE OF ANALYSIS:</b>	2/07/2020 – For more information please contact Legislative Affairs Director Rachel Moscoso at (850) 717-2716
<b>LEAD AGENCY ANALYST:</b>	Sam Kerce, Deputy Legislative Affairs Director
<b>ADDITIONAL ANALYST(S):</b>	Sherry Jackson, Director of Research and Data
<b>LEGAL ANALYST:</b>	John Mila, Asst. General Counsel
<b>FISCAL ANALYST:</b>	Marti Harkness, Chief of Budget



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## **POLICY ANALYSIS**

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### **1. EXECUTIVE SUMMARY**

The bill states juveniles awaiting trial in adult court may not be housed in a jail or other facility intended for the detention of adults. The bill also lays out exceptions and guidance for judges to consider if they determine it is in the interest of justice for the youth to be held in adult jail or another facility intended or used for the detention of adults.

### **2. SUBSTANTIVE BILL ANALYSIS**

#### **1. PRESENT SITUATION:**

Currently, youth who are transferred to adult court under sections 985.556, 985.557, and 985.56, F.S., are held in a jail or another facility intended or used for the detention of adults. A youth who is alleged to have committed a misdemeanor being transferred for criminal prosecution pursuant to s. 985.556, F.S., or 985.557, F.S., may not be held in an adult detention center or jail. All youth held in adult detention centers or jails must be kept separate from adult inmates to prohibit a youth from having regular contact with incarcerated adults. There must also be 10-minute documented checks on all youth housed in adult detention centers or jails in accordance to s. 985.265, F.S.

Currently, when a youth is transferred to adult court they are no longer under the supervision or jurisdiction of the Department of Juvenile Justice (DJJ or department).

In late 2018, the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) was reauthorized. One of the components of the Act is to keep youth who are being tried as adults out of adult jail and adult detention centers while they await their sentences. Florida has three years from the date of enactment to come into compliance with the law (December 2021).

#### **2. EFFECT OF THE BILL:**

##### Section 1:

The bill amends section 985.265, F.S., to delete the requirement that a youth transferred for adult prosecution must be held in adult jail or another facility intended or used for the detention of adults. With there currently being nowhere else to hold these youth, for the purpose of this analysis we assume these youth would be held in the Department's secure juvenile detention facilities. The bill provides an exception to this requirement when the judge finds that it is in the interest of justice that the youth be housed in an adult jail or other facility intended or used for the detention of adults. The bill establishes guidelines that the court must consider when determining where the youth shall be held. The court must consider the age of the child, physical and mental maturity of the child, the present mental state of the child, the nature and circumstances of the alleged offense, prior offending, the ability of the adult and juvenile detention centers to provide the specific needs of the child and ability to keep the youth protected, and any other relevant factors.

The bill further adds, that if a court determines that it is in the interest of justice to allow a child be held in jail or a facility intended or used for the detention of adults, the court must hold hearings no less than every 30 days, or 45 days if the jurisdiction is rural, to determine if it is still in the interest of justice to allow the child to be held. It also puts a limit on the number of days a youth can be held in adult detention to 180 days unless there is good cause for an extension or the child waives this limitation.

It is assumed that on July 1, 2020, all youth currently held in adult jail would be required to come into our detention centers, which would be a sudden drastic increase to our current population.

Section 2

Provides for an implementation date of July 1, 2020.

**3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?**

Y ☐ N ☒

If yes, explain:	Click or tap here to enter text.
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	Click or tap here to enter text.

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	Unknown.
Opponents and summary of position:	Unknown.

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?**

Y ☐ N ☒

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?**

Y ☐ N ☒

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

## FISCAL ANALYSIS

### 1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y ☒N ☐

Revenues:	Click or tap here to enter text.
Expenditures:	Please see explanation under <i>Impact to State Government</i> . In accordance with Detention Cost Share, counties that are not fiscally constrained and do not provide their own detention care for juveniles pay for half of the cost of juvenile detention in their counties.
Does the legislation increase local taxes or fees? If yes, explain.	No.
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?	Click or tap here to enter text.

### 2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y ☒N ☐

Revenues:	Click or tap here to enter text.
Expenditures:	<p>Indeterminant. The bill is not clear on whether youth transferred for adult prosecution would be required to be held in DJJ detention centers, only that they cannot be held in adult facilities. If youth are required to be held in DJJ detention centers, the department does not have the staffing or capacity to accommodate them. In order to accommodate them, the department's best estimate of the cost to implement this bill is \$35,829,542.</p> <p>The bill would require a hearing for youth being treated as an adult for purposes of prosecution in criminal court in order to be held in an adult jail or other facility intended for the use of adults. The Department is not able to predict how many state attorneys would go through the process of filing for a hearing and, if successful, file again every 30 days. If the youth is not to be held in an adult jail, the bill is not clear on where the youth would be held. The following is a best estimate of cost, based on available data, if all of these youth were to be housed in the juvenile detention centers and provided transportation to and from court.</p> <p>In FY 2018-19, 861 youth were transferred to adult court, although not all of these youth would necessarily be held in an adult jail. If this bill were to be signed into law, the Department predicts the majority of youth awaiting adult trial would be held in its juvenile detention facilities.</p>

	<p>A review of dispositions for youth transferred to adult court show that a youth awaits trial for an average of 284 days. Housing 861 youth for 284 days would increase the number of detention services days by 244,524.</p> <p>The department estimates the need for 447 additional FTE to safely and securely handle this increase in youth. This is based on the following:</p> <p>For 861 Youth  1<sup>st</sup> Shift 8:1 Ratio (PREA requirement) = 107.6 staff  2<sup>nd</sup> Shift 8:1 Ratio (PREA requirement) = 107.6 staff  3<sup>rd</sup> Shift 16:1 Ratio (PREA requirement) = 53.8 staff  = 269 staff</p> <p>269 Staff multiplied by a relief factor of .55 = 148 staff</p> <p><i>1 supervisor for every 8 staff</i>  52 Supervisors  365 Detention Officers  <b>Total Detention Officers/Supervisors = 417</b></p> <p>15 detention centers would need 1 additional food service workers and 12 tier 5 (large) detention centers would need 2 additional workers  <b>Total Food Support Workers = 27</b></p> <p>Each of the 3 detention regions (North, Central, and South) will need a coordinator to help schedule the additional youth who will be awaiting adult court.  <b>Total Operations Coordinators = 3</b></p> <p><b>Salary &amp; Benefits</b>  365 Juvenile Detention Officer I = \$17,170,541  52 Juvenile Detention Supervisor = \$2,631,622  27 Food Support Workers = \$1,018,304  3 Operations Coordinators = \$179,378</p> <p><b>Variable Costs</b>  Food, medical, laundry, etc. is \$54.98 per day = \$13,443,930  (861 youth for an average of 284 days)</p> <p><b>Transportation Costs</b>  <i>(Court hearings and other outside appointments)</i>  Additional vans and caging= \$1,254,770 non-recurring  Gas, maintenance and repairs= \$130,998 recurring</p>
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	<p>The department will also incur fixed capital outlay costs associated with retrofitting existing detention centers to accommodate the additional youth. Those costs are indeterminate but will be significant.</p> <p>If money is allocated to enact this legislation, the current implementation date of the bill being July 1, 2020, would not allow the department access to any of these funds until the day that the bill goes into effect. Essentially the department would not be able to hire staff and prepare facilities for transition. Time will need to be given between allocation and implementation.</p>
Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	Click or tap here to enter text.

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?**Y ☐N ☒

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Other:	Click or tap here to enter text.

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?**Y ☐ N ☒

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

**TECHNOLOGY IMPACT****1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?**Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	Click or tap here to enter text.
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### FEDERAL IMPACT

#### 1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?

Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.
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### ADDITIONAL COMMENTS

The Department will need clarification on the use of bail for these youth and who will be overseeing this process.

Even if all Juvenile Detention Officer and Supervisor positions are funded, the department is concerned about filling the positions. The department currently struggles with recruiting and retaining detention officers for our current population. In FY 2018-19, the turnover rate for the entry-level juvenile detention officer (JDO) position was 64% with an average vacancy rate of 25%.

### LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	The bill recites the criteria found in newly-amended 34 U.S.C. §11133(a)(11)(B), which requirements are effective "not later than 3 years after December 21, 2018."
Lines 25-29:	<p>The bill will require extensive implementation through the Florida Juvenile Court Rules (or Criminal Rules – see (1), below) to determine how and where the referenced "hearing" will be conducted. The bill should provide more guidance to allow the Juvenile Court Rules Committee to begin to flesh out the procedural mechanism. The following uncertainties present themselves:</p> <ol style="list-style-type: none"> <li>1) Will the hearing be conducted in juvenile court or adult court?</li> <li>2) How will the proceedings be commenced? If the presumption is that the youth is not held in adult jail, then who would be making a motion?</li> <li>3) If there is no hearing, then where is the youth to be held? Nothing in the bill specifies that the juvenile detention center is available. In other words, the entirety of the bill addresses how a youth can get to adult jail, but no mention is made of the "alternative."</li> </ol>
Lines 25 and 47:	The bill assumes a hearing has been held, but the language does not explain how the hearing is triggered.
Line 27:	"legal process" should be defined.
Line 51:	The bill relaxes the timing for "review hearings" when the youth is held in "a rural jurisdiction." Rural should be defined.

Line 57:	“good cause” should be defined.
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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/CS/SB 688

INTRODUCER: Criminal Justice Committee; Environment and Natural Resources Committee; and  
Senator Wright

SUBJECT: Illegal Taking and Possession of Bears

DATE: February 12, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dyson	Rogers	EN	<b>Fav/CS</b>
2.	Cellon	Jones	CJ	<b>Fav/CS</b>
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 688 creates a section of law that increases the penalty for taking or possessing a freshly killed bear from a Level Two violation (a second-degree misdemeanor for the first offense) to a Level Three violation (a first-degree misdemeanor for the first offense). The bill makes a subsequent offense of such taking or possession permanently ineligible for any other permit or license issued by the Fish and Wildlife Conservation Commission.

The bill also makes the sale or attempted sale of a bear taken in violation of the section a Level Four violation (a third-degree felony).

Rule 68A-4.009 of the Florida Administrative Code provides rules specifically addressing Florida Black Bear Conservation. The rule allows the Fish and Wildlife Conservation Commission to issue permits for certain activities that might be considered “taking or possessing” a black bear. The bill incorporates this exception to the general rules related to black bears by exempting a person who is acting under the authority rule 68A-4.009 F.A.C. from the prohibitions and penalties in the bill.

The Florida Fish and Wildlife Conservation Commission suggests that there may be a nominal loss of revenue due to the loss in permit fees from violators who are no longer eligible to be issued a license by the Commission. The bill has a positive insignificant prison bed impact (an



increase of 10 or fewer prison beds) on the Department of Corrections. See Section IV Fiscal Impact Statement.

The bill is effective July 1, 2020.

## II. Present Situation:

### Florida Black Bear

The Florida black bear (*Ursus americanus floridanus*) is a subspecies of the American black bear (*Ursus americanus*)<sup>1</sup> that has historically ranged throughout Florida, southern Georgia, and southern Alabama.<sup>2</sup> Once roaming across Florida, the Florida black bear is now mainly located in fragmented areas across the state covering about 49 percent of its historic range.<sup>3</sup> Due to loss of habitat and unregulated hunting, the population was reduced to an estimated 300-500 bears during the 1970s.<sup>4</sup> The massive population decline led the Florida Fish and Wildlife Conservation Commission (FWC) to classify the Florida black bear as a threatened species in 1974.<sup>5</sup>

After more than 35 years of strict statewide protection and management, the FWC conducted an evaluation and determined that the Florida black bear was no longer at risk for extinction. In 2012 the Florida black bear was removed from the state threatened species list.<sup>6</sup>

### Population

The Florida black bear population is comprised of seven distinct sub-populations. They are Apalachicola; Eglin; Osceola; Ocala/St. Johns; Chassahowitzka; Highland/Glades; and Big Cypress.<sup>7</sup> During 2014-2015, the FWC conducted a statewide population assessment for Florida black bears and found that bear populations had increased substantially in certain sub-populations and increased by approximately 53 percent statewide.<sup>8</sup> Even though the Florida black bear population is growing, the bears still only reside in the seven disconnected sub-groups across the state.<sup>9</sup>

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<sup>1</sup> Florida Fish and Wildlife Conservation Commission, Draft *Florida Black Bear Management Plan*, pg. 1 (November 22, 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 6, 2020).

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

<sup>3</sup> Florida Fish and Wildlife Conservation Commission, *The Florida Black Bear, Appearance*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/facts/appearance/> (last visited February 6, 2020).

<sup>4</sup> Florida Fish and Wildlife Conservation Commission, *Black Bear Research*, available at <http://myfwc.com/research/wildlife/terrestrial-mammals/bear/research/> (last visited February 6, 2020).

<sup>5</sup> *Id.*

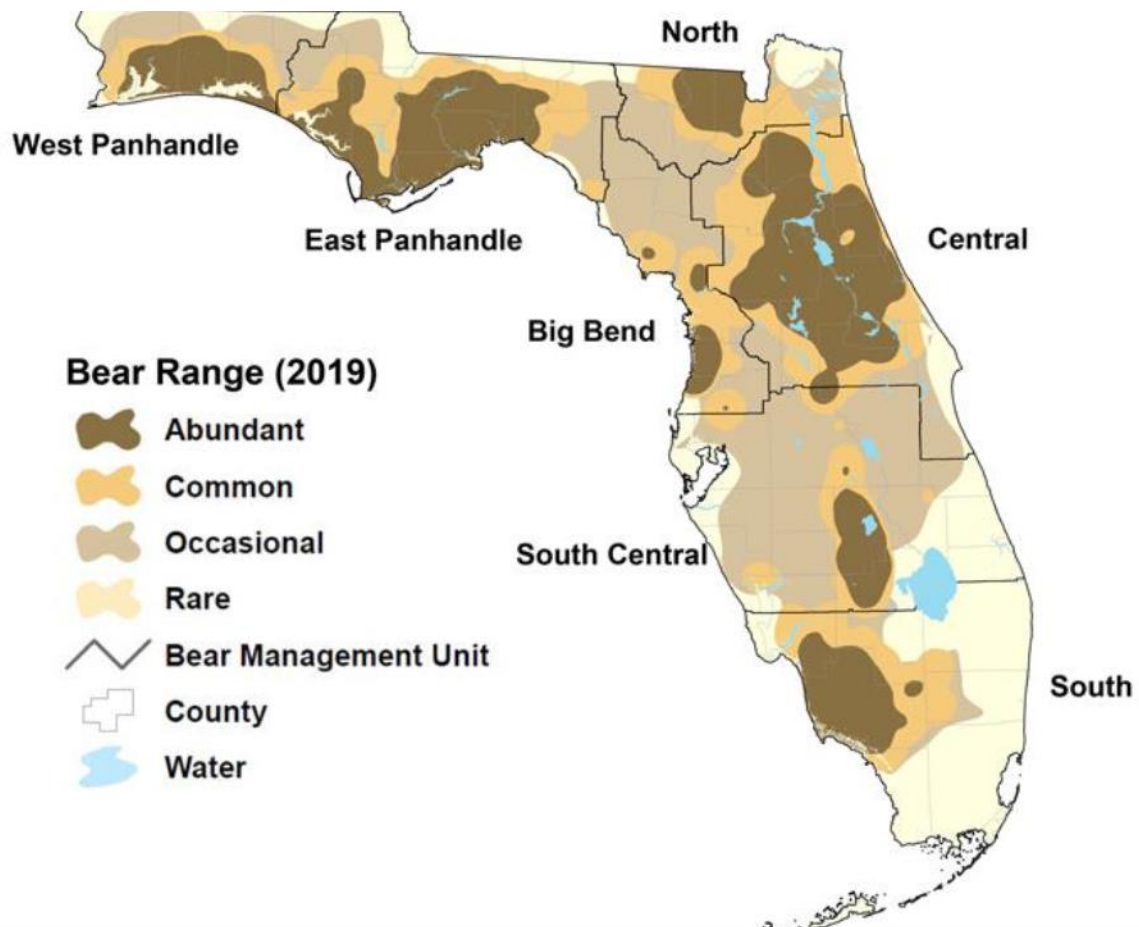
<sup>6</sup> Florida Fish and Wildlife Conservation Commission, *Bear Management Plan*, pgs. 26-27 (June 27, 2012), available at <https://myfwc.com/media/14741/bear-management-plan.pdf> (last visited February 6, 2020).

<sup>7</sup> Florida Fish and Wildlife Conservation Commission, Draft *Florida Black Bear Management Plan*, pg. xix (November 22, 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 6, 2020).

<sup>8</sup> Florida Fish and Wildlife Conservation Commission, *Florida Black Bear: Numbers*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/numbers/> (last visited February 6, 2020).

<sup>9</sup> Florida Fish and Wildlife Conservation Commission, *Bear Management Plan*, pg. vi (June 27, 2012), available at <https://myfwc.com/media/14741/bear-management-plan.pdf> (last visited February 6, 2020).

Each subpopulation is separated into a bear management unit (BMU). A BMU is a geographic location bounded by county and/or state borders with one of the seven Florida black bear subpopulations within it.<sup>10</sup> The goal of a BMU is to provide a defined area within which the FWC can have a community-focused effort to effectively manage and conserve Florida black bears.<sup>11</sup> FWC estimates that the current population of the Florida black bear is over 4,000.<sup>12</sup> A map of the BMUs and Florida black bear habitats is shown below.<sup>13</sup>



## Habitat

The Florida black bear is adaptable and inhabits a variety of forested habitats but thrives in areas that provide seasonally available foods, secluded areas for denning, and some degree of protection from humans.<sup>14</sup> The optimal bear habitat in Florida is a thoroughly interspersed mixture of flatwoods, swamps, scrub oak ridges, bayheads, and hammock habitats.<sup>15</sup>

<sup>10</sup> Florida Fish and Wildlife Conservation Commission, *BMU*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/bmu/> (last visited February 6, 2020).

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

<sup>12</sup> Florida Fish and Wildlife Conservation Commission, *Draft Florida Black Bear Management Plan*, (November 22 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 6, 2020).

<sup>13</sup> Florida Fish and Wildlife Conservation Commission, *Distribution Map*, <https://myfwc.com/wildlifehabitats/wildlife/bear/living/distribution-map/> (last visited February 6, 2020).

<sup>14</sup> Florida Fish and Wildlife Conservation Commission, *Bear Management Plan*, pg. 8, (June 27, 2012), available at <https://myfwc.com/media/14741/bear-mapg.nagement-plan.pdf> (last visited February 6, 2020).

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

## **Hunting as a Management Tool**

In 2015, the FWC authorized the first bear hunt, opening the East Panhandle, North, Central, and South BMUs to a limited hunt.<sup>16</sup> In 2016, the FWC staff considered four options regarding the hunting of Florida black bears.<sup>17</sup> These options included: using the same framework for the 2016 hunt as was used in 2015; authorizing a more conservative bear hunt utilizing input received from the public and stakeholders; postponing bear hunting in Florida; or prohibiting bear hunting in Florida for future years.<sup>18</sup> The FWC ultimately decided to postpone the bear hunt for 2016 with the option to reopen discussion at a later date.<sup>19</sup> Currently, there is no season where bear hunting is authorized in the state.

## **Penalties for Taking or Sale of Wildlife**

The FWC has a four-tier system for penalties and violations which includes civil penalties for noncriminal infractions, criminal penalties, and suspension and forfeiture of licenses and permits. Level One violations are considered the least serious while Level Four violations the most serious.<sup>20</sup>

### ***Level Two Violations***

Examples of a Level Two violation include:

- Violating rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish;
- Violating rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries;
- Violating rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals;
- Violating rules or orders of the commission relating to the use of dogs for the taking of wildlife;
- Violating rules or orders of the commission which are not otherwise classified; and
- Violating rules or orders of the commission prohibiting the unlawful use of traps, unless otherwise provided by law.<sup>21</sup>

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<sup>16</sup> Florida Fish and Wildlife Conservation Commission, *2015 Florida Black Bear Summary Report*, pg. 1, available at <https://myfwc.com/media/13669/2015-florida-black-bear-hunt-report.pdf> (last visited February 6, 2020).

<sup>17</sup> Florida Fish and Wildlife Conservation Commission, *FWC to Consider Staff Recommendation for Florida Bear Hunt, Four Options on How to Move Forward* (June 10, 2016), available at [https://myfwc.com/media/16630/fwc-to-consider-staff-recommendation-for-florida-bear-hunt-four-options-on-how-to-move-forward\\_061016.pdf](https://myfwc.com/media/16630/fwc-to-consider-staff-recommendation-for-florida-bear-hunt-four-options-on-how-to-move-forward_061016.pdf) (last visited February 6, 2020).

<sup>18</sup> *Id.*

<sup>19</sup> Florida Fish and Wildlife Conservation Commission, *FWC votes to postpone bear hunting in 2016* (June 22, 2016), available at [https://myfwc.com/media/16632/fwc-votes-to-postpone-bear-hunting-in-2016\\_062216.pdf](https://myfwc.com/media/16632/fwc-votes-to-postpone-bear-hunting-in-2016_062216.pdf) (last visited February 6, 2020).

<sup>20</sup> Section 379.401, F.S.

<sup>21</sup> Section 379.401(2)(a), F.S.

The penalties for Level Two violations are as follows:

<b>Level Two Violation</b>	<b>Degree of Offense</b>	<b>Fine or Incarceration</b>	<b>License Restrictions</b>
First offense	2 <sup>nd</sup> Degree Misdemeanor <sup>22</sup>	Max: \$500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>23</sup>	Min: \$250; Max: \$1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>24</sup>	Min: \$500; Max: \$1,000 Max: one year	Suspension of license for one year
Fourth offense within 10 years of three previous Level Two violations (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>25</sup>	Min: \$750; Max \$1,000 or Max: one year	Suspension of license for three years

The taking of a bear during closed season is considered a Level Two violation.<sup>26</sup>

### ***Level Three Violations***

Examples of a Level Three violation include:

- The illegal sale or possession of alligators;
- The taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked; and
- The illegal taking and possession of deer and wild turkey.<sup>27</sup>

The penalties for a Level Three violation are as follows:

<b>Level Three Violation</b>	<b>Degree of Offense</b>	<b>Fine or Incarceration</b>	<b>License Restrictions</b>
First offense	1 <sup>st</sup> Degree Misdemeanor <sup>28</sup>	Max: \$1,000 Max: one year	None
Second offense within 10 years of a previous Level Three violation (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>29</sup>	Min: \$750; Max: \$1,000 Max: one year	Suspension of license or permit for up to three years
Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S.	1 <sup>st</sup> Degree Misdemeanor	Mandatory \$1,000 <sup>30</sup> Max: one year	May not acquire license or permit for five years

<sup>22</sup> Section 379.401(2)(b)1., F.S.

<sup>23</sup> Section 379.401(2)(b)2., F.S.

<sup>24</sup> Section 379.401(2)(b)3., F.S.

<sup>25</sup> Section 379.401(2)(b)4., F.S.

<sup>26</sup> Section 379.401(2)(a)1., F.S.; 68A-4.009 F.A.C.

<sup>27</sup> Section 379.401(3), F.S.

<sup>28</sup> Section 379.401(3)(b)1., F.S.

<sup>29</sup> Section 379.401(3)(b)2., F.S.

<sup>30</sup> Section 379.401(3)(b)3., F.S.

### ***Level Four Violations***

Examples of a Level Four violation include:

- The making, forging, counterfeiting, or reproduction of a recreational license or the possession of same without authorization from the commission;
- The sale of illegally-taken deer or wild turkey;
- The unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs;
- The intentional killing or wounding of any species designated as endangered, threatened, or of special concern; and
- The killing of any Florida or wild panther.<sup>31</sup>

The penalties for Level Four Violations are as follows:

<b>Level Four Violation</b>	<b>Degree of Offense</b>	<b>Fine or Incarceration</b>	<b>License Restrictions</b>
First offense <sup>32</sup>	3 <sup>rd</sup> Degree Felony	Max: \$5,000 Max: Five Years	None

### **FWC Rule Promoting Bear Conservation, Human-Bear Coexistence**

Rule 68A-4.009 of the Florida Administrative Code provides rules specifically addressing Florida Black Bear Conservation. The rule allows the FWC to issue permits for certain activities that might be considered “taking or possessing” a black bear.

The rule provides that the FWC will issue permits authorizing intentional take of bears when it determines such authorization furthers scientific or conservation purposes which will benefit the survival potential of the species or to reduce property damage caused by bears. Activities that are eligible for a permit include:

- Collection of scientific data needed for conservation or management of the species;
- Taking bears that are causing property damage when no non-lethal options can provide practical resolution to the damage, and the FWC is unable to capture the bear.<sup>33</sup>

The FWC authorizes members of the public to take a bear in an attempt to scare a bear away from people using methods considered non-lethal, in situations and by methods as authorized by the FWC staff.<sup>34</sup> The FWC will provide technical assistance to land owners and comments to permitting agencies in order to minimize and avoid potential negative human-bear interactions or impacts of land modifications on the conservation and management of black bears. The FWC will base its comments and recommendations on the goals and objectives of the approved Florida Black Bear Management Plan.<sup>35</sup>

<sup>31</sup> Section 379.401(4)(a), F.S.

<sup>32</sup> Section 379.401(4)(b), F.S.

<sup>33</sup> Rule 68A-4.009 (2) F.A.C.

<sup>34</sup> Rule 68A-4.009 (3) F.A.C., *see* Florida Fish and Wildlife Conservation Commission, Draft Florida Black Bear Management Plan, (November 22, 2019), *available at* <https://myfwc.com/wildlifehabitats/wildlife/bear/living/scare/> (last visited February 11, 2020).

<sup>35</sup> Rule 68A-4.009 (4) F.A.C., *see* Florida Fish and Wildlife Conservation Commission, Draft Florida Black Bear Management Plan, (November 22 2019), *available at* <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 11, 2020).

### III. Effect of Proposed Changes:

The bill adds the prohibited taking and possession of bears to the list of Level Three violations, which are first degree misdemeanor offenses punishable by up to a year in the county jail and a \$1,000 fine.<sup>36</sup> It also adds the prohibited sale of an illegally-taken bear to the list of Level Four violations which are third degree felony offenses punishable by up to 5 years incarceration and a \$5,000 fine.<sup>37</sup>

The bill creates s. 379.4041, F.S., which increases the penalty for taking or possessing a freshly killed bear during the closed season. Under the bill, a person who commits such offenses commits a Level Three violation and forfeits any FWC license or permit for three years from the violation date. A person who commits a subsequent offense of taking a bear or possessing a freshly killed bear is permanently ineligible for issuance of any FWC license or permit.

The bill also states that any person who possesses for sale or sells a bear taken during the closed season commits a Level Four violation.

Rule 68A-4.009 of the Florida Administrative Code provides rules specifically addressing Florida Black Bear Conservation. The rule allows the FWC to issue permits for certain activities that might be considered “taking” a black bear. The bill incorporates this exception to the general rules related to “taking” black bears by exempting a person who is acting under the authority of rule 68A-4.009 F.A.C. from the prohibitions and penalties in the bill.

The bill provides an effective date of July 1, 2020.

### 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.

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<sup>36</sup> Sections 775.082 and 775.083, F.S.

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

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

There may be a nominal loss in permit fees from violators who are no longer eligible to be issued a license.<sup>38</sup>

The Criminal Justice Impact Conference considered this bill on February 10, 2020, and determined that the bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds) on the Department of Corrections.<sup>39</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 379.4041 of the Florida Statutes.

This bill substantially amends section 379.401 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/CS by Criminal Justice on February 11, 2020:**

Exempts a person who is acting under the authority of rule 68A-4.009 F.A.C. from the prohibitions and penalties in the bill. (Rule 68A-4.009 F.A.C. allows the FWC to issue permits for activities that might be considered to be “taking” a black bear.)

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<sup>38</sup> Florida Fish and Wildlife Conservation Commission, 2020 Agency Bill Analysis, October 15, 2019, (on file with the Senate Criminal Justice Committee).

<sup>39</sup> Office of Economic and Demographic Research, Criminal Justice Impact Conference Adopted Estimate, CS/SB 688 – Illegal Taking, Possession, and Sale of Bears February 10, 2020 (on file with the Senate Criminal Justice Committee).

**CS by Environment and Natural Resources on February 3, 2020:**

Changes the bill to add the prohibited taking and possession of bears to the list of Level Three violations and the prohibited sale of an illegally-taken bear to the list of Level Four violations.

**B. Amendments:**

None.





436308

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete line 76

and insert:

(1) Unless a person is acting under the authority of rule 68A-4.009 F.A.C., a person who takes a bear or possesses a freshly killed

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

And the title is amended as follows:



436308

11       Delete line 8  
12 and insert:  
13       an exception; providing penalties; providing an  
14       effective date.

By the Committee on Environment and Natural Resources; and  
Senator Wright

592-03059-20

2020688c1

A bill to be entitled

An act relating to the illegal taking, possession, and sale of bears; amending s. 379.401, F.S.; providing that a person commits specified violations for the illegal taking, possession, and sale of bears; creating s. 379.4041, F.S.; prohibiting the illegal taking, possession, and sale of bears; providing penalties; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) and paragraph (a) of subsection (4) of section 379.401, Florida Statutes, are amended to read:

379.401 Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.—

(3) LEVEL THREE VIOLATIONS.—

(a) A person commits a Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the commission prohibiting the sale of saltwater fish.

2. Rules or orders of the commission prohibiting the illegal importation or possession of exotic marine plants or animals.

3. Section 379.28, prohibiting the importation of freshwater fish.

4. Section 379.3014, prohibiting the illegal sale or possession of alligators.

Page 1 of 3

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

592-03059-20

2020688c1

5. Section 379.354(17), prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.

6. Section 379.357(4), prohibiting the sale, transfer, or purchase of tarpon.

7. Section 379.404(1), (3), and (6), prohibiting the illegal taking and possession of deer and wild turkey.

8. Section 379.4041(1), prohibiting the illegal taking and possession of bears.

9.8- Section 379.406, prohibiting the possession and transportation of commercial quantities of freshwater game fish.

10.9- Section 379.407(2), establishing major violations.

11.10- Section 379.407(4), prohibiting the possession of certain finfish in excess of recreational daily bag limits.

(4) LEVEL FOUR VIOLATIONS.—

(a) A person commits a Level Four violation if he or she violates any of the following provisions:

1. Section 379.354(16), prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or the possession of same without authorization from the commission.

2. Section 379.365(2)(c), prohibiting criminal activities relating to the taking of stone crabs.

3. Section 379.366(4)(c), prohibiting criminal activities relating to the taking and harvesting of blue crabs.

4. Section 379.367(4), prohibiting the willful molestation of spiny lobster gear.

5. Section 379.3671(2)(c)5., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.

Page 2 of 3

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

592-03059-20

2020688c1

6. Section 379.404(5), prohibiting the sale of illegally-taken deer or wild turkey.

7. Section 379.4041(2), prohibiting the sale of illegally-taken bears.

~~8.7-~~ Section 379.405, prohibiting the molestation or theft of freshwater fishing gear.

~~9.8-~~ Section 379.409, prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.

~~10.9-~~ Section 379.411, prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.

~~11.10-~~ Section 379.4115, prohibiting the killing of any Florida or wild panther.

Section 2. Section 379.4041, Florida Statutes, is created to read:

379.4041 Illegal taking, possession, and sale of bears.-

(1) A person who takes a bear or possesses a freshly killed bear during the closed season prescribed by law or rules of the commission commits a Level Three violation under s. 379.401 and forfeits any license or permit issued to him or her under this chapter for 3 years after the date of the violation. A person who commits a subsequent offense of such taking or possession is permanently ineligible for issuance of any license or permit under this chapter.

(2) A person who possesses for sale or sells a bear taken in violation of this section or rules of the commission commits a Level Four violation under s. 379.401.

Section 3. This act shall take effect July 1, 2020.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02/11/2020

Meeting Date

SB 688

Bill Number (if applicable)

436308

Amendment Barcode (if applicable)

Topic Bears

Name Gregg Eason

Job Title Lt. Colonel

Address FWC  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☒ Information

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

Representing LAW Enforcement related Quas.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/11/20

Meeting Date

688

Bill Number (if applicable)

Topic Bears

Amendment Barcode (if applicable)

Name Kate MacFall

Job Title State Director

Address 1624 Metropolitan Cir.

Phone 850 508 1001

Street

Tallahassee FL

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Humane Society of the United States

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Military and Veterans Affairs and Space, *Chair*  
Children, Families, and Elder Affairs  
Commerce and Tourism  
Environment and Natural Resources

### JOINT COMMITTEE:

Joint Administrative Procedures Committee

**SENATOR TOM A. WRIGHT**

14th District

February 4, 2020

The Honorable Keith Perry  
316, Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Re: Senate Bill 688 – Illegal Taking and Possession of Bears

Dear Chair Perry:

Senate Bill 688, relating to Illegal Taking and Possession of Bears has been referred to the Committee on Criminal Justice. I am requesting your consideration on placing SB 688 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: Lauren Jones, Staff Director of the Committee on Criminal Justice  
Sue Arnold, Administrative Assistant of the Committee on Criminal Justice

### REPLY TO:

- ☐ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore



## 2020 AGENCY LEGISLATIVE BILL ANALYSIS

**AGENCY: Florida Fish and Wildlife Conservation Commission**

### BILL INFORMATION

<b>BILL NUMBER:</b>	<u>Senate Bill (SB) 688</u>
<b>BILL TITLE:</b>	<u>Illegal Taking and Possession of Bears</u>
<b>BILL SPONSOR:</b>	<u>Senator Tom Wright</u>
<b>EFFECTIVE DATE:</b>	<u>July 1, 2020</u>

### COMMITTEES OF REFERENCE

1) Environment and Natural Resources
2) Criminal Justice
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

### CURRENT COMMITTEE

Environment and Natural Resources
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### SIMILAR BILLS

<b>BILL NUMBER:</b>	House Bill (HB) 327
<b>SPONSOR:</b>	Representative David Smith

### PREVIOUS LEGISLATION

<b>BILL NUMBER:</b>	Click or tap here to enter text.
<b>SPONSOR:</b>	Click or tap here to enter text.
<b>YEAR:</b>	Click or tap here to enter text.
<b>LAST ACTION:</b>	Click or tap here to enter text.

### IDENTICAL BILLS

<b>BILL NUMBER:</b>	Click or tap here to enter text.
<b>SPONSOR:</b>	Click or tap here to enter text.

### Is this bill part of an agency package?

No.

### BILL ANALYSIS INFORMATION

<b>DATE OF ANALYSIS:</b>	15 October, 2019
<b>LEAD AGENCY ANALYST:</b>	David Telesco, Travis Franklin
<b>ADDITIONAL ANALYST(S):</b>	Ron Mezich
<b>LEGAL ANALYST:</b>	Quilla Miralia
<b>FISCAL ANALYST:</b>	Charlotte Jerrett



## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

SB 688 would create section (s.) 379.4041, Florida Statutes (F.S.), (Part VIII Penalties) to change the penalty structure for certain taking and possession of black bears. The bill would prohibit the taking or possession of bears during closed season. A person in violation of this provision would commit a Level Three violation and forfeit any license or permit for 3 years after the date of the violation. A subsequent violation would make the person permanently ineligible for any license or permit issued under Chapter 379, F.S. Any person that offers for sale or sells a bear taken in violation of these provisions would commit a Level Four violation. The bill provides an effective date of 1 July, 2020.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

Pursuant to Florida Fish and Wildlife Conservation Commission (Commission) rule 68A-4.009, Florida Administrative Code (FAC), it is unlawful for any person to take, possess, injure, shoot, collect, or sell black bears or their parts or attempt to engage in such conduct except as authorized by the Commission. This rule is implemented by Article IV., Section 9, of the Florida Constitution. Presently, any individual convicted of engaging in such act commits a misdemeanor of the second degree (Level Two violation), punishable as provided in s. 775.082 or s. 775.083, F.S. Penalties include: fines not exceeding \$500; sentencing up to 60 days in jail; and a suspension of any recreational or commercial fishing and hunting licenses or permits issued under s. 379.354, F.S., for one year.

#### 2. EFFECT OF THE BILL:

SB 688 would create s. 379.4041, F.S., to expand current protection, penalties, and license suspension requirements found in s. 379.404, F.S., (protection for deer and turkey) to bears.

This bill proposes a change in the penalty structure for any individual convicted of an unlawful act relating to the take, possession, injury, shooting, collection, or selling of any black bears or their parts.

The bill proposes that the penalty for these actions be increased to a misdemeanor of the first degree (Level Three violation), punishable as provided in s. 775.082 or s. 775.083, F.S. Fines for such noncriminal crimes shall not exceed \$1,000, sentencing up to one year in jail as well as forfeiture of recreational or commercial fishing and hunting licenses or permits issued under s. 379.354, F.S., for three years. The sale of illegally taken deer and turkey is currently a level four (felony) violation. This bill would make the sale of illegally taken bears a level four violation.

#### 3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

#### 4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown.
Opponents and summary of position:	Unknown.

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?**Y ☐ N ☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?**Y ☐ N ☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

**FISCAL ANALYSIS****1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?**Y ☒ N ☐

Revenues:	Nominal. Fines imposed under this section are currently deposited in the County Fine and Forfeiture fund in accordance with s. 142.01, F.S., and will continue to be deposited there, with this proposed increase.
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	No.
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?	No.

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?**Y ☒ N ☐

Revenues:	Nominal. Violators of the provisions of this bill would not be allowed to purchase recreational licenses for a three-year time period. This would result in a loss of revenue to the Agency.
Expenditures:	Enforcement of the provisions of this act would be accomplished with existing resources and funding.

Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	N/A

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?**Y ☒ N ☐

Revenues:	N/A
Expenditures:	Persons found in violation of the provisions of this act would be subject to fines and forfeiture of license/permits as provided in s. 379.401, F.S.
Other:	N/A

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?**Y ☒ N ☐

If yes, explain impact.	This bill proposes that any individual in violation of this law commits a Level Three violation under s. 379.401, F.S., and forfeits any license or permit issued to him or her under this chapter for three years after the date of the violation. Fines related to this act would be increased from a maximum of \$500 to a maximum of \$1000.
Bill Section Number:	Section 1.

**TECHNOLOGY IMPACT****1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?**Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A
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**FEDERAL IMPACT****1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?**Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	N/A
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**ADDITIONAL COMMENTS**

The bill uses the term “take” which is defined in s. 379.101, F.S.:

(38) “Take” means taking, attempting to take, pursuing, hunting, molesting, capturing, or killing any wildlife or freshwater or saltwater fish, or their nests or eggs, by any means, whether or not such actions result in obtaining possession of such wildlife or freshwater or saltwater fish or their nests or eggs.

Therefore, “take” in this circumstance would include pursuing, capturing and molesting. This conflicts with the Commission’s draft Bear Management Plan and Commission rule 68A-4.009 relating to bears, which allow for hazing. Since this statute prohibits the actions (as opposed to just referring to violations created by rules of the Commission), it would create a new violation instead of just creating enhanced penalties for violations that currently exist.

The term “freshly killed” could also be problematic, as it could require prosecutors to prove that the bear had been killed within some undefined time period.

### LEGAL - GENERAL COUNSEL’S OFFICE REVIEW

Issues/concerns/comments:	
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## **CS/SB 688 – Illegal Taking, Possession, and Sale of Bears (Identical CS/HB 327)**

This bill creates s. 379.4041, F.S., increasing the Level Two violation (2<sup>nd</sup> degree misdemeanor for a first offense) to a Level Three violation (1<sup>st</sup> degree misdemeanor for a first offense) when “a person...takes a bear or possesses a freshly killed bear during the closed season prescribed by law or rules of the commission.” It also adds a Level 4 violation (Level 1, 3<sup>rd</sup> degree felony) for “a person who possesses for sale or sells a bear taken in violation of this section or rules of the commission.”

Level 4 violations contain a wide range of 3<sup>rd</sup> degree felonies, with one that is similar to the felony created above. S. 379.404(5), F.S. states that “whoever possesses for sale or sells deer or wild turkey taken in violation of this chapter or the rules and regulations of the commission commits a Level Four violation under s. 379.401, F.S.” Per DOC, in FY 18-19, there were no new commitments to prison for this violation.

**EDR PROPOSED ESTIMATE: Positive Insignificant**

**Requested by: Senate**

## **CS/SB 688 – Illegal Taking, Possession, and Sale of Bears (Identical CS/HB 327)**

This bill creates s. 379.4041, F.S., increasing the Level Two violation (2<sup>nd</sup> degree misdemeanor for a first offense) to a Level Three violation (1<sup>st</sup> degree misdemeanor for a first offense) when “a person... takes a bear or possesses a freshly killed bear during the closed season prescribed by law or rules of the commission.” It also adds a Level 4 violation (Level 1, 3<sup>rd</sup> degree felony) for “a person who possesses for sale or sells a bear taken in violation of this section or rules of the commission.”

Level 4 violations contain a wide range of 3<sup>rd</sup> degree felonies, with one that is similar to the felony created above. S. 379.404(5), F.S. states that “whoever possesses for sale or sells deer or wild turkey taken in violation of this chapter or the rules and regulations of the commission commits a Level Four violation under s. 379.401, F.S.” Per DOC, in FY 18-19, there were no new commitments to prison for this violation.

**CONFERENCE ADOPTED ESTIMATE: Positive Insignificant**

**Requested by: Senate**

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

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

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

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BILL: SB 798

INTRODUCER: Senator Rouson

SUBJECT: Procurement of Human Organs and Tissue

DATE: February 10, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Williams	Brown	HP	<b>Favorable</b>
2.	Wagoner	Jones	CJ	<b>Favorable</b>
3.			RC	

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## **I. Summary:**

SB 798 prohibits a for-profit entity from engaging, directly or indirectly, in the procurement of any eye, cornea, eye tissue, or corneal. Such conduct constitutes a second degree felony. The bill provides exceptions for specified entities.

The Agency for Health Care Administration (AHCA) will collect \$4,000 less in annual assessment fees. The bill may have a positive indeterminate prison bed impact. See Section V. Fiscal Impact Statement.

The effective date of the bill is July 1, 2020.

## **II. Present Situation:**

### **Regulations and Standards for Tissue Processing**

Tissue processing in the United States is governed by mandatory requirements enforced by federal and state regulatory authorities. The authorization of donated tissues is governed by the Uniform Anatomical Gift Act. Tissue banks in the United States are governed by the National Organ Transplantation Act (NOTA), which provides that tissue cannot be bought or sold. The law does allow for reimbursement of costs associated with the recovery, processing, and storing of tissue and the development of tissue processing technologies. Such activities can include research, screening and testing, sterilization processes, and precision-tooled shaping of allografts for transplantation.<sup>1</sup>

Regardless of their status, all tissue banks must meet the same regulatory requirements and have the same goal of assisting in the process of making tissue safely available for transplants. Human

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<sup>1</sup> American Association of Tissue Banks, Regulation and Standards, available at <https://www.aatb.org/regulatory> (last visited on Feb. 7, 2020).

tissue processed and distributed for transplantation by the American Association of Tissue Banks (AATB)-accredited tissue banks is subject to federal Food and Drug Administration regulation and AATB's standards.<sup>2</sup>

### **Statutory Provisions Specific to Eye Banks in Florida**

Part V of ch. 765, F.S., contains provisions specific to the donation and procurement of human organs and tissues. Under this part, "procurement" is defined in s. 765.511(18), F.S., as "any retrieval, recovery, processing, storage, or distribution of human organs or tissues for transplantation, therapy, research, or education."

Section 765.542, F.S., provides requirements for the certification of procurement organizations in the state of Florida. Procurement organizations, as defined in s. 765.511(19), F.S., include organ procurement organizations, eye banks, and tissue banks. Per s. 765.511(11), F.S., an eye bank is "an entity that is accredited by the Eye Bank Association of America or otherwise regulated under federal or state law to engage in the retrieval, screening, testing, processing, storage, or distribution of human eye tissue."

In accordance with s. 765.542(3), F.S., a person may not engage in the practice of eye procurement in the state of Florida without being appropriately certified as an eye bank by the AHCA. Funeral directors or direct disposers who retrieve eye tissue for a certified eye bank are exempt from being certified as eye banks.<sup>3</sup>

All procurement organizations, including eye banks, are required to file an annual report and an annual assessment fee to the AHCA based on reported revenues from procurement and processing activities, as provided in s. 765.544, F.S. During State Fiscal Year 2018-2019, \$4,000 in annual assessment fees were received by the AHCA from for-profit eye banks.<sup>4</sup>

Chapter 873, F.S., governs the sale of anatomical matter by a person or a for-profit entity and includes provisions related to the purchase, sale, and transfer of human organs and tissues, including, but not limited to: the eye, cornea, kidney, liver, heart, lung, pancreas, bone, and skin.<sup>5</sup>

Section 873.01(2), F.S., prohibits for-profit entities, or any employee of a for-profit entity, from transferring human organs and tissues or arranging for the transfer of human organs and tissues for valuable consideration. "Valuable consideration" does not include the reasonable costs associated with the removal, storage, and transportation of a human organ or tissue. A violation of this section constitutes a second degree felony.<sup>6</sup>

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

<sup>3</sup> Section 765.542(3), F.S.

<sup>4</sup> Agency for Health Care Administration, *Senate Bill 798 Analysis* (updated Feb. 5, 2020) (on file with the Senate Committee on Criminal Justice).

<sup>5</sup> Section 873.01(3)(a), F.S.

<sup>6</sup> Section 873.01(4), F.S. 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. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.



### **Procurement Organizations Regulated by the Agency for Health Care Administration**

According to the AHCA, there are currently 155 procurement organizations certified in the state of Florida. Of these, four are certified as organ procurement organizations, 24 are certified as eye banks, and 127 are certified as tissue banks. Of the 24 certified eye banks, three are physically located in Florida, and the remaining 21 eye banks certified in Florida are out-of-state organizations. The three eye banks located in Florida are not-for-profit corporations. The profit status of Florida's certified eye banks is as follows:

- Sixteen not-for-profit entities, and
- Eight for-profit entities.<sup>7</sup>

### **Corporate Trends in the Eye-Tissue Banking Industry**

In recent years, the market for corneal tissue procurement, transport, and surgeon partnerships has experienced somewhat of a shift from local, community-based eye banks to larger companies. Some of these larger companies are represented by not-for-profit corporations affiliated with for-profit “daughter” companies, which, in partnership with each other, play defined roles in the process, with the non-profit organization recovering the tissue while the for-profit organization processes, evaluates, and distributes the tissues to cornea surgeons.<sup>8</sup>

The for-profit status of any participant in the process has drawn criticism. However, defenders of such partnerships respond by noting that such for-profit companies operate under the NOTA, which states that it is illegal to buy or sell organs and tissues while it *is* legal to obtain reasonable payment associated with the removal, transportation, processing, preservation, quality control, and storage of corneas and eye tissue. Similarly, local eye banks routinely obtain payment related to these actions. Some argue that the for-profit connection fundamentally alters the relationship between physicians, eye banks, and donors by rendering the gift of the tissue as a commodity. The resulting ethical debate may be crucial to the future of eye banks.<sup>9</sup>

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

**Section 1** amends s. 765.542, F.S., relating to requirements to engage in organ, tissue, or eye procurement, to specify that a for-profit entity may not engage, directly or indirectly, in the procurement of any eye, cornea, eye tissue, or corneal tissue. The bill stipulates that this new provision does not apply to any hospital or ambulatory surgical center licensed under ch. 395, F.S., or to a district medical examiner appointed under ch. 406, F.S.

**Section 2** amends s. 873.01, F.S., relating to the prohibition on the purchase or sale of human organs and tissues, to specify that a for-profit entity may not engage, directly or indirectly, in the procurement, as defined in s. 765.511, F.S., of any eye, cornea, eye tissue, or corneal tissue. The bill stipulates that this new provision does not apply to any hospital or ambulatory surgical center

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<sup>7</sup> *Supra* note 4.

<sup>8</sup> Majid Moshirfar, Jackson L. Goldberg, et al., *A paradigm shift in eye banking: how new models are challenging the status quo*, U.S. National Library of Medicine, National Institutes of Health (Dec. 27, 2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6311318/> (last visited Feb. 7, 2020).

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

licensed under ch. 395, F.S., or to a district medical examiner appointed under ch. 406, F.S. Such conduct constitutes a second degree felony.<sup>10</sup>

**Section 3** provides an effective date of July 1, 2020.

**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:

According to the AHCA, SB 798 will result in the delicensing of eight for-profit eye banks that are currently certified to do business in Florida and will prohibit any for-profit entities from applying for and obtaining certification as eye banks in the future.<sup>11</sup>

C. Government Sector Impact:

The AHCA will collect \$4,000 less in annual assessment fees for the currently operating for-profit eye banks doing business in Florida.<sup>12</sup>

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<sup>10</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. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

<sup>11</sup> *Supra* note 4.

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

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, has not yet considered the bill. However, the bill may have a positive indeterminate prison bed impact (an increase in prison beds) on the Department of Corrections because the bill creates a new felony offense.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The statutory provisions proposed in the bill do not appear to conflict with applicable federal law relating to prohibition of organ purchases.<sup>13</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 765.542 and 873.01.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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<sup>13</sup> See 42 U.S.C. 274e.

By Senator Rouson

19-00897A-20

2020798\_\_

A bill to be entitled

An act relating to the procurement of human organs and tissue; amending s. 765.542, F.S.; prohibiting for-profit entities from procuring certain human organs and tissue, with certain exceptions; amending s. 873.01, F.S.; prohibiting for-profit entities from procuring certain human organs and tissue, with certain exceptions; providing an effective date.

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

Section 1. Present subsection (4) of section 765.542, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

765.542 Requirements to engage in organ, tissue, or eye procurement.—

(4) A for-profit entity may not engage, directly or indirectly, in the procurement of any eye, cornea, eye tissue, or corneal tissue. This subsection does not apply to a hospital or an ambulatory surgical center licensed under chapter 395 or to a district medical examiner appointed under chapter 406.

Section 2. Present subsections (3) and (4) of section 873.01, Florida Statutes, are redesignated as subsections (4) and (5), respectively, a new subsection (3) is added to that section, and subsections (1) and (2) of that section are amended, to read:

873.01 Purchase or sale of human organs and tissue prohibited.—

(1) A ~~No~~ person may not ~~shall~~ knowingly offer to purchase

Page 1 of 2

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

19-00897A-20

2020798\_\_

or sell, or purchase, sell, or otherwise transfer, any human organ or tissue for valuable consideration.

(2) A ~~No~~ for-profit corporation or any employee thereof may ~~not shall~~ transfer or arrange for the transfer of any human body part for valuable consideration.

(3) A for-profit entity may not engage, directly or indirectly, in the procurement, as defined in s. 765.511, of any eye, cornea, eye tissue, or corneal tissue. This subsection does not apply to a hospital or an ambulatory surgical center licensed under chapter 395 or to a district medical examiner appointed under chapter 406.

Section 3. This act shall take effect July 1, 2020.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/20  
Meeting Date

SB 798  
Bill Number (if applicable)

Topic Procurement of Human Organs & Tissue  
~~organ transplantation~~

Amendment Barcode (if applicable)

Name Todd Josko

Job Title Partner, Ballard Partners

Address 1726 E. 7th Ave., Ste 13-15  
Street

Phone (813) 374-6007

Tampa FL 33605  
City State Zip

Email tj@ballardpartners.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Lion's Eye Institute for Transplants & Research

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Keith Perry, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** January 29, 2020

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I respectfully request that **Senate Bill # 798**, relating to Procurement of Human Organs and Tissue, be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Ervin Rouson".

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Senator Darryl Ervin Rouson  
Florida Senate, District 19



# 2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Agency for Health Care Administration

## BILL INFORMATION

BILL NUMBER:	SB 798
BILL TITLE:	Procurement of Human Organs and Tissue
BILL SPONSOR:	Senator Darryl Rouson
EFFECTIVE DATE:	July 1, 2020

## COMMITTEES OF REFERENCE

1) Health Policy
2) Criminal Justice
3) Rules
4)
5)

## CURRENT COMMITTEE

Criminal Justice

## SIMILAR BILLS

BILL NUMBER:	
SPONSOR:	

## PREVIOUS LEGISLATION

BILL NUMBER:	
SPONSOR:	
YEAR:	

## IDENTICAL BILLS

BILL NUMBER:	HB 563
SPONSOR:	Rep. Dan Daley

Is this bill part of an agency package?

Y \_\_\_ N \_x\_

LAST ACTION:

## BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	
LEAD AGENCY ANALYST:	Ruby Grantham
ADDITIONAL ANALYST(S):	
LEGAL ANALYST:	Thomas M. Hoeler
FISCAL ANALYST:	

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

This legislation amends sections 765.542<sup>1</sup> and 873.01<sup>2</sup>, Florida Statutes (F.S.) in order to prohibit for-profit entities from collecting eye, cornea, eye tissue or corneal tissue and obtaining certification as eye banks. The proposed bill creates exceptions for hospitals and ambulatory surgical centers licensed under chapter 395, F.S. and district medical examiners appointed under chapter 406, F.S.

The proposed bill would take effect July 1, 2020.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

There are currently 155 procurement organizations certified in the state of Florida. Four of these procurement organizations are certified as organ procurement organizations, 24 are certified as eye banks, and 127 are certified as tissue banks.

Of the 24 certified eye banks, 3 are physically located in Florida; the remaining 21 certified eye banks are out-of-state organizations (Alabama, California, Illinois, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah and Washington). The 3 eye banks located in Florida are all not-for-profit corporations.

The breakdown of certified eye banks is as follows:

16 – not-for-profit entities

8 – for-profit entities

Chapter 765, Part V<sup>3</sup>, F.S. contains provisions for the donation and procurement of human organs and tissues. Procurement is defined in section 765.511,<sup>4</sup> F.S. as “any retrieval, recovery, processing, storage, or distribution of human organs or tissues for transplantation, therapy, research, or education.” Chapter 873,<sup>5</sup> F.S. governs the sale of anatomical matter by a person or a for-profit entity and includes explanations related to the purchase, sale and transfer of human organs and tissues including but not limited to: the eye, cornea, kidney, liver, heart, lung, pancreas, bone, and skin.

Section 765.542, F.S. provides requirements for the certification of procurement organizations in the state of Florida. Procurement organizations, as defined in subsection 765.511(19), F.S. include organ procurement organizations, eye banks, and tissue banks. Per subsection 765.511(11), F.S. an eye bank is “an entity that is accredited by the Eye Bank Association of America or otherwise regulated under federal or state law to engage in the retrieval, screening, testing, processing, storage, or distribution of human eye tissue.”

In accordance with subsection 765.542(3), F.S., a person may not currently engage in the practice of eye procurement in the state of Florida without being appropriately certified as an eye bank by the Agency for Health Care Administration (Agency). Funeral directors or direct disposers who retrieve eye tissue for a certified eye bank are exempt from being certified as eye banks.

All procurement organizations, including eye banks, are required to file an annual report and an annual assessment fee based on reported revenues from procurement and processing activities, as provided in section 765.544, F.S. During the fiscal year 2018-19, \$3,500.00 in annual assessment fees were received from for-profit eye banks.

Subsection 873.01(2), F.S. currently prohibits for-profit entities, or any employee of a for-profit entity, from transferring human organs and tissues or arranging human organs and tissues for transfer for more than the reasonable costs associated with the removal, storage, and transportation of these organs and tissues.

<sup>1</sup> 765.542 Requirements to engage in organ, tissue, or eye procurement, F.S.

<sup>2</sup> 873.01 Purchase or sale of human organs and tissue prohibited, F.S.

<sup>3</sup> Chapter 795, Part V, Anatomical Gifts

<sup>4</sup> Chapter 795.511, Definitions

<sup>5</sup> Chapter 873, Sale of Anatomical Matter





**2. EFFECT OF THE BILL:**

The bill amends sections 765.542, F.S. and 873.01, F.S. in order to prohibit for-profit entities from engaging in the procurement of eye, cornea, eye tissue or corneal tissue. The proposed bill creates exceptions for hospitals and ambulatory surgical centers licensed under chapter 395, F.S. and district medical examiners appointed under chapter 406, F.S.

As a result of the creation of subsection 765.542(4), F.S., the 8 for-profit eye banks that are physically located in other states (California, North Carolina, New Jersey, Pennsylvania, Tennessee, Texas and Washington) and currently certified in Florida would no longer be certified, as this bill would prohibit any for-profit entities from applying for and obtaining certification as eye banks in Florida.

Section 873.01, F.S. is also expanded to prohibit for-profit entities from engaging in any procurement activities of any eye, cornea, eye tissue, or corneal tissue, not just the transfer or arrangement for transfer of human eye tissue.

The delicensing of the for-profit eye banks would result in an estimated loss of \$4,000 in annual assessment fees per year to the Agency.

For-profit eye banks account for less than 5% of all of the procurement organizations currently certified. The Agency anticipates no impact from this bill based on the representation of for-profit eye banks currently certified within the state of Florida.

The proposed changes do not conflict with Title 42 USC 274e<sup>6</sup> relating to prohibition of organ purchases.

The impact on private stakeholders is unknown.

**3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y \_\_\_ N X**

If yes, explain:	
Is the change consistent with the agency's core mission?	Y ___ N ___
Rule(s) impacted (provide references to F.A.C., etc.):	

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y \_\_\_ N X**

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

**6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC.? REQUIRED BY THIS BILL? Y \_\_\_ N X**

Board:	
Board Purpose:	

<sup>6</sup> 42 USC 274e: Prohibition of organ purchases

Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

## FISCAL ANALYSIS

### 1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y \_\_\_ N X

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
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 FISCAL IMPACT TO STATE GOVERNMENT? Y X N \_\_\_

Revenues:	The delicensure of the 8 for-profit eye banks would result in an estimated loss in revenue of \$4,000 per year to the Agency, which is minimal when looking at the revenue collected from the entire licensure program.
Expenditures:	
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

### 3. DOES THE BILL HAVE A THE FISCAL IMPACT TO THE PRIVATE SECTOR? Y X N \_\_\_

Revenues:	Unknown – for-profit eye banks that can no longer be licensed
Expenditures:	Unknown – for-profit eye banks that can no longer be licensed
Other:	

### 4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y X N \_\_\_

If yes, explain impact.	Decrease in AHCA revenue from annual assessment fees
Bill Section Number:	N/A

## TECHNOLOGY IMPACT

### 1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y \_\_\_ N X

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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### FEDERAL IMPACT

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1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?    Y \_\_\_ N X

If yes, describe the anticipated impact including any fiscal impact.	
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### ADDITIONAL COMMENTS

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### LEGAL – GENERAL COUNSEL’S OFFICE REVIEW

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Issues/concerns/comments:	None.
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**Arnold, Sue**

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**From:** Heere, Robert  
**Sent:** Tuesday, February 11, 2020 10:10 AM  
**To:** Arnold, Sue  
**Subject:** SB 798 Human Procurement of Organs

Good morning,

Please allow Senator Pizzo to present SB 798 today in the Criminal Justice Committee on behalf of Senator Rouson.

Thank you,

**Robert Heere**  
Legislative Assistant  
State Senator Darryl Rouson  
Office- 850-487-5019  
[Heere.robert@flsenate.gov](mailto:Heere.robert@flsenate.gov)

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

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

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

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BILL: CS/SB 1508

INTRODUCER: Criminal Justice Committee and Senator Taddeo

SUBJECT: Police Vehicles

DATE: February 11, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wagoner	Jones	CJ	<b>Fav/CS</b>
2.			IS	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1508 prohibits a person from knowingly selling, exchanging, or transferring a police vehicle without, before consummating the sale, exchange, or transfer, removing any police markings from the vehicle. The bill requires law enforcement agencies, before consummating the sale, exchange, or transfer, to provide an official letter of notification that police markings have been removed to the purchaser, customer, or transferee. The bill exempts the sales, exchanges, or transfers of police vehicles between law enforcements agencies. A person who knowingly sells, exchanges, or offers to sell or exchange a motor vehicle in violation of these provisions commits a second degree misdemeanor.

The bill defines “police markings” as decals, stickers, distinctive paint schemes, or other markings attached or applied to a police vehicle that identify the vehicle as a police vehicle.

The bill may have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2020.

## II. Present Situation:

Once police vehicles reach a certain age or mile limit, many law enforcement agencies find it more cost effective to purchase new vehicles than continue to utilize older vehicles.<sup>1</sup> Law enforcement agencies sometimes transition older vehicles to become administrative or training vehicles,<sup>2</sup> or in many cases, they sell them.<sup>3</sup> Retired police cars on the road with their former agency's markings may create confusion for the public and law enforcement and enable illegal police impersonations.<sup>4</sup>

Section 319.14, F.S., provides requirements for the sale of police vehicles. A "police vehicle" is defined as a motor vehicle owned or leased by the state or a county or municipality and used in law enforcement.<sup>5</sup> A person may not knowingly offer for sale, sell, or exchange any vehicle that has been licensed, registered, or used as a police vehicle until the Department of Highway Safety and Motor Vehicles (DHSMV) has stamped in a conspicuous place on the certificate of title of the vehicle, or its duplicate, words stating the nature of the previous use of the vehicle.<sup>6</sup> Additionally, prior to consummating the sale, exchange, or transfer of a police vehicle, a person must disclose in writing to the purchaser, customer, or transferee the fact that the vehicle had previously been titled, registered, or used as a police vehicle.<sup>7</sup> A violation of s. 319.14, F.S., is a second degree misdemeanor.<sup>8</sup> Currently, there is no requirement for the removal of police markings prior to sale.

Although not statutorily required, many law enforcement agencies have adopted policies for removal before selling their vehicles. The DHSMV's Division of Florida Highway Patrol (FHP) decommissions vehicles by removing all police decals and painting over the tan portion of the marked patrol vehicle with Rust-Oleum High Performance Protective Enamel oil-based black paint in compliance with s. 321.03, F.S., which prohibits a person from coloring or causing to be colored any motor vehicle or motorcycle the same or similar color as those used by FHP.<sup>9</sup> Such person would be guilty of a first degree misdemeanor.<sup>10</sup>

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<sup>1</sup> Tom Kanewske, *What to do With Old Police Vehicles?*, Officer.com (February 15, 2017), available at <https://www.officer.com/on-the-street/vehicles-equipment/article/12291284/what-to-do-with-old-police-vehicles> (last visited February 6, 2020).

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

<sup>3</sup> Thi Dao, *How to Remarket Patrol Vehicles*, Policemag.com (February 7, 2018), available at <https://www.policemag.com/342406/how-to-remarket-patrol-vehicles> (last visited February 6, 2020).

<sup>4</sup> Over the last five years, Florida has had 489 arrests for impersonating an officer. Brian Entin & Daniel Cohen, *They're not police cars – but they used to be. Retired law enforcement vehicle can create confusion*, WSVN News Miami (November 4, 2019), available at <https://wsvn.com/news/investigations/theyre-not-police-cars-but-they-used-to-be-retired-law-enforcement-vehicles-can-create-confusion/> (last visited February 6, 2020).

<sup>5</sup> Section 319.14(1)(c)1., F.S.

<sup>6</sup> Section 319.14(1)(a), F.S.

<sup>7</sup> Section 319.14(2), F.S.

<sup>8</sup> Section 319.14(5), F.S. A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>9</sup> Department of Highway Safety and Motor Vehicles, *2020 Agency Legislative Bill Analysis for SB 1508*, (January 14, 2020) (on file with the Senate Criminal Justice Committee).

<sup>10</sup> Section 321.03, F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 774.083, F.S.

Additionally, it is a first degree misdemeanor for any unauthorized person to color or cause to be colored any motor vehicle or motorcycle the statutorily prescribed color combination of motor vehicles and motorcycles used by sheriffs of Florida and their deputies.<sup>11</sup>

Further, it is a first degree misdemeanor for an unauthorized person to own or operate a motor vehicle marked or identified in any manner by words, lettering, marking, insignia, or coloration officially used to identify the vehicle as a law enforcement vehicle or a vehicle used by a criminal justice agency<sup>12</sup> or fire department with the intent to mislead or cause another person to believe that such vehicle is an official vehicle of those agencies.<sup>13</sup>

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

The bill prohibits a person from knowingly selling, exchanging, or transferring a police vehicle without, before consummating the sale, exchange, or transfer, removing any police markings from the vehicle and certifying in writing to the purchaser, customer, or transferee the fact that the vehicle has had the police markings removed. The bill requires law enforcement agencies, before consummating the sale, exchange, or transfer, to provide an official letter of notification to the purchaser, customer, or transferee confirming the fact that the vehicle has had the police markings removed. A person<sup>14</sup> who knowingly sells, exchanges, or offers to sell or exchange a motor vehicle in violation of these provisions commits a second degree misdemeanor.<sup>15</sup>

The bill defines “police markings” as decals, stickers, distinctive paint schemes, or other markings attached or applied to a police vehicle that identify the vehicle as a police vehicle.

The bill is effective July 1, 2020.

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

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

None.

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

None.

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<sup>11</sup> Section 30.46, F.S.

<sup>12</sup> For purposes of this section, as defined in s. 943.045(11), F.S., “criminal justice agency” means a court, the Department of Law Enforcement, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Families, and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

<sup>13</sup> Section 843.085(2) and (5), F.S.

<sup>14</sup> Section 319.14(5), F.S., provides that any officer, agent, or employee of a person who knowingly authorizes, directs, aids in, or consents to sales contrary to this section are also subject to criminal liability.

<sup>15</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.



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:

This bill may have a positive fiscal impact on law enforcement agencies that do not currently practice the removal of police markings before selling decommissioned police vehicles.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 319.14 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Criminal Justice on February 11, 2020:**

The committee substitute:

- Revises the notification of police markings removal requirement.
- Revises the definition of “police markings” to include distinctive paints schemes and specifies that such markings must be used to identify the vehicle as a police vehicle.
- Exempts the sales, exchanges, or transfers of police vehicles between law enforcement agencies from the requirements of the bill.

- B. **Amendments:**

None.

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

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868736

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 24 - 28  
and insert:  
vehicle. Law enforcement agencies, before consummating the sale,  
exchange, or transfer, shall provide an official letter of  
notification to the purchaser, customer, or transferee  
confirming the fact that the vehicle has had the police markings  
removed. For purposes of this subsection, the term "police  
markings" means decals, stickers, distinctive paint schemes, or



868736

other markings attached or applied to a police vehicle that  
identify the vehicle as a police vehicle. Sales, exchanges, or  
transfers of police vehicles between law enforcement agencies  
are exempt from the requirements of this subsection.

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

And the title is amended as follows:

    Delete lines 5 - 7

and insert:

    without removing any police markings from the vehicle;  
    requiring law enforcement agencies to provide written  
    confirmation that the police markings have been  
    removed; defining the term "police markings";  
    exempting sales, exchanges, or transfers of police  
    vehicles between law enforcement agencies;

By Senator Taddeo

40-01474-20

20201508\_\_

1 A bill to be entitled  
 2 An act relating to police vehicles; amending s.  
 3 319.14, F.S.; prohibiting a person from knowingly  
 4 selling, exchanging, or transferring a police vehicle  
 5 without removing any police markings from the vehicle  
 6 and certifying that the police markings have been  
 7 removed; defining the term "police markings";  
 8 providing an effective date.  
 9  
 10 Be It Enacted by the Legislature of the State of Florida:  
 11  
 12 Section 1. Present subsections (5) through (10) of section  
 13 319.14, Florida Statutes, are redesignated as subsections (6)  
 14 through (11), respectively, a new subsection (5) is added to  
 15 that section, and present subsection (5) of that section is  
 16 republished, to read:  
 17 319.14 Sale of motor vehicles registered or used as  
 18 taxicabs, police vehicles, lease vehicles, rebuilt vehicles,  
 19 nonconforming vehicles, custom vehicles, or street rod vehicles;  
 20 conversion of low-speed vehicles.—  
 21 (5) A person may not knowingly sell, exchange, or transfer  
 22 a police vehicle without, before consummating the sale,  
 23 exchange, or transfer, removing any police markings from the  
 24 vehicle and certifying in writing to the purchaser, customer, or  
 25 transferee the fact that the vehicle has had the police markings  
 26 removed. For purposes of this subsection, the term "police  
 27 markings" means decals, stickers, or other markings attached or  
 28 applied to a police vehicle.  
 29 (6)-(5) A person who knowingly sells, exchanges, or offers

Page 1 of 2

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

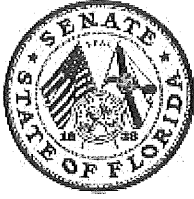
40-01474-20

20201508\_\_

30 to sell or exchange a motor vehicle or mobile home contrary to  
 31 this section or any officer, agent, or employee of a person who  
 32 knowingly authorizes, directs, aids in, or consents to the sale,  
 33 exchange, or offer to sell or exchange a motor vehicle or mobile  
 34 home contrary to this section commits a misdemeanor of the  
 35 second degree, punishable as provided in s. 775.082 or s.  
 36 775.083.  
 37 Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Keith Perry, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** January 28, 2020

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I respectfully request that **Senate Bill #1508**, relating to the removal of police vehicle markings prior to the sale of decommissioned police vehicles, be placed on the:

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

Leader McGhee has filed the House version of the Bill, HB 1281.

A handwritten signature in dark ink, appearing to read "Annette Taddeo", with a horizontal line drawn through it.

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Senator Annette Taddeo  
Florida Senate, District 40



## 2020 AGENCY LEGISLATIVE BILL ANALYSIS

### AGENCY: Highway Safety and Motor Vehicles

#### BILL INFORMATION

<b>BILL NUMBER:</b>	SB 1508
<b>BILL TITLE:</b>	<u>Police Vehicles</u>
<b>BILL SPONSOR:</b>	Senator Taddeo
<b>EFFECTIVE DATE:</b>	July 1, 2020

#### COMMITTEES OF REFERENCE

1) Criminal Justice
2) Infrastructure and Security
3) Rules
4)
5)

#### CURRENT COMMITTEE

Criminal Justice

#### SIMILAR BILLS

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

#### PREVIOUS LEGISLATION

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	
<b>YEAR:</b>	
<b>LAST ACTION:</b>	

#### IDENTICAL BILLS

<b>BILL NUMBER:</b>	HB 1281
<b>SPONSOR:</b>	McGhee

**Is this bill part of an agency package?**

#### BILL ANALYSIS INFORMATION

<b>Date of Analysis:</b>	January 14, 2020: Lindsey Eppes, Major Gary Howze - FHP
<b>Division Director/Designee MS</b>	
<b>Division Director/Designee FHP</b>	<i>John McGhee</i> <i>JA 1/27/2020</i>
<b>Bureau Chief(s):</b>	
<b>Additional Analyst(S):</b>	
<b>Legal Analyst:</b>	January 22, 2020: Nate Sebastian/Rich Coln/Gregory Pitt - OGC
<b>Fiscal Analyst:</b>	January 22, 2020: Suzie Carey - Budget

*1/29/2020 RL*

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

Senate Bill 1508 ("the bill") amends s. 319.14, F.S., to prohibit a person from knowingly selling, exchanging, or transferring a police vehicle without removing any police markings from the vehicle and certifying in writing that such markings have been removed.

If passed, this bill shall take effect July 1, 2020.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

Current law broadly prohibits the public from impersonating police officers, but it does not explicitly address the removal of police markings prior to the sale, exchange, or transfer of a police vehicle.<sup>1</sup>

#### 2. EFFECT OF THE BILL:

The bill amends s. 319.14, F.S., to prohibit a person from knowingly selling, exchanging, or transferring a police vehicle without first removing police markings from the vehicle. In addition, the seller must certify in writing to the purchaser, customer, or transferee that all police markings have been removed. The bill defines "police markings" as decals, stickers, or other markings attached or applied to a police vehicle.

The Department of Highway Safety and Motor Vehicles' Division of Florida Highway Patrol ("FHP") decommissions vehicles by removing all police decals and painting over the tan portion of the marked patrol vehicles with Rust-Oleum High Performance Protective Enamel oil-based black paint in compliance with s. 321.03, F.S., which prohibits a person in the state from coloring or causing to be colored any motor vehicle or motorcycle the same or similar color as the color or colors so prescribed for FHP. Due to the type of paint used, it is not possible for the new owner of a decommissioned FHP car to remove the paint or cause the FHP car to appear as an official FHP vehicle without intentionally repainting the vehicle in violation of the law.

#### 3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

If yes, explain:	
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

#### 4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	None
Opponents and summary of position:	

#### 5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y ☐ N ☒

If yes, provide a description:	
Date Due:	

<sup>1</sup> See ss. 30.46, 321.03, and 843.085, F.S.



Bill Section Number(s):	
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**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** Y ☐ N ☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

### FISCAL ANALYSIS

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** Y ☐ N ☐

Revenues:	No
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No
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?	NA

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?** Y ☐ N ☒

Revenues:	No
Expenditures:	No
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	NA

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?** Y ☐ N ☒

Revenues:	No
Expenditures:	No
Other:	NA

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?** Y ☐ N ☐

If yes, explain impact.	No
Bill Section Number:	NA

### TECHNOLOGY IMPACT

**1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	This legislation does not appear to have any impact on the Department's technology systems.
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**FEDERAL IMPACT**

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1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☐

If yes, describe the anticipated impact including any fiscal impact.	
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**ADDITIONAL COMMENTS**

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**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

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Issues/concerns/comments:	The definition of "police markings" is overly broad and could be interpreted as including markings designating the make and model of the vehicle, Department of Transportation codes on tires and safety glass, and other markings unrelated to police work. The intent of the bill may be better served by limiting "police markings" to agency insignia, jurisdictional markings, and any other decals, stickers, or other markings applied by a law enforcement agency to serve a law enforcement purpose.
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## Wagoner, Tessa

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**From:** Jacobs, Kevin <KevinJacobs@flhsmv.gov>  
**Sent:** Wednesday, February 5, 2020 2:46 PM  
**To:** Wagoner, Tessa  
**Cc:** Langston, Jennifer  
**Subject:** RE: SB 1508 Police Vehicles  
**Attachments:** SB1508\_HSM 2020-01-30.pdf; RE: [EXT] HB 1281

Tessa,

Attached is our Department Bill Analysis for SB 1508 as well as my conversation and draft clarification amendment provided to house staff. The biggest parts were determine what exactly needed to be provided at the point of sale, and the clarification that police markings would include the distinctive paint scheme used by FHP.

Let me know if there is anything else you need.

Best,  
Kevin Jacobs  
850 617-3112

---

**From:** Wagoner, Tessa <Wagoner.Tessa@flsenate.gov>  
**Sent:** Wednesday, February 5, 2020 2:40 PM  
**To:** Jacobs, Kevin <KevinJacobs@flhsmv.gov>  
**Subject:** [EXT] SB 1508 Police Vehicles

Good afternoon, Mr. Jacobs,

I am working on SB 1508 regarding the sale of police vehicles. The HB 1281 analysis cites to you regarding current policies of law enforcement agencies. Would you mind forwarding me this information as well? Thank you!

Sincerely,

*Tessa Wagoner*

OPS Legal Intern  
Committee on Criminal Justice | Florida Senate  
(850) 487-5266

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This email originated from a Florida Department of Highway Safety and Motor Vehicles email address.  
Always use caution when clicking links or opening attachments unless you recognize the sender and know the content is safe.  
Please Note: Florida has very broad public records laws. Unless a statutory exemption applies, emails are

subject to public disclosure.

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## Wagoner, Tessa

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**From:** Jacobs, Kevin <KevinJacobs@flhsmv.gov>  
**Sent:** Monday, January 27, 2020 1:26 PM  
**To:** Roth, Danielle  
**Cc:** Langston, Jennifer  
**Subject:** RE: [EXT] HB 1281  
**Attachments:** HB 1281 DRAFT Amendment.docx

Danielle,

See the attached draft amendment regarding clarification of "written certification" and police markings.

Kevin

---

**From:** Roth, Danielle <Danielle.Roth@myfloridahouse.gov>  
**Sent:** Saturday, January 25, 2020 12:16 PM  
**To:** Jacobs, Kevin <KevinJacobs@flhsmv.gov>  
**Cc:** Langston, Jennifer <JenniferLangston@flhsmv.gov>  
**Subject:** [EXT] HB 1281

Hey Kevin:

In response to FHP's below concern, can you have them draft language for a possible amendment for clarification of "written certification"? Thanks. Amendment deadline is 6 pm on Monday.

Also, clarification on the intent of the requirement that "written certification" be provided to the purchaser, customer or transferee is needed. It's not clear if an official letter of notification from the agency with the vehicle as it leaves our possession to state auction would suffice, or is actual confirmed personal service to the end owner by FHP be required? If the latter is the case, FHP would be well served to establish procedures to document the possession/transaction history of decommissioned police vehicles to include this certified notification. It should also be noted that many of our vehicles end up as police/security vehicles for other agencies.

Sincerely,

Danielle M. Roth  
Attorney, Transportation and Infrastructure Subcommittee  
Florida House of Representatives  
209 House Office Building  
402 S. Monroe Street  
Tallahassee, FL 32399  
(850) 717-4890

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(5) A person may not knowingly sell, exchange, or transfer a police vehicle without, before consummating the sale, exchange, or transfer, removing any police markings from the vehicle and suppling written certification, to be included with the sale of the vehicle, to the purchaser, customer, or transferee that such police markings have been removed. For the purposes of this subsection, the term “police markings” means decals, stickers, distinctive paint schemes, or other markings attached or applied to a police vehicle.

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

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

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

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BILL: CS/SB 1552

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Law Enforcement Activities

DATE: February 11, 2020

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1552 amends s. 683.231, F.S., which authorizes the Florida Department of Law Enforcement (FDLE) to establish a citizen support organization (CSO) to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day. The bill expands CSO grant authority to authorize the CSO to provide financial support to law enforcement agencies for missing and unidentified persons investigations and specialized training to support the resolution of such investigations through the issuance of grants.

The CSO may create a grant program for these purposes and raise and accept funds from any public or private source. The CSO may also establish criteria and set specific time periods for the acceptance of applications from local and state law enforcement agencies and for the selection process for awards. These criteria must be publicly available on the CSO's website.

The CSO may not award grants if the president of the CSO or the staff of the FDLE reasonably believe that the CSO has not yet met its obligations for funding Florida Missing Children's Day. The total amount of grants awarded may not exceed funds available to the CSO. The CSO must determine the assignment and use of grants awarded with oversight by the FDLE.

The bill also amends s. 775.21, F.S. (sexual predator registration) and s. 943.0435, F.S. (sexual offender registration) to:

- Specify that the FDLE’s secure online system includes updates to all vehicles owned by sexual predators and sexual offenders (registrants) and authorize registrants to report such updates to the FDLE through this system.
- Clarify a registration requirement relating to the in-person reporting of a change of residence to another state or jurisdiction by changing “within 48 hours before the date” the registrant intends to leave Florida to “at least 48 hours before the date” of intended travel.
- Provide that any travel not known by the registrant 48 hours before the date of intended travel must be reported as soon as possible before departure.
- Amend a registration requirement relating to international travel to require that a registrant residing in Florida report all international travel, regardless of how long they are leaving the United States.
- Specifically require reporting of airport departures and cruise ship departures.
- Provide a process for a petition for relief of registration for sexual offenders required to register based solely upon a requirement to register in another state or jurisdiction, and whose registration is considered confidential from public disclosure in that state or jurisdiction.

The FDLE states that it will absorb costs of implementing the requirements of the bill (updating forms, websites, and training materials, and coordinating and notifying criminal justice partners and registrants of the bill’s provisions). By allowing changes to registrant vehicle information to be reported online to the FDLE as an alternative to in-person reporting of this information to a sheriff office, sheriff offices may experience a reduction in costs associated with this reporting requirement. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2020.

## II. Present Situation:

### Florida Missing Children’s Day

Section 683.23, F.S., provides that the second Monday in September of each year is designated as “‘Florida Missing Children’s Day’ in remembrance of Florida’s past and present missing children and in recognition of our state’s continued efforts to protect the safety of children through prevention, education, and community involvement”<sup>1</sup> “Each year parents, children, law enforcement officers and citizens convene on the steps of the Old Capitol Building in Tallahassee to remember Florida’s missing children who are still missing and those who will never come home again. The Governor, Lieutenant Governor, and the [FDLE] Commissioner are invited as speakers.”<sup>2</sup>

### FDLE’s CSO: Florida Missing Children’s Day Foundation, Inc.

CSOs are statutorily-created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a CSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO was created to support.

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<sup>1</sup> Section 683.23, F.S.

<sup>2</sup> *Florida Missing Children’s Day*, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/mcic/fmcd.aspx> (last visited on Feb. 6, 2020).



In 2008, the Legislature created s. 683.231, F.S., which authorizes the FDLE to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day.<sup>3</sup> In 2008, the Florida Missing Children's Day Foundation, Inc., was established to provide such assistance, funding, and promotional support.<sup>4</sup> In 2018, the Legislature reenacted statutory authority (s. 683.23, F.S.) for the FDLE to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day.<sup>5</sup>

Section 683.231(1), F.S., authorizes the FDLE to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day. For purposes of s. 683.231, F.S., "citizen support organization" means an organization that is:

- A Florida corporation not for profit incorporated under ch. 617, F.S., and approved by the Department of State; and
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures to or for the direct or indirect benefit of the FDLE in furtherance of Florida Missing Children's Day.<sup>6</sup>

Section 683.231(3), F.S., provides that the CSO is not a registered lobbyist within the meaning of s. 11.045, F.S.<sup>7</sup>

Section 683.231(4), F.S., authorizes the CSO to collect and expend funds to be used for awards; public awareness and awards ceremonies, workshops, and other meetings, including distribution materials for public education and awareness; travel; Internet and web-hosting services; administrative costs, including personnel costs; costs of audits; and costs of rental facilities.

Section 683.231(5), F.S., provides that the activities of the CSO must be determined by the FDLE to be consistent with the goals and mission of the FDLE and in the best interests of the state and approved in writing by the FDLE to operate for the direct or indirect benefit of the FDLE. The approval must be given in a letter of agreement from the FDLE.

Section 683.231(6)(a), F.S., authorizes the FDLE to fix and collect charges for the rental of facilities and properties managed by the FDLE and to permit, without charge, appropriate use of administrative services, property, and facilities of the FDLE by the CSO, subject to s. 683.231, F.S. The use must be directly in keeping with the approved purposes of the CSO and may not be made at times or places that would unreasonably interfere with opportunities for the public to use such facilities for established purposes. Any money received from rentals of facilities and properties managed by the FDLE may be held in the Operating Trust Fund of the FDLE or in a separate depository account in the name of the CSO and subject to the provisions of the letter of

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<sup>3</sup> Section 683.231(1), F.S.

<sup>4</sup> *Florida Missing Children's Day Foundation (FMCDF)*, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/MCICSearch/FMCDFoundation.asp> (last visited on Feb. 6, 2020).

<sup>5</sup> Ch. 2018-54, L.O.F.

<sup>6</sup> Section 683.231(2), F.S.

<sup>7</sup> Section 11.045, F.S., sets forth registration requirements for lobbyists who lobby the Legislature.

agreement with the FDLE. The letter of agreement must provide that any funds held in the separate depository account in the name of the CSO must revert to the FDLE if the CSO is no longer approved by the department to operate in the best interests of the state.

Section 683.231(6)(c), F.S., prohibits the FDLE from permitting the use of any administrative services, property, or facilities of the state by a CSO that does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.

Section 683.231(7), F.S., requires the CSO to provide for an independent annual financial audit in accordance with s. 215.981, F.S. Copies of the audit must be provided to the FDLE, the Office of Policy and Budget in the Executive Office of the Governor, and the Florida Cabinet.

### **Florida's Sexual Predator and Sexual Offender Registration Laws**

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.<sup>8</sup> The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. Relevant to the bill, this information includes vehicle information and information regarding travel outside Florida. The laws span several different chapters and numerous statutes,<sup>9</sup> and are implemented through the combined efforts of FDLE, all Florida sheriffs, the Department of Corrections, the Department of Juvenile Justice, the Department of Highway Safety and Motor Vehicles, and the Department of Children and Families.

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;<sup>10</sup>
- Has been convicted of a current qualifying sex offense<sup>11</sup> committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.<sup>12</sup>

A person is classified as a sexual offender if the person:

---

<sup>8</sup> Sections 775.21 and 943.0435, F.S.

<sup>9</sup> Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

<sup>10</sup> Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.), and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

<sup>11</sup> Examples of qualifying sex offenses include luring or enticing a child by an adult with a prior sexual conviction (s. 787.025(2)(c), F.S.), human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.), sexual battery (s. 794.011, excluding s. 794.011(10), F.S.), unlawful sexual activity with a minor (s. 794.05, F.S.), and lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.). Section 775.21(4)(a), F.S.

<sup>12</sup> Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

- Has been convicted of a qualifying sex offense<sup>13</sup> and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.<sup>14</sup>

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.<sup>15</sup> Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

### **Registrant Reporting of Vehicle Information**

Sexual predators and sexual offenders must report in-person to the sheriff's office within 48 hours after any change in vehicles owned.<sup>16</sup> According to the FDLE, there are currently 55,987 vehicles registered to the 31,627 non-incarcerated registrants residing in Florida. The FDLE reports: "While vehicle information is incredibly important to law enforcement, the mandate to have every change to this information reported in-person to the sheriff's office has created a significant impact to these local sheriff's offices. Since 2007, registrants have had the ability to electronically report and update other specific supplemental registration information such as email addresses, Internet identifiers, and phone numbers through a secure online system."<sup>17</sup>

### **Registrant Reporting of Travel Information**

Sexual predators and sexual offenders must report a change of residence to another state or jurisdiction within 48 hours before the date of intended travel. If the intended residence of 5 days or more is outside of the United States, it must be reported at least 21 days before the date of intended travel.<sup>18</sup>

<sup>13</sup> Examples of qualifying sex offenses include luring or enticing a child by an adult with a prior sexual conviction (s. 787.025(2)(c), F.S.), human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.), sexual battery (s. 794.011, excluding s. 794.011(10), F.S.), unlawful sexual activity with a minor (s. 794.05, F.S.), and lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.). Section 943.0435(1)(h), F.S.

<sup>14</sup> Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the Department of Corrections' supervision, also define the term "sexual offender."

<sup>15</sup> The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. *About Us*, Florida Department of Law Enforcement, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on Feb. 6, 2020). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. *Sexual Offenders and Predators Search*, Florida Department of Law Enforcement, available at <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Feb. 6, 2020).

<sup>16</sup> Sections 775.21(6)(a)1.d. and 943.0435(2)(b)3., F.S.

<sup>17</sup> Analysis of SB 1552 (July 1, 2020), Florida Department of Law Enforcement. This analysis is on file with the Senate Committee on Criminal Justice.

<sup>18</sup> Sections 775.21(6)(i) and 943.0435(7), F.S.

### **Relief from Registration Requirements for Persons Required to Register in Another State or Jurisdiction**

According to the FDLE “[c]urrent law has no mechanism for relief of registration for individuals required to register based solely upon a requirement to register in another state for an offense that is not similar to a conviction offense requiring registration in Florida, and whose registration is considered confidential from public disclosure in that state.”<sup>19</sup>

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

#### **CSO Grant Authority**

The bill amends s. 683.231, F.S., which authorizes the FDLE to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children’s Day. The bill expands CSO grant authority to authorize the CSO to provide financial support to law enforcement agencies for missing and unidentified persons investigations and specialized training to support the resolution of such investigations through the issuance of grants.

The CSO may create a grant program for these purposes and raise and accept funds from any public or private source. The CSO may also establish criteria and set specific time periods for the acceptance of applications from local and state law enforcement agencies and for the selection process for awards. These criteria must be publicly available on the CSO’s website.

The CSO may not award grants if the president of the CSO or the staff of the FDLE reasonably believe that the CSO has not yet met its obligations for funding Florida Missing Children’s Day. The total amount of grants awarded may not exceed funds available to the CSO. The CSO must determine the assignment and use of grants awarded with oversight by the FDLE.

#### **Registrant Reporting of Vehicle Information**

The bill amends ss. 775.21 and s. 943.0435, F.S., to specify that the FDLE’s secure online system includes updates to all vehicles owned by registrants and authorizes registrants to report such updates to the FDLE through this system. According to the FDLE, this change will facilitate “faster access to this critical information and [reduce] the impact on sheriff’s offices. Sexual offenders and sexual predators will still have the option to report this information in-person to the sheriff’s office.”<sup>20</sup>

#### **Registrant Reporting of Travel Information**

The bill also amends ss. 775.21 and 943.0435, F.S., to:

- Clarify a registration requirement relating to in-person reporting of a change of residence to another state or jurisdiction by changing “within 48 hours before the date” the sexual offender or sexual predator intends to leave Florida to “at least 48 hours before the date” of intended travel.

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<sup>19</sup> See footnote 17.

<sup>20</sup> *Id.*

- Provide that any travel not known by the offender or predator 48 hours before the date of intended travel must be reported as soon as possible before departure.
- Amend a registration requirement relating to international travel to require that a sexual offender or sexual predator residing in Florida report all international travel, regardless of how long they are leaving the United States.
- Specifically require reporting of airport returns and cruise ship returns.

### **Relief from Registration Requirements for Persons Required to Register in Another State or Jurisdiction**

The bill also amends s. 943.0435, F.S., to provide for a removal of Florida sexual offender registration requirements for a person who:

- Establishes or maintains a residence in Florida and who has not been designated as a sexual predator by a Florida court but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender; and
- Petitions for removal of Florida sexual offender registration requirements and asserts in that petition that his or her designation as a sexual predator or sexually violent predator or any other sexual offender designation in the state or jurisdiction in which the designation was made is confidential from public disclosure or that such designation, if not imposed by a court, is considered confidential from public disclosure by operation of law or court order in the state or jurisdiction in which the designation was made, provided that such person does not meet the criteria under Florida law for registration as a sexual offender.

The person must file the petition for relief in the circuit court in the jurisdiction in which the person resides or, for a person who no longer resides in Florida, the court in the jurisdiction in which the person last resided in Florida.

A petition for relief must document the person's conviction and include a copy of the order issued by the court in the state or jurisdiction which made the designation confidential from public disclosure. If there was no such court designation, the person must demonstrate to the Florida circuit court that the designation has been made confidential by operation of law in the state or jurisdiction in which the designation was made.

The state attorney and the FDLE must be given notice at least 21 days before the date of the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why it should be denied.

If relief is granted by the Florida circuit court and the offender provides to the FDLE a certified copy of the court's order removing the requirement to register in Florida, the person is no longer required to register as a sexual offender in Florida and the FDLE must remove the person's information from the public registry of sexual offenders and sexual predators maintained by the department.

**Effective Date**

The bill takes effect July 1, 2020.

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

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

**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:**

According to the FDLE, changes proposed by the bill will require the department to:

- Update sexual offender/predator registration forms and e-forms, the Florida Sexual Offender/Predator Public Registry website and the CJNet website and training materials; and
- Coordinate and send notifications of these changes to criminal justice partners via e-mail and sexual offenders/predators via physical mail.<sup>21</sup>

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

The FDLE states that within the last five years, the total cost to send physical letters to all offenders and predators with an active Florida address to notify them of updates in registration requirements as a result of legislation has ranged from approximately \$12,000 to \$19,000.<sup>22</sup> The FDLE further states that costs of implementing the requirements of the bill will be absorbed by the department.<sup>23</sup>

By allowing changes to registrant vehicle information to be reported online to the FDLE as an alternative to in-person reporting of this information to a sheriff office, sheriff offices may experience a reduction in costs associated with this reporting requirement.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 683.231, 775.21, and 943.0435.

**IX. Additional Information:**

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

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

**CS by Criminal Justice on February 11, 2020:**

The committee substitute:

- Makes technical corrections for proper placement of language relating to reporting changes in vehicle information.
- Clarifies the process for a petition for relief of registration for sexual offenders required to register based solely upon a requirement to register in another state or jurisdiction, and whose registration is considered confidential from public disclosure in that state or jurisdiction.

**B. Amendments:**

None.

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

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<sup>22</sup> *Id.*

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
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The Committee on Criminal Justice (Flores) recommended the following:

**Senate Amendment**

Delete lines 369 - 495

and insert:

(e)1. A sexual offender shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet





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identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

2. A sexual offender shall register all changes to vehicles owned, all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported under this subparagraph must be reported within 48 hours after the change.

3. The department shall establish an online system through



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which sexual offenders may securely access, submit, and update all changes in status to vehicles owned; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of higher education information.

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida or intends to travel outside of the United States shall report in person to the sheriff of the county of current residence at least ~~within~~ 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel ~~if the intended residence of 5 days or more is outside of the United States~~. Any travel that is not known by the sexual offender 48 hours before he or she intends to establish a residence in another state or jurisdiction or 21 days before the departure date for travel outside of the United States must be reported in person to the sheriff's office as soon as possible before departure. The sexual offender shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual offender shall also provide travel information, including, but not limited to, expected departure and return dates, flight numbers ~~number~~, airports ~~airport~~ of departure and return, cruise ports ~~port~~ of departure and return, or any other means of intended travel. The sheriff shall promptly provide to the department the information



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received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence or the intended country of travel of the sexual offender's intended residence or intended travel. The failure of a sexual offender to provide his or her intended place of residence or intended travel is punishable as provided in subsection (9).

(11) Except as provided in s. 943.04354, a sexual offender shall maintain registration with the department for the duration of his or her life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. However, a sexual offender shall be considered for removal of the requirement to register as a sexual offender only if the person:

(b) Maintains ~~As defined in sub-subparagraph (1)(h)1.b.~~ ~~must maintain~~ registration with the department as described in sub-subparagraph (1)(h)1.b. for the duration of his or her life until the person provides the department with an order issued by the court that designated the person as a sexual predator or, as a sexually violent predator, ~~or any other~~ by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, ~~and~~ provided that such person no longer meets the criteria for registration as a sexual offender under



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the laws of this state.

(c)1. Is required to register as a sexual offender solely under the requirements of sub-subparagraph (1)(h)1.b. and files a petition in the circuit court in the jurisdiction in which the person resides or, for a person who no longer resides in this state, the court in the jurisdiction in which the person last resided in this state. The petition must assert that his or her designation as a sexual predator or sexually violent predator or any other sexual offender designation in the state or jurisdiction in which the designation was made is confidential from public disclosure or that such designation, if not imposed by a court, is considered confidential from public disclosure by operation of law or court order in the state or jurisdiction in which the designation was made, provided that such person does not meet the criteria for registration as a sexual offender under the laws of this state.

2. If the person meets the criteria in subparagraph 1., the court may grant the petition and remove the requirement to register as a sexual offender.

3. A petition under this paragraph must document the person's conviction and include a copy of the order issued by the court in the state or jurisdiction which made the designation confidential from public disclosure. If such relief was not granted by court order, the person must demonstrate to the court that his or her registration requirement has been made confidential by operation of law in the state or jurisdiction requiring registration. The state attorney and the department must be given notice at least 21 days before the date of the hearing on the petition and may present evidence in opposition



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127 to the requested relief or may otherwise demonstrate why it  
128 should be denied.

129 4. If a person provides to the department a certified copy  
130 of the circuit court's order granting the person removal of the  
131 requirement to register as a sexual offender in this state in  
132 accordance with this sub-paragraph, the registration

By Senator Flores

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1 A bill to be entitled  
 2 An act relating to law enforcement activities;  
 3 amending s. 683.231, F.S.; authorizing a citizen  
 4 support organization for Florida Missing Children's  
 5 Day to provide grants to law enforcement agencies for  
 6 specified purposes; redefining the term "citizen  
 7 support organization"; providing requirements for such  
 8 grants and for the citizen support organization;  
 9 amending ss. 775.21 and 943.0435, F.S.; authorizing  
 10 sexual predators and sexual offenders to report online  
 11 certain information to the Department of Law  
 12 Enforcement; revising reporting requirements for  
 13 sexual predators and sexual offenders; making  
 14 technical changes; providing for consideration for  
 15 removal of the requirement to register as a sexual  
 16 offender under certain circumstances; providing an  
 17 effective date.  
 18  
 19 Be It Enacted by the Legislature of the State of Florida:  
 20  
 21 Section 1. Subsection (7) of section 683.231, Florida  
 22 Statutes, is renumbered as subsection (10), subsection (1),  
 23 paragraph (b) of subsection (2), and subsection (4) are amended,  
 24 and a new subsection (7) and subsections (8) and (9) are added  
 25 to that section, to read:  
 26 683.231 Citizen support organization for Florida Missing  
 27 Children's Day.—  
 28 (1) The Department of Law Enforcement may establish a  
 29 citizen support organization to provide assistance, funding, and

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

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30 promotional support for activities authorized for Florida  
 31 Missing Children's Day under s. 683.23 and to provide financial  
 32 support to law enforcement agencies for missing and unidentified  
 33 persons investigations and specialized training to support the  
 34 resolution of such investigations through the issuance of  
 35 grants.  
 36 (2) As used in this section, the term "citizen support  
 37 organization" means an organization that is:  
 38 (b) Organized and operated to conduct programs and  
 39 activities; raise funds; request and receive grants, gifts, and  
 40 bequests of money; acquire, receive, hold, invest, and  
 41 administer, in its own name, securities, funds, objects of  
 42 value, or other property, either real or personal; and make  
 43 expenditures to or for the direct or indirect benefit of the  
 44 department in furtherance of Florida Missing Children's Day and  
 45 missing and unidentified persons investigations and specialized  
 46 training to support the resolution of such investigations.  
 47 (4) The citizen support organization is specifically  
 48 authorized to collect and expend funds to be used for awards;  
 49 public awareness and awards ceremonies, workshops, and other  
 50 meetings, including distribution materials for public education  
 51 and awareness; grants to assist missing and unidentified persons  
 52 investigations and specialized training to support the  
 53 resolution of such investigations; travel; Internet and web-  
 54 hosting services; administrative costs, including personnel  
 55 costs; costs of audits; and costs of facilities rental.  
 56 (7) The citizen support organization is authorized to  
 57 create a grant program to provide financial support to law  
 58 enforcement agencies for missing and unidentified persons

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59 investigations and specialized training to support the  
 60 resolution of such investigations through the issuance of  
 61 grants. The citizen support organization may raise and accept  
 62 funds from any public or private source. The citizen support  
 63 organization may establish criteria and set specific time  
 64 periods for the acceptance of applications from local and state  
 65 law enforcement agencies and for the selection process for  
 66 awards. The citizen support organization shall make such  
 67 criteria publicly available on its website.

68 (8) The citizen support organization may not award grants  
 69 if the president of the citizen support organization or the  
 70 staff of the department reasonably believe that the citizen  
 71 support organization has not yet met its obligations for funding  
 72 Florida Missing Children's Day. The total amount of grants  
 73 awarded may not exceed funds available to the citizen support  
 74 organization.

75 (9) The citizen support organization shall manage the  
 76 assignment and use of grants awarded. The department shall  
 77 oversee these activities consistent with subsection (5).

78 Section 2. Paragraphs (a), (g), and (i) of subsection (6)  
 79 of section 775.21, Florida Statutes, are amended to read:

80 775.21 The Florida Sexual Predators Act.—

81 (6) REGISTRATION.—

82 (a) A sexual predator shall register with the department  
 83 through the sheriff's office by providing the following  
 84 information to the department:

85 1. Name; social security number; age; race; sex; date of  
 86 birth; height; weight; tattoos or other identifying marks; hair  
 87 and eye color; photograph; address of legal residence and

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88 address of any current temporary residence, within the state or  
 89 out of state, including a rural route address and a post office  
 90 box; if no permanent or temporary address, any transient  
 91 residence within the state; address, location or description,  
 92 and dates of any current or known future temporary residence  
 93 within the state or out of state; electronic mail addresses;  
 94 Internet identifiers and each Internet identifier's  
 95 corresponding website homepage or application software name;  
 96 home telephone numbers and cellular telephone numbers;  
 97 employment information; the make, model, color, vehicle  
 98 identification number (VIN), and license tag number of all  
 99 vehicles owned; date and place of each conviction; fingerprints;  
 100 palm prints; and a brief description of the crime or crimes  
 101 committed by the offender. A post office box may not be provided  
 102 in lieu of a physical residential address. The sexual predator  
 103 shall produce his or her passport, if he or she has a passport,  
 104 and, if he or she is an alien, shall produce or provide  
 105 information about documents establishing his or her immigration  
 106 status. The sexual predator shall also provide information about  
 107 any professional licenses he or she has.

108 a. Any change that occurs after the sexual predator  
 109 registers in person at the sheriff's office as provided in this  
 110 subparagraph in any of the following information related to the  
 111 sexual predator must be reported as provided in paragraphs (g),  
 112 (i), and (j): permanent, temporary, or transient residence;  
 113 name; electronic mail addresses; Internet identifiers and each  
 114 Internet identifier's corresponding website homepage or  
 115 application software name; home and cellular telephone numbers;  
 116 employment information; and status at an institution of higher

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education.

b. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

c. If the sexual predator is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual predator shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment, volunteer, or employment status. The sheriff, the Department of Corrections, or the Department of Juvenile Justice shall promptly notify each institution of higher education of the sexual predator's presence and any change in the sexual predator's enrollment, volunteer, or employment status.

d. A sexual predator shall report to the department through the department's online system or in person to the sheriff's office within 48 hours after any change in vehicles owned to

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report those vehicle information changes.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.

(g)1. Each time a sexual predator's driver license or identification card is subject to renewal, and, without regard to the status of the predator's driver license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver license office and is subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section. A sexual predator who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in paragraph (f) and this paragraph shall also report any change of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the Department of Highway



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175 Safety and Motor Vehicles. The reporting requirements under this  
 176 subparagraph do not negate the requirement for a sexual predator  
 177 to obtain a Florida driver license or identification card as  
 178 required by this section.

179 2.a. A sexual predator who vacates a permanent, temporary,  
 180 or transient residence and fails to establish or maintain  
 181 another permanent, temporary, or transient residence shall,  
 182 within 48 hours after vacating the permanent, temporary, or  
 183 transient residence, report in person to the sheriff's office of  
 184 the county in which he or she is located. The sexual predator  
 185 shall specify the date upon which he or she intends to or did  
 186 vacate such residence. The sexual predator shall provide or  
 187 update all of the registration information required under  
 188 paragraph (a). The sexual predator shall provide an address for  
 189 the residence or other place that he or she is or will be  
 190 located during the time in which he or she fails to establish or  
 191 maintain a permanent or temporary residence.

192 b. A sexual predator shall report in person at the  
 193 sheriff's office in the county in which he or she is located  
 194 within 48 hours after establishing a transient residence and  
 195 thereafter must report in person every 30 days to the sheriff's  
 196 office in the county in which he or she is located while  
 197 maintaining a transient residence. The sexual predator must  
 198 provide the addresses and locations where he or she maintains a  
 199 transient residence. Each sheriff's office shall establish  
 200 procedures for reporting transient residence information and  
 201 provide notice to transient registrants to report transient  
 202 residence information as required in this sub-subparagraph.  
 203 Reporting to the sheriff's office as required by this sub-

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204 subparagraph does not exempt registrants from any reregistration  
 205 requirement. The sheriff may coordinate and enter into  
 206 agreements with police departments and other governmental  
 207 entities to facilitate additional reporting sites for transient  
 208 residence registration required in this sub-subparagraph. The  
 209 sheriff's office shall, within 2 business days, electronically  
 210 submit and update all information provided by the sexual  
 211 predator to the department.

212 3. A sexual predator who remains at a permanent, temporary,  
 213 or transient residence after reporting his or her intent to  
 214 vacate such residence shall, within 48 hours after the date upon  
 215 which the predator indicated he or she would or did vacate such  
 216 residence, report in person to the sheriff's office to which he  
 217 or she reported pursuant to subparagraph 2. for the purpose of  
 218 reporting his or her address at such residence. When the sheriff  
 219 receives the report, the sheriff shall promptly convey the  
 220 information to the department. An offender who makes a report as  
 221 required under subparagraph 2. but fails to make a report as  
 222 required under this subparagraph commits a felony of the second  
 223 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 224 775.084.

225 4. The failure of a sexual predator who maintains a  
 226 transient residence to report in person to the sheriff's office  
 227 every 30 days as required by sub-subparagraph 2.b. is punishable  
 228 as provided in subsection (10).

229 5.a. A sexual predator shall register all electronic mail  
 230 addresses and Internet identifiers, and each Internet  
 231 identifier's corresponding website homepage or application  
 232 software name, with the department through the department's

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online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

b. A sexual predator shall register all changes to vehicles owned, all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported in this sub-subparagraph

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shall be reported within 48 hours after the change.

c. The department shall establish an online system through which sexual predators may securely access, submit, and update all ~~vehicles owned~~; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of higher education information.

(i) A sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida or intends to travel outside of the United States shall report in person to the sheriff of the county of current residence at least within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel ~~if the intended residence of 5 days or more is~~ outside of the United States. Any travel that is not known by the sexual predator 48 hours before he or she intends to establish a residence in another state or jurisdiction or 21 days before the departure date for travel outside of the United States must be reported to the sheriff's office as soon as possible before departure. The sexual predator shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual predator shall also provide travel information, including, but not limited to, expected departure and return dates, flight ~~numbers~~ number, ~~airports~~ airport of departure and return, cruise ~~ports~~ port of departure and return, or any other means of intended travel. The sheriff

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291 shall promptly provide to the department the information  
 292 received from the sexual predator. The department shall notify  
 293 the statewide law enforcement agency, or a comparable agency, in  
 294 the intended state, jurisdiction, or country of residence or the  
 295 intended country of travel of the sexual predator's intended  
 296 residence or intended travel. The failure of a sexual predator  
 297 to provide his or her intended place of residence or intended  
 298 travel is punishable as provided in subsection (10).

299 Section 3. Paragraph (b) of subsection (2), paragraph (e)  
 300 of subsection (4), subsection (7), and paragraph (b) of  
 301 subsection (11) of section 943.0435, Florida Statutes, are  
 302 amended, and paragraph (c) is added to subsection (11) of that  
 303 section, to read:

304 943.0435 Sexual offenders required to register with the  
 305 department; penalty.—

306 (2) Upon initial registration, a sexual offender shall:

307 (b) Provide his or her name; date of birth; social security  
 308 number; race; sex; height; weight; hair and eye color; tattoos  
 309 or other identifying marks; fingerprints; palm prints;  
 310 photograph; employment information; address of permanent or  
 311 legal residence or address of any current temporary residence,  
 312 within the state or out of state, including a rural route  
 313 address and a post office box; if no permanent or temporary  
 314 address, any transient residence within the state, address,  
 315 location or description, and dates of any current or known  
 316 future temporary residence within the state or out of state; the  
 317 make, model, color, vehicle identification number (VIN), and  
 318 license tag number of all vehicles owned; home telephone numbers  
 319 and cellular telephone numbers; electronic mail addresses;

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320 Internet identifiers and each Internet identifier's  
 321 corresponding website homepage or application software name;  
 322 date and place of each conviction; and a brief description of  
 323 the crime or crimes committed by the offender. A post office box  
 324 may not be provided in lieu of a physical residential address.  
 325 The sexual offender shall also produce his or her passport, if  
 326 he or she has a passport, and, if he or she is an alien, shall  
 327 produce or provide information about documents establishing his  
 328 or her immigration status. The sexual offender shall also  
 329 provide information about any professional licenses he or she  
 330 has.

331 1. If the sexual offender's place of residence is a motor  
 332 vehicle, trailer, mobile home, or manufactured home, as defined  
 333 in chapter 320, the sexual offender shall also provide to the  
 334 department through the sheriff's office written notice of the  
 335 vehicle identification number; the license tag number; the  
 336 registration number; and a description, including color scheme,  
 337 of the motor vehicle, trailer, mobile home, or manufactured  
 338 home. If the sexual offender's place of residence is a vessel,  
 339 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 340 sexual offender shall also provide to the department written  
 341 notice of the hull identification number; the manufacturer's  
 342 serial number; the name of the vessel, live-aboard vessel, or  
 343 houseboat; the registration number; and a description, including  
 344 color scheme, of the vessel, live-aboard vessel, or houseboat.

345 2. If the sexual offender is enrolled or employed, whether  
 346 for compensation or as a volunteer, at an institution of higher  
 347 education in this state, the sexual offender shall also provide  
 348 to the department the name, address, and county of each

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institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status. The sheriff, the Department of Corrections, or the Department of Juvenile Justice shall promptly notify each institution of higher education of the sexual offender's presence and any change in the sexual offender's enrollment, volunteer, or employment status.

3. A sexual offender shall report to the department through the department's online system or in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

When a sexual offender reports at the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the offender and forward the photographs, palm prints, and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the sexual offender.

(4)

(e)1. A sexual offender shall register all changes in vehicles owned, all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections, he or she must

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report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

2. A sexual offender shall register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported under this subparagraph must be reported within 48 hours after the change.

3. The department shall establish an online system through which sexual offenders may securely access, submit, and update all changes in status to vehicles owned; electronic mail addresses; Internet identifiers and each Internet identifier's

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corresponding website homepage or application software name;  
home telephone numbers and cellular telephone numbers;  
employment information; and institution of higher education  
information.

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida or intends to travel outside of the United States shall report in person to the sheriff of the county of current residence at least within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel ~~if the intended residence of 5 days or more is~~ outside of the United States. Any travel that is not known by the sexual offender 48 hours before he or she intends to establish a residence in another state or jurisdiction or 21 days before the departure date for travel outside of the United States must be reported in person to the sheriff's office as soon as possible before departure. The sexual offender shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual offender shall also provide travel information, including, but not limited to, expected departure and return dates, flight ~~numbers number,~~ airports airport of departure and return, cruise ~~ports port~~ of departure and return, or any other means of intended travel. The sheriff shall promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence or the

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intended country of travel of the sexual offender's intended residence or intended travel. The failure of a sexual offender to provide his or her intended place of residence or intended travel is punishable as provided in subsection (9).

(11) Except as provided in s. 943.04354, a sexual offender shall maintain registration with the department for the duration of his or her life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. However, a sexual offender shall be considered for removal of the requirement to register as a sexual offender only if the person:

(b) ~~Maintains As defined in sub-subparagraph (1)(h)1.b. must maintain~~ registration with the department as described in sub-subparagraph (1)(h)1.b. for the duration of his or her life until the person provides the department with an order issued by the court that designated the person as a sexual predator ~~or, as~~ a sexually violent predator, or any other ~~by another~~ sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, ~~and~~ provided that such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(c)1. Is required to register as a sexual offender solely under the requirements of sub-subparagraph (1)(h)1.b. and files

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a petition in the circuit court in the jurisdiction in which the person resides or, for a person who no longer resides in this state, the court in the jurisdiction in which the person last resided in this state. The petition must assert that his or her designation as a sexual predator or sexually violent predator or any other sexual offender designation in the state or jurisdiction in which the designation was made is confidential from public disclosure or that such designation, if not imposed by a court, is considered confidential from public disclosure by operation of law or court order in the state or jurisdiction in which the designation was made, provided that such person does not meet the criteria for registration as a sexual offender under the laws of this state.

2. If the person meets the criteria in subparagraph 1., the court may grant the petition and remove the requirement to register as a sexual offender.

3. A petition under this paragraph must document the person's conviction and include a copy of the order issued by the court in the state or jurisdiction which made the designation confidential from public disclosure. If such relief was not granted by court order, the person must demonstrate to the court that the designation has been made confidential by operation of law in the state or jurisdiction in which the designation was made. The state attorney and the department must be given notice at least 21 days before the date of the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why it should be denied.

4. If a person provides to the department a certified copy

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of the circuit court's order granting the person removal of the requirement to register as a sexual offender, the registration requirement does not apply to the person and the department must remove all information about the person from the public registry of sexual offenders and sexual predators maintained by the department.

Section 4. This act shall take effect July 1, 2020.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2.11.20

Meeting Date

1552

Bill Number (if applicable)

Topic Law Enforcement Activities

Amendment Barcode (if applicable)

Name Ron Drza

Job Title Director of External Affairs

Address 2331 Phillips Road

Phone 850.410.7020

Street

Tallahassee

City

FL

State

32308

Zip

Email ronald.drza@fdle.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FDLE

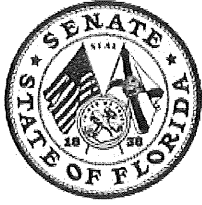
Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Keith Perry, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** January 29<sup>th</sup>, 2020

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I respectfully request that **Senate Bill #1552**, relating to Law Enforcement Activities, be placed on the:

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

A handwritten signature in cursive script that reads "Anitere Flores".

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Senator Anitere Flores  
Florida Senate, District 39





# 2020 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
BILL NUMBER:	SB 1552
BILL TITLE:	Law Enforcement Activities
BILL SPONSOR:	Flores
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Subcommittee
3) Appropriations
4)
5)

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

CURRENT COMMITTEE
Criminal Justice

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

IDENTICAL BILLS	
BILL NUMBER:	HB 1055
SPONSOR:	Brannan

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 10, 2020
LEAD AGENCY ANALYST:	Lori Mizell
ADDITIONAL ANALYST(S):	Seth Montgomery, Mary Coffee, Becky Bezemek
LEGAL ANALYST:	Elisabeth Yerkes, Jeff Dambly
FISCAL ANALYST:	Cynthia Barr, Deshawn Byrd

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

An act relating to law enforcement activities; amending s. 683.231, F.S.; authorizing a citizen support organization for Florida Missing Children's Day to provide grants to law enforcement agencies for specified purposes; providing requirements for such grants and organizations; amending ss. 775.21 and 943.0435, F.S.; authorizing sexual predators and offenders to report online to FDLE; revising reporting requirements for sexual predators and offenders; making technical changes; providing for removal of the requirement to register as a sexual offender in certain circumstances. This act shall take effect July 1, 2020.

### 2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** In 2008, the Florida Missing Children's Day Foundation was established as a citizen support organization (CSO) within FDLE to fundraise, through public and private donations, monies to cover the cost of the annual Florida Missing Children's Day event and raise awareness of child safety through educational partnerships. Currently, the Foundation is only authorized to use gathered monies to fund Florida Missing Children's Day.

In regard to ss. 775.21 and 943.0435, F.S.:

- Current law requires sexual offenders and sexual predators to report in-person to the sheriff's office within 48 hours after any change in vehicles owned. Currently, there are 55,987 vehicles registered to the 31,627 non-incarcerated registrants residing in Florida. While vehicle information is incredibly important to law enforcement, the mandate to have every change to this information reported in-person to the sheriff's office has created a significant impact to these local sheriff's offices. Since 2007, registrants have had the ability to electronically report and update other specific supplemental registration information such as email addresses, Internet identifiers, and phone numbers through a secure online system.
- Current law requires that sexual offenders and predators report a change of residence to another state or jurisdiction *within* 48 hours before the date of intended travel. If the intended residence of 5 days or more is outside of the United States, it must be reported *at least* 21 days before the date of intended travel.
- Current law has no mechanism for relief of registration for individuals required to register based solely upon a requirement to register in another state for an offense that is not similar to a conviction offense requiring registration in Florida, and whose registration is considered confidential from public disclosure in that state.

2. **EFFECT OF THE BILL:** Amending s. 683.231, F.S. as proposed:

- Allows the CSO to create a grant program to provide financial support to law enforcement agencies supporting missing and unidentified persons investigations and specialized training towards the resolution of such investigations.
- The CSO may not award grants if it has not yet met its obligation for funding Florida Missing Children's Day.
- The CSO shall manage assignment and use of grants awarded and FDLE shall oversee these activities.

Amending ss. 775.21 and 943.0435, F.S. as proposed:

- Allows sexual offenders and sexual predators required to register under ss. 943.0435 and 775.21, F.S. to report changes to vehicle's owned through FDLE's secure online system, thus facilitating faster access to this critical information and reducing the impact on sheriff's offices. Sexual offenders and sexual predators will still have the option to report this information in-person to the sheriff's office.
- Clarifies registration requirement relating to the in-person reporting of a change of residence to another state or jurisdiction by changing "*within 48 hours before the date*" the sexual offender or predator intends to leave Florida to "*at least 48 hours before the date*" of intended travel. Provides that any travel not known by the offender or predator 48 hours before the date of intended travel must be reported as soon as possible before departure.
- Amends registration requirement relating to international travel, requiring that a sexual offender or sexual predator residing in Florida report all international travel, regardless of how long they are leaving the United States.
- Creates s. 943.0435(11)(c), F.S., providing a mechanism to petition for relief of registration for sexual offenders required to register based *solely* upon a requirement to register in another state, and whose registration is considered confidential from public disclosure in that state.
  - Relief under this sub-subsection is only permitted for a person who is required to register in Florida solely under the requirements of sub-subparagraph (1)(h)1.b.
  - The language provides that the sexual offender must petition the circuit court for such relief and provide documentation to the court as required. The state attorney and FDLE must be given notice at least 21 days prior to the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why the petition should be denied.

- If relief is granted by the circuit court and the sexual offender provides a certified copy of the court's order removing the requirement to register in Florida to FDLE, the person is no longer required to register as a sexual offender in Florida and FDLE must remove the person's information from the public registry of sexual offenders and sexual predators maintained by FDLE.

**3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y ☐ N ☒**

If yes, explain:	
What is the expected impact to the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

**4. WHAT IS THE POSITION OF 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 OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☒**

If yes, provide a description:	
Date Due:	
Bill Section Number:	

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒**

Board:	
Board Purpose:	
Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

## FISCAL ANALYSIS

**1. DOES THE BILL HAVE A FISCAL 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 FISCAL IMPACT TO STATE GOVERNMENT? Y ☒ N ☐**

Revenues:	
Expenditures:	The proposed changes will require FDLE to update sexual offender/predator registration forms and e-forms, the Florida Sexual Offender/Predator Public Registry website, the CJNet website and training materials. Additionally, FDLE will coordinate and send notifications of these changes to criminal justice partners via e-mail and sexual offenders/predators via physical mail. Within the last five years, the total cost to send physical letters to all offenders and predators with an active Florida address has ranged from approximately \$12,000 to \$19,000. The implementation costs will be absorbed by FDLE.
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

**3. DOES THE BILL HAVE A FISCAL 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 IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y ☐ N ☒**

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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### FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	
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### LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	
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### ADDITIONAL COMMENTS

- The following are issues within SB 1552's language that must be addressed:
  1. Language is incorrectly located in sub-sub-subsection:  
Remove the added language from lines 369-370 and move it to line 389. Lines 369-370: The added language "all changes in vehicles owned" has been added to the wrong place, to 943.0435(4)(e)1. It should be correctly placed in **943.0435(4)(e)2.** as follows: "A sexual offender shall register all changes to vehicles owned, all changes to home telephone numbers..."
  2. Lines 486-488: Current bill language: "...the court that the designation has been made confidential by operation of law in the state or jurisdiction in which the designation was made."  
  
Corrected language: "...the court that his or her registration requirement has been made confidential by operation of law in the state or jurisdiction requiring registration."
  3. Line 495: Add the following bolded words: "...requirement to register as a sexual offender in this state in accordance with this sub-subparagraph, the registration requirement does not apply..."

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

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

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

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BILL: CS/SB 1594

INTRODUCER: Criminal Justice Committee and Senator Powell

SUBJECT: Firesafety Inspectors

DATE: February 11, 2020

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1594 creates s. 633.217, F.S., to prohibit certain actions taken to influence a firesafety inspector to violate the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S., or offering any compensation to a firesafety inspector to induce such violation.

The bill also prohibits a firesafety inspector from knowingly and willfully accepting an attempt by a person to influence the firesafety inspector to commit such violation.

The bill does not provide for a specific penalty. Therefore, the described offenses are second degree misdemeanors pursuant to s. 633.124(1), F.S. (general criminal penalties for violations of ch. 633, F.S.).

The bill does not have a state prison bed impact because no felony penalties are created. The second degree misdemeanor penalties for the offenses created by the bill may have a positive indeterminate impact on county jails.

The bill takes effect July 1, 2020.

## II. Present Situation:

### Division of the State Fire Marshal

State law on fire prevention and control<sup>1</sup> designates the Chief Financial Officer as the State Fire Marshal, operating through the Division of the State Fire Marshal (Division).<sup>2</sup> Pursuant to this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;<sup>3</sup>
- Investigates the causes of fires;<sup>4</sup>
- Enforces arson laws;<sup>5</sup>
- Regulates the installation and maintenance of fire equipment;<sup>6</sup>
- Conducts firesafety inspections of state buildings;<sup>7</sup>
- Develops firesafety standards;<sup>8</sup>
- Provides testing facilities for testing firefighting equipment;<sup>9</sup> and
- Operates the Florida State Fire College.<sup>10</sup>

The Division consists of two bureaus: the Bureau of Fire Standards and Training and the Bureau of Fire Prevention. The Bureau of Firefighter Standards and Training approves firefighter training curricula, offers fire service training at the Florida State Fire College, and certifies that fire service members meet industry-based standards. The Bureau of Fire Prevention conducts fire/life safety inspections and construction plans review on all state-owned buildings; regulates the fireworks and the fire sprinkler industries, inspects and licenses boilers, and certifies fire suppression industry workers.<sup>11</sup>

### Florida Fire Prevention Code

The State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.<sup>12</sup> The State Fire Marshal adopts a new edition of the FFPC every three years.<sup>13</sup> The FFPC includes national firesafety and life safety standards set forth by the National Fire Protection Association (NFPA).<sup>14</sup>

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<sup>1</sup> Chapter 633, F.S., and s. 633.104(1), F.S.

<sup>2</sup> The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS. Section 20.121, F.S.

<sup>3</sup> Section 633.128(1), F.S., and Part IV, ch. 633, F.S. (Fire Standards and Training).

<sup>4</sup> Sections 633.104(2)(e) and 633.112, F.S.

<sup>5</sup> Section 633.104(2), F.S.

<sup>6</sup> Sections 633.104(2)(b) and 633.104(2)(c), F.S., and Part II, ch. 633, F.S. (Fire Protection and Suppression).

<sup>7</sup> Section 633.218, F.S.

<sup>8</sup> Part II, ch. 633, F.S. (Fire Safety and Prevention).

<sup>9</sup> Section 633.432, F.S.

<sup>10</sup> Section 633.128(1)(h)–(q), F.S. See ss. 633.428–633.434, F.S.

<sup>11</sup> *What We Do*, Division of State Fire Marshal, available at <https://www.myfloridacfo.com/Division/sfm/> (last visited on Feb. 3, 2020).

<sup>12</sup> Section 633.202(1), F.S., and ch. 69A-60, F.A.C.

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

<sup>14</sup> Section 633.202(2), F.S. Founded in 1896, the NFPA is a global, nonprofit organization devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards. It has developed over 300 voluntary consensus

## **Firesafety Enforcement by Local Governments**

State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the FFPC as the minimum fire prevention code, which operates uniformly among local governments and in conjunction with the Florida Building Code.<sup>15</sup> These local enforcing authorities may adopt more stringent firesafety standards, subject to certain requirements in s. 633.208, F.S.,<sup>16</sup> but may not enact firesafety ordinances which conflict with ch. 633, F.S., or any other state law.<sup>17</sup>

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and the rules prescribed by the State Fire Marshal within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.<sup>18</sup> Each county, municipality, and special district with firesafety enforcement responsibilities is also required to employ or contract with a firesafety inspector (certified by the State Fire Marshal) to conduct all firesafety inspections required by law.<sup>19</sup>

## **Firesafety Inspectors**

Section 633.102(12), F.S., defines a firesafety inspector as an individual who holds a current and valid Fire Safety Inspector Certificate of Compliance issued by the Division under s. 633.216, F.S., who is officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities.<sup>20</sup> The Bureau of Firefighter Standards and Training issues certifications for Firesafety Inspector I and Firesafety Inspector II.<sup>21</sup>

A person applying for certification as a Firesafety Inspector I must:

- Be a high school graduate or the equivalent and at least 18 years of age;
- Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, or a felony or a crime punishable by imprisonment of one year or more, or be dishonorably discharged from the Armed Forces of the United States;
- Submit a set of fingerprints to the Division with a current processing fee;
- Have a good moral character;
- Be in good physical condition as determined by a medical examination; and

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codes and standards in the areas of fire, electrical, and building safety which are widely used by state and local officials. *About NFPA*, National Fire Protection Association, available at <http://www.nfpa.org/about-nfpa> (last visited on Feb. 3, 2020).

<sup>15</sup> Sections 633.108 and 633.208, F.S.

<sup>16</sup> See Rule 69A-60.002, F.A.C.

<sup>17</sup> Section 633.214(4), F.S. The State Fire Marshal maintains a list of local amendments to the FFPC. This information is available at <https://www.myfloridacfo.com/Division/SFM/bfp/LocalAmendments.htm> (last visited on Feb. 3, 2020).

<sup>18</sup> Section 633.118, F.S.

<sup>19</sup> Section 633.216(1) and (2), F.S.

<sup>20</sup> See s. 633.214(1)(a), F.S.

<sup>21</sup> Section 633.216(2), F.S., and *Firesafety Inspector I Certification* (Feb. 4, 2016), Bureau of Fire Standards and Training, Division of State Fire Marshal, available at <https://www.myfloridacfo.com/division/sfm/bfst/Documents/FiresafetyInspectorI.pdf> (last visited on Feb. 3, 2020).



- Be a nonuser of tobacco or tobacco products for at least one year immediately preceding application.<sup>22</sup>

A Firesafety Inspector I Certificate of Compliance will be issued by the Division to an individual who:

- Successfully completes a minimum of 200 hours of basic certification training for firesafety inspectors, or has received equivalent training in another state; and
- Passes a state written examination.<sup>23</sup>

The Firesafety Inspector I Certificate of Compliance is valid for a period of four years from the date of issuance. Renewal of this certificate includes completion of at least 54 hours of continuing education during the preceding four-year period.<sup>24</sup>

A Firesafety Inspector II Certificate of Compliance will be issued by the Division to an individual who:

- Is certified as a Firesafety Inspector I; and
- Successfully completes a minimum of 160 hours of certification training for Firesafety Inspector II, or has received equivalent training in another state.<sup>25</sup>

### **General Criminal Penalties for Violation of Ch. 633, F.S.**

Section 633.124(1), F.S., generally provides that a person who violates any provision of ch. 633, F.S., relating to fire prevention or control, any order or rule of the State Fire Marshal, or any order to cease and desist or to correct conditions issued under ch. 633, F.S., commits a second degree misdemeanor. A second degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500.<sup>26</sup>

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

The bill creates s. 633.217, F.S., which prohibits:

- A person from influencing a firesafety inspector by threatening, coercing, tricking, or attempting to threaten, coerce, or trick a firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S., or offering any compensation to a firesafety inspector to induce such violation; and
- A firesafety inspector from knowingly and willfully accepting an attempt by a person to influence the firesafety inspector to commit such violation.

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<sup>22</sup> Sections 633.216(2) and 633.412(1)-(4), F.S.

<sup>23</sup> Section 633.216(2), F.S.

<sup>24</sup> Section 633.216(4), F.S., and Rules 69A-39.003, 69A-39.005, and 69A-39.009, F.A.C.

<sup>25</sup> Sections 633.216(2) and s. 633.216(8), F.S., and *Firesafety Inspector II Certification* (Sept. 26, 2012), Bureau of Fire Standards and Training, Division of State Fire Marshal, available at <https://www.myfloridacfo.com/division/sfm/bfst/Documents/FiresafetyInspectorII.pdf> (last visited on Feb. 3, 2020).

<sup>26</sup> Sections 775.082 and 775.083, F.S.

The bill does not provide for a specific penalty. Therefore, the described offenses are second degree misdemeanors pursuant to s. 633.124(1), F.S. (general criminal penalties for violations of ch. 633, F.S.).

The bill takes effect July 1, 2020.

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

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

The second degree misdemeanor penalties in s. 633.124(1), F.S., which are applicable to the offenses created by the bill, may have an indeterminate but positive county jail bed impact. However, punishment of criminal offenses is exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

##### **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 bill does not create felony penalties so the bill does not have a state prison bed impact. The second degree misdemeanor penalties in s. 633.124(1), F.S., which are applicable to the offenses created by the bill, may have an indeterminate but positive county jail bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 633.217 of the Florida Statutes.

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

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

**CS by Criminal Justice on February 11, 2020:**

Revises the acts that constitute unlawfully influencing a firesafety inspector by removing reference to “persuading, interfering with, or otherwise influencing” a firesafety inspector (or attempting to do these acts).

**B. Amendments:**

None.



928606

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 17 - 20  
and insert:

(a) Threatening, coercing, tricking, or attempting to  
threaten, coerce, or trick the firesafety inspector into  
violating any provision

By Senator Powell

30-00097A-20

20201594\_\_

A bill to be entitled

An act relating to firesafety inspectors; creating s. 633.217, F.S.; prohibiting certain actions to influence a firesafety inspector into violating certain provisions; prohibiting a firesafety inspector from knowingly and willfully accepting an attempt to influence the firesafety inspector into violating certain provisions; providing an effective date.

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

Section 1. Section 633.217, Florida Statutes, is created to read:

633.217 Influencing a firesafety inspector; prohibited acts.—

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, persuading, interfering with, or otherwise influencing, or attempting to threaten, coerce, trick, persuade, interfere with, or otherwise influence, the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(b) Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(2) A firesafety inspector may not knowingly and willfully accept an attempt by a person to influence the firesafety inspector into violating any provision of the Florida Fire

Page 1 of 2

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

30-00097A-20

20201594\_\_

Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/11/20

Meeting Date

1584

Bill Number (if applicable)

Topic FIRE INSPECTORS

Amendment Barcode (if applicable)

Name JOE PASQUALONE

Job Title EXECUTIVE DIRECTOR

Address PO BOX 325

Phone 772 349 1507

Street

HOPE SOUND FL

City

State

33475

Zip

Email INFO@FFAFLA.ORG

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL FIRE MARSHALS & INSPECTORS ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

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

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

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BILL: SB 1690

INTRODUCER: Senator Torres

SUBJECT: Preservation of Memorials

DATE: February 10, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Wagoner</u>	<u>Jones</u>	<u>CJ</u>	<b>Favorable</b>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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## **I. Summary:**

SB 1690 provides that anyone who damages, destroys, takes, or removes a memorial without permission is liable for the full cost to repair or replace the memorial. Where such conduct is intentional, a person will also be liable for treble damages, attorney fees, and court costs associated with an action brought to recover damages.

The bill further provides that no object that would obstruct the view of a memorial or that would convey information about such a memorial may be placed on or adjacent to a memorial existing before 2019 without written approval from the Secretary of State.

The bill also establishes that the damaging, defacing, or removing of a memorial constitutes criminal mischief, a third degree felony, punishable by a term of imprisonment up to 5 years and a fine of up to \$5,000.

The bill has an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

## **II. Present Situation:**

### **Memorials**

Chapter 265, F.S., regards memorials, museums, and arts and culture. The legislative intent of the chapter is to recognize the vast cultural resources available in the state and to provide state support for, and gain national and international recognition of, efforts, works, and performances of Florida artists, agencies, museums, and nonprofits.<sup>1</sup> The chapter designates the Secretary of State as chief cultural officer of the state, and creates the division of “state arts administrative

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<sup>1</sup> Section 265.282, F.S.

agency” to administer federal arts funding, award grants, and consult with and advise individuals, groups, organizations, and agencies and officials concerning the acquisition of fine arts.<sup>2</sup> The division also sponsors and promotes performances and exhibits, conducts cultural programs and exchanges, and accepts funding and support for its purposes.<sup>3</sup>

### **Civil Liability and Treble Damages**

A statute may subject a person to civil liability for damages caused by the person’s criminal behavior. “Civil liability” is defined by Black’s Law Dictionary as the “debt or legal obligation from a private wrong amounting to the damage done.”<sup>4</sup> “Treble damages” are special damages provided by statute in certain cases found by a jury, where the damages to be paid are triple the amount of damage actually caused.<sup>5</sup>

### **Criminal Mischief**

Section 806.13, F.S., defines and provides penalties for criminal mischief. A person commits criminal mischief if he or she (1) willfully and maliciously (2) injures or damages (3) real property belonging to another, including via the placement of graffiti. If the damage to property is valued at \$200 or less, it is a second degree misdemeanor;<sup>6</sup> between \$200 and \$1,000, it is a first degree misdemeanor;<sup>7</sup> and greater than \$1,000 or causing interruption or impairment of business or public service, it is a third degree felony.<sup>8</sup>

A third degree felony is punishable by a term of imprisonment up to 5 years and a fine of up to \$5,000.<sup>9</sup>

The section also provides a third degree felony for willful and malicious defacement, injury, or damage to certain public goods or places of worship. A person convicted under the section is also required to pay a fine between \$250 and \$1,000,<sup>10</sup> and perform at least 100 hours of community service.<sup>11</sup>

### **Penalties for Minors**

A minor found to have committed an act of criminal mischief may have his or her driving privilege revoked or withheld for up to one year.<sup>12</sup> A minor whose driving privilege has been revoked, suspended, or withheld under the section may elect to reduce the sentence by

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<sup>2</sup> Section 265.284, F.S.

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

<sup>4</sup> “Civil Liability,” Black’s Law Dictionary 435 (9th ed. 2009).

<sup>5</sup> “Treble Damages,” Black’s Law Dictionary 435 (9th ed. 2009).

<sup>6</sup> Section 806.13(1)(b)1., F.S. A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>7</sup> Section 806.13(1)(b)2., F.S. 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>8</sup> Section 806.13(1)(b)3., F.S., punishable as provided in ss. 775.082, 775.083, and 775.084, F.S.

<sup>9</sup> Sections 775.082 and 775.083, F.S. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

<sup>10</sup> Section 806.13(6), F.S.

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

<sup>12</sup> Section 806.13(7), F.S.



performing community service, at a rate of one day's suspension per hour community service worked.<sup>13</sup> Such community service is to be in the form of cleaning graffiti from public property.

### III. Effect of Proposed Changes:

**Section 1** provides that the act may be cited as the "Historical Memorials Protection Act."

**Section 2** creates s. 265.710, F.S. The bill defines the term "memorial" as a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is:

- Constructed and located with the intent of being permanently displayed or perpetually maintained;
- Dedicated to a historical person, entity, event, or series of events; and
- Honoring or recounting the military service of a U.S. Armed Forces personnel, or the public service of a resident of Florida or the United States.

The definition of memorial includes, but is not limited to:

- Florida Women's Hall of Fame;
- Florida Medal of Honor Wall;
- Florida Veterans' Hall of Fame;
- POW-MIA Chair of Honor Memorial;
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden;
- Florida Law Enforcement Officers' Hall of Fame;
- Florida Holocaust Memorial;
- Florida Slavery Memorial; and
- Any other memorial located within the Capitol Complex, including Waller Park.

The bill provides that any person or entity that damages, destroys, takes, or removes a memorial without authorization is civilly liable for the full cost of repair or replacement of the memorial. Where such conduct is intentional, such person in addition is liable for treble damages, attorney fees, and court costs associated with any action brought to recover the damages for the cost of repair or replacement. The bill provides standing to a resident of this state, a historical preservation organization, a military veteran or veterans' organization, or a law enforcement or firefighter benevolent organization.

The bill further provides that, without express written approval of the Secretary of State, no object<sup>14</sup> that would obstruct the view of a memorial on public property, or that would convey information about the memorial, may be placed on or adjacent to any memorial in existence on or before January 1, 2019.

**Section 3** adds a new subsection to s. 806.13, F.S., regarding criminal mischief. The new subsection provides that a person may not willfully damage, deface, or remove a memorial. It specifies memorials<sup>15</sup> owned by a governmental entity, museum, historical society or similar

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<sup>13</sup> Section 806.13(8), F.S.

<sup>14</sup> "plaque, sign, picture, marker, exhibit, notice, or other object."

<sup>15</sup> Given the same definition as in section 1 of the bill.

organization, or memorials located in a cemetery or on a grave or tombstone. The subsection provides that the violator commits a third degree felony.<sup>16</sup>

The bill also provides that a minor choosing to reduce his or her period of driver's license suspension, revocation, or withholding via community service may apply the cleaning of graffiti on memorials or the cleanup of parks dedicated to veterans or historic sites towards such community service requirement.

**Section 4** provides that the bill takes effect October 1, 2020.

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

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

Not applicable. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue.

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

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

This bill does not impose, authorize, or raise a state tax or fee.

##### **E. Other Constitutional Issues:**

None identified.

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

##### **A. Tax/Fee Issues:**

The bill does not impact state or local taxes or fees.

##### **B. Private Sector Impact:**

To the extent that this bill acts as a deterrent, memorial caretakers may experience a positive fiscal impact on less repairing and cleaning memorials.

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<sup>16</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

**C. Government Sector Impact:**

The bill has an indeterminate fiscal impact. The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, has not yet considered the bill. However, the bill may have a positive indeterminate prison bed impact (an increase in prison beds) because the bill creates a new felony offense. To the extent that this bill acts as a deterrent, public memorial caretakers may experience a positive fiscal impact on less repairing and cleaning memorials.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that no object that would obstruct the view of a memorial that is located on public property or that would convey information about such a memorial may be placed on or immediately adjacent to any such memorial *in existence on or before* January 1, 2019, without the express authorization of the Secretary of State. Therefore, if the memorial is erected *after* January 1, 2019, this provision is inapplicable. The purpose for the distinction is unclear.

The bill provisions regarding civil damages specifies that the removal of a memorial *without authorization* from the appropriate entity may subject a person to civil liability. However, the provision regarding criminal charges provides that a person may not *remove by any means* a memorial without exempting those with authorization from the appropriate entity. Therefore, for example, a public parks employee that is ordered to remove a memorial located on the park by their employer would be in violation of this provision.

**VIII. Statutes Affected:**

This bill creates section 265.710 of the Florida Statutes.

This bill substantially amends section 806.13 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.

**B. Amendments:**

None.

By Senator Torres

15-01216A-20

20201690\_\_

A bill to be entitled

An act relating to preservation of memorials; providing a short title; creating s. 265.710, F.S.; defining the term "memorial"; prohibiting specified activities concerning memorials by a person or an entity; providing for liability and the award of certain costs and damages for violations of the act; requiring the Secretary of State to provide written approval before the placement of certain materials on or adjacent to certain memorials on public property; granting certain persons standing for enforcement of the act; amending s. 806.13, F.S.; providing criminal penalties for damage to or removal of certain memorials; redefining the term "community service" for purposes of minors found to have committed certain delinquent acts of criminal mischief; providing an effective date.

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

Section 1. This act may be cited as the "Historical Memorials Protection Act."

Section 2. Section 265.710, Florida Statutes, is created to read:

265.710 Civil liability for damaging, destroying, or removing memorials; enforcement.—

(1) As used in this section, the term "memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display

15-01216A-20

20201690\_\_

that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising this state or the United States. The term includes, but is not limited to, the following memorials established under this chapter:

(a) Florida Women's Hall of Fame;

(b) Florida Medal of Honor Wall;

(c) Florida Veterans' Hall of Fame;

(d) POW-MIA Chair of Honor Memorial;

(e) Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden;

(f) Florida Law Enforcement Officers' Hall of Fame;

(g) Florida Holocaust Memorial;

(h) Florida Slavery Memorial; and

(i) Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

(2) Any person or entity that damages or destroys any memorial, or that takes or removes a memorial without returning the memorial to its original position and condition, is liable for the full cost of repair or replacement of such memorial unless such person or entity was authorized to take or remove the memorial by the person or entity owning such memorial for the purpose of restoring or repairing the memorial.

(3) In addition to the cost of repair or replacement, any person or entity that intentionally damages, destroys, takes, or

15-01216A-20

20201690

removes a memorial without authorization is liable for treble damages, attorney fees, and court costs to the owner of the memorial in any action or proceeding brought to recover damages for the cost of repair or replacement of a memorial.

(4) No plaque, sign, picture, marker, exhibit, notice, or other object that would obstruct the view of a memorial that is located on public property or that would convey information about such a memorial may be placed on or immediately adjacent to any such memorial in existence on or before January 1, 2019, without the express written approval of the Secretary of State.

(5) A resident of this state, a historical preservation organization, a military veteran, a veterans' organization, or a law enforcement or firefighter benevolent organization has standing to seek enforcement of this section through civil action in the circuit court in the county in which a memorial that has been damaged or destroyed is located.

Section 3. Present subsections (5) through (9) of section 806.13, Florida Statutes, are renumbered as subsections (6) through (10), respectively, a new subsection (5) is added to that section, and present subsection (8) of that section is amended, to read:

806.13 Criminal mischief; penalties; penalty for minor.—

(5) A person may not willfully damage or deface, or remove by any means, a memorial that is owned or erected by a governmental entity, a museum, a historical society, or a similar public or private organization, or a memorial that is located in a cemetery or on a grave or tombstone. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

15-01216A-20

20201690

For purposes of this subsection, the term "memorial" has the same meaning as in s. 265.710.

~~(9)(8)~~ A minor whose driver license or driving privilege is revoked, suspended, or withheld under subsection ~~(8)~~ ~~(7)~~ may elect to reduce the period of revocation, suspension, or withholding by performing community service at the rate of 1 day for each hour of community service performed. In addition, if the court determines that due to a family hardship, the minor's driver license or driving privilege is necessary for employment or medical purposes of the minor or a member of the minor's family, the court shall order the minor to perform community service and reduce the period of revocation, suspension, or withholding at the rate of 1 day for each hour of community service performed. As used in this subsection, the term "community service" means cleaning graffiti from public property, including graffiti on memorials, or the general cleanup of parks dedicated to veterans or historic sites.

Section 4. This act shall take effect October 1, 2020.

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

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

2-11-20

Meeting Date

1690

Bill Number (if applicable)

Topic PRESERVATIONS OF MEMORIALS

Amendment Barcode (if applicable)

Name JOHN HAYNES

Job Title PAST STATE COMMANDER

Address 424 HIAWATHA FARMS RD.  
Street

Phone 850-443-3451

MONTICELLO  
City

FLI  
State

32344  
Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing DISABLED VETERANS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

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

2 11 20

*Meeting Date*

1690

*Bill Number (if applicable)*

Topic Preservation of Memorials

*Amendment Barcode (if applicable)*

Name Dan Hendrickson

Job Title president, Tallahassee Veterans Legal Collaborative

Address PO Box 1201

Phone 850/ 570-1967

*Street*

Tallahassee

FL

32302

Email danbhendrickson@comcast.net

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



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

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

2/11/20

Meeting Date

1690

Bill Number (if applicable)

Topic Historic Preservation

Amendment Barcode (if applicable)

Name JEFF KOTIKAMP

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

Tallahassee

City

FL

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Guardians of American History

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



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

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

2-10-20

Meeting Date

1690

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Greg Pouncil

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

Address 9166 Sunrise Dr.

Phone \_\_\_\_\_

Street

Largo

City

FL.

State

33773

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Saving Families

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

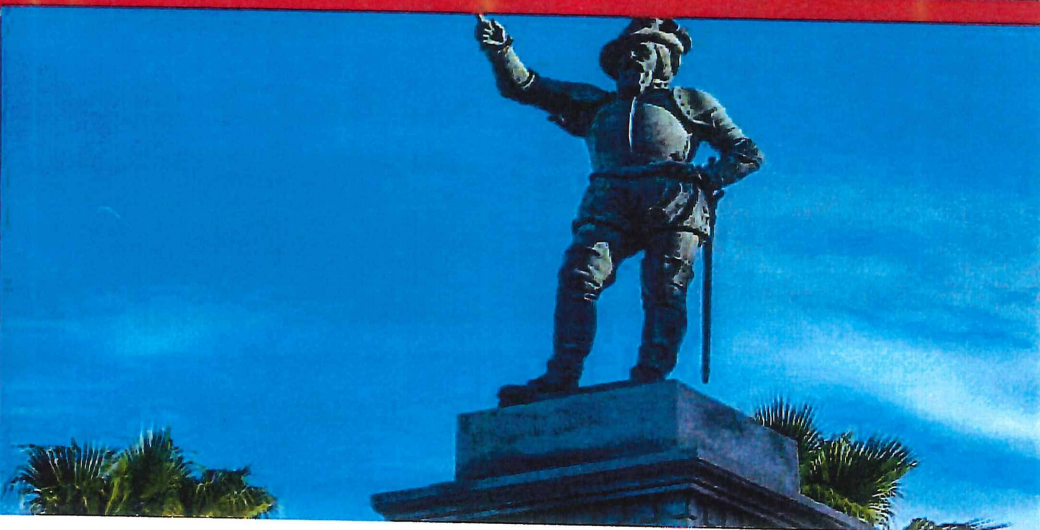
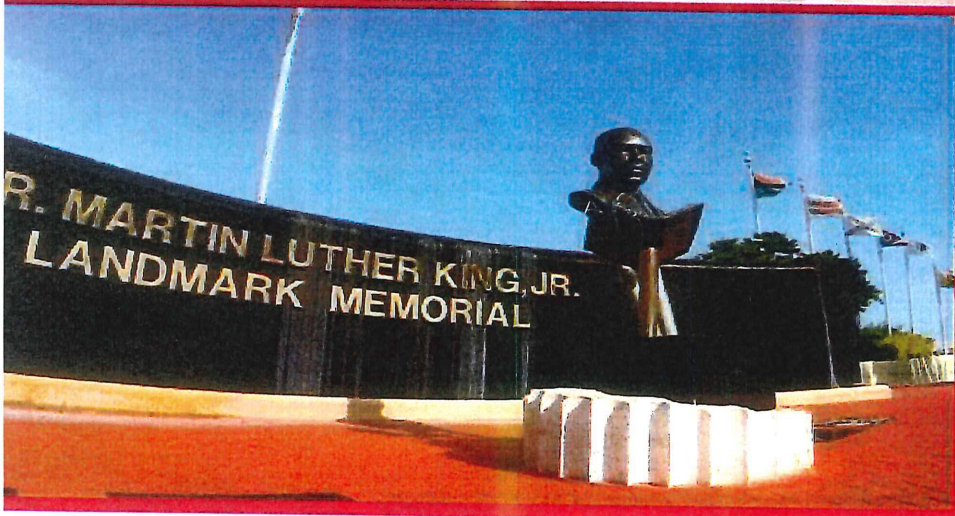
*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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

S-001 (10/14/14)



*Holocaust Memorial — Vietnam Wall — Dr. Martin Luther King, Jr. — Spanish Explorer*  
*Miami Pensacola West Palm Beach St. Augustine*

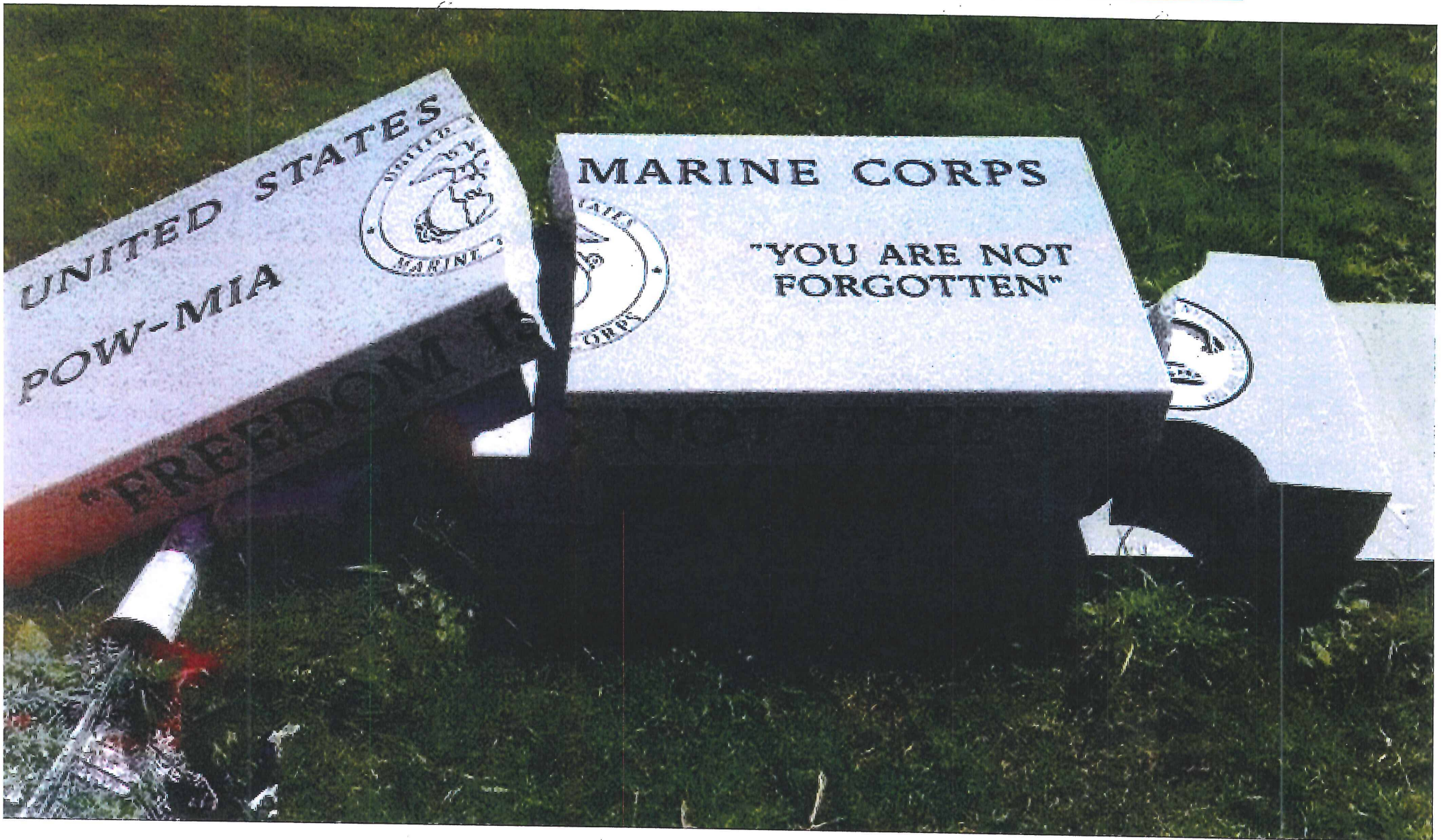




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*Marine Corps Memorial in Pensacola, FL.*

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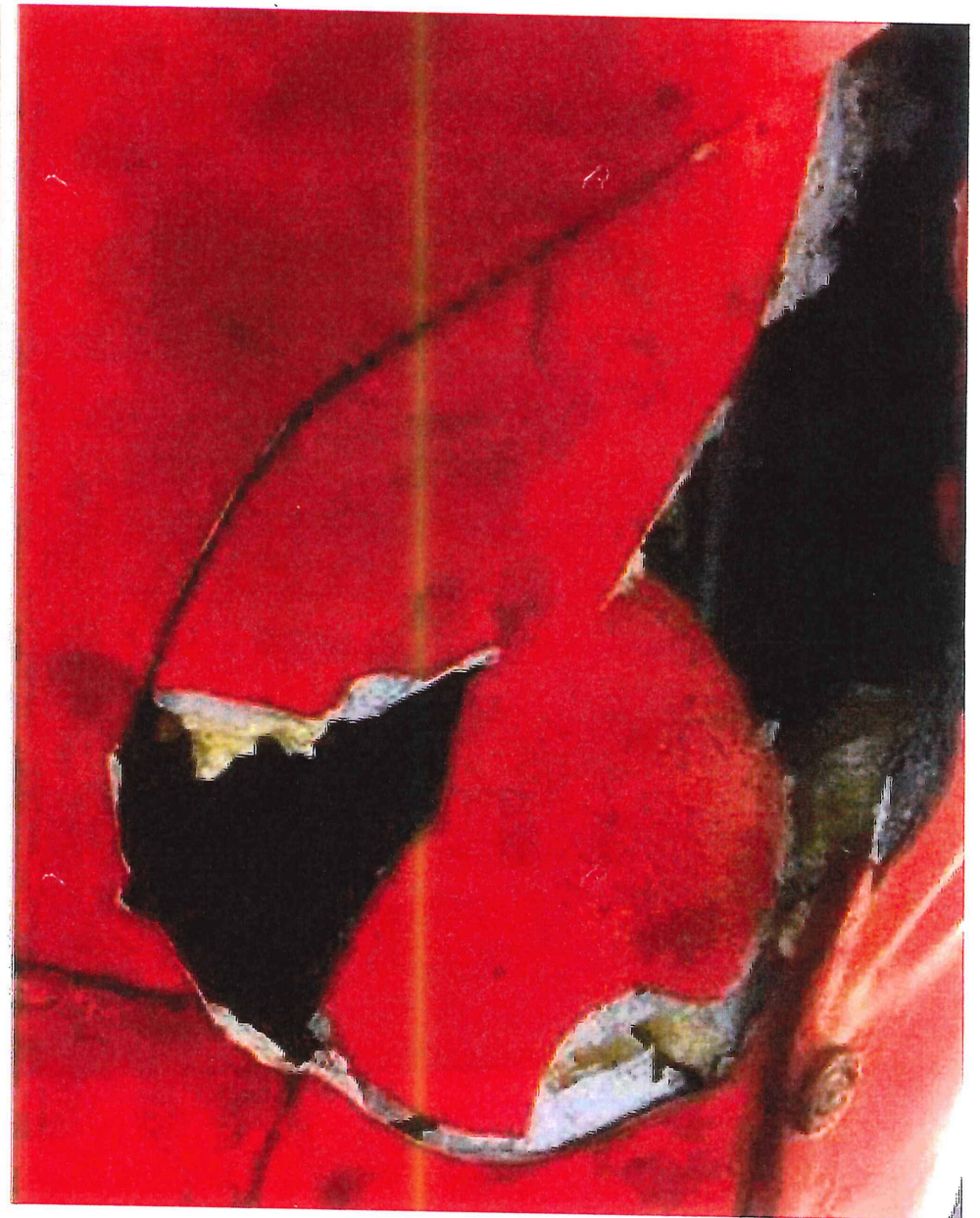




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*Tuskegee Airman Statue in Winter Park, FL.*

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WELCOME HOME

VIETNAM VETERANS



VIETNAM VETERANS

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

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

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

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BILL: SB 1866

INTRODUCER: Senator Pizzo

SUBJECT: Assault or Battery

DATE: February 10, 2020

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	<b>Pre-meeting</b>
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

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## **I. Summary:**

SB 1866 reclassifies the misdemeanor or felony degree of an assault, aggravated assault, battery, and aggravated battery when a person is charged with knowingly committing any of these offenses upon a code enforcement officer, an employee of a state park or park operated by a political subdivision, or a certified lifeguard while such officer, employee, or lifeguard is engaged in the lawful performance of his or her duties.

The Legislature's Office of Economic and Demographic Research preliminarily estimates the bill 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 October 1, 2020.

## **II. Present Situation:**

Section 784.07(2), F.S., reclassifies the misdemeanor or felony degree of assault,<sup>1</sup> aggravated assault,<sup>2</sup> battery,<sup>3</sup> and aggravated battery<sup>4</sup> when a person is charged with knowingly committing

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<sup>1</sup> Assault, which is a second degree misdemeanor, is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Section 784.011(1) and (2), F.S.

<sup>2</sup> Aggravated assault, which is a third degree felony, is the commission of an assault using a deadly weapon without intent to kill or the commission of an assault with the intent to commit a felony. Section 784.021(1) and (2), F.S.

<sup>3</sup> Simple battery, which is a first degree misdemeanor, is actually and intentionally touching or striking another person against the will of that person or intentionally causing bodily harm to another person. Section 784.03(1)(a), F.S.

<sup>4</sup> A person commits aggravated battery, a second degree felony, if the person, in committing a battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; uses a deadly weapon; or the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. Section 784.045(1) and (2), F.S.

any of these offenses upon an officer or employee described as follows while that officer or employee is engaged in the lawful performance of his or her duties:

- A law enforcement officer;
- A firefighter;
- An emergency medical care provider;
- A railroad special officer;
- A traffic accident investigation officer;
- A nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI;
- A law enforcement explorer;
- A traffic infraction enforcement officer;
- A parking enforcement specialist;
- A person licensed as a security officer and wearing a uniform bearing at least one patch or emblem that is visible at all times and clearly identifies the person's employing agency and that the person is a licensed security officer;
- A security officer employed by the board of trustees of a community college; or
- A public transit employee or agent.<sup>5</sup>

The reclassification of the degree of the offense is as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor;
- In the case of battery, from a first degree misdemeanor to a third degree felony;
- In the case of aggravated assault, from a third degree felony to a second degree felony, and any person convicted of aggravated assault upon a law enforcement officer is subject to a mandatory three-year minimum term of imprisonment; and
- In the case of aggravated battery, from a second degree felony to a first degree felony, and any person convicted of aggravated battery of a law enforcement officer is subject to a mandatory five-year minimum term of imprisonment.<sup>6</sup>

Further, if the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

- A firearm or destructive device, the person is subject to a mandatory minimum term of imprisonment of three years; or

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<sup>5</sup> "Public transit employees or agents" is defined in s. 784.07(1)(e), F.S. There is no specific reference in the statute to a public transit employee or agent in the list of officers and employees referenced as being subject to an assault or battery, which triggers the reclassification if the assault or battery occurs while the officer or employee is engaged in his or her lawful duties. A public transit employee or agent is only referenced in regard to a listed officer or employee engaged in performance of his or her lawful duties. However, notwithstanding the specific reference omission, it appears that the statute has been applied when the victim is a public transit employee. *See, e.g., Walker v. State*, 193 So.3d 946, 948-949 (Fla. 4th DCA 2016), rehearing denied, 193 So.3d 990 (Fla. 4th DCA 2016) (appellate court stating that the charges against the appellant included a count relating to battery on a public transit employee in violation of ss. 784.03(1), 784.07(1)(e), and 784.07(2)(b), F.S., and the appellant was found guilty as charged on this count).

<sup>6</sup> Section 784.07(2)(a)-(d), F.S.

- A semiautomatic firearm and its high-capacity detachable box magazine or a machine gun, the person is subject to a mandatory minimum term of imprisonment of eight years.<sup>7</sup>

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.<sup>8</sup>

### III. Effect of Proposed Changes:

The bill amends s. 784.07, F.S., to reclassify the misdemeanor or felony degree of an assault, aggravated assault, battery, and aggravated battery when a person is charged with knowingly committing any of these offenses upon a code enforcement officer as defined in s. 162.21, F.S.,<sup>9</sup> an employee of a state park or a park operated by a political subdivision, or a lifeguard certified under s. 514.071, F.S.,<sup>10</sup> while that officer, employee, or lifeguard is engaged in the lawful performance of his or her duties. The reclassification is as follows:

- In the case of assault, from a second degree misdemeanor (maximum penalty of 60 days in county jail) to a first degree misdemeanor (maximum penalty of one year in county jail);
- In the case of battery, from a first degree misdemeanor to a third degree felony (maximum penalty of five years in state prison);
- In the case of aggravated assault, from a third degree felony to a second degree felony (maximum penalty of 15 years in state prison); and
- In the case of aggravated battery, from a second degree felony to a first degree felony (maximum penalty of 30 years in state prison).<sup>11</sup>

If the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

- A firearm or destructive device, the person is subject to a mandatory minimum term of imprisonment of three years; or

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<sup>7</sup> Section 784.07(3)(a) and (b), F.S. Additionally, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release, prior to serving the minimum sentence. Section 784.07(3), F.S.

<sup>8</sup> Section 775.082, F.S. (maximum penalties). Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.082, F.S., provides the following maximum fines: \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

<sup>9</sup> Section 162.21(1), F.S., defines a “code enforcement officer” as any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality.

<sup>10</sup> Section 514.071(1), F.S., requires that any person working as a lifeguard at a public swimming pool must be certified by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs. Lifeguards must be currently certified in lifeguarding, first aid, and cardiopulmonary resuscitation.

<sup>11</sup> Section 775.082, F.S. (maximum penalties).



- A semiautomatic firearm and its high-capacity detachable box magazine or a machine gun, the person is subject to a mandatory minimum term of imprisonment of eight years.<sup>12</sup>

A person subject to such mandatory minimum term may not have adjudication of guilt or imposition of sentence suspended, deferred, or withheld, and is not eligible for statutory gain-time or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release, prior to serving the minimum sentence.<sup>13</sup>

The bill is effective October 1, 2020.

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

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

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

##### **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.

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<sup>12</sup> Section 784.07(3)(a) and (b), F.S.

<sup>13</sup> Section 784.07(3), F.S.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).<sup>14</sup>

The Legislature’s Office of Economic and Demographic Research (EDR) provides the following information relevant to this estimate:

Large numbers come to prison each year with these offenses as primary. There were 1,998 (adj.)<sup>15</sup> sentenced in FY 17-18 with 466 (adj.) sentenced to prison.... In FY 18-19, there were 400 new commitments to prison for these offenses. It is unknown how large the code enforcement officer, park employee, or lifeguard victim pool is, but simple battery is the most common felony offense and the incarceration rate is low (16.3% adj.). CJIC has heard bills with the same provisions in prior years and found them to have an insignificant impact due to low volume.<sup>16</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 784.07 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

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

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<sup>14</sup> E-mail from EDR staff, dated Jan. 27, 2020 (on file with the Senate Committee on Criminal Justice).

<sup>15</sup> The abbreviation “adj.” means “adjusted.” Sentencing data from the Department of Corrections is incomplete, which means that the number the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

<sup>16</sup> The EDR estimate is on file with the Senate Committee on Criminal Justice.

By Senator Pizzo

38-01452-20

20201866\_\_

A bill to be entitled

An act relating to assault or battery; amending s. 784.07, F.S.; providing for reclassification of assault or battery offenses committed upon certain persons while they are engaged in the lawful performance of their duties; providing an effective date.

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

Section 1. Subsection (2) of section 784.07, Florida Statutes, is amended to read:

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

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a person licensed as a security officer as defined in s. 493.6101 and

Page 1 of 3

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

38-01452-20

20201866\_\_

wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, ~~or~~ a security officer employed by the board of trustees of a community college, a code enforcement officer as defined in s. 162.21, an employee of a state park or a park operated by a political subdivision, or a lifeguard certified under s. 514.071, while the officer, firefighter, emergency medical care provider, railroad special officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, law enforcement explorer, parking enforcement specialist, public transit employee or agent, ~~or~~ security officer, code enforcement officer, park employee, or lifeguard is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a

Page 2 of 3

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

38-01452-20

20201866\_\_

59 minimum term of imprisonment of 5 years.

60 Section 2. This act shall take effect October 1, 2020.

# Racial/Ethnic Impact Statement

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## SB1866

Prepared by  
Florida State University  
College of Criminology & Criminal Justice

For  
The Florida Senate Criminal Justice Committee



## SB1866

### Bill Summary

SB1866 amends s. 784.07 F.S., which describes the offense of assault and battery against law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers and provides penalties for violations. The proposed amendment would add additional protected officials to the statute, namely, the bill adds code enforcement officers, public park employees, and certified lifeguards. Assault or battery against these protected officials results in an increase in penalties for all levels of assault or battery. Currently, all states have legislation that provides additional penalties for assault or battery committed against law enforcement officers. Similar to Florida, these laws also typically cover “Peace Officers”, an umbrella term that can include any official who is empowered to enforce the law, investigate criminal activity, respond to emergencies, or maintain public peace. Prior research has not examined whether there is racial disparity in assaults or batteries committed against “Peace Officers”. Using data from the Florida Department of Law Enforcement (FDLE) and the Office of Economic and Demographic Research (EDR), it was found that there is racial disparity in the charges filed for assault or battery committed against law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers. Specifically, Black individuals are more likely to be charged for the offense. If enacted, SB1866, will increase the number of individuals subject to punishment and if the same racial breakdown in charges continues under the new legislation, the racial disparity will likely continue.

### Comparable Legislation and Prior Research

Currently, all states have legislation that provides additional penalties for assault or battery committed against law enforcement officers. These laws also typically cover “Peace Officers”, an umbrella term that includes any official who is empowered to enforce the law, investigate criminal activity, respond to emergencies, or maintain public peace. This often includes park rangers, emergency medical personnel, firefighters, code enforcement officers, parking officers, school resource officers, and others tasked by government agencies to enforce the law. Public officials, such as sanitation workers, officials serving court summons, or school officials are also often included as protected officials. States also uniformly tend to apply these protections to medical workers such as doctors, nurses, and medical technicians. Most states require the official to be actively engaged in their capacity as an officer or official and in uniform or on the clock at the time of the assault or battery, but this is not always the case. Many states also state this protection is in effect when the officer or official is responding to an emergency or administering first aid. Some states also include components that increase the penalties further if the assault or battery results in injury of the officer or official.

Examples of similar legislation in other states are provided below. Importantly, since nearly every state has similar legislation, examples were selected to highlight features that are less common.

**California’s** (Cal. Penal Code § 243) assault and battery on police/peace officer law includes additional penalties if the officer is injured during the assault or battery. The penal codes states that assault and battery against an officer or peace officer carries a fine of 2,000 dollars and up to a year in jail, while causing an injury to that officer in the course of the assault and battery can result in a fine of up to 10,000 dollars and up to three years in prison.

**New York’s** (NY Penal L § 120.05) assault and battery on police/peace officer law is somewhat unique as it includes sanitation workers who are on duty as a protected official, this includes health inspectors, public health officials, and sanitation workers.

**Georgia’s** (O.C.G.A. 16-5-21 & O.C.G.A. 35-8-2) assault and battery on police/peace officer law includes state licensing and certification officials as protected officials, any officer who is installed as an “emergency peace officer” in times of emergency or natural disaster, and administrative heads of state agencies who do not personally exercise law enforcement duties.

Prior research on assault and battery against the specific types of officials that Florida's SB1866 proposes to add is not available. This could be due to the fact that states do not make a distinction in criminal penalties between uniformed police officers, firefighters, doctors or other protected peace officers in their criminal code. No states had separate felonies or penalties depending on the type of officer. However, there is evidence on violence against police that can be examined to offer a broader picture.

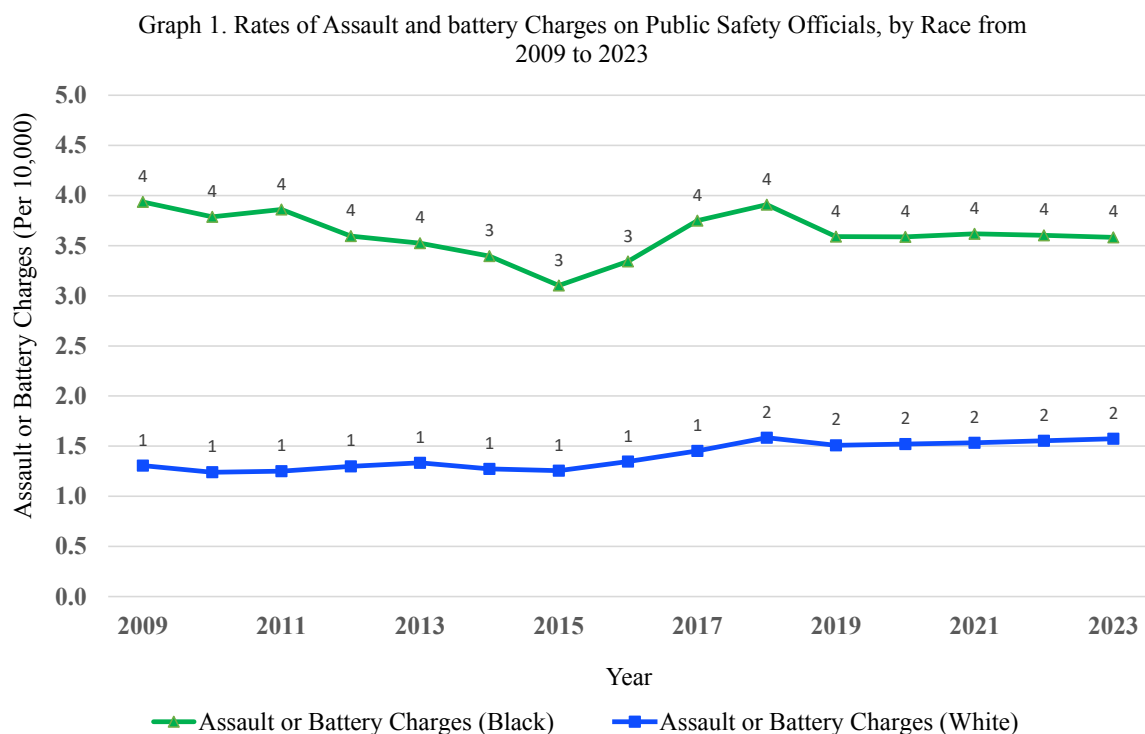
Covington, Huff-Corzine, Lin, and Corzine (2014) examined violence against police officers in Orlando, Florida from 2006 to 2008. The authors examined the characteristics of the officer, the characteristics of the offender, the time of day, time of year, how many officers were involved, and other variables related to violence against officers. They found that cases that involved multiple officers were higher risk for violence against officers. They found that female offenders, offenders with higher body mass indexes, and offenders who recently consumed alcohol all corresponded to higher incidence of violence against officers. Race, time of day, number of offenders, and use of tasers were all non-significant in predicting violence against officers.

## Data and Methods for Racial/Ethnic Impact Forecast

Data from FDLE and EDR were used to prepare this racial/ethnic impact statement. Individuals who were charged with an assault or battery offense under s. 784.07 F.S., were included in the analyses. Racial differences in charges for assault or battery offenses under the current statute were assessed using data from 2009 through 2018 and projections from 2019 through 2023. It is important to note that the analyses in this impact statement show racial disparities among individuals charged with assault or battery against law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers. It does not include the individuals that will be added if the legislation is enacted, namely, code enforcement officers, employees of state parks or other parks operated by political subdivisions, and certified lifeguards.

## Results

From 2009-2018 there were 32,912 charges for assault or battery on law enforcement officers, firefighters, emergency medical care providers, or public transit employees or agents. Black individuals were more likely to be charged for this offense than were White individuals over this time period. Specifically, in 2018, four per 10,000 Black individuals and two per 10,000 White individuals were charged with the offense. As shown in Graph 1, the observed racial disparities are projected to remain over the next five years.



## Racial/Ethnic Impact Statement for the Bill

SB1866 amends s. 784.07 F.S., which describes the offense of assault and battery against law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers and provides penalties for violations. The proposed amendment would add additional protected officials to the statute, namely, the bill adds code enforcement officers, public park employees, and certified lifeguards. There is racial disparity in the charges filed for assault or battery committed against law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers. Specifically, Black individuals are more likely to be charged for the offense. If enacted, SB1866, will increase the number of individuals subject to punishment and if the same racial breakdown in charges continues under the new legislation, the racial disparity will likely persist.

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## References

Cal. Penal Code § 240. Of Crimes Against the Person

Covington, M. W., Huff-Corzine, L., & Corzine, J. (2014). Battered police: Risk factors for violence against law enforcement officers. *Violence and Victims*, 29(1): 34-52.

Ga. Code Ann. § 16-5-21. Aggravated Assault

Ga. Code Ann. § 35-8-2. Employment and Training of Peace Officers, Definitions

N.Y. U.C.C. Penal Law § 120.05. Assault in the second degree

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## Contributors Racial/Ethnic Impact Statement SB1866

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FLORIDA STATE UNIVERSITY  
COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE





The Florida Senate

## Committee Agenda Request

**To:** Senator Keith Perry, Chair  
Committee on Criminal Justice

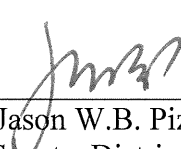
**Subject:** Committee Agenda Request

**Date:** January 21, 2020

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I respectfully request that **SB 1866**, relating to Assault or Battery, be placed on the:

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

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

## **SB 1866 – Assault or Battery**

This bill adds “a code enforcement officer as defined in s. 162.21, F.S., an employee of a state park or a park operated by a political subdivision, or a lifeguard certified under s. 514.071, F.S.” to s. 784.07, F.S., which addresses assault or battery of law enforcement officers, firefighters, emergency medical providers, public transit employees, etc. Offenses under this statute are reclassified as follows:

Assault increased from 2<sup>nd</sup> degree misdemeanor to 1<sup>st</sup> degree misdemeanor;  
Battery from 1<sup>st</sup> degree misdemeanor to 3<sup>rd</sup> degree felony  
Aggravated assault from 3<sup>rd</sup> degree felony to 2<sup>nd</sup> degree felony  
Aggravated battery from 2<sup>nd</sup> degree felony to 1<sup>st</sup> degree felony

Large numbers come to prison each year with these offenses as primary. There were 1,998 (adj.) sentenced in FY 17-18 with 466 (adj.) sentenced to prison. **See Handout.** In FY 18-19, there were 400 new commitments to prison for these offenses. It is unknown how large the code enforcement officer, park employee, or lifeguard victim pool is, but simple battery is the most common felony offense and the incarceration rate is low (16.3% adj.). CJIC has heard bills with the same provisions in prior years and found them to have an insignificant impact due to low volume.

**CONFERENCE ADOPTED ESTIMATE: Positive Insignificant**

**Requested by: Senate**

## SB 1866 -- Assault or Battery

These bills add hospital personnel to the list of professions in s. 784.07, F.S. , which increases the felony degree of assault and battery offenses when the victim is hospital personnel.

### Current assault and battery offenses on law enforcement and other professions (s. 784.07, F.S.)

Statute	Primary Offense	Felony Degree	Offense Severity Level	Criminal Code Lowest Permissible Sentence (in months) <sup>1</sup>	Maximum Sentence Under Criminal Code (Based on degree)	Number Sentenced FY 17-18 <sup>2</sup>	Number Receiving Prison <sup>2</sup>	Percent Receiving Prison	Mean Sentence Length (in months)
784.087(2)(b)	BATTERY; OF LAW ENFORCEMENT OFFICER OR FIREFIGHTER OR INTAKE OFFICER, ETC.	3rd	4	Non-prison	5 years	1,726	282	16.3%	25.8
784.087(2)(c)	AGGRAVATED ASSAULT; OF LAW ENFORCEMENT OFFICER OR FIREFIGHTER OR INTAKE OFFICER, ETC.	2nd	6	Non-prison	15 years	195	130	66.5%	101.4
784.087(2)(d)	AGGRAVATED BATTERY; OF LAW ENFORCEMENT OFFICER OR FIREFIGHTER OR INTAKE OFFICER, ETC.	1st	7	21	30 years	77	55	70.8%	83.9

<sup>1</sup> Criminal Code Lowest Permissible Sentence assumes no additional or prior offenses and is based on offense severity level.

<sup>2</sup> Adjusted for non-compliance in the completion of scoresheets. Per Department of Corrections report entitled, "Sentencing Scoresheet Compliance Report July 1, 2017 - June 30, 2018", compliance is about 93.3%.

## Erickson, Mike

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**From:** Hasbrouck, Matthew  
**Sent:** Monday, January 27, 2020 4:37 PM  
**To:** Erickson, Mike  
**Cc:** Baker, Amy  
**Subject:** RE: SB 1866

Hey Mike,

Yes, they agreed with that estimate.

-Matt

---

**From:** Erickson, Mike <ERICKSON.MIKE@flsenate.gov>  
**Sent:** Monday, January 27, 2020 4:36 PM  
**To:** Hasbrouck, Matthew <HASBROUCK.MATTHEW@leg.state.fl.us>  
**Subject:** SB 1866

Hi Matt-

Did CJIC agree with your estimate of SB 1866? You estimated positive insignificant. I watched the CJIC meeting but missed a few of the bills, including this one.

-Mike

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

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

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

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BILL: CS/SB 1880

INTRODUCER: Criminal Justice Committee and Senator Perry

SUBJECT: Restitution for Juvenile Offenses

DATE: February 11, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wagoner	Jones	CJ	Fav/CS
2.			JU	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1880 adopts a uniform set of conditions of restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld. The bill requires the court to order the child and the child's parent or guardian to pay restitution when the court has determined that restitution is appropriate.

The bill authorizes the court to set up a payment plan if the child and the parent or legal guardian are unable to pay the restitution in one lump-sum payment.

The bill authorizes the court to absolve the parent or guardian of any liability for restitution if:

- After a hearing, the court finds that the current offense is the child's first referral and the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts;
- The victim entitled to restitution is the child's parent or legal guardian;
- At any time relevant to the juvenile delinquency proceedings, the parent or guardian did not have custody of or parental responsibility for the child; or
- After a hearing, the court finds that the child has attained 18 years of age and the child's parent or guardian made good faith efforts to comply with the restitution order.

The bill clarifies that the following entities are not considered a guardian responsible for restitution for the delinquent acts of a child: the Department of Children and Families, a foster

parent, the community-based care lead agency supervising placement of the child, or a residential child-caring agency or family foster home.

The bill's fiscal impact is indeterminate. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

## **II. Present Situation:**

### **Juvenile Cases in which the Court enters an Adjudication of Delinquency**

A court may order children who are adjudicated delinquent of a crime into a probation program or a postcommitment probation program.<sup>1</sup> If the court orders probation for the child, the probation program must include a penalty component such as restitution in money or in kind, community service, a curfew, revocation or suspension of the child's driver license, or other appropriate punishment that is non-residential.<sup>2</sup> Additionally, the probation program must include a rehabilitative component such as participation in substance abuse treatment or in a school or educational program.<sup>3</sup> The probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation.<sup>4</sup>

#### ***Restitution***

Section 985.437, F.S., authorizes a court with jurisdiction over a child who has been adjudicated delinquent to order the child to pay restitution to the victim for any damage<sup>5</sup> or loss caused by the child's offense<sup>6</sup> in a reasonable amount or manner. The court may order the child to make restitution in money, through a promissory note cosigned by the child's parent or guardian<sup>7</sup>, or in kind.<sup>8</sup> When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or the child's parent or guardian could reasonably be expected to pay or make.<sup>9</sup> However, the child's parent or guardian may be absolved of any such liability for restitution if the court finds, after a hearing, that the parent or guardian has made diligent and good faith

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<sup>1</sup> Section 985.435(1), F.S.

<sup>2</sup> Section 985.435(2), F.S.

<sup>3</sup> Section 985.435(3), F.S.

<sup>4</sup> Section 985.435(4), F.S.

<sup>5</sup> "Any damage" has been interpreted by Florida courts to include damage for pain and suffering. *C.W. v. State*, 655 So.2d 87 (Fla. 1995).

<sup>6</sup> The damage or loss must be directly or indirectly related to the child's offense or criminal episode. *L.R.L. v. State*, 9 So.3d 714 (Fla. 2d DCA 2009).

<sup>7</sup> Section 985.437, F.S., does not specifically exempt the Department of Children and Families, a foster parent, or any other entity considered a guardian of a dependent child from the restitution requirements of this section.

<sup>8</sup> Section 985.437(2), F.S. A parent or guardian cannot be ordered to pay restitution for offenses committed by their minor child without the court providing the parent meaningful notice, an opportunity to be heard, and a determination of the parent or guardian's ability to pay. See *S.B.L. v. State*, 737 So. 2d 1131, 1132-33 (Fla. 1st DCA 1999) (holding that the trial court violated the mother's due process right by ordering her to pay restitution without affording her meaningful opportunity to be heard at the restitution hearing); *A.T. v. State*, 706 So. 2d 109, 109 (Fla. 2d DCA 1998) (trial court erred by ordering the juvenile and her mother to pay restitution without making a determination of either's ability to do so); *C.D.D. v. State*, 684 So. 2d 866, 867 (Fla. 2d DCA 1996) (holding that the trial court was required to consider the juvenile's and mother's ability to pay before imposing a restitution order).

<sup>9</sup> Section 985.437(2), F.S.

efforts to prevent the child from engaging in delinquent acts.<sup>10</sup> Additionally, s. 985.513, F.S., provides that the court may order the parent or guardian of a child adjudicated delinquent to make restitution in money or in kind for any damage or loss caused by the child's offense.

To enter an order of restitution, a court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution to which the victim is entitled.<sup>11</sup> A restitution hearing is not required if the child previously entered into an agreement to pay<sup>12</sup> or has waived his or her right to attend a restitution hearing.<sup>13</sup>

The clerk of the circuit court receives and dispenses restitution payment.<sup>14</sup> If restitution is not made, the clerk must notify the court.<sup>15</sup> The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied.<sup>16</sup> If a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the real property of the child or parent.<sup>17</sup> The court may transfer a restitution order to a collection court or a private collection agent to collect unpaid restitution.<sup>18</sup>

### **Juvenile Cases in which the Court enters a Withheld of Adjudication**

Section 985.35, F.S., provides that if the court finds that the child has committed a delinquent act, it may enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency. Upon withholding adjudication of delinquency, the court may place the child in a probation program.<sup>19</sup> The court may impose, as a condition of the program, a penalty component, including restitution in money or in kind, or a rehabilitative component.<sup>20</sup> Such components are identical to those available for adjudications of delinquency, however, the imposition of program conditions are not mandatory when the court withholds adjudication.<sup>21</sup>

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

The bill amends s. 985.437, F.S., adopting a uniform set of conditions of restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld.

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<sup>10</sup> Section 985.437(4), F.S.

<sup>11</sup> *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.

<sup>12</sup> *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

<sup>13</sup> *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

<sup>14</sup> Section 985.437(3), F.S.

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

<sup>16</sup> Section 985.0301(5)(d), F.S.

<sup>17</sup> Section 985.0301(5)(d), F.S., provides that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089(5), F.S. That section provides that a restitution order may be enforced in the same manner as a judgment in a civil action.

<sup>18</sup> Section 985.045(5), F.S.

<sup>19</sup> Section 985.35(4), F.S.

<sup>20</sup> *Id.*

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

The bill requires the court to order the child *and* the child's parent or guardian to pay restitution when the court has determined that restitution is appropriate.

The bill provides that a court may establish a payment plan that reflects ability to pay the restitution amount when the child and the child's parent or guardian are unable to make restitution in kind or to pay the restitution in one lump-sum payment.

The bill amends s. 985.513, F.S., providing a uniform set of conditions for jurisdiction over a child's parent or guardian concerning restitution.

Currently, a child's parent or guardian who the court finds has made diligent and good faith efforts to prevent the child's delinquency is absolved from liability for restitution. Under the bill, this ground for avoiding liability is limited to circumstances in which the child is making his or her first referral to the delinquency system.

In addition, the bill provides that a parent or guardian may be absolved from liability for restitution if:

- The parent or guardian is the victim of the child's offense;
- The parent or guardian did not, at any time relevant to the juvenile delinquency proceedings, have custody of or parental responsibility for the child; or
- After a hearing, the court finds that the child has attained 18 years of age and the child's parent or guardian made good faith efforts to comply with the restitution order.

The bill provides that the following entities are not considered a guardian responsible for restitution for the delinquent acts of a child: the Department of Children and Families, a foster parent, the community-based care lead agency supervising placement of the child, or a residential child-caring agency<sup>22</sup> or family foster home.<sup>23</sup>

The bill is effective October 1, 2020.

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

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

None.

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

None.

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<sup>22</sup> "Residential child-caring agency" means any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth. Section 409.175, F.S.

<sup>23</sup> "Family foster home" means a residence licensed by the Department of Children and Families in which children who are unattended by a parent or legal guardian are provided 24-hour care. Section 409.175, F.S.



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 bill may provide greater potential for victims to receive all or a portion of restitution. Parents ordered to pay restitution on behalf of a child may avoid a civil lien if they cannot pay restitution in a lump-sum as the bill authorizes payment plans.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) reports that the fiscal impact of the bill is indeterminate. The bill expands on the types of cases that qualify for court-ordered restitution by including when adjudication is withheld, resulting in a likely increase in the number of post-judgment and compliance hearings. Additionally, the bill limits those parents and guardians that may seek to be absolved from liability for restitution by showing diligent and good faith efforts to prevent the child from further delinquent acts by requiring an additional finding that it is the child's first referral to the delinquency system. This would significantly reduce the number of parents and guardians eligible to seek to be absolved from liability for restitution. Further, the OSCA reports that the establishment of payment plans will likely result in fewer court hearings for parties failing to pay full amounts of restitution.<sup>24</sup>

The OSCA further reports that the length of hearings will increase due to the following procedural changes under the bill:

- Judges will be required to inform a child's parent or guardian of the consequences of failing to pay restitution.
- Courts will be required to further ascertain the child's parent or guardian's ability to pay restitution.
- Judges will have to address evidentiary issues and hear testimony to determine whether the parties' have current custody and parental responsibility of the child in

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<sup>24</sup> Office of the State Courts Administrator, *2020 Judicial Impact Statement for SB 1880*, (January 27, 2020) (on file with the Senate Criminal Justice Committee).

cases where the parents are separated, divorced, or if the child is living with a relative.<sup>25</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.437 and 985.513.

**IX. Additional Information:**

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

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

**CS by Criminal Justice on February 11, 2020:**

The committee substitute:

- Moves provisions to a more appropriate statutory section. Specifically, provisions absolving parents or guardians of liability for restitution for their child's offense is moved from s. 985.437, F.S., concerning juvenile restitution, to s. 985.513, F.S., concerning a court's jurisdiction over a parent or guardian during juvenile delinquency proceedings.
- Requires the clerk of court to notify the court if a restitution payment plan is not followed.
- Clarifies that a parent or guardian may be absolved from liability if, at any time relevant to the juvenile delinquency proceedings, that parent or guardian did not have custody of or parental responsibility for the child.
- Provides that the child's parent or guardian may be absolved from liability for restitution if, after a hearing, the court finds that the child has attained 18 years of age and the child's parent or guardian made good faith efforts to comply with the restitution order.
- Removes unnecessary amending language to s. 985.35, F.S.
- Makes other clarifying and technical changes.
- Revises the effective date.

**B. Amendments:**

None.

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

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



461968

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
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The Committee on Criminal Justice (Perry) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 985.437, Florida Statutes, is amended to  
read:

985.437 Restitution.—

(1) Regardless of whether adjudication is imposed or  
withheld, the court that has jurisdiction over a ~~an adjudicated~~  
~~delinquent~~ child may, by an order stating the facts upon which a



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determination of a sanction and rehabilitative program was made at the disposition hearing, order the child and the child's parent or guardian to make restitution in the manner provided in this section. This order shall be part of the child's probation program to be implemented by the department or, in the case of a committed child, as part of the community-based sanctions ordered by the court at the disposition hearing or before the child's release from commitment.

(2) If the court orders restitution, the court shall may order the child and the child's parent or guardian, as provided under s. 985.513, to make restitution in money, through a promissory note signed by the child and cosigned by the child's parent or guardian, or in kind for any damage or loss caused by the child's offense in a reasonable amount or manner to be determined by the court. When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the child's parent or guardian could reasonably be expected to pay or make. If the child and the child's parent or guardian are unable to make restitution in kind or pay the restitution in one lump sum, the court may establish a payment plan based on the child's and the child's parent or guardian's ability to pay the restitution amount.

(3) The clerk of the circuit court shall be the receiving and dispensing agent. In such case, the court shall order the child and ~~or~~ the child's parent or guardian to pay to the office of the clerk of the circuit court an amount not to exceed the actual cost incurred by the clerk as a result of receiving and dispensing restitution payments. The clerk shall notify the court if restitution is not made or if a restitution payment



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plan is not followed, and the court shall take any further action that is necessary against the child and ~~or~~ the child's parent or guardian.

~~(4) A finding by the court, after a hearing, that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts absolves the parent or guardian of liability for restitution under this section.~~

~~(5)~~ The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise, as provided in s. 985.0301.

Section 2. Section 985.513, Florida Statutes, is amended to read:

985.513 Powers of the court over parent or guardian at disposition.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, ~~÷~~

~~(a)~~ order the child's parent or guardian, together with the child, to render community service in a public service program or to participate in a community work project. In addition to the sanctions imposed on the child, the court may order the child's parent or guardian to perform community service if the court finds that the child's parent or guardian did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts.

(2) Regardless of whether adjudication is imposed or



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withheld, if the court orders restitution under s. 985.437, the court shall order the child and the child's parent or guardian to make restitution in money, through a promissory note signed by the child and cosigned by the child's parent or guardian, or in kind for any damage or loss caused by the child's offense.

~~(b) Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense. The court may also require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437.~~ The court shall determine a reasonable amount or manner of restitution, and payment shall be made to the clerk of the circuit court as provided in s. 985.437. The court may retain jurisdiction, as provided under s. 985.0301, over the child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or the court orders otherwise.

(a) The child's parent or guardian may be absolved of liability for restitution ordered under this chapter if:

1. After a hearing, the court finds that it is the child's first referral to the delinquency system and that the child's parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts;

2. The victim entitled to restitution is the child's parent or guardian; or

3. The parent or guardian did not, at any time relevant to the proceedings under this chapter, have custody of or parental responsibility for the child.

(b) For purposes of this section, the Department of



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Children and Families, a foster parent with whom the child is placed, the community-based care lead agency supervising the placement of the child pursuant to a contract with the Department of Children and Families, or a facility licensed or registered under s. 409.175 or s. 409.176 is not considered a parent guardian responsible for restitution for the delinquent acts of a child who is found to be dependent as defined in s. 39.01.

~~(3)~~(2) Notwithstanding whether adjudication is imposed or withheld, the court may order the natural parents or legal custodian or guardian of a child who is found to have committed a delinquent act to participate in family counseling and other professional counseling activities deemed necessary for the rehabilitation of the child or to enhance their ability to provide the child with adequate support, guidance, and supervision. The court may also order that the parent, custodian, or guardian support the child and participate with the child in fulfilling a court-imposed sanction. In addition, the court may use its contempt powers to enforce a court-imposed sanction.

Section 3. This act shall take effect October 1, 2020.

===== 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 restitution for juvenile offenses;  
amending s. 985.437, F.S.; providing a uniform set of



461968

conditions of restitution for juvenile offenses,  
regardless of whether adjudication is imposed or  
withheld; requiring a child's parent or guardian, in  
addition to the child, to make restitution for damage  
or loss caused by the child's offense; authorizing the  
court to establish a payment plan in certain  
circumstances; requiring notification to the court if  
a payment plan is not followed; removing duplicative  
provisions; amending s. 985.513, F.S.; providing a  
uniform set of conditions for jurisdiction over a  
child's parent or guardian concerning restitution,  
regardless of whether adjudication is imposed or  
withheld; authorizing the child's parent or guardian  
to be absolved of liability for restitution in certain  
circumstances; authorizing the court to order  
restitution to be paid only by the parents or  
guardians who have concurrent custody and parental  
responsibility; providing that the Department of  
Children and Families, foster parents, and specified  
facilities are agencies are not considered parents or  
guardians for purposes of restitution; providing an  
effective date.





695846

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
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The Committee on Criminal Justice (Perry) recommended the following:

**Senate Amendment to Amendment (461968)**

Delete lines 93 - 96  
and insert:  
or guardian;

3. The parent or guardian did not, at any time relevant to the proceedings under this chapter, have custody of or parental responsibility for the child; or

4. After a hearing, the court finds that the child has attained the age of 18 years and the child's parent or guardian



695846

11 has made good faith efforts to comply with the restitution  
12 order.



156254

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/03/2020	.	
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The Committee on Criminal Justice (Perry) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 95 - 122

and insert:

Section 3. Section 985.513, Florida Statutes, is amended to read:

985.513 Powers of the court over parent or guardian at disposition.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a



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determination of a sanction and rehabilitative program was made at the disposition hearing, ~~÷~~

~~(a)~~ order the child's parent or guardian, together with the child, to render community service in a public service program or to participate in a community work project. In addition to the sanctions imposed on the child, the court may order the child's parent or guardian to perform community service if the court finds that the child's parent or guardian did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts.

~~(b) Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense. The court may also require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437. The court shall determine a reasonable amount or manner of restitution, and payment shall be made to the clerk of the circuit court as provided in s. 985.437.~~

(2) Notwithstanding whether adjudication is imposed or withheld, the court may retain jurisdiction, as provided under s. 985.0301, over the child and the child's parent or legal guardian whom the court has ordered to make restitution in kind or pay restitution until the restitution order is satisfied or the court orders otherwise.

(3) ~~(2)~~ Notwithstanding whether adjudication is imposed or withheld, the court may order the natural parents or legal custodian or guardian of a child who is found to have committed a delinquent act to participate in family counseling and other professional counseling activities deemed necessary for the



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rehabilitation of the child or to enhance their ability to provide the child with adequate support, guidance, and supervision. The court may also order that the parent, custodian, or guardian support the child and participate with the child in fulfilling a court-imposed sanction. In addition, the court may use its contempt powers to enforce a court-imposed sanction.

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

And the title is amended as follows:

Delete lines 3 - 18

and insert:

amending s. 985.437, F.S.; providing a uniform set of conditions of restitution for juvenile offenses, regardless of whether adjudication is imposed or withheld; requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; authorizing the court to establish a payment plan in certain circumstances; authorizing the child's parent or guardian to be absolved of liability for restitution in certain circumstances; authorizing the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility; providing that the Department of Children and Families, foster parents, and specified facilities and agencies are not guardians for purposes of restitution; amending s. 985.35, F.S.; conforming provisions to changes made by the act; amending s.



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69        985.513, F.S.; removing duplicative provisions;  
70        conforming provisions to changes made by the act;  
71        providing an effective date.

By Senator Perry

8-00302-20

20201880\_\_

A bill to be entitled

An act relating to restitution for juvenile offenses; amending s. 985.35, F.S.; conforming provisions to changes made by the act; amending s. 985.437, F.S.; requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; authorizing the court to establish a payment plan in certain circumstances; authorizing the child's parent or guardian to be absolved of liability for restitution in certain circumstances; authorizing the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility; providing that the Department of Children and Families, foster parents, and specified facilities and agencies are not guardians for purposes of restitution; amending s. 985.513, F.S.; removing duplicative provisions; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 985.35, Florida Statutes, is amended to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

(4) If the court finds that the child named in the petition has committed a delinquent act or violation of law, it may, in its discretion, enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency.

Page 1 of 5

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

8-00302-20

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(a) Upon withholding adjudication of delinquency, the court may place the child in a probation program under the supervision of the department or under the supervision of any other person or agency specifically authorized and appointed by the court. The court may, as a condition of the program, impose as a penalty component restitution in money or in kind to be made by the child and the child's parent or guardian as provided in s. 985.437, community service, a curfew, urine monitoring, revocation or suspension of the driver license of the child, or other nonresidential punishment appropriate to the offense, and may impose as a rehabilitative component a requirement of participation in substance abuse treatment, or school or other educational program attendance.

Section 2. Present subsection (5) of section 985.437, Florida Statutes, is renumbered as subsection (7), a new subsection (5) and subsection (6) are added to that section, and subsections (1), (2), and (4) of that section are amended, to read:

985.437 Restitution.—

(1) Regardless of whether adjudication is imposed or withheld, the court that has jurisdiction over ~~a an adjudicated delinquent~~ child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, order the child and the child's parent or guardian to make restitution in the manner provided in this section. This order shall be part of the child's probation program to be implemented by the department or, in the case of a committed child, as part of the community-based sanctions ordered by the court at the disposition hearing or before the

Page 2 of 5

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

8-00302-20

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child's release from commitment.

(2) If the court orders restitution, the court shall may  
 order the child and the child's parent or guardian to make  
 restitution in money, through a promissory note ~~assigned by the~~  
~~child's parent or guardian~~, or in kind for any damage or loss  
 caused by the child's offense in a reasonable amount or manner  
 to be determined by the court. When restitution is ordered by  
 the court, the amount of restitution may not exceed an amount  
 the child and the child's parent or guardian could reasonably be  
 expected to pay or make. If the child and the child's parent or  
guardian are unable to make restitution in kind or to pay the  
restitution in one lump-sum payment, the court may establish a  
payment plan that reflects their ability to pay the restitution  
amount.

(4) The child's parent or guardian may be absolved of  
liability for restitution under this section if:

(a) After a hearing, the court finds that it is the child's  
first referral to the delinquency system and ~~A finding by the~~  
~~court, after a hearing,~~ that the child's parent or guardian has  
 made diligent and good faith efforts to prevent the child from  
 engaging in delinquent acts; or

(b) The victim entitled to restitution as a result of  
damage or loss caused by the child's offense is that child's  
~~absolves the parent or guardian of liability for restitution~~  
~~under this section.~~

(5) The court may order restitution to be made in kind or  
paid only by the parents or guardians who have current custody  
of and parental responsibility for the child.

(6) For purposes of this section, the Department of

8-00302-20

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Children and Families, a foster parent with whom the child is  
placed, the community-based care lead agency supervising the  
placement of the child pursuant to a contract with the  
Department of Children and Families, or a facility licensed or  
registered under s. 409.175 or s. 409.176 is not considered a  
guardian responsible for restitution for the delinquent acts of  
a child who is found to be dependent as defined in s. 39.01(15).

Section 3. Subsection (1) of section 985.513, Florida  
 Statutes, is amended to read:

985.513 Powers of the court over parent or guardian at  
 disposition.—

(1) The court that has jurisdiction over an adjudicated  
 delinquent child may, by an order stating the facts upon which a  
 determination of a sanction and rehabilitative program was made  
 at the disposition hearing, +

~~(a)~~ order the child's parent or guardian, together with the  
 child, to render community service in a public service program  
 or to participate in a community work project. In addition to  
 the sanctions imposed on the child, the court may order the  
 child's parent or guardian to perform community service if the  
 court finds that the child's parent or guardian did not make a  
 diligent and good faith effort to prevent the child from  
 engaging in delinquent acts.

~~(b) Order the parent or guardian to make restitution in~~  
~~money or in kind for any damage or loss caused by the child's~~  
~~offense. The court may also require the child's parent or legal~~  
~~guardian to be responsible for any restitution ordered against~~  
~~the child, as provided under s. 985.437. The court shall~~  
~~determine a reasonable amount or manner of restitution, and~~



8-00302-20

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117 ~~payment shall be made to the clerk of the circuit court as~~  
118 ~~provided in s. 985.437.~~ The court may retain jurisdiction, as  
119 provided under s. 985.0301, over the child and the child's  
120 parent or legal guardian whom the court has ordered to make  
121 restitution in kind or pay restitution until the restitution  
122 order is satisfied or the court orders otherwise.

123       Section 4. This act shall take effect July 1, 2020.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-10-20

Meeting Date

1880

~~1880~~

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Greg Pound

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

Address 9166 Sunrise Dr.

Street

Phone \_\_\_\_\_

Largo

City

FL.

State

33773

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Saving Families

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

OFFICE OF THE STATE COURTS ADMINISTRATOR  
2020 JUDICIAL IMPACT STATEMENT

BILL NUMBER: SB 1880

DATE: January 27, 2020

SPONSOR(S): Senator Perry

STATUTE(S) AFFECTED: ss. 985.35, 985.437, and 985.513, F.S.

COMPANION BILL(S): HB 1225

AGENCY CONTACT: Sean M. Burnfin

TELEPHONE: (850) 922-0358

ASSIGNED OSCA STAFF: Jonathan Corey/EWM

I. SUMMARY: The bill amends s. 985.437, F.S., by adding that a child's parent or guardian, in addition to the child, be ordered to pay restitution for damage or loss caused by the child's offense if restitution is ordered. The bill removes discretionary determinations as to who will be responsible for restitution by adding that "if the court orders restitution" the court "shall" order the child "and the child's parent or guardian." The bill removes language limiting the court's authority to order restitution to minors "adjudicated delinquent," replacing it with language that expands the court's authority to impose restitution over the child and the child's parent or guardian "regardless of whether adjudication is imposed or withheld." The bill also adds new language that allows the court to assess the ability of the child and the child's parent or guardian to pay restitution in one lump-sum. If it is determined they cannot pay the lump-sum, the bill allows for the court to establish a payment plan. The bill also adds a second requirement to the section that would allow for the child's parent or guardian to be absolved of liability for restitution by now requiring that it must be the child's first referral to the delinquency system, in addition to the court having to find the parent or guardian has made a good-faith effort to prevent the child from engaging in delinquent acts. The bill also requires that the court can only order restitution for parents or guardians who have both concurrent custody and parental responsibility over the child, while also exempting the Department of Children and Families (DCF), a foster parent, or a DCF contract facility from being held liable for restitution. Finally, ss. 985.35 and 985.153, F.S., are both amended to conform to the provisions of s. 985.437, F.S.

II. EFFECT OF PROPOSED CHANGES: The proposed changes have the following effects:

Currently, if the court orders restitution the child is the only party liable, but the court *may* order the parent or guardian to cosign a promissory note. This bill would obligate the parent(s) or guardian(s) to sign the promissory note as additional drawers as opposed to cosigners. Additionally, the bill defines parent or guardian as the person(s) who have

*both concurrent custody and parental responsibility* over the child. This will require the court to make additional findings as to the parents'/guardians' percentage of custody and parental responsibility in cases where the parents are separated, divorced, or if the child is living with a relative. (See Section III for further discussion.)

Second, currently s. 985.437, F.S., permits the court that has jurisdiction over *an adjudicated delinquent* to order restitution. The bill deletes the language of "an adjudicated delinquent" and replaces it with "regardless of whether adjudication is imposed or withheld." This change allows the sanction of restitution to be applied to a broader range of minors. Specifically, whereas restitution could only be ordered in cases where a minor was adjudicated delinquent, under the bill the state attorney can recommend, and the court order, restitution in cases where adjudication is withheld.

Third, the bill would limit the number of parent(s) or guardian(s) (i.e., number of cases) who would be eligible to seek being absolved from liability by creating a second requirement that the court must determine. Currently, if a parent or guardian seeks to be absolved from liability from a promissory note that they cosigned, a hearing is held to determine that the parent(s) or guardian(s) has made a diligent and good faith effort to prevent the child from further delinquent acts. The bill would require the court to make the additional finding that it is the child's *first* referral to the delinquency system. This likely would significantly reduce the number of guardians and parents that would be eligible to seek being absolved from liability for restitution.

Fourth, the addition that the court may establish a payment plan based on the inability of the parties to pay the lump-sum amount will likely result in compliance in restitution payments and fewer court hearings for parties failing to pay full amounts.

- III. **ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT:** Judges would need to become familiar with the new law and inform parents and guardians of the consequences of being held liable for the failure to pay the entire restitution amount. This will result in an increase in the length of hearings. Additionally, parents and guardians who meet the concurrent custody and parental responsibility requirement will likely have to testify as to their ability to pay the restitution amount or fill out financial affidavits. The court will have to consider and decide on their ability to pay, which will also increase the length of hearings. Moreover, in cases where the concurrent custody and parental responsibility is not straight forward, judges will have to address evidentiary issues and hear testimony to determine whether the parties' have current custody and parental responsibility as per the statute. In practice, in cases where the parents/guardians are involved in family litigation or have a dependency case, the nature of these types of disputes will likely result in arguments to the court on which party should be considered the one with concurrent custody and parental responsibility.

Because the bill expands on the type of cases that would qualify for court ordered restitution (i.e., adjudications withheld and adjudicated delinquent), there would likely be an increase in the number of post-judgment/compliance hearings related to the imposition of restitution.

The addition that the court may establish a payment plan based on the inability of the parties to pay the lump-sum amount will likely result in compliance in restitution payments and fewer court hearings for parties failing to pay full amounts.

IV. **IMPACT TO COURT RULES/JURY INSTRUCTIONS:** The Florida Rules of Juvenile Procedure may need to be reviewed to ensure they accommodate the new statutory procedures.

V. **ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:**

**A. Revenues: None.**

**B. Expenditures:** The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to establish the changes in judicial workload resulting from an increase in the frequency and length of hearings or the potential decrease in hearings, as discussed in Section II and Section III, above.

Trial court judicial workload is measured using a case weighting system that calculates the amount of time that it takes for a judge to dispose of a case. Passage of this bill may impact the case weighting system. The number of case filings using the case weighting system is used to determine the needs for additional judicial resources each year. Any judicial workload changes in the future as a result of this bill will be reflected in the Supreme Court's annual opinion regarding certification of the need for additional judges.

# CourtSmart Tag Report

**Room:** LL 37

**Case No.:**

**Type:**

**Caption:** Senate Criminal Justice Committee

**Judge:**

**Started:** 2/11/2020 10:03:21 AM

**Ends:** 2/11/2020 10:50:59 AM

**Length:** 00:47:39

10:03:19 AM Meeting called to order by Chair Perry  
10:03:23 AM Roll call by AA Sue Arnold  
10:03:29 AM Quorum present  
10:03:35 AM Comments from Chair Perry  
10:03:44 AM SP1866 TP'd per Chair Perry  
10:03:58 AM Introduction of Tab 1 by Chair Perry  
10:04:12 AM Explanation of SB 618, Detention of Children by Senator Powell  
10:04:43 AM Question from Senator Brandes  
10:04:49 AM Response from Senator Powell  
10:05:26 AM Introduction of Amendment Barcode No. 270048 by Chair Perry  
10:05:32 AM Explanation of Amendment by Senator Powell  
10:05:50 AM Amendment adopted  
10:05:56 AM Trish Nealy, League Women Voters in support  
10:06:38 AM  
10:06:43 AM  
10:06:44 AM Albert Balido, Southern Poverty Law Center waives in support  
10:06:47 AM Dawn Steward, Florida PTA waives in support  
10:06:48 AM Nancy Daniels, Legislative Consultant waives in support  
10:07:00 AM Senator Brandes in debate  
10:07:52 AM Closure by Senator Powell  
10:07:58 AM Roll call by AA  
10:08:04 AM CS/SB 618 reported favorably  
10:08:13 AM Introduction of Tab 6 by Chair Perry  
10:08:24 AM Explanation of SB 1594, Firesafety Inspectors by Senator Powell  
10:09:10 AM Introduction of Amendment Barcode No. 928606 by Chair Perry  
10:09:14 AM Explanation of Amendment by Senator Powell  
10:09:40 AM Closure waived  
10:09:43 AM Amendment adopted  
10:09:49 AM Speaker Jon Pasqualone, Executive Director, FL Fire Marshals & Inspectors in support  
10:10:28 AM Closure waived  
10:10:30 AM Roll call by AA  
10:10:35 AM CS/SB 1594 reported favorably  
10:10:44 AM Introduction of Tab 7 by Chair Perry  
10:11:12 AM Explanation of SB 1690, Preservation of Memorials by Senator Torres  
10:14:43 AM Question from Senator Pizzo  
10:14:48 AM Response from Senator Torres  
10:15:08 AM Comments from Senator Pizzo  
10:15:17 AM Follow-up question from Senator Pizzo  
10:15:24 AM Response from Senator Torres  
10:16:02 AM Question from Senator Flores  
10:17:00 AM Response from Senator Torres  
10:18:22 AM Question from Senator Brandes  
10:18:27 AM Response from Senator Torres  
10:18:34 AM Follow-up question from Senator Brandes  
10:18:42 AM Response from Senator Torres  
10:19:16 AM Additional question from Senator Brandes  
10:19:22 AM Response from Senator Torres  
10:20:00 AM Additional question from Senator Brandes  
10:20:19 AM Response from Senator Torres  
10:21:30 AM Comments from Senator Brandes  
10:21:49 AM Additional question from Senator Brandes  
10:21:57 AM Response from Senator Torres

10:22:39 AM Speaker Greg Pound  
10:23:50 AM Jeff Kottkamp, Guardians of American History waives in support  
10:23:57 AM Dan Hendrickson, Florida Public Defender Association waives in support  
10:24:01 AM John Haynes waives in support  
10:24:19 AM Senator Pizzo in debate  
10:24:39 AM Senator Brandes in debate  
10:25:27 AM Senator Flores in debate  
10:28:31 AM Senator Bracy in debate  
10:29:13 AM Chair Perry in debate  
10:30:18 AM Senator Torres in closure  
10:30:23 AM Roll call by AA  
10:31:19 AM SB 1690 reported favorably  
10:31:30 AM Introduction of Tab 4 by Chair Perry  
10:31:40 AM Explanation of SB 1508, Police Vehicles by Senator Taddeo  
10:32:41 AM Question from Senator Brandes  
10:32:48 AM Response from Senator Taddeo  
10:32:59 AM Follow-up question from Senator Brandes  
10:33:18 AM Response from Senator Taddeo  
10:34:07 AM Introduction of Amendment Barcode No. 868736 by Chair Perry  
10:34:11 AM Explanation of Amendment by Senator Taddeo  
10:34:38 AM Closure waived  
10:34:45 AM Amendment adopted  
10:34:53 AM Senator Brandes in debate  
10:36:11 AM Senator Taddeo in closure  
10:36:19 AM Roll call by AA  
10:37:03 AM CS/SB 1508 reported favorably  
10:37:15 AM Introduction of Tab 2 by Chair Perry  
10:37:23 AM Explanation of CS/SB 688, Illegal Taking, Possession, and Sale of Bears by Senator Wright  
10:37:51 AM Introduction of Amendment Barcode No. 436308 by Chair Perry  
10:37:54 AM Explanation of Amendment by Senator Wright  
10:38:30 AM Lt. Colonel Gregg Eason, FWC waives in support  
10:38:43 AM Closure waived  
10:38:45 AM Amendment adopted  
10:38:50 AM Kate MacFall, Humane Society of the United States waives in support  
10:39:06 AM Closure waived  
10:39:08 AM Roll call by AA  
10:39:13 AM CS/CS/SB 688 reported favorably  
10:39:27 AM Introduction of Tab 5 by Chair Perry  
10:39:39 AM Explanation of SB 1552, Law enforcement Activities by Senator Flores  
10:40:55 AM Introduction of Amendment Barcode No. 697978 by Chair Perry  
10:41:03 AM Explanation of Amendment by Senator Flores  
10:41:31 AM Closure waived  
10:41:34 AM Amendment adopted  
10:41:39 AM Ron Draa, Director of External Affairs, FDLE waives in support  
10:41:50 AM Closure waived  
10:41:57 AM Roll call by AA  
10:42:01 AM CS/SB 1552 reported favorably  
10:42:18 AM Introduction of Tab 3 by Chair Perry  
10:42:27 AM Explanation of SB 798, Procurement of Human Organs and Tissue by Senator Pizzo  
10:42:54 AM Todd Josko, Lion's Eye Institute for Transplants & Research waives in support  
10:43:02 AM Closure waived  
10:43:06 AM Roll call by AA  
10:43:10 AM SB 798 reported favorably  
10:43:21 AM Chair turned over to Senator Brandes  
10:43:29 AM Introduction of Tab 9 by Chair Brandes  
10:43:38 AM Explanation of SB 1880, Restitution for Juvenile Offenses by Senator Perry  
10:44:01 AM Motion to reconsider barcode No. 461968 by Senator Perry  
10:44:27 AM Introduction of Amendment to Amendment Barcode No. 695846 by Chair Brandes  
10:44:38 AM Explanation of Amendment by Senator Perry  
10:44:55 AM Closure waived  
10:44:59 AM Amendment to Amendment adopted  
10:45:16 AM Closure waived

**10:45:25 AM** Amendment as amended adopted  
**10:45:39 AM** Speaker Greg Pound  
**10:46:03 AM** Question from Senator Brandes  
**10:46:10 AM** Response from Mr. Pound  
**10:46:50 AM** Follow-up from Chair Brandes  
**10:46:56 AM** Response from Mr. Pound  
**10:47:03 AM** Comments from Senator Pizzo  
**10:47:10 AM** Response from Mr. Pound  
**10:47:21 AM** Response from Senator Pizzo  
**10:47:37 AM** Senator Pizzo in debate  
**10:48:49 AM** Senator Perry in closure  
**10:48:52 AM** Roll call by AA  
**10:49:27 AM** CS/SB 1880 reported favorably  
**10:49:40 AM** Chair returned to Senator Perry  
**10:49:48 AM** Senator Pizzo moves that staff be allowed to make technical and conforming changes to the Committee Substitutes  
**10:50:36 AM** Senator Brandes moves to adjourn, meeting adjourned