

Tab 1	SB 68 by Garcia; (Identical to H 00691) Public Records/Staff and Volunteers of Domestic Violence Centers					
215070	A	S	RCS	CJ, Garcia	Delete L.273 - 320:	02/16 06:33 PM
Tab 2	CS/SB 70 by CF, Garcia; (Similar to H 00689) Domestic Violence Centers					
Tab 3	SB 194 by Berman (CO-INTRODUCERS) Cruz, Polsky; (Similar to H 00043) Crimes Evidencing Prejudice					
332962	A	S	RCS	CJ, Berman	btw L.97 - 98:	02/16 06:33 PM
Tab 4	SB 210 by Brandes; Sentencing					
Tab 5	SB 388 by Wright (CO-INTRODUCERS) Book, Garcia; (Identical to H 00697) Injured Police Canines					
Tab 6	SB 614 by Rodriguez; Assault or Battery on Hospital Personnel					
330330	A	S	RCS	CJ, Rodriguez	Delete L.36:	02/16 06:33 PM
Tab 7	SB 620 by Bracy; (Similar to H 00069) Parole Eligibility					
177598	D	S		CJ, Bracy	Delete everything after	02/12 04:16 PM
Tab 8	SB 638 by Powell; (Identical to H 00771) Direct Filing of an Information					
324466	A	S	RCS	CJ, Powell	Delete L.51:	02/16 06:33 PM
Tab 9	SB 776 by Gainer; (Identical to H 00783) Racketeering					
328704	A	S	RCS	CJ, Gainer	Delete L.27 - 125:	02/16 06:33 PM
Tab 10	SB 890 by Hooper; Use of Electronic Databases					
377242	A	S	RCS	CJ, Hooper	Delete L.42 - 70:	02/16 06:33 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Pizzo, Chair
Senator Brandes, Vice Chair

MEETING DATE: Tuesday, February 16, 2021

TIME: 9:00 a.m.—12:15 p.m.

PLACE: *Toni Jennings Committee Room, 110 Senate Building*

MEMBERS: Senator Pizzo, Chair; Senator Brandes, Vice Chair; Senators Baxley, Boyd, Gainer, Perry, Powell, and Taddeo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	SB 68 Garcia (Identical H 691)	Public Records/Staff and Volunteers of Domestic Violence Centers; Exempting personal identifying and location information of current and former staff and volunteers of domestic violence centers certified by the Department of Children and Families under ch. 39, F.S., and personal identifying and location information of spouses and children of such personnel, from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 02/03/2021 Favorable CJ 02/16/2021 Fav/CS RC	Fav/CS Yeas 7 Nays 0
2	CS/SB 70 Children, Families, and Elder Affairs / Garcia (Similar H 689)	Domestic Violence Centers; Prohibiting the unlawful disclosure of certain information about domestic violence centers; providing criminal penalties, etc. CF 02/03/2021 Fav/CS CJ 02/16/2021 Favorable RC	Favorable Yeas 7 Nays 0
3	SB 194 Berman (Similar H 43)	Crimes Evidencing Prejudice; Expanding grounds for the reclassification of crimes to include prejudice based on the gender or gender identity of any person; specifying that the reclassification occurs if the crime was based in whole or in part on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, advanced age, gender, or gender identity of any person; specifying that the reclassification of a certain crime occurs if the crime was based in whole or in part on a disability of any person, etc. CJ 02/16/2021 Fav/CS JU RC	Fav/CS Yeas 5 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 16, 2021, 9:00 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 210 Brandes	Sentencing; Revising the required sentencing structure for prison releasee reoffenders upon proof from a state attorney which establishes that a defendant is a prison releasee reoffender; deleting a provision that prohibits a prison releasee reoffender from eligibility for any form of early release and that requires a prison releasee reoffender to serve 100 percent of the court-imposed sentence; deleting a provision that requires a state attorney to explain a sentencing deviation in writing under certain circumstances, etc. CJ 02/16/2021 Favorable AP RC	Favorable Yeas 7 Nays 0
5	SB 388 Wright (Identical H 697)	Injured Police Canines; Authorizing licensed life support services to transport injured police canines under certain circumstances; authorizing a paramedic or an emergency medical technician to provide emergency medical care to injured police canines under certain circumstances; providing for immunity from criminal and civil liability under certain circumstances, etc. HP 02/04/2021 Favorable CJ 02/16/2021 Favorable RC	Favorable Yeas 7 Nays 0
6	SB 614 Rodriguez	Assault or Battery on Hospital Personnel; Providing enhanced criminal penalties for persons who knowingly commit assault or battery upon hospital personnel, etc. CJ 02/16/2021 Fav/CS HP RC	Fav/CS Yeas 4 Nays 3
7	SB 620 Bracy (Similar H 69)	Parole Eligibility; Revising legislative intent concerning the granting of parole; requiring the Commission on Offender Review to partner with the Department of Corrections to adopt a specified program with certain requirements; requiring rulemaking, etc. CJ 02/16/2021 Temporarily Postponed ACJ AP	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 16, 2021, 9:00 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 638 Powell (Identical H 771)	Direct Filing of an Information; Prohibiting a child who has been transferred to adult court for criminal prosecution pursuant to direct file from being held in a jail or other facility used for the detention of adults before a specified hearing to determine if the child should be prosecuted as an adult; deleting references to the state attorney's discretion to direct file a juvenile; authorizing the child or the child's parent or guardian to request an evidentiary hearing, etc. CJ 02/16/2021 Fav/CS ACJ AP	Fav/CS Yeas 7 Nays 0
9	SB 776 Gainer (Identical H 783)	Racketeering; Revising the definition of the term "racketeering activity" to include certain actions relating to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes, etc. CJ 02/16/2021 Fav/CS EN RC	Fav/CS Yeas 7 Nays 0
10	SB 890 Hooper	Use of Electronic Databases; Increasing the maximum fine imposed on public officers who violate any provision of that chapter; requiring the Criminal Justice Standards and Training Commission to incorporate into the course curriculum required for initial certification of law enforcement officers instruction on the authorized access to and use of personal identification information contained in electronic databases; requiring the commission to adopt rules requiring that each law enforcement officer receive instruction on the authorized access to and use of personal identification information contained in electronic databases for continued employment or appointment as an officer, etc. CJ 02/16/2021 Fav/CS TR RC	Fav/CS Yeas 7 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 68

INTRODUCER: Criminal Justice Committee and Senator Garcia

SUBJECT: Public Records/Staff and Domestic Violence Advocates of Domestic Violence Centers

DATE: February 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	Favorable
2.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 68 amends s. 119.071(4)(d), F.S., creating a new exemption from public records disclosure for specified personal information of current and former staff and domestic violence advocates of domestic violence centers certified by the Department of Children and Families (DCF) under ch. 39, F.S., and specified personal information relating to their spouses and children.

The bill exempts the following information from public records disclosure:

- Home addresses, telephone numbers, places of employment, dates of birth, and photographs of such personnel;
- Names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides a statement of public necessity as required by the state constitution.

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

The bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2024, in accordance with s. 119.15, F.S., unless the statute is reviewed and reenacted

by the Legislature before that date. While the repeal date is typically 5 years from enactment of an exemption, the repeal date for this bill is 3 years, so that it remains consistent with the repeal dates of other exemptions currently in s. 119.071(4)(d), F.S.

There is no anticipated fiscal impact on state, county, or municipal governments. Agency costs incurred in responding to public records requests for the specified information should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means

“public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with

of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records.

specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹ However, an exemption may be reviewed under the Open Government Sunset Review Act prior to the fifth year since enactment.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.²⁷

Social Security Numbers

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.²⁸ An employing agency may only release social security numbers for the following reasons:

- It is required by federal or state law, or court order.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.²⁹

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.³⁰ This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.³¹

Medical Information

A prospective, current, or former agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. Such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission pursuant to a court order.³²

Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the dependent children of current and former employees and is also retroactively applied.³³

Public Records Exemptions for Specified Agency Personnel and Their Families (s. 119.071(4)(d), F.S.)

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include, in part:

²⁷ Section 119.071(4)(a) and (b), F.S.

²⁸ Section 119.071(4)(a)1., F.S.

²⁹ Section 119.071(4)(a), F.S.

³⁰ Section 119.071(5)(a)5., F.S.

³¹ Section 119.071(5)(a)6.f. and g., F.S.

³² Section 119.071(4)(b)1., F.S.

³³ Section 119.071(4)(b)2., F.S.

- Active or former sworn or civilian law enforcement personnel employed by a law enforcement agency, including correctional and correctional probation officers, certain investigative personnel of the DCF and the Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and child support enforcement;³⁴
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;³⁵
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;³⁶
- Current or former certified firefighters;³⁷
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;³⁸
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;³⁹
- Current or former code enforcement officers;⁴⁰
- Current or former guardians ad litem;⁴¹
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;⁴²
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;⁴³
- County tax collectors;⁴⁴
- Current or former certified emergency medical technicians and paramedics;⁴⁵
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;⁴⁶ and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.⁴⁷

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.⁴⁸ Further, all of these exemptions have retroactive application.⁴⁹

³⁴ Section 119.071(4)(d)2.a., F.S.

³⁵ Section 119.071(4)(d)2.b., F.S.

³⁶ Section 119.071(4)(d)2.c., F.S.

³⁷ Section 119.071(4)(d)2.d., F.S.

³⁸ Section 119.071(4)(d)2.e., F.S.

³⁹ Section 119.071(4)(d)2.f., F.S.

⁴⁰ Section 119.071(4)(d)2.i., F.S.

⁴¹ Section 119.071(4)(d)2.j., F.S. Guardians ad litem are volunteers who offer their services to the program.

⁴² Section 119.071(4)(d)2.l., F.S.

⁴³ Section 119.071(4)(d)2.m., F.S.

⁴⁴ Section 119.071(4)(d)2.n., F.S.

⁴⁵ Section 119.071(4)(d)2.q., F.S.

⁴⁶ Section 119.071(4)(d)2.s., F.S.

⁴⁷ Section 119.071(4)(d)2.t., F.S.

⁴⁸ Section 119.071(4)(d)3. and 4., F.S.

⁴⁹ Section 119.071(4)(d)5., F.S.

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses,⁵⁰ telephone numbers,⁵¹ and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

Section 119.071(4)(d)2., F.S., also exempts from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and names and locations of children's schools and day care facilities. However, exemptions are not uniform for names, dates of birth, and photographs of family members.

In addition, some of the provisions exempt information from ch. 119, F.S., but not from Article I, s. 24(a), of the Florida Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Finally, certain exemptions have different Open Government Sunset Review sunset dates.

Domestic Violence Centers

A domestic violence center means an agency whose primary mission is to provide services to victims of domestic violence.⁵² Currently, Florida has 41 certified domestic violence centers that are the leading providers of domestic violence services. They provide crisis counseling and support services to victims of domestic violence and their children.⁵³

The DCF is tasked with performing specified duties and functions with respect to domestic violence under ch. 39, F.S. Section 39.903, F.S., states the DCF must:

- Operate the domestic violence program and coordinate and administer statewide activities related to the prevention of domestic violence.
- Receive and approve or reject applications for initial certification of domestic violence centers, and annually renew the certification thereafter.

⁵⁰ Section 119.071(4)(d)1.a., F.S., defines "home addresses" to mean "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address."

⁵¹ Section 119.071(4)(d)1.b., F.S., defines "telephone numbers" to include "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices."

⁵² Section 39.902(2), F.S. Section 741.28(2), F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Further, s. 741.28(3), F.S., defines "family or household member" as "spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit."

⁵³ The Department of Children and Families, *Domestic Violence Overview*, available at <https://www.myflfamilies.com/service-programs/domestic-violence/overview.shtml> (last visited February 5, 2021).

- Have the right to enter and inspect the premises of domestic violence centers that are applying for an initial certification or facing potential suspension or revocation of certification to effectively evaluate the state of compliance with minimum standards.
- Promote the involvement of certified violence centers in the coordination, development, and planning of domestic violence programming in the circuits.
- Coordinate with state agencies that have health, education, or criminal justice responsibilities to raise awareness of domestic violence and promote consistent policy implementation.
- Cooperate with, assist in, and participate in, programs of other properly qualified state agencies, including any agency of the federal government, schools of medicine, hospitals, and clinics, in planning and conducting research on the prevention of domestic violence and the provision of services to clients.
- Contract with an entity or entities for the delivery and management of services for the state's domestic violence program if the DCF determines that doing so is in the best interest of the state.
- Consider applications from certified domestic violence centers for capital improvement grants and award those grants in accordance with s. 39.9055, F.S.
- Adopt by rule procedures to administer this section, including developing criteria for the approval, suspension, or rejection of certification of domestic violence centers and developing minimum standards for domestic violence centers to ensure the health and safety of the clients in the centers.

Services provided free of charge by domestic violence centers include emergency shelter, 24-hour crisis and information hotline, safety planning, counseling, case management, child assessments, information and referrals, education for community awareness, and training for law enforcement and other professionals, and other ancillary services such as relocation assistance, daycare, and transitional housing.⁵⁴

Domestic violence centers employ staff and rely on volunteers to provide these services to victims. A domestic violence advocate is an employee or a volunteer who has 30 hours of training in assisting victims of domestic violence and is an employee or volunteer for a program for victims of domestic violence whose primary purpose is the rendering of advice, counseling, or assistance to victims of domestic violence.⁵⁵ A volunteer is an unpaid staff member who provides direct or indirect services for a domestic violence center. All employees and volunteers receive some degree of training on domestic violence.⁵⁶

Staff, including volunteers, are required to submit to a background screening, except personnel who assist on an intermittent basis for less than 10 hours per month if a person who meets the screening requirement is always present and has the volunteer within his or her line of sight.⁵⁷

⁵⁴ *Id.*

⁵⁵ Section 90.5036, F.S.; Rule 65H-1.011(9), F.A.C., states “‘domestic violence advocate’ means an employee or volunteer of a certified domestic violence center who: provides direct services to individuals victimized by domestic violence; has received 30 hours of domestic violence core competency training; and, has been identified by the domestic violence center as an individual who may assert a claim to privileged communications with domestic violence victims under section 39.905, F.S.”

⁵⁶ Rule 65H-1.011(17), F.A.C., states “‘volunteer’ means unpaid staff members trained in the dynamics of domestic violence who provide direct and indirect services to those seeking and receiving services from a domestic violence center.”

⁵⁷ Section 39.001(2)(a), F.S.

Some also require personal reference letters.⁵⁸ As a practical matter, domestic violence centers generally require background checks for all volunteers, such as the centers in Baker County,⁵⁹ Broward County,⁶⁰ and Escambia County.⁶¹

There are 17,692 domestic violence advocates registered in the DCF domestic violence advocate-victim privilege database. Of those, 2,727 are current employees and volunteers of certified domestic violence centers, and 14,965 are no longer employed or volunteer at a certified domestic violence center. Advocates are not removed from the privilege database after they leave because they may be later subpoenaed for information and need to be able to assert the privilege, or they may become employed by or volunteer at another program.⁶²

Some certified domestic violence centers have reported to the DCF that employees and volunteers have been physically threatened, stalked, and emotionally abused by perpetrators of domestic violence. It has also been reported that these threats have led staff to leave their employment due to safety concerns.⁶³

III. Effect of Proposed Changes:

The bill amends s. 119.071(4)(d)2., F.S., exempting certain information pertaining to current or former staff and domestic violence advocates, as defined in s. 90.5036(1)(b), F.S., of domestic violence centers certified by DCF under ch. 39, F.S.

The bill exempts specific information from public records requirements for the above-mentioned personnel including the:

- Home addresses, telephone numbers, places of employment, dates of birth, and photographs of such personnel;
- Names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

A custodian of a record who is not the employer of the person covered by the exemption must maintain the exempt status of the information if the covered person submits a written request for maintenance of the exemption to the custodial agency.

This exemption applies to information held by an agency before, on, or after the effective date of the exemption.

⁵⁸ Women in Distress of Broward County, Inc. Jim & Jan Moran Family Center, *Interested in becoming a volunteer?*, available at <https://www.womenindistress.org/what-you-can-do/volunteer/> (last visited February 5, 2021).

⁵⁹ Hubbard House, *How do I get started?*, available at <https://www.hubbardhouse.org/getstarted> (last visited February 5, 2021).

⁶⁰ Women in Distress of Broward County, Inc. Jim & Jan Moran Family Center, *Interested in becoming a volunteer?*, available at <https://www.womenindistress.org/what-you-can-do/volunteer/> (last visited February 5, 2021).

⁶¹ Family House of Northwest Florida, Inc., *Volunteers Make It Happen!*, available at <https://favorhouse.org/page/Volunteer.html> (last visited February 5, 2021).

⁶² Email from John Paul Fiore, Legislative Specialist, DCF, RE: Domestic Violence Advocate (Email on file with the Committee on Criminal Justice) (February 12, 2021).

⁶³ The DCF, *Agency Analysis for SB 68*, p. 2, January 11, 2021 (On file with the Senate Committee on Criminal Justice).

The bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2024, unless the statute is reviewed and reenacted by the Legislature before that date.

The bill also provides a statement of public necessity as required by the State Constitution. Currently, s. 119.071(4)(d), F.S., exempts from public disclosure specified information of certain agency personnel and their families. The public necessity statement notes:

[t]he Legislature finds...[domestic violence centers' staff, domestic violence advocates] and their family members are at a heightened risk of physical and emotional harm from perpetrators of domestic violence who have contentious reactions to actions taken by such personnel to house and protect victims of domestic violence and limit further harm to such victims. The Legislature further finds that it is necessary to provide safeguards to staff and domestic violence advocates who are offering their time to protect victims of domestic violence. Without such protection, individuals may be less willing to volunteer or work for such centers, thus reducing the pool of resources and assistance available to address the already significant needs of victims of domestic violence.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. CS/SB 68 enacts a new exemption for specified public records relating to domestic violence centers' staff, domestic violence advocates, and their spouses and children and therefore, the bill will require two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires the law state with specificity the public necessity to justify a new or substantially amended exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Scope of Exemption

Article I, s. 24(c) of the Florida Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The stated purpose of the law is to protect staff, domestic violence advocates, and their spouse and children from perpetrators of domestic violence who pose a risk of harm to them, and reduce the risk that individuals may be less willing to volunteer or work for domestic violence centers as a result of such risk. The bill exempts only those persons who are at risk of harm and their relevant location or identifying information which could pose a harm to them. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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 appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.⁶⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁶⁴ Section 119.07(2) and (4), F.S.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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 16, 2021:

The committee substitute replaces the term “volunteer” with “domestic violence advocate,” as defined under s. 90.5036(1)(b), F.S.

- B. **Amendments:**

None.

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



215070

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 273 - 320
and insert:
staff and domestic violence advocates, as defined in s.
90.5036(1)(b), of domestic violence centers certified by the
Department of Children and Families under chapter 39; the names,
home addresses, telephone numbers, places of employment, dates
of birth, and photographs of the spouses and children of such
personnel; and the names and locations of schools and day care



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11 facilities attended by the children of such personnel are exempt
12 from s. 119.07(1) and s. 24(a), Art. I of the State
13 Constitution.

14 3. An agency that is the custodian of the information
15 specified in subparagraph 2. and that is not the employer of the
16 officer, employee, justice, judge, or other person specified in
17 subparagraph 2. shall maintain the exempt status of that
18 information only if the officer, employee, justice, judge, other
19 person, or employing agency of the designated employee submits a
20 written request for maintenance of the exemption to the
21 custodial agency.

22 4. An officer, an employee, a justice, a judge, or other
23 person specified in subparagraph 2. may submit a written request
24 for the release of his or her exempt information to the
25 custodial agency. The written request must be notarized and must
26 specify the information to be released and the party that is
27 authorized to receive the information. Upon receipt of the
28 written request, the custodial agency shall release the
29 specified information to the party authorized to receive such
30 information.

31 5. The exemptions in this paragraph apply to information
32 held by an agency before, on, or after the effective date of the
33 exemption.

34 6. This paragraph is subject to the Open Government Sunset
35 Review Act in accordance with s. 119.15 and shall stand repealed
36 on October 2, 2024, unless reviewed and saved from repeal
37 through reenactment by the Legislature.

38 Section 2. The Legislature finds that it is a public
39 necessity that the home addresses, telephone numbers, places of



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employment, dates of birth, and photographs of current or former
staff and domestic violence advocates, as defined in s.
90.5036(1)(b), of domestic violence centers certified by the
Department of Children and Families under chapter 39; the names,
home addresses, telephone numbers, places of employment, dates
of birth, and photographs of the spouses and children of such
personnel; and the names and locations of schools and day care
facilities attended by the children of such personnel be exempt
from public records requirements. Such personnel and their
family members are at a heightened risk of physical and
emotional harm from perpetrators of domestic violence who have
contentious reactions to actions taken by such personnel to
house and protect victims of domestic violence and limit further
harm to such victims. The Legislature further finds that it is
necessary to provide safeguards to staff and domestic violence
advocates who are

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

And the title is amended as follows:

Delete line 5

and insert:

domestic violence advocates of domestic violence
centers certified by

By Senator Garcia

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A bill to be entitled

An act relating to public records; amending s.

119.071, F.S.; exempting personal identifying and

location information of current and former staff and

volunteers of domestic violence centers certified by

the Department of Children and Families under ch. 39,

F.S., and personal identifying and location

information of spouses and children of such personnel,

from public records requirements; providing for future

legislative review and repeal of the exemption;

providing a statement of public necessity; providing

an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

b. "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone

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numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care

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59 facilities attended by the children of such personnel are exempt
60 from s. 119.07(1) and s. 24(a), Art. I of the State
61 Constitution.

62 c. The home addresses, telephone numbers, dates of birth,
63 and photographs of current or former nonsworn investigative
64 personnel of the Office of Financial Regulation's Bureau of
65 Financial Investigations whose duties include the investigation
66 of fraud, theft, other related criminal activities, or state
67 regulatory requirement violations; the names, home addresses,
68 telephone numbers, dates of birth, and places of employment of
69 the spouses and children of such personnel; and the names and
70 locations of schools and day care facilities attended by the
71 children of such personnel are exempt from s. 119.07(1) and s.
72 24(a), Art. I of the State Constitution.

73 d. The home addresses, telephone numbers, dates of birth,
74 and photographs of current or former firefighters certified in
75 compliance with s. 633.408; the names, home addresses, telephone
76 numbers, photographs, dates of birth, and places of employment
77 of the spouses and children of such firefighters; and the names
78 and locations of schools and day care facilities attended by the
79 children of such firefighters are exempt from s. 119.07(1) and
80 s. 24(a), Art. I of the State Constitution.

81 e. The home addresses, dates of birth, and telephone
82 numbers of current or former justices of the Supreme Court,
83 district court of appeal judges, circuit court judges, and
84 county court judges; the names, home addresses, telephone
85 numbers, dates of birth, and places of employment of the spouses
86 and children of current or former justices and judges; and the
87 names and locations of schools and day care facilities attended

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88 by the children of current or former justices and judges are
89 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
90 Constitution.

91 f. The home addresses, telephone numbers, dates of birth,
92 and photographs of current or former state attorneys, assistant
93 state attorneys, statewide prosecutors, or assistant statewide
94 prosecutors; the names, home addresses, telephone numbers,
95 photographs, dates of birth, and places of employment of the
96 spouses and children of current or former state attorneys,
97 assistant state attorneys, statewide prosecutors, or assistant
98 statewide prosecutors; and the names and locations of schools
99 and day care facilities attended by the children of current or
100 former state attorneys, assistant state attorneys, statewide
101 prosecutors, or assistant statewide prosecutors are exempt from
102 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

103 g. The home addresses, dates of birth, and telephone
104 numbers of general magistrates, special magistrates, judges of
105 compensation claims, administrative law judges of the Division
106 of Administrative Hearings, and child support enforcement
107 hearing officers; the names, home addresses, telephone numbers,
108 dates of birth, and places of employment of the spouses and
109 children of general magistrates, special magistrates, judges of
110 compensation claims, administrative law judges of the Division
111 of Administrative Hearings, and child support enforcement
112 hearing officers; and the names and locations of schools and day
113 care facilities attended by the children of general magistrates,
114 special magistrates, judges of compensation claims,
115 administrative law judges of the Division of Administrative
116 Hearings, and child support enforcement hearing officers are

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exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and

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s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders,

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175 criminal conflict and civil regional counsel, and assistant
 176 criminal conflict and civil regional counsel are exempt from s.
 177 119.07(1) and s. 24(a), Art. I of the State Constitution.

178 m. The home addresses, telephone numbers, dates of birth,
 179 and photographs of current or former investigators or inspectors
 180 of the Department of Business and Professional Regulation; the
 181 names, home addresses, telephone numbers, dates of birth, and
 182 places of employment of the spouses and children of such current
 183 or former investigators and inspectors; and the names and
 184 locations of schools and day care facilities attended by the
 185 children of such current or former investigators and inspectors
 186 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 187 Constitution.

188 n. The home addresses, telephone numbers, and dates of
 189 birth of county tax collectors; the names, home addresses,
 190 telephone numbers, dates of birth, and places of employment of
 191 the spouses and children of such tax collectors; and the names
 192 and locations of schools and day care facilities attended by the
 193 children of such tax collectors are exempt from s. 119.07(1) and
 194 s. 24(a), Art. I of the State Constitution.

195 o. The home addresses, telephone numbers, dates of birth,
 196 and photographs of current or former personnel of the Department
 197 of Health whose duties include, or result in, the determination
 198 or adjudication of eligibility for social security disability
 199 benefits, the investigation or prosecution of complaints filed
 200 against health care practitioners, or the inspection of health
 201 care practitioners or health care facilities licensed by the
 202 Department of Health; the names, home addresses, telephone
 203 numbers, dates of birth, and places of employment of the spouses

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204 and children of such personnel; and the names and locations of
 205 schools and day care facilities attended by the children of such
 206 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 207 the State Constitution.

208 p. The home addresses, telephone numbers, dates of birth,
 209 and photographs of current or former impaired practitioner
 210 consultants who are retained by an agency or current or former
 211 employees of an impaired practitioner consultant whose duties
 212 result in a determination of a person's skill and safety to
 213 practice a licensed profession; the names, home addresses,
 214 telephone numbers, dates of birth, and places of employment of
 215 the spouses and children of such consultants or their employees;
 216 and the names and locations of schools and day care facilities
 217 attended by the children of such consultants or employees are
 218 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 219 Constitution.

220 q. The home addresses, telephone numbers, dates of birth,
 221 and photographs of current or former emergency medical
 222 technicians or paramedics certified under chapter 401; the
 223 names, home addresses, telephone numbers, dates of birth, and
 224 places of employment of the spouses and children of such
 225 emergency medical technicians or paramedics; and the names and
 226 locations of schools and day care facilities attended by the
 227 children of such emergency medical technicians or paramedics are
 228 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 229 Constitution.

230 r. The home addresses, telephone numbers, dates of birth,
 231 and photographs of current or former personnel employed in an
 232 agency's office of inspector general or internal audit

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department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this sub-subparagraph, the term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26).

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1) and fulfills the screening requirement of s. 39.3035(2), and the members of a Child Protection Team as described in s. 39.303 whose duties

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include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

u. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former staff and volunteers of domestic violence centers certified by the Department of Children and Families under chapter 39; the names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. An officer, an employee, a justice, a judge, or other person specified in subparagraph 2. may submit a written request

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for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party that is authorized to receive the information. Upon receipt of the written request, the custodial agency shall release the specified information to the party authorized to receive such information.

5. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former staff and volunteers of domestic violence centers certified by the Department of Children and Families under chapter 39; the names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel be exempt from public records requirements. Such personnel and their family members are at a heightened risk of physical and emotional harm from perpetrators of domestic violence who have contentious reactions to actions taken by such personnel to house and protect victims of domestic violence and limit further harm to such victims. The Legislature further finds that it is

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necessary to provide safeguards to staff and volunteers who are offering their time to protect victims of domestic violence. Without such protection, individuals may be less willing to volunteer or work for such centers, thus reducing the pool of resources and assistance available to address the already significant needs of victims of domestic violence.

Section 3. This act shall take effect upon becoming a law.

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2021 AGENCY LEGISLATIVE BILL ANALYSIS

Department of Children and Families

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 68
BILL TITLE:	<u>Public Records/Staff and Volunteers of Domestic Violence Centers</u>
BILL SPONSOR:	Senator Garcia
EFFECTIVE DATE:	Upon becoming a law.

<u>COMMITTEES OF REFERENCE</u>
1) Children, Families, and Elder Affairs
2) Criminal Justice
3) Rules
4)
5)

<u>CURRENT COMMITTEE</u>
N/A

<u>SIMILAR BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	N/A
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	

<u>Is this bill part of an agency package?</u>
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	January 11, 2021 For further information, please contact John Paul Fiore at (850) 488-9410.
LEAD AGENCY ANALYST:	Nina Zollo, DV Office
ADDITIONAL ANALYST(S):	
LEGAL ANALYST:	Stefanie Camfield, OGC
FISCAL ANALYST:	Emily Chavez, Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill exempts from public records personal identifying information of current and former staff and volunteers of domestic violence centers that are certified by the Department of Children and Families (Department). The bill also exempts personal identifying information of spouses and children of current and former staff and volunteers of certified domestic violence centers.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 1., s. 119.071, F.S., General exemptions from inspection or copying of public records. –

Currently, there is no public records exemption for the home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former staff and volunteers of domestic violence centers certified by the Department pursuant to Chapter 39. There is no public records exemption for the names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of current or former staff and volunteers of certified domestic violence centers, or for the names and locations of schools and day care facilities attended by the children of center personnel.

Some certified domestic violence centers have reported to the Department that employees and volunteers have been physically threatened, stalked and emotionally abused by perpetrators of domestic violence and families of perpetrators because of the protective services centers provide to survivors of domestic violence and their children. Such threats and intimidation by perpetrators can extend to the spouses and children of certified domestic violence employees and volunteers because their employee and volunteer files that contain their home addresses and other personal information are subject to public records requests. It has been reported that perpetrator threats and emotional abuse have led to staff leaving their employment with centers because of safety concerns and additional stress. The possibility that employee and volunteer records with personal information can be released to perpetrators through public records requests also may discourage potential qualified employees and volunteers, some of whom are survivors themselves, from working or volunteering at the centers because of safety concerns.

Section 2. Statement of Public Necessity. -

Currently, there is no recognition in statute by the legislature that current and former employees and volunteers of certified domestic violence centers and their families are at a heightened risk of physical and emotional harm from perpetrators because of the work they do at the centers to protect survivors of domestic violence and their children. There is no recognition in statute that a public records exemption for home addresses and other personal information would provide the necessary protection to current and former center employees, volunteers and their families and would encourage more people to work and volunteer at certified domestic violence centers.

2. EFFECT OF THE BILL:

Section 1., s. 119.071, F.S., General exemptions from inspection or copying of public records. –

This section creates (i), a public records exemption for the home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former staff and volunteers of domestic violence centers certified by the department pursuant to Chapter 39; (ii) a public records exemption for the names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of current or former staff and volunteers of certified domestic violence centers; (iii) a public records exemption for the names and locations of schools and day care facilities attended by the children of these personnel.

The bill would provide a level of protection to current and former employees and volunteers of certified domestic centers and their families who are a risk of, or have been threatened with physical harm, stalked and emotionally abused by perpetrators of domestic violence solely because they work for agencies that provide shelter and services to victims of domestic violence and their children.

Section 2. Statement of Public Necessity

This section demonstrates that the Legislature recognizes that current and former employees and volunteers of certified domestic violence centers and their families are at risk of physical and emotional harm from perpetrators because of the work they do at the centers, and that a public records exemption for home addresses and other personal information provides them with a level of protection to reduce the risk. This acknowledgment that a public records exemption is necessary will help reduce the stress and fear experienced by current and former center employees, volunteers and their families, and will encourage more people to work and volunteer at certified domestic violence centers.

Section 3.

The act shall take effect upon becoming a law.

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

If yes, explain:	No
What is the expected impact to the agency's core mission?	N/A
Rule(s) impacted (provide references to F.A.C., etc.):	None

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

List any known proponents and opponents:	N/A
Provide a summary of the proponents' and opponents' positions:	N/A

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

If yes, provide a description:	No
Date Due:	N/A
Bill Section Number(s):	N/A

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

Board:	No
Board Purpose:	N/A
Who Appoints:	N/A
Appointee Term:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	The Department's Office of Administrative Services finds that there are no expenditures generated by this bill.
Does the legislation increase local taxes or fees?	The Department's Office of Administrative Services finds that this bill does not 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?	The Department's Office of Administrative Services finds that this section is not applicable.

2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	The Department's Office of Administrative Services finds that there are no expenditures generated by this bill.
Does the legislation contain a State Government appropriation?	The Department's Office of Administrative Services finds that this bill does not contain a State Government Appropriation.
If yes, was this appropriated last year?	The Department's Office of Administrative Services finds that this section is not applicable.

3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	The Department's Office of Administrative Services finds that there are no expenditures generated by this bill.
Other:	The Department's Office of Administrative Services finds that this section is not applicable.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Does the bill increase taxes, fees or fines?	The Department's Office of Administrative Services finds that this bill does not increase taxes, fees or fines.
Does the bill decrease taxes, fees or fines?	The Department's Office of Administrative Services finds that this bill does not decrease taxes, fees or fines.
What is the impact of the increase or decrease?	The Department's Office of Administrative Services finds that this section is not applicable.
Bill Section Number:	The Department's Office of Administrative Services finds that this section is not applicable.

TECHNOLOGY IMPACT

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	No system changes are anticipated to be needed. The Department and domestic violence centers may need to review practice on what is posted on the web, redacted, or provided to the public.
If yes, describe the anticipated impact to the agency including any fiscal impact.	None anticipated based on analysis.

FEDERAL IMPACT

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	No
If yes, describe the anticipated impact including any fiscal impact.	N/A

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	The Office of General Council has no issues, concerns, comments or recommended action.
--	--

From: [Stokes, Amanda](#)
To: [Arnold, Sue](#)
Subject: FW: Domestic Violence Advocate
Date: Monday, February 15, 2021 10:40:09 AM

To keep on file for CS analysis for 68

From: Jones, Lauren <JONES.LAUREN@flsenate.gov>
Sent: Friday, February 12, 2021 3:54 PM
To: Stokes, Amanda <Stokes.Amanda@flsenate.gov>
Subject: FW: Domestic Violence Advocate

This could be good for the going out BA, after the amendment

Lauren Jones
Staff Director
Senate Committee on Criminal Justice
(850) 487-5192
Jones.Lauren@flsenate.gov

From: Fiore, John Paul <John.Fiore@myflfamilies.com>
Sent: Friday, February 12, 2021 3:53 PM
To: Cox, Ryan <Cox.Ryan@flsenate.gov>
Cc: Jones, Lauren <JONES.LAUREN@flsenate.gov>; Moody, Jacqueline <Moody.Jacqueline@flsenate.gov>; Cleary, Allie <CLEARLY.ALLIE@flsenate.gov>; Wickersheim, Michael <Michael.Wickersheim@myflfamilies.com>; Madeline G Donofrio <madeline.donofrio@myflfamilies.com>; Zander, Lindsey <lindsey.zander@myflfamilies.com>
Subject: RE: Domestic Violence Advocate

Good Afternoon Ryan,

Please see the Department's response below. Let us know if you have any questions. Thank you!

There are a total of 17,692 advocates registered in the DCF domestic violence advocate-victim privilege database. Of those, 2,727 are current employees and volunteers of certified domestic violence centers, and 14,965 are no longer employed by or volunteer at a certified domestic violence center. Advocates are not removed from the privilege database after they leave a certified domestic violence center because they may be subpoenaed for information about survivors after they leave a center and need to be able to assert the privilege, or they may become employed by or volunteer at another program "whose primary purpose is the rendering of advice, counseling, or assistance to victims of domestic violence," pursuant to s. 90.5036(1)(b), F.S.

Best,

JP

John Paul Fiore, J.D.

Legislative Specialist

Florida Department of Children and Families

1317 Winewood Blvd.

Tallahassee, Florida 32399

Office: (850) 488-9410 | Cell: (850) 354-1551

From: Wickersheim, Michael <Michael.Wickersheim@myflfamilies.com>

Sent: Friday, February 12, 2021 9:52 AM

To: Cox, Ryan <Cox.Ryan@flsenate.gov>; Fiore, John Paul <John.Fiore@myflfamilies.com>

Cc: Jones, Lauren <JONES.LAUREN@flsenate.gov>; Moody, Jacqueline <Moody.Jacqueline@flsenate.gov>; Cleary, Allie <CLEARY.ALLIE@flsenate.gov>

Subject: RE: Domestic Violence Advocate

Good morning Ryan,

We will work with our DV team to gather this information. Will try to get it to your team as timely as possible.

Kind Regards,

Michael

Michael E. Wickersheim

Director of Legislative Affairs

Department of Children & Families

Office: 850-488-9410

Email: Michael.Wickersheim@myflfamilies.com

From: Cox, Ryan <Cox.Ryan@flsenate.gov>

Sent: Friday, February 12, 2021 9:12 AM

To: Wickersheim, Michael <Michael.Wickersheim@myflfamilies.com>; Fiore, John Paul <John.Fiore@myflfamilies.com>

Cc: Jones, Lauren <JONES.LAUREN@flsenate.gov>; Moody, Jacqueline <Moody.Jacqueline@flsenate.gov>; Cleary, Allie <CLEARY.ALLIE@flsenate.gov>

Subject: Domestic Violence Advocate

CAUTION: This email originated from outside of the Department of Children and Families. Whether you know the sender or not, do not click links or open attachments you were not expecting.

Michael and John Paul:

Good morning! Can you please provide, by the end of today, the number of active and inactive domestic violence advocates that are on the list that the DCF maintains who have privilege status under ch. 90, F.S.? Please also delineate between how many are active versus inactive. Thank you!

Sincerely,

Ryan C. Cox

Staff Director

Senate Committee on Children, Families, and Elder Affairs

(850) 487-5340



The Florida Senate

Committee Agenda Request

To: Senator Jason Pizzo, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 6, 2021

I respectfully request that **Senate Bill #68**, relating to Public Records/Staff and Volunteers of Domestic Violence Centers, be placed on the:

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

Senator Ileana Garcia
Florida Senate, District 37

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 70

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Garcia

SUBJECT: Domestic Violence Centers

DATE: February 15, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Moody</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
2. <u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3. _____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 70 creates s. 39.9057, F.S., making it a first degree misdemeanor for any person who maliciously publishes, disseminates, or discloses any descriptive information or image that may identify the location of a domestic violence center certified under s. 39.905, F.S., or who otherwise maliciously discloses the location of a center. Any person who violates the law commits a misdemeanor of the first degree, punishable by up to one year imprisonment and a \$1,000 fine.

The bill reclassifies the penalty from a first degree misdemeanor to a third degree felony for a second or subsequent violation. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine.

The bill creates a new first degree misdemeanor and a new third degree felony for a second or subsequent offense. To the extent this results in persons being sentenced to jail or prison, it will likely have a positive insignificant jail or prison bed impact (i.e. an increase of 10 or fewer beds). The Criminal Justice Impact Conference has not heard the bill at this time. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Certified Domestic Violence Centers

Domestic violence occurs when a person shows a pattern of behavior to control his or her partner through physical, sexual, or emotional abuse.¹ Florida law provides that “domestic violence” is any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.²

Section 39.903, F.S., requires the Department of Children and Families (DCF) to comply with a variety of duties related to domestic violence centers. In part, the DCF is required to approve or reject the applications for initial certification of domestic violence centers, and annually renew the certification thereafter.³ Certified domestic violence centers must comply and meet minimum statutory requirements.⁴

The DCF and domestic violence center employees and volunteers must not disclose the location of the centers or any information received by the center about clients, because such information is deemed confidential and exempt⁵ from the requirements of ch. 119, F.S.⁶ Center clients may provide written consent to disclose information or records pertaining to them, and information about a client or the location of a center may be provided by staff or volunteers to law enforcement, firefighting, medical, or other personnel in the following circumstances:

- To medical personnel in a medical emergency.
- Upon a court order based upon an application by a law enforcement officer for a criminal arrest warrant which alleges that the individual sought to be arrested is located at the domestic violence shelter.
- Upon a search warrant that specifies the individual or object of the search and alleges that the individual or object is located at the shelter.
- To firefighting personnel in a fire emergency.
- To any other person necessary to maintain the safety and health standards in the domestic violence shelter.
- Information solely about the location of the domestic violence shelter may be given to those with whom the agency has an established business relationship.⁷

¹ Psychology Today, Domestic Violence, available at <https://www.psychologytoday.com/us/basics/domestic-violence> (last visited February 11, 2021).

² Section 741.28(1), F.S.

³ Section 39.903(2), F.S.

⁴ Section 39.905(1), F.S. (requiring, for instance, certified domestic violence centers to: provide a facility which will serve as a center to receive and house persons who are victims of domestic violence, including children of the victim; provide services such as information and referral services, counseling and case management services, temporary emergency shelter for more than 24 hours, a 24-hour hotline, and training for law enforcement personnel; file with the DCF a list of the names of the domestic violence advocates who are employed or who volunteer at the domestic violence center who may claim privilege under s. 90.5036, F.S.)

⁵ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

⁶ Section 39.908(1), F.S.

⁷ Section 39.908(2), F.S.

Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁸

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁹ The Florida Supreme Court has interpreted the statutory definition of “public record” to include material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.¹⁰

A domestic violence victim may request in writing that information which reveals his or her home or employment telephone number, home address, or personal assets is exempt from s. 119.07(1), F.S., and s. 24(a), Art. 1 of the Florida Constitution, but such request must contain official verification that an applicable crime has occurred.¹¹

Any public officer who violates any provision of the Public Records Act commits a noncriminal infraction or, if he or she knowingly violated it, is subject to suspension and removal or impeachment and commits a first degree misdemeanor.¹² Any person who willfully and knowingly violates any provision of the Public Records Act commits a first degree misdemeanor.¹³

Address of Domestic Violence Victim Exempt

Chapter 741, F.S., establishes an Address Confidentiality Program in which the Attorney General serves as the address¹⁴ of a domestic violence victim who fears for his or her safety or his or her children’s safety.¹⁵ Addresses, telephone numbers, and social security numbers of participants in the program that are held by the Attorney General, supervisor of elections, and Department of

⁸ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁹ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

¹⁰ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹¹ Section 119.071(2)(j), F.S. Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹² A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹³ Section 119.10(1), F.S.

¹⁴ Section 741.465(1), F.S., states that “address” means a residential street address, school address, or work address, as specified on the individual’s application to be a program participant in the Address Confidentiality Program for Victims of Domestic Violence.

¹⁵ Section 741.403(1), F.S. Section 741.30, F.S., permits domestic violence victims to file petition for an injunction in a confidential filing if, for safety reasons, the petitioner requires the location of the current residence to be confidential.

State are exempt from public records disclosure under s. 119.07(1), F.S., and s. 24(a), Art. 1 of the Florida Constitution, except in limited circumstances.¹⁶

Federal and Other States' Legislation

The Federal government awards grants to states to prevent incidents of domestic violence, including funds for shelters.¹⁷ Federal law provides that the address or location of any shelter facility that maintains a confidential location shall not be made public, except by written authorization of the person responsible for the operation of the shelter.¹⁸

There are at least 19 states, including Florida, that require the location of safe houses to be confidential.¹⁹ Eight of the states impose penalties for the unlawful disclosure of the location, and four states create criminal offenses for unlawfully disclosing the information relating to the location of safe houses.²⁰ California²¹ and South Carolina's²² criminal statute contain similar language, making it a criminal offense to "maliciously" disclose the location of a domestic violence shelter, while Georgia's²³ statute simply makes it a criminal offense to "knowingly," disclose such location.

Reclassification

Florida currently has numerous statutes that reclassify criminal offenses under specified circumstances. Generally, criminal laws provide for reclassification to the next highest degree. Examples of criminal offenses that provide for such reclassification include, in part:

- A violation of driving while license suspended is a second degree misdemeanor²⁴ for a first offense.²⁵ A second or subsequent conviction is reclassified from a second degree misdemeanor to a first degree misdemeanor.²⁶ Further, a third or subsequent conviction is reclassified to a third degree felony if the violation or the most recent prior conviction is related to a violation of specified driving offenses.²⁷

¹⁶ Section 741.465(1) and (2), F.S. (providing exceptions to the exemption from s. 119.071(1), F.S., and s. 24(a), Art. 1 of the Florida Constitution, including to law enforcement for purposes of assisting in the execution of a valid arrest warrant; if directed by a court order, to a person identified in the order; or, if held by the Attorney General, if the certification has been canceled).

¹⁷ See 42 U.S.C. ss. 10401, 10406(a).

¹⁸ See 42 U.S.C. ss. 10401, 10406(c)(5)(H).

¹⁹ Michelle Kirby, *Confidentiality of Information on Safe Houses*, OLR Research Report, p. 1, available at <https://www.cga.ct.gov/2014/rpt/2014-R-0011.htm> (last visited February 4, 2021). "Safe house" refers to a shelter provided to people who are in danger, including domestic and family violence shelters, trafficking shelters, shelters for victims of dating violence or sexual assault, temporary emergency shelters, and transitional housing for victims and their dependents.

²⁰ *Id.* (noting that California, Georgia, South Carolina, and Washington have criminal statutes for disclosing information relating to the location of safe houses).

²¹ See Section 273.7, CA Penal.

²² See Section 16-3-2080, SC ST.

²³ See Section 19-13-23, GA ST.

²⁴ A second degree misdemeanor is punishable by up to 60 days in county jail and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

²⁵ Section 322.34(2)(a), F.S.

²⁶ Section 322.34(2)(b), F.S.

²⁷ Section 322.34(2)(c), F.S. The enumerated specified offenses include driving under the influence; refusal to submit to a urine, breath-alcohol, or blood alcohol test; a traffic offense causing death or serious bodily injury; or fleeing and eluding.

- A violation of the theft statute under s. 812.014, F.S., for petit theft offenses are reclassified when a person has prior theft convictions.²⁸ For example, a petit theft where the property is valued at more than \$100, but less than \$750, is a first degree misdemeanor²⁹ but a person who commits petit theft and who previously was convicted two or more times for a theft commits a third degree felony.³⁰

Freedom of Speech

The First Amendment of the U.S. Constitution states that, “Congress shall make no law ... abridging the freedom of speech...”³¹ This language prohibits the government from having the ability to constrain the speech of citizens.³² However, the prohibition on restricting freedom of speech is not absolute. Even speech that enjoys the broadest First Amendment protection may still be subject to “regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”³³

Additionally, speech may be restricted on the basis of its content if the restriction passes a strict scrutiny test which means that the government may regulate the content of speech if there is a “compelling interest” and it is “the least restrictive means to further the articulated interest.”³⁴

Governments commonly restrict speech by making it subject to criminal penalties or civil fines and sanction a person if they use it.³⁵ The Supreme Court of the United States has found that, “[c]ontent-based prohibitions, enforced by severe criminal penalties, have the constant potential to be a repressive force in the lives and thoughts of a free people. To guard against that threat the Constitution demands that content-based restrictions on speech be presumed invalid, and that the Government bear the burden of showing their constitutionality.”³⁶

In applying the strict scrutiny test, the court should determine whether the challenged prohibition on speech is the “least restrictive means among available, effective alternatives.”³⁷ The government must also demonstrate that the prohibition on speech is justified by a compelling state interest. “The State must specifically identify an ‘actual problem’ in need of solving.”³⁸

²⁸ Sections 812.014(3)(b), and (c), F.S.

²⁹ Section 812.014(2)(e), F.S.

³⁰ Section 812.04(3)(c), F.S.

³¹ U.S. CONST. amend. I.

³² Kathleen Ann Ruane, *Freedom of Speech and Press: Exceptions to the First Amendment*, Congressional Research Service, summary page, (September 8, 2014), available at <https://fas.org/sgp/crs/misc/95-815.pdf> (last visited February 4, 2021)(hereinafter cited as “Exceptions to the First Amendment”).

³³ Exceptions to the First Amendment, p. 6.

³⁴ *Id.*; See also *Sable Communications of California, Inc. v. Federal Communications Commission*, 492 U.S. 115, 126 (1989).

³⁵ *Id.*

³⁶ *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 660 (2004), (citing, *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992); *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 817 (2000))

³⁷ *Id.* at 666.

³⁸ *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 799 (2011), (citing, *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992); *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 817 (2000))

III. Effect of Proposed Changes

The bill creates s. 39.9057, F.S., providing that any person who maliciously publishes, disseminates, or discloses any descriptive information or image that may identify the location of a domestic violence center certified under s. 39.905, F.S., or who otherwise maliciously discloses the location of a center, commits a first degree misdemeanor, punishable by up to one year imprisonment and a \$1,000 fine.

The bill reclassifies the penalty from a first degree misdemeanor to a third degree felony for a second or subsequent violation. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine.

The bill limits the application of the criminal penalty to any person who *maliciously* publishes, disseminates, or discloses any descriptive information, image or other information that may identify the location of a domestic violence center. Therefore, a person must be found to publish, disseminate, or disclose such information wrongfully, intentionally, and without legal justification or excuse to be subject to the criminal penalties created in the bill.³⁹

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 1 of the bill creates a new criminal offense that may result in indeterminate local fund expenditures for costs relating to criminal prosecution and confinement if a jail sentence is imposed. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal law and are 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.

³⁹ See *Kennedy v. State*, 59 So. 3d 376, 380 (Fla. 4th DCA 2011); See also *Reed v. State*, 837 So.2d 366 (Fla.2002).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a new misdemeanor offense. To the extent that this results in persons being sentenced to jail, the bill will likely have a positive insignificant jail bed impact (i.e. an increase of 10 or fewer beds).

The Criminal Justice Impact Conference has not heard the bill at this time. However, the bill creates a third degree felony. To the extent this results in persons being sentenced to prison, the bill will likely have a positive insignificant prison bed impact (i.e. an increase of 10 or fewer beds).

The Department of Office Administration Services finds that there are no expenditures generated by this bill.⁴⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 39.9057 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 Children, Families, and Elder Affairs on February 3, 2021:

The committee substitute reclassifies the criminal offense from a first degree misdemeanor to a third degree felony for a second or subsequent conviction.

⁴⁰ The DCF, *Agency Analysis for SB 70*, p. 4, January 11, 2021 (on file with the Senate Committee on Criminal Justice).

B. Amendments:

None.

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

By the Committee on Children, Families, and Elder Affairs; and
Senator Garcia

586-01973-21

202170c1

A bill to be entitled

An act relating to domestic violence centers; creating
s. 39.9057, F.S.; prohibiting the unlawful disclosure
of certain information about domestic violence
centers; providing criminal penalties; providing an
effective date.

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

Section 1. Section 39.9057, Florida Statutes, is created to
read:

39.9057 Unlawful disclosure of certified domestic violence
center location; penalties.—Any person who maliciously
publishes, disseminates, or discloses any descriptive
information or image that may identify the location of a
domestic violence center certified under s. 39.905 or who
otherwise maliciously discloses the location of a center commits
a:

(1) Misdemeanor of the first degree, punishable as provided
in s. 775.082 or s. 775.083.

(2) Felony of the third degree, punishable as provided in
s. 775.082, s. 775.083, or s. 775.084, upon a second or
subsequent conviction.

Section 2. This act shall take effect July 1, 2021.



2021 AGENCY LEGISLATIVE BILL ANALYSIS

Department of Children and Families

BILL INFORMATION

BILL NUMBER:	SB 70
BILL TITLE:	<u>Domestic Violence Centers</u>
BILL SPONSOR:	Senator Garcia
EFFECTIVE DATE:	July 1, 2021

COMMITTEES OF REFERENCE

1) Children, Families, and Elder Affairs
2) Criminal Justice
3) Rules
4)
5)

CURRENT COMMITTEE

N/A

SIMILAR BILLS

BILL NUMBER:	N/A
SPONSOR:	

PREVIOUS LEGISLATION

BILL NUMBER:	N/A
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS

BILL NUMBER:	N/A
SPONSOR:	

Is this bill part of an agency package?

No.

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	January 11, 2021 For further information, please contact John Paul Fiore at (850) 488-9410.
LEAD AGENCY ANALYST:	Nina Zollo, DV Office
ADDITIONAL ANALYST(S):	
LEGAL ANALYST:	Stefanie Camfield, OGC
FISCAL ANALYST:	Emily Chavez, Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill proposes a new statute prohibiting the malicious publication, dissemination or disclosure of any descriptive information or image that may identify the location of a domestic violence center certified by the Department of Children and Families (Department) under Chapter 39, F.S., and provides criminal penalties.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 1., s. 39.9057, F.S., Unlawful disclosure of certified domestic violence center location; penalties. - Pursuant to s. 39.903, F.S., the Department certifies and monitors certified domestic violence centers that meet the requirements of s. 39.905, F.S.

The Florida Legislature has exempted from public records the location of certified domestic violence centers and facilities to protect the safety of survivors and their children and employees and volunteers of the centers. Survivors are more likely to seek help if they know they are receiving shelter and other services in a confidential location that cannot be located by perpetrators.

Section 39.908, F.S., "Confidentiality of information received by department or domestic violence center", provides that:

- (1) *Information about clients received by the department or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection, or otherwise, is confidential and exempt from the provisions of s. [119.07\(1\)](#). **Information about the location of domestic violence centers and facilities is confidential and exempt from the provisions of s. [119.07\(1\)](#).***

Section 39.908, F.S., currently authorizes disclosure of the location of certified domestic violence centers to certain persons in specific situations:

- (2) *Information about domestic violence center clients may not be disclosed without the written consent of the client to whom the information or records pertain. For the purpose of state law regarding searches and seizures, domestic violence centers shall be treated as private dwelling places. Information about a client or the location of a domestic violence center may be given by center staff or volunteers to law enforcement, firefighting, medical, or other personnel in the following circumstances:*
- (a) *To medical personnel in a medical emergency.*
 - (b) *Upon a court order based upon an application by a law enforcement officer for a criminal arrest warrant which alleges that the individual sought to be arrested is located at the domestic violence shelter.*
 - (c) *Upon a search warrant that specifies the individual or object of the search and alleges that the individual or object is located at the shelter.*
 - (d) *To firefighting personnel in a fire emergency.*
 - (e) *To any other person necessary to maintain the safety and health standards in the domestic violence shelter.*
 - (f) *Information solely about the location of the domestic violence shelter may be given to those with whom the agency has an established business relationship.*
- (3) *The restriction on the disclosure or use of the information about domestic violence center clients does not apply to:*
- (a) *Communications from domestic violence shelter staff or volunteers to law enforcement officers when the information is directly related to a client's commission of a crime or threat to commit a crime on the premises of a domestic violence shelter; or*
 - (b) *Reporting suspected abuse of a child or a vulnerable adult as required by law. However, when cooperating with protective investigation services staff, the domestic violence shelter staff and volunteers must protect the confidentiality of other clients at the domestic violence center.*

Currently, there are no criminal penalties in Chapter 39, F.S., or in any other Florida statute for persons who maliciously publish, disseminate or disclose the confidential location of a certified domestic violence center.

2. EFFECT OF THE BILL:**Section 1., s. 39.9057, F.S., Unlawful disclosure of certified domestic violence center location; penalties. –**

Creates s. 39.9057, F.S., to criminalize the malicious publication, dissemination or disclosure of any descriptive information or image that may identify the location of a certified domestic violence center or that otherwise maliciously discloses the location of a center.

Persons convicted of this crime commit a misdemeanor of the first degree, may be sentenced to serve up to one year in prison, and/or of a fine not to exceed \$1,000.00 and imposition of court costs. The threat of criminal penalties may dissuade persons with malicious intent from disclosing or publishing the location of or descriptive information or images that disclose the location of certified domestic violence centers and thus prevent harm to survivors, their children, as well as to center employees and volunteers.

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

If yes, explain:	No
What is the expected impact to the agency's core mission?	N/A
Rule(s) impacted (provide references to F.A.C., etc.):	None

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

List any known proponents and opponents:	N/A
Provide a summary of the proponents' and opponents' positions:	N/A

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

If yes, provide a description:	No
Date Due:	N/A
Bill Section Number(s):	N/A

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

Board:	No
Board Purpose:	N/A
Who Appoints:	N/A
Appointee Term:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	The Department's Office of Administrative Services finds that there are no expenditures generated by this bill.
Does the legislation increase local taxes or fees?	The Department's Office of Administrative Services finds that this bill does not 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?	The Department's Office of Administrative Services finds that this section is not applicable.

2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	Indeterminant. Pursuant to s. 775.083, F.S., a person may serve a term of imprisonment not exceeding one year and/or a fine up to \$1,000 if convicted of a misdemeanor of the first degree. The fine imposed in this subsection will be deposited by the Clerk of the Court in the Fine and Forfeiture Fund established in s. 142.01, F.S.
Expenditures:	The Department's Office of Administration Services finds that there are no expenditures generated by this bill.
Does the legislation contain a State Government appropriation?	The Department's Office of Administrative Services finds that this bill does not contain a State Government Appropriation.
If yes, was this appropriated last year?	The Department's Office of Administrative Services finds that this section is not applicable.

3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?

Revenues:	The Department's Office of Administration Services finds that there are no revenues generated by this bill.
Expenditures:	A person who is convicted of this crime may serve a term of imprisonment not exceeding one year and/or a fine up to \$1,000, pursuant to s. 775.082, F.S., and s. 775.083, F.S.
Other:	The Department's Office of Administrative Services finds that this section is not applicable.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Does the bill increase taxes, fees or fines?	This bill proposed a new criminal law with a penalty, if a person is convicted, may serve a term of imprisonment not exceeding one year and/or a fine up to \$1,000, pursuant to s. 775.082, F.S., and s. 775.083, F.S.
Does the bill decrease taxes, fees or fines?	The Department's Office of Administrative Services finds this bill does not decrease taxes, fees or fines.

What is the impact of the increase or decrease?	A person who is convicted of this crime may serve a term of imprisonment not exceeding one year and/or a fine up to \$1,000 per s. 775.082, F.S., and s. 775.083, F.S.
Bill Section Number:	Section 1.

TECHNOLOGY IMPACT

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	<p>No system changes are anticipated to be needed. The Department does publish the phone number and county (no address) of domestic violence centers at: https://www.myflfamilies.com/service-programs/domestic-violence/map.shtmlhttps://www.myflfamilies.com/service-programs/domestic-violence/map.shtml</p> <p>It is not specified whether these centers are certified under section 39.905, F.S., and it appears that the information available is necessary to individuals who need the services of the centers but does not provide the information the bill seeks to protect.</p>
If yes, describe the anticipated impact to the agency including any fiscal impact.	None anticipated based on analysis.

FEDERAL IMPACT

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	No
If yes, describe the anticipated impact including any fiscal impact.	N/A

ADDITIONAL COMMENTS

The proposed bill does not define "maliciously" or cross-reference to another statute that defines "maliciously." Other Florida criminal statutes define maliciously as "wrongfully, intentionally and without legal justification or excuse." The proposed bill also does not define what constitutes "publication, dissemination or disclosure" of descriptive information or images that identify the location of a certified domestic violence center. The lack of definitions of these terms could result in the bill impacting persons who probably are not the intended targets of the bill.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	The Department's Office of General Counsel has no issues, concerns, comments on this bill.
--	--



The Florida Senate

Committee Agenda Request

To: Senator Jason Pizzo, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 6, 2021

I respectfully request that **Senate Bill #70**, relating to Domestic Violence Centers, be placed on the:

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

Senator Ileana Garcia
Florida Senate, District 37

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 194

INTRODUCER: Criminal Justice Committee and Senator Berman and others

SUBJECT: Crimes Evidencing Prejudice

DATE: February 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 194 amends ss. 775.085 and 775.0863, F.S., Florida's hate crimes statutes. Section 775.085, F.S., reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age of the victim of the crime. Section 775.0863, F.S., is similar to s. 775.085, F.S., but only addresses hate crimes based on a victim's mental or physical disability.

The bill specifies that a violation of ss. 775.085 or 775.0863, F.S., occurs if the commission of a crime evidences prejudice "in whole or in part" based on a characteristic of "any person" specified in either statute.

The bill also expands s. 775.085, F.S., to include gender and gender identity as relevant characteristics of "any person." Therefore, a violation of s. 775.085, F.S., occurs if the commission of a crime evidences prejudice "in whole or in part" based on the gender or gender identity of any person. The bill defines the term "gender identity."

The bill also amends s. 775.0863, F.S., to remove reference to "mental or physical" in regard to the term "disability." The bill repeals the current definition of "mental or physical disability" and provides a definition of "disability" that is more expansive than the current definition of "mental or physical disability."

Finally, the bill amends s. 877.19, F.S., the Hate Crimes Reporting Act, to provide for reporting of hate crimes based on a person's gender, gender identity, or physical disability.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that 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 takes effect July 1, 2021.

II. Present Situation:

Florida's Hate Crimes Laws

Section 775.085, F.S., reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age of the victim.¹ Offenses are reclassified as follows:

- A second degree misdemeanor is reclassified to a first degree misdemeanor;
- A first degree misdemeanor is reclassified to a third degree felony;
- A third degree felony is reclassified to a second degree felony;
- A second degree felony is reclassified to a first degree felony; and
- A first degree felony is reclassified to a life felony.²

Reclassification of the degree of an offense has the effect of increasing the maximum sentence that a judge may impose for the offense. The maximum sentence for:

- A second degree misdemeanor is 60 days in jail and a \$500 fine;
- A first degree misdemeanor is 1 year in jail and a \$1,000 fine;
- A third degree felony is 5 years in state prison and a \$5,000 fine;
- A second degree felony is 15 years in state prison and a \$10,000 fine;
- A first degree felony is generally 30 years in state prison and a \$10,000 fine; and
- A life felony is generally a term of imprisonment for life or imprisonment for a term of years not exceeding life imprisonment and a \$15,000 fine.³

Additionally, felony reclassification may impact the scored lowest permissible sentence under the Criminal Punishment Code. For example, a primary offense that is a second degree felony would typically score more sentence points than a primary offense that is a third degree felony.

Section 775.0863, F.S., is similar to s. 775.085, F.S., but only addresses hate crimes based on a victim's mental or physical disability. Section 775.0863(1)(b), F.S., defines the term "mental or

¹ Section 775.0863, F.S., provides for reclassification of the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on the victim's mental or physical disability.

² Section 775.085(a), F.S.

³ Sections 775.082 and 775.083, F.S. However, if a defendant is sentenced for an offense that was committed on or after July 1, 2009, which is a third degree felony that is not a forcible felony, as defined in s. 776.08, F.S., and excluding a felony violation of ch. 810, F.S., and if total sentence points pursuant to s. 921.0014, F.S., are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction unless it makes written findings that such sanction could present a danger to the public. Section 775.082(10), F.S.

physical disability” as a condition of mental or physical incapacitation due to a developmental disability, organic brain damage, or mental illness, and one or more mental or physical limitations that restrict a person’s ability to perform the normal activities of daily living. The reclassification provisions of s. 775.0863, F.S., are identical to the reclassification provisions of s. 775.085, F.S.

According to the Florida jury instruction for ss. 775.085 and 775.0863, F.S.,⁴ the jury should find a defendant guilty of the crime charged (or a lesser included crime) aggravated by the defendant intentionally selecting the victim based on prejudice if the jury finds that the defendant committed the crime charged (or lesser included crime) and also finds beyond a reasonable doubt that the defendant:

- Perceived, knew, or had reasonable ground to perceive or know the victim’s race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability, or advanced age; and
- Intentionally selected the victim because of that perception or knowledge.⁵

Coverage of Gender and Gender Identity in Federal Hate Crime Laws and Other States’ Hate Crime Laws

The federal Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009, which is codified at 18 U.S.C. s. 249, extends federal hate crime prohibitions to crimes committed because of actual or perceived gender or gender identity of any person.⁶

According to information compiled by the Brennan Center for Justice, 25 states, the District of Columbia, and Puerto Rico include gender (sometimes referred to as “sex”) in their hate crime laws. Further, such information indicates that 11 states, the District of Columbia, and Puerto Rico include gender identity in their hate crime laws.⁷

Gender and Gender Identity

Laws may treat the terms “gender” and “sex” as interchangeable terms⁸ and may only recognize a gender binary of “male” and “female.”⁹ One court has described this gender binary as “an individual’s biological sex in the binary sense -either male or female- that is assigned at birth, as

⁴ Fla. Std. Jury Instr. (Crim.) 3.3(f).

⁵ Proof that the defendant intentionally selected the victim is required by *State v. Stalder*, 630 So.2d 1072, 1077 (Fla. 1994). However, “[t]o qualify criminal conduct for sentencing enhancement under section 775.085, *Stalder* does not require that prejudice be the sole motivating factor for the underlying crime.” *State v. Hart*, 677 So.2d 385, 386 (Fla. 4th DCA 1996).

⁶ *Hate Crime Laws*, U.S. Department of Justice, (updated on March 7, 2019), available at <https://www.justice.gov/crt/hate-crime-laws> (last visited on Feb. 5, 2021).

⁷ *State Hate Crime Statutes*, Brennan Center for Justice, (last updated on July 2, 2020), available at <https://www.brennancenter.org/our-work/research-reports/state-hate-crimes-statutes> (last visited on Feb. 5, 2021).

⁸ See, e.g., Yamuna Menon, “The Intersex Community and the Americans with Disabilities Act,” 43 *Conn. L. Rev.* 1221, 1226, n. 24. (2010) (asserting that “federal and Supreme Court cases use the terms ‘sex’ and ‘gender’ interchangeably”).

⁹ *Id.* at p. 1227. See also *Bostock v. Clayton County, Georgia*, 140 S.Ct 1731, 1747 (2020), in which the U.S. Supreme Court found in a Title VII action that “homosexuality and transgender status are distinct concepts from sex” but “discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second.”

reflected on that individual's birth certificate, and typically assigned on the basis of an individual's genitalia."¹⁰

"Increasingly in medicine and sociology, gender is distinguished from sex."¹¹ For example, according to information provided by the American Psychological Association (APA), "[g]ender refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex."¹² In contrast, "[s]ex refers to a person's biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female). There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia."¹³

Sex is typically assigned at birth (or before [or] during ultrasound) based on the appearance of external genitalia. When the external genitalia are ambiguous other indicators (e.g., internal genitalia, chromosomal and hormonal sex) are considered to assign a sex with the aim of assigning a sex that is most likely to be congruent with the child's gender identity.... For most people, gender identity is congruent with sex assigned at birth (see cisgender); for ... [transgender and gender-nonconforming] individuals, gender identity differs in varying degrees from sex assigned at birth."¹⁴

The Hate Crimes Reporting Act

Section 877.19, F.S., the Hate Crimes Reporting Act, requires that the Governor, through the Florida Department of Law Enforcement (FDLE), collect and disseminate data on incidents of criminal acts that evidence prejudice based on race, religion, ethnicity, color, ancestry, sexual orientation, or national origin. All law enforcement agencies must report monthly to the FDLE concerning such hate crimes in the form and manner as prescribed by FDLE. The compiled information must be disseminated upon request to any local law enforcement agency, unit of local government, or state agency.¹⁵

¹⁰ *Johnston v. Univ. of Pittsburgh of the Commonwealth Sys. of Higher Educ.*, 97 F. Supp. 3d 657, 672 (W.D. Pa. 2015).

¹¹ *Id.*

¹² *Definitions Related to Sexual Orientation and Gender Diversity in APA Guidelines and Policy Documents*, American Psychological Association, available at <http://www.apa.org/pi/lgbt/resources/sexuality-definitions.pdf> (last visited on Feb. 5, 2021).

¹³ *Id.* However, one legal commentator has noted that "the definition of intersex is shifting and changing alongside the corresponding shifts and changes in societal definitions of 'male' and 'female.' Intersex individuals have congenital anomalies of the reproductive and sexual system that bring into question their categorization as either male or female. Whether a given anomaly is sufficient to bring male or female categorization into question and whether the anomaly is required to introduce some combination of 'male' and 'female' characteristics into a single body are both disputed and socially determined questions. What is clear is that the intersex body fits the definition of neither a male nor a female body - and that it defies the gender binary so commonly assumed by individuals and the law." Ilana Gelfman, "Because of Intersex: Intersexuality. Title VII, And The Reality Of Discrimination 'Because of ... [Perceived] Sex,'" 34 *N.Y.U. Rev. L. & Soc. Change* 55, 62 (2010) (citation omitted).

¹⁴ *Supra*, n. 12. According to information from the American Psychological Association, "gender identity" refers to "[a] person's deeply-felt, inherent sense of being a boy, a man, or male; a girl, a woman, or female; or an alternative gender (e.g., genderqueer, gender nonconforming, gender neutral) that may or may not correspond to a person's sex assigned at birth or to a person's primary or secondary sex characteristics. Since gender identity is internal, a person's gender identity is not necessarily visible to others." *Id.*

¹⁵ Section 877.19(1), F.S.

The hate crimes information collected by the FDLE is confidential and exempt from public disclosure. Data required pursuant to s. 877.19, F.S., must only be used for research or statistical purposes and must not include any information that may reveal the identity of an individual victim of a crime.¹⁶ Further, the Attorney General must publish an annual summary of the data required pursuant to s. 877.19, F.S.¹⁷

III. Effect of Proposed Changes:

The bill amends ss. 775.085 and 775.0863, F.S., Florida's hate crimes statutes. Section 775.085, F.S., reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age of the victim of the crime. Section 775.0863, F.S., is similar to s. 775.085, F.S., but only addresses hate crimes based on a victim's mental or physical disability.

The bill also specifies that a violation of ss. 775.085 or 775.0863, F.S., occurs if the commission of a crime evidences prejudice "in whole or in part" based on a characteristic of "any person" specified in either statute.

The bill also expands s. 775.085, F.S., to include gender and gender identity as relevant characteristics of "any person." Therefore, a violation of s. 775.085, F.S., occurs if the commission of a crime evidences prejudice "in whole or in part" based on the gender or gender identity of any person. The bill defines the term "gender identity" as a person's gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.¹⁸

The bill also amends s. 775.0863, F.S., to remove reference to "mental or physical" in regard to the term "disability." The bill repeals the current definition of "mental or physical disability" and provides a definition of "disability." A "disability" is a physical or mental impairment that substantially limits one or more of a person's major life activities. Several definitions in Florida

¹⁶ Section 877.19(2), F.S.

¹⁷ Section 877.19(3), F.S.

¹⁸ This definition is very similar to a definition of "gender identity or expression" in Connecticut law (CT Gen Stat s. 1-1n) and almost identical to a definition of "gender identity" in Massachusetts law (Mass. Gen. L. ch. 4, s. 7).

law incorporate similar language¹⁹ as does the definition of “disability”²⁰ relevant to the Americans with Disabilities Act.²¹

This definition of “disability” is more expansive than the definition of “mental or physical disability” that is currently in s. 775.0863, F.S., which requires a condition of mental or physical incapacitation due to a developmental disability, organic brain damage, or mental illness. For example, a crime victim’s paralysis may not be covered by the current definition but appears to be covered by the amended definition in the bill if it substantially limits one or more of a person’s major life activities.

Finally, the bill amends s. 877.19, F.S., the Hate Crimes Reporting Act, to provide for reporting of hate crimes based on a person’s gender, gender identity, or physical disability.

The effective date of the bill is July 1, 2021.

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.

¹⁹ Section 97.021(27), F.S., defines “persons with disabilities” as individuals who have *a physical or mental impairment that substantially limits one or more major life activities*. Section 110.215(2)(b), F.S., defines “disability” with respect to an individual as *a physical or mental impairment that substantially limits one or more of the major life activities of the individual*, or an individual having a record of having such an impairment, or an individual being regarded as having such an impairment. Section 413.08(1)(b), F.S., defines “individual with a disability” as a person who has *a physical or mental impairment that substantially limits one or more major life activities of the individual*. Section 760.22(3), F.S., defines “disability” to include a person who has *a physical or mental impairment that substantially limits one or more major life activities of the individual*, or a person who has a record of having, or is regarded as having, such physical or mental impairment. Section 1004.02(6), F.S., defines “adult with disability” as an individual who has *a physical or mental impairment that substantially limits one or more major life activities*, has a record of such impairment, or is regarded as having such an impairment, and who requires modifications to the educational program, adaptive equipment, or specialized instructional methods and services in order to participate in workforce development programs that lead to competitive employment.

²⁰ The term “disability” means, with respect to an individual, *a physical or mental impairment that substantially limits one or more major life activities of such individual*, a record of such impairment, or being regarded as having such impairment (as further defined in this section). 42 U.S.C. s. 12102(1)(A) to (C).

²¹ The Americans with Disabilities Act of 1990, as amended, is codified at 42 U.S.C. ss. 12101 *et seq.*

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).²²

The EDR provides the following information relevant to its preliminary estimate:

Nationwide, the Uniform Crime Reports (UCR) for 2019 note that there were 67 known offenders who committed offenses with Anti-Male/Anti-Female motivations. There were 233 known offenders who committed offenses with Anti-Transgender/Anti-Gender Non-Conforming motivations. However, it is unknown how many states currently have these laws. Per FDLE's statewide UCR, in 2019, there were 8 offenses motivated by Anti-Lesbian, Gay, Bisexual, Transgender (Mixed Group), with 3 arrests, and no offenses based on mental disabilities. There were no offenses based on physical disabilities. Also[,] per FDLE's Computerized Criminal History (CCH) files, in FY 19-20, there were 5 arrests and no convictions under s. 775.085, F.S., with arrests possibly overlapping with UCR. In FY 18-19, there were four arrests and one conviction under this statute. There were no arrests under s. 775.0863, F.S., and nobody has been sentenced for evidencing prejudice during an offense against someone with a mental or physical disability. However, since these statutes reclassify felonies, such acts might not be captured in the initial arrest.

Since July 1, 2012 there have been 3 adjudications withheld for 3rd degree felonies under s. 775.085, F.S., and one 1st degree misdemeanor guilty conviction

²² The EDR's preliminary estimate is on file with the Senate Committee on Criminal Justice.

and one 3rd degree felony conviction. Per [Department of Corrections (DOC)], in FY 18-19 and FY 19-20, there were no new commitments for a misdemeanor that was elevated to a felony by this statute. Furthermore, DOC does not have data available on those felonies that were increased due to this statute.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.085, 775.0863, and 877.19.

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 16, 2021:

The committee substitute amends s. 877.19, F.S., the Hate Crimes Reporting Act, to provide for reporting of hate crimes based on a person's gender, gender identity, or physical disability.

- B. Amendments:

None.

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

²³ *Id.*



332962

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 97 and 98
insert:

Section 3. Subsection (2) of section 877.19, Florida
Statutes, is amended to read:

877.19 Hate Crimes Reporting Act.—

(2) ACQUISITION AND PUBLICATION OF DATA.—The Governor,
through the Florida Department of Law Enforcement, shall collect
and disseminate data on incidents of criminal acts that evidence



332962

prejudice based on race, religion, ethnicity, color, ancestry, sexual orientation, gender, gender identity, disability, or national origin. All law enforcement agencies shall report monthly to the Florida Department of Law Enforcement concerning such offenses in such form and in such manner as prescribed by rules adopted by the department. Such information shall be compiled by the department and disseminated upon request to any local law enforcement agency, unit of local government, or state agency.

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

And the title is amended as follows:

Delete line 17

and insert:

any person; amending s. 877.19, F.S.; expanding the data the Governor is required to collect and disseminate on incidents of criminal acts that evidence prejudice based on gender, gender identity, or disability; providing an effective date.

By Senator Berman

31-00439-21

2021194__

1 A bill to be entitled
 2 An act relating to crimes evidencing prejudice;
 3 amending s. 775.085, F.S.; expanding grounds for the
 4 reclassification of crimes to include prejudice based
 5 on the gender or gender identity of any person;
 6 specifying that the reclassification occurs if the
 7 crime was based in whole or in part on the race,
 8 color, ancestry, ethnicity, religion, sexual
 9 orientation, national origin, homeless status,
 10 advanced age, gender, or gender identity of any
 11 person; defining the term "gender identity"; amending
 12 s. 775.0863, F.S.; replacing the term "mental or
 13 physical disability" with the term "disability";
 14 defining the term "disability"; specifying that the
 15 reclassification of a certain crime occurs if the
 16 crime was based in whole or in part on a disability of
 17 any person; providing an effective date.
 18
 19 Be It Enacted by the Legislature of the State of Florida:
 20
 21 Section 1. Subsection (1) of section 775.085, Florida
 22 Statutes, is amended to read:
 23 775.085 Evidencing prejudice while committing offense;
 24 reclassification.—
 25 (1)(a) The penalty for any felony or misdemeanor shall be
 26 reclassified as provided in this subsection if the commission of
 27 such felony or misdemeanor evidences prejudice based in whole or
 28 in part on the race, color, ancestry, ethnicity, religion,
 29 sexual orientation, national origin, homeless status, ~~or~~

Page 1 of 4

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

31-00439-21

2021194__

30 advanced age, gender, or gender identity of any person the
 31 ~~victim~~:
 32 1. A misdemeanor of the second degree is reclassified to a
 33 misdemeanor of the first degree.
 34 2. A misdemeanor of the first degree is reclassified to a
 35 felony of the third degree.
 36 3. A felony of the third degree is reclassified to a felony
 37 of the second degree.
 38 4. A felony of the second degree is reclassified to a
 39 felony of the first degree.
 40 5. A felony of the first degree is reclassified to a life
 41 felony.
 42 (b) As used in paragraph (a), the term:
 43 1. "Advanced age" means that the person ~~victim~~ is older
 44 than 65 years of age.
 45 2. "Gender identity" means a person's gender-related
 46 identity, appearance, or behavior, regardless of whether such
 47 gender-related identity, appearance, or behavior is different
 48 from that traditionally associated with the person's physiology
 49 or assigned sex at birth.
 50 ~~3.2-~~ "Homeless status" means that the person ~~victim~~:
 51 a. Lacks a fixed, regular, and adequate nighttime
 52 residence; or
 53 b. Has a primary nighttime residence that is:
 54 (I) A supervised publicly or privately operated shelter
 55 designed to provide temporary living accommodations; or
 56 (II) A public or private place not designed for, or
 57 ordinarily used as, a regular sleeping accommodation for human
 58 beings.

Page 2 of 4

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

31-00439-21

2021194__

Section 2. Section 775.0863, Florida Statutes, is amended to read:

775.0863 Evidencing prejudice while committing offense against person with ~~mental or physical~~ disability; reclassification.—

(1)(a) The penalty for any felony or misdemeanor shall be reclassified as provided in this subsection if the commission of such felony or misdemeanor evidences prejudice based in whole or in part on a ~~mental or physical~~ disability of any person the victim:

1. A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.

2. A misdemeanor of the first degree is reclassified to a felony of the third degree.

3. A felony of the third degree is reclassified to a felony of the second degree.

4. A felony of the second degree is reclassified to a felony of the first degree.

5. A felony of the first degree is reclassified to a life felony.

(b) As used in paragraph (a), the term "disability" ~~"mental or physical disability"~~ means a physical or mental impairment that substantially limits one or more of a person's major life activities ~~a condition of mental or physical incapacitation due to a developmental disability, organic brain damage, or mental illness, and one or more mental or physical limitations that restrict a person's ability to perform the normal activities of daily living.~~

(2) A person or organization that establishes by clear and

Page 3 of 4

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

31-00439-21

2021194__

convincing evidence that it has been coerced, intimidated, or threatened in violation of this section has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or in equity. Upon prevailing in such civil action, the plaintiff may recover reasonable attorney fees and costs.

(3) It is an essential element of this section that the record reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the person ~~victim~~ was within the class delineated in this section.

Section 3. This act shall take effect July 1, 2021.

Page 4 of 4

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

SB 194 – Crimes Evidencing Prejudice

Amends s. 775.085, F.S., including that the commission of a felony or misdemeanor evidences prejudice “in whole or in part” for each potential victim category, and also adds “gender” and “gender identity” to the potential basis for prejudice, while also deleting victim and adding “any person” in its place. Gender identity is defined as “a person’s gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth.” This bill also amends s. 775.0863, F.S., also adding “in whole or in part” for evidencing prejudice while committing an offense against “any person” (replacing victim) with a disability. Disability is now defined as “a physical or mental impairment that substantially limits one or more of a person’s major life activities.” With this bill, the penalty for any felony or misdemeanor shall be reclassified as provided in this subsection if during the commission of such felony or misdemeanor evidencing prejudice is in whole or in part based on currently existing victim categories, as well as gender or gender identity and the newly expanded definition of disability.

- 2nd degree misdemeanor increased to 1st degree misdemeanor
- 1st degree misdemeanor increased to 3rd degree felony
- 3rd degree felony increased to 2nd degree felony
- 2nd degree felony increased to 1st degree felony
- 1st degree felony increased to life felony

Nationwide, the Uniform Crime Reports (UCR) for 2019 note that there were 67 known offenders who committed offenses with Anti-Male/Anti-Female motivations. There were 233 known offenders who committed offenses with Anti-Transgender/Anti-Gender Non-Conforming motivations. However, it is unknown how many states currently have these laws. Per FDLE’s statewide UCR, in 2019, there were 8 offenses motivated by Anti-Lesbian, Gay, Bisexual, Transgender (Mixed Group), with 3 arrests, and no offenses based on mental disabilities. There were no offenses based on physical disabilities. Also per FDLE’s Computerized Criminal History (CCH) files, in FY 19-20, there were 5 arrests and no convictions under s. 775.085, F.S., with arrests possibly overlapping with UCR. In FY 18-19, there were four arrests and one conviction under this statute. There were no arrests under s. 775.0863, F.S. and nobody has been sentenced for evidencing prejudice during an offense against someone with a mental or physical disability. However, since these statutes reclassify felonies, such acts might not be captured in the initial arrest.

Since July 1, 2012 there have been 3 adjudications withheld for 3rd degree felonies under s. 775.085, F.S., and one 1st degree misdemeanor guilty conviction and one 3rd degree felony conviction. Per DOC, in FY 18-19 and FY 19-20, there were no new commitments for a misdemeanor that was elevated to a felony by this statute. Furthermore, DOC does not have data available on those felonies that were increased due to this statute.

EDR PROPOSED ESTIMATE: Positive Insignificant

Requested by: Senate



The Florida Senate
Committee Agenda Request

To: Chair Jason W. B. Pizzo
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 5, 2021

I respectfully request that **Senate Bill #194**, relating to Crimes Evidencing Prejudice, be placed on the:

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

A handwritten signature in cursive script, reading "Lori Berman", followed by a horizontal line.

Senator Lori Berman
Florida Senate, District 31

Cc: Senator Jeff Brandes, Vice Chair
Lauren Jones, Staff Director

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/16/21

Meeting Date

194

Bill Number (if applicable)

Topic Crimes Evidencing Prejudice

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title

Address

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 Florida Rising + Florida Immigrant Coalition

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)

2/16/21

Meeting Date

194

Bill Number (if applicable)

Topic Crimes Evidencing Prejudice

Amendment Barcode (if applicable)

Name Ida V. ESKamani

Job Title

Address 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 Florida Rising

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)

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THE FLORIDA SENATE

APPEARANCE RECORD

2/16/2021

Meeting Date

194

Bill Number (if applicable)

Topic Crimes Evidencing Prejudice

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.

Phone 850-321-9386

Street

Tallahassee

FL

32301

City

State

Zip

Email fcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Center for Fiscal and Economic Policy

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)

Meeting Date _____

199
Bill Number (if applicable) _____

Topic Hate Crimes

Amendment Barcode (if applicable) _____

Name Jon Harris Maurer

Job Title Public Policy Dir.

Address 201 E Park Ave. 200A Phone 850 681 0980
Street

FLH FL 32301 Email _____
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-19-21

Meeting Date

194

Bill Number (if applicable)

Topic Hate Crimes

Amendment Barcode (if applicable)

Name Janel Diaz

Job Title

Address 2407 Robert's Ave

Phone 954-661-8654

Street

Tallahassee FL

32309

City

State

Zip

Email dianel_samel@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/16/2021

Meeting Date

SB194

Bill Number (if applicable)

Topic Crimes Endangering Prejudice

Amendment Barcode (if applicable)

Name LAKEY LOVE

Job Title _____

Address 1571 Melvin Street

Street

Phone 850-345-0018

Tallahassee

City

FL

State

32301

Zip

Email lakey@lovejustwalks.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Coalition for Transgender Liberation

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)

02/16/2021

Meeting Date

194

Bill Number (if applicable)

Topic Hate Crime Bill

Amendment Barcode (if applicable)

Name Allen R Grossman

Job Title Attorney

Address 3916 Charkston Road

Street

Phone 250 385 1314

Tallahassee

City

FL

State

32309

Zip

Email agrossman@gsbllaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Anti Defamation League

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)

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THE FLORIDA SENATE

APPEARANCE RECORD

02-16-21

Meeting Date

194

Bill Number (if applicable)

Topic Crimes Evidencing Predjudice "Hate Crimes"

Amendment Barcode (if applicable)

Name Jeff Binkley

Job Title President

Address 4780 Ashford-Dunwoody Road Suite 540

Phone 770-335-6538

Street

Atlanta

GA

30338

City

State

Zip

Email jeff@avadvisorsgroup.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Maura's Voice

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 210

INTRODUCER: Senator Brandes

SUBJECT: Sentencing

DATE: February 15, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Favorable
2. _____	_____	AP	_____
3. _____	_____	RC	_____

I. Summary:

SB 210 reduces the mandatory minimum penalties imposed upon a prison releasee reoffender (a category of repeat offenders) under s. 775.082(9), F.S. These changes are also applied retroactively. The bill provides a process for resentencing. Further, the bill removes a provision of law that prohibits a prison releasee reoffender from any form of early release.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds). The Department of Corrections indicates it would need one full time, temporary position, funded for no more than one year, and significant programming changes. Total costs for the position and programming changes is \$150,370 (\$58,941 recurring and \$91,429 non-recurring). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Prison Releasee Reoffender (s. 775.082(9), F.S.)

Section 775.082(9), F.S., provides that a judge must sentence a person as a "prison releasee reoffender" if the defendant has committed or attempted to commit any of the following enumerated offenses within 3 years after being released from a Florida state or private correctional facility, a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence, or a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year:

- Treason;

- Murder;
- Manslaughter;
- Sexual battery;
- Carjacking;
- Home-invasion robbery;
- Robbery;
- Arson;
- Kidnapping;
- Aggravated assault with deadly weapon;
- Aggravated battery;
- Aggravated stalking;
- Aircraft piracy;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Any felony that involves the use or threat of physical force or violence against an individual;
- Armed burglary;
- Burglary of a dwelling or an occupied structure;
- Any violation of s. 790.07, F.S. (felons in possession of firearms);
- Any violation of s. 800.04, F.S. (lewd or lascivious act in the presence of a child);
- Any violation of s. 827.03, F.S. (abuse, aggravated abuse and neglect of a child);
- Any violation of s. 827.071, F.S. (sexual performance by a child); or
- Any violation of s. 847.013(5), F.S. (prohibited computer transmissions constituting lewd exhibition).¹

A judge must also sentence a defendant as a “prison releasee reoffender” if the defendant committed or attempted to commit any of the previously-described offenses while the defendant was serving a prison sentence or on escape status from a Florida state or private correctional facility or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.²

If the state attorney determines that a defendant is a prison releasee reoffender, the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:

- For a felony punishable by life,³ by a term of imprisonment for life;
- For a first degree felony,⁴ by a term of imprisonment of 30 years;
- For a second degree felony⁵, by a term of imprisonment of 15 years; and

¹ Section 775.082(9)(a)1., F.S.

² Section 775.082(9)(a)2., F.S.

³ For example, a capital felony is generally punishable by death or life imprisonment, a life felony is generally punishable by life imprisonment or by a term of imprisonment not exceeding 40 years, and a first degree felony may be punishable by a term of years not exceeding life imprisonment when specifically provided by statute. Section 775.082, F.S.

⁴ The maximum term of imprisonment for a first degree felony is generally 30 years imprisonment. Section 775.082, F.S.

⁵ The maximum term of imprisonment for a second degree felony is 15 years imprisonment. Section 775.082, F.S.

- For a third degree felony,⁶ by a term of imprisonment of 5 years.⁷

A person sentenced as a prison releasee reoffender can be released only by expiration of sentence and is not be eligible for parole, control release, or any form of early release. A prison releasee reoffender must also serve 100 percent of the court-imposed sentence.⁸

The prison releasee reoffender provisions provide legislative intent that prison releasee reoffenders “be punished to the fullest extent of the law” unless the prosecuting attorney does not have sufficient evidence to prove the highest charge available, the testimony of material witness cannot be obtained, the victim provides a written statement that he or she does not want the offender to receive a mandatory sentence, or other extenuating circumstances exist which preclude the just prosecution of the offender.⁹

For every case in which the offender meets the prison releasee reoffender criteria and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.¹⁰

Constitutional and Statutory Savings Clauses

Until recently, Article X, Section 9 of the State Constitution (Florida’s constitutional savings clause) expressly prohibited any repeal or amendment of a criminal statute that affected prosecution or punishment for any crime previously committed, and therefore, the Florida Legislature was “powerless to lessen penalties for past transgressions; to do so would require constitutional revision.”¹¹

In 2018, Florida voters adopted the following amendment to Article X, Section 9 of the State Constitution:

~~Repeal or amendment~~ of a criminal statute shall not affect prosecution ~~or punishment~~ for any crime ~~previously committed~~ before such repeal.

Revised Article X, Section 9 of the State Constitution only prohibits applying the repeal of a criminal statute to any crime committed before such repeal if this retroactive application “affects prosecution.” The revised constitutional savings clause does not expressly prohibit retroactive application of a repeal that does not affect prosecution, a repeal that affects punishment, or an amendment of a criminal statute that affects prosecution or punishment.

The elimination of the expressed prohibition on certain retroactive applications is not a directive to the Legislature to retroactively apply what was formerly prohibited. As the Florida Supreme

⁶ The maximum term of imprisonment for a third degree felony is 5 years imprisonment. Section 775.082, F.S.

⁷ Section 775.082(9)(a)3., F.S.

⁸ Section 775.082(9)(b), F.S. Section 775.082(9), F.S., does not prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084, F.S., or any other provision of law. Section 775.082(9)(c), F.S.

⁹ Section 775.082(9)(d)1., F.S.

¹⁰ Section 775.082(9)(d)2., F.S.

¹¹ Comment, *Today’s Law and Yesterday’s Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 129 (1972).

Court recently stated: “... [T]here will no longer be any provision in the Florida Constitution that would prohibit the Legislature from applying an amended criminal statute retroactively to pending prosecutions or sentences. However, nothing in our constitution does or will require the Legislature to do so, and the repeal of the prohibition will not require that they do so.”¹²

In 2019, the Legislature created s. 775.022, F.S., a general savings statute for criminal statutes. The statute defines a “criminal statute” as a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.¹³

The statute specifies legislative intent to preclude:

- Application of the common law doctrine of abatement to a reenactment or an amendment of a criminal statute; and
- Construction of a reenactment or amendment as a repeal or an implied repeal¹⁴ of a criminal statute for purposes of Article X, Section 9 of the State Constitution (Florida’s constitutional savings clause).¹⁵

The statute also states that, except as expressly provided in an act of the Legislature or as provided in two specified exceptions, the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:

- The prior operation of the statute or a prosecution or enforcement under the criminal statute;
- A violation of the criminal statute based on any act or omission occurring before the effective date of the act; and
- A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.¹⁶

The first exception is a retroactive amelioration exception that provides that if a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.¹⁷ This means the penalty, forfeiture, or punishment reduction must be imposed retroactively *if the sentence has not been imposed*, including the situation in which the sentence is imposed after the effective date of the amendment. However, nothing in the general savings statute precludes the Legislature from providing for a more extensive retroactive application either to legislation in the future or legislation that was enacted prior to the effective date of the general savings statute. This is because the general savings statute specifically provides for a legislative exception to the default position of prospectivity. The Legislature only has to “expressly provide” for this retroactive application.¹⁸

¹² *Jimenez v. Jones*, 261 So.3d 502, 504 (Fla. 2018).

¹³ Section 775.022(2), F.S.

¹⁴ The Florida Supreme Court previously indicated that the “standard [is] that implied repeals are disfavored and should only be found in cases where there is a ‘positive repugnancy’ between the two statutes or ‘clear legislative intent’ indicating that the Legislature intended the repeal[.]” *Flo-Sun, Inc. v. Kirk*, 783 So.2d 1029, 1036 (Fla. 2001).

¹⁵ Section 775.022(1), F.S.

¹⁶ Section 775.022(3), F.S.

¹⁷ Section 775.022(4), F.S.

¹⁸ Section 775.022(3), F.S.

The second exception relates to defenses and provides that the general savings statute does not limit the retroactive effect of any defense to a criminal statute enacted or amended by the Legislature to any criminal case that has not yet reached final judgment.¹⁹

III. Effect of Proposed Changes:

The bill amends s. 775.082(9), F.S., to reduce mandatory penalties applicable to a prison releasee reoffender. A prison releasee reoffender must be sentenced as follows:

- For a felony punishable by life, to a term of 25 years (current law requires life imprisonment);
- For a first degree felony, to a term of imprisonment of 20 years (current law requires 30 years);
- For a second degree felony, to a term of imprisonment of 10 years (current law requires 15 years); and
- For a third degree felony, to a term of imprisonment of 3 years (current law requires 5 years).

The bill provides for retroactive application of the previously-described penalty changes to:

- A person who qualified as a prison releasee reoffender before July 1, 2021 (referred to in the bill as “former 775.082(9)”), and who was not sentenced as a prison releasee reoffender before July 1, 2021; and
- A person who qualified as a prison releasee reoffender before July 1, 2021, who was sentenced as such before July 1, 2021, to a mandatory minimum term of imprisonment pursuant to former s. 775.082(9), F.S., and who is serving such mandatory minimum term of imprisonment on or after July 1, 2021.

A person who qualified as a prison releasee reoffender before July 1, 2021, and who was not sentenced as a prison releasee reoffender before July 1, 2021, must be sentenced as provided in the bill (see previous description of changes to penalties).

A person who qualified as a prison releasee reoffender before July 1, 2021, who was sentenced as such before July 1, 2021, to a mandatory minimum term of imprisonment pursuant to former s. 775.082(9), F.S., and who is serving such mandatory minimum term of imprisonment on or after July 1, 2021, must be resentenced in the following manner:

- The Department of Corrections must notify this person of his or her eligibility to request a sentence review hearing.
- The person seeking sentence review may submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The sentencing court retains original jurisdiction for the duration of the sentence for this purpose.
- A person who is eligible for this sentence review hearing is entitled to representation by legal counsel. If the person is indigent and unable to employ counsel, the court must appoint counsel under s. 27.52, F.S. Determination of indigence and costs of representation is as provided in ss. 27.52 and 938.29, F.S.
- Upon receiving an application from an eligible person, the court of original jurisdiction must hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing. If the court determines at the sentence review hearing that the eligible person

¹⁹ Section 775.022(5), F.S.

meets such criteria, the court must resentence the person as provided in the bill (see previous description of changes to penalties); however, the new sentence may not exceed the person's original sentence with credit for time served. If the court determines that such person does not meet the criteria for resentencing, the court must provide written reasons why such person does not meet such criteria.

- A person resented as previously described is eligible to receive any gain-time pursuant to s. 944.275, F.S., he or she was previously ineligible to receive under former s. 775.082(9), F.S.

Because the bill expressly provides for retroactive application of the changes the bill makes, the bill has provided a legislative exception to the default position of prospectivity.

The bill modifies s. 775.082(9)(a)3., F.S., which currently provides that “upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced” under the penalties specified in s. 775.082(9), F.S. The bill removes reference to the “preponderance of evidence” standard of proof and ineligibility for sentencing under the sentencing guidelines. Neither of these changes appear to be substantive. Whether stated in the statute or not “preponderance of the evidence” would likely be the standard of proof because s. 775.082(9), F.S., does not increase the penalty beyond the statutory maximum.²⁰ Further, it does not need to be stated in the statute that a prison releasee reoffender is ineligible to be sentenced under the sentencing guidelines because s. 775.082(9), F.S., specifies that a prison releasee reoffender must be sentenced under that subsection.

The bill also removes language from s. 775.082(9), F.S., that:

- Indicates legislative intent that offenders previously released from prison or a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence who meet the prison releasee reoffender criteria be punished to the fullest extent of the law.
- Requires a state attorney to explain in writing why he or she seeks prison releasee reoffender sanctions for an offender who meets prison releasee reoffender criteria.
- Prohibits a prison releasee reoffender from any form of early release.

The bill takes effect July 1, 2021.

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.

²⁰ “In [*Apprendi v. New Jersey*, 530 U.S. 466 (2000)], the United States Supreme Court held that other than the fact of a prior conviction, any fact that increases the punishment for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. *Apprendi* is inapplicable to the Prison Releasee Reoffender Act, because the Act merely limits the court’s discretion in sentencing. It does not increase the penalty beyond the statutory maximum.” *Stabile v. State*, 790 So.2d 1235, 1238 (Fla. 5th DCA 2001) (citations omitted), approved, 838 So.2d 557 (Fla. 2003).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds).²¹

The EDR provides the following information relevant to its preliminary estimate:

Per [Department of Corrections], in FY 18-19, there were 510 potentially eligible releasee reoffenders admitted to prison, with 374 admitted in FY 19-20. Currently, there are 7,372 potentially eligible releasee reoffenders incarcerated with varying mandatory sentences: 1,005 with 5 years, 3,505 with 15 years, 825 with 30 years, 1,809 with Life, and 228 listed as "Other" (sentence lengths that do not conform to the mandatory minimums). It should be noted that this is strictly releasee reoffender sentence length, rather than the full length of their prison sentences.

With the retroactive application of gain-time and lowered mandatory sentence lengths, the large number of offenders in the 5 years and 15 years groups with varying lengths of time spent in prison would likely be enough to have a

²¹ The EDR's preliminary estimate is on file with the Senate Committee on Criminal Justice.

significant impact on the prison population. However, without enough information on gain-time application and determination of eligibility, the bed impact cannot be quantified.²²

The Department of Corrections (DOC) provides the following information on the impact of the bill on the department:

If this bill is passed, it is anticipated that there will be a decrease in inmate population and an increase in community supervision, as all prison release offenders are required to be released to conditional release. However, the Department cannot provide the specific number of immediate releases within the limited time frames of this analysis, thus the fiscal impact to the inmate and community supervision population is indeterminate.

When inmate population is impacted in small increments statewide, the inmate variable per diem of \$21.70 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The Department's FY 18-19 average per diem for community supervision was \$5.62.

In addition, the Bureau of Admission and Release would need one full time, temporary position, funded for no more than one year, to handle the workload increase required to complete notifications for 7,400 inmates. Also, significant programming changes will be required in order to modify the Department's internal calculator.²³

The DOC estimates that total costs for the one temporary FTE and programming is \$150,370.

- Recurring: \$58,941
 - \$55,233 in salary and benefits for one Correctional Services Assistant Consultant (Class Title Code 8055)
 - \$3,378 for recurring expense – prof. light travel
 - \$330 for human resource services
- Non-recurring: \$91,429
 - \$4429 for non-recurring expense – prof. light travel
 - \$87,000 for information technology²⁴

VI. Technical Deficiencies:

None.

²² *Id.*

²³ 2021 Agency Legislative Bill Analysis (SB 210), February 9, 2021, on file with the Senate Committee on Criminal Justice.

²⁴ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.082 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Brandes

24-00354-21

2021210__

1 A bill to be entitled
 2 An act relating to sentencing; amending s. 775.082,
 3 F.S.; revising the required sentencing structure for
 4 prison releasee reoffenders upon proof from a state
 5 attorney which establishes that a defendant is a
 6 prison releasee reoffender; deleting a provision that
 7 prohibits a prison releasee reoffender from
 8 eligibility for any form of early release and that
 9 requires a prison releasee reoffender to serve 100
 10 percent of the court-imposed sentence; providing
 11 legislative intent; defining a term for the purpose of
 12 establishing applicability of a specified provision;
 13 applying the revised sentencing structure to certain
 14 persons under certain circumstances; providing
 15 resentencing requirements; deleting a provision
 16 relating to legislative intent; deleting a provision
 17 that requires a state attorney to explain a sentencing
 18 deviation in writing under certain circumstances;
 19 providing an effective date.

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

22
 23 Section 1. Subsection (9) of section 775.082, Florida
 24 Statutes, is amended to read:

25 775.082 Penalties; applicability of sentencing structures;
 26 mandatory minimum sentences for certain reoffenders previously
 27 released from prison.—

28 (9)(a)1. "Prison releasee reoffender" means any defendant
 29 who commits, or attempts to commit:

Page 1 of 6

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

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30 a. Treason;
 31 b. Murder;
 32 c. Manslaughter;
 33 d. Sexual battery;
 34 e. Carjacking;
 35 f. Home-invasion robbery;
 36 g. Robbery;
 37 h. Arson;
 38 i. Kidnapping;
 39 j. Aggravated assault with a deadly weapon;
 40 k. Aggravated battery;
 41 l. Aggravated stalking;
 42 m. Aircraft piracy;
 43 n. Unlawful throwing, placing, or discharging of a
 44 destructive device or bomb;
 45 o. Any felony that involves the use or threat of physical
 46 force or violence against an individual;
 47 p. Armed burglary;
 48 q. Burglary of a dwelling or burglary of an occupied
 49 structure; or
 50 r. Any felony violation of s. 790.07, s. 800.04, s. 827.03,
 51 s. 827.071, or s. 847.0135(5);
 52
 53 within 3 years after being released from a state correctional
 54 facility operated by the Department of Corrections or a private
 55 vendor, a county detention facility following incarceration for
 56 an offense for which the sentence pronounced was a prison
 57 sentence, or a correctional institution of another state, the
 58 District of Columbia, the United States, any possession or

Page 2 of 6

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

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territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

2. "Prison releasee reoffender" also means any defendant who commits or attempts to commit any offense listed in subparagraphs ~~(a)~~1.a.-r. while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

3. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney which that establishes ~~by a preponderance of the evidence~~ that a defendant is a prison releasee reoffender as defined in this section, such defendant ~~is not eligible for sentencing under the sentencing guidelines and~~ must be sentenced as follows:

a. For a felony punishable by life, ~~to by~~ a term of imprisonment of 25 years ~~imprisonment for life~~;

b. For a felony of the first degree, ~~to by~~ a term of imprisonment of 20 30 years;

c. For a felony of the second degree, ~~to by~~ a term of imprisonment of 10 15 years; and

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d. For a felony of the third degree, ~~to by~~ a term of imprisonment of 3 5 years.

~~(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.~~

~~(b)(c)~~ Nothing in This subsection does not ~~shall~~ prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084 or any other ~~provision~~ of law.

~~(c)(d)~~ 1. It is the intent of the Legislature to retroactively apply the amendments to this subsection which are effective on July 1, 2021.

2. As used in this paragraph, the term "former s. 775.082(9)" means s. 775.082(9) as it existed before the amendment of this subsection, which took effect on July 1, 2021.

3. A person who qualified as a prison releasee reoffender before July 1, 2021, and who was not sentenced as a prison releasee reoffender before July 1, 2021, may not be sentenced as such under former s. 775.082(9). Such person, if sentenced as a prison releasee reoffender, must be sentenced as provided in paragraph (a).

4. A person who qualified as a prison releasee reoffender before July 1, 2021, who was sentenced as such before July 1, 2021, to a mandatory minimum term of imprisonment pursuant to former s. 775.082(9), and who is serving such mandatory minimum term of imprisonment on or after July 1, 2021, must be resentenced in accordance with subparagraph 5. to a sentence as

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provided in paragraph (a) and sub-subparagraph 5.d.

5. Resentencing must occur in the following manner:

a. The Department of Corrections shall notify a person described in subparagraph 4. of his or her eligibility to request a sentence review hearing.

b. The person seeking sentence review may submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The sentencing court retains original jurisdiction for the duration of the sentence for this purpose.

c. A person who is eligible for a sentence review hearing under this paragraph is entitled to representation by legal counsel. If the person is indigent and unable to employ counsel, the court must appoint counsel under s. 27.52. Determination of indigence and costs of representation is as provided in ss. 27.52 and 938.29.

d. Upon receiving an application from an eligible person, the court of original jurisdiction shall hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing under subparagraph 4. If the court determines at the sentence review hearing that the eligible person meets such criteria, the court must resentence the person as provided in paragraph (a); however, the new sentence may not exceed the person's original sentence with credit for time served. If the court determines that such person does not meet the criteria for resentencing under subparagraph 4., the court must provide written reasons why such person does not meet such criteria.

6. A person resentenced pursuant to this subsection is eligible to receive any gain-time pursuant to s. 944.275 which

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~~he or she was previously ineligible to receive under former s. 775.082 (9) It is the intent of the Legislature that offenders previously released from prison or a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.~~

~~2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.~~

Section 2. This act shall take effect July 1, 2021.

SB 210 – Sentencing

This bill amends s. 775.082, F.S., removing “preponderance of the evidence” for how a state attorney establishes that a defendant is a prison releasee reoffender, as well as deleting that the defendant “is not eligible for sentencing under the sentencing guidelines.” Furthermore, it adjusts how the prison releasee reoffenders must be sentenced to the following:

- for a felony punishable by life, to a term of 25 years (currently Life)
- for a felony of the 1st degree, to a term of 20 years (currently 30 years)
- for a felony of the 2nd degree, to a term of 10 years (currently 15 years)
- for a felony of the 3rd degree, to a term of 3 years (currently 5 years)

This would also apply retroactively to those offenders currently incarcerated and those not sentenced before the effective date. A process for resentencing currently incarcerated offenders is explained in detail, with the note that if DOC and the court of original jurisdiction determine eligibility, they must be resentenced under the new statutory language. Additionally, all prison releasee reoffenders would now be eligible for gain-time, with those currently incarcerated receiving any gain-time not accrued prior to passage of the law. This law would go into effect on July 1, 2021.

Per DOC, in FY 18-19, there were 510 potentially eligible releasee reoffenders admitted to prison, with 374 admitted in FY 19-20. Currently, there are 7,372 potentially eligible releasee reoffenders incarcerated with varying mandatory sentences: 1,005 with 5 years, 3,505 with 15 years, 825 with 30 years, 1,809 with Life, and 228 listed as “Other” (sentence lengths that do not conform to the mandatory minimums). It should be noted that this is strictly releasee reoffender sentence length, rather than the full length of their prison sentences.

With the retroactive application of gain-time and lowered mandatory sentence lengths, the large number of offenders in the 5 years and 15 years groups with varying lengths of time spent in prison would likely be enough to have a significant impact on the prison population. However, without enough information on gain-time application and determination of eligibility, the bed impact cannot be quantified.

EDR PROPOSED ESTIMATE: Negative Significant

Requested by: Senate



2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 210
BILL TITLE:	Sentencing
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	July 1, 2021

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations
3) Rules
4)
5)

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	February 9, 2021
LEAD AGENCY ANALYST:	Michelle Palmer
ADDITIONAL ANALYST(S):	Mary Le
LEGAL ANALYST:	Ryan Orbe, Dan Burke
FISCAL ANALYST:	Tommy Milito

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill amends s.775.082(9), F.S., (Prison Releasee Reoffender), reducing the minimum mandatory penalties; providing resentencing requirements; deleting provision relating to legislative intent; deleting provision that requires a state attorney to explain a sentencing deviation in writing under certain circumstances; providing an effective date.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:**

Effective May 30, 1997, the Reoffender Act, s.775.082(9), F.S., provides for enhanced punishment for offenders who commit certain crimes within 3 years after release from prison, or who commit a crime enumerated in the statute while serving a prison sentence or while on escape status from a prison. The law requires the court to impose a sentence equal to the statutory maximum for the offense as follows:

- Life Felony – Life without parole
- 1st Degree - 30 years
- 2nd Degree – 15 years
- 3rd Degree – 5 years

The Reoffender Act requires imposition and service of the statutory maximum penalty without the benefit of gain time; however, it does not prevent the court from imposing a greater sentence as authorized by law. For example, an inmate sentenced both as a releasee reoffender and habitual offender may receive an enhanced sentencing which exceeds the statutory maximum. An inmate who has been sentenced to a term longer than the normal statutory maximum by virtue of another enhancement provision such as habitual offender, may accrue gain time to reduce the longer overall term as long as the inmate serves, at minimum, the statutory maximum under the Reoffender Act.

Whether to file a notice of enhanced penalty is within the sole discretion of the state attorney; however, for every case in which the defendant meets the criteria for prison releasee reoffender and does not receive the minimum prison sentence, the state must explain the deviation in writing and place in the state attorney's case file.

Any person who is designated as a prison releasee reoffender is required to register as a career offender pursuant to s. 775.261, F.S.

2. **EFFECT OF THE BILL:**

The bill reduces the mandatory penalties applicable to the prison releasee reoffender under s. 775.082(9), F.S., as follows:

- Life Felony – from Life without parole to 25 years
- 1st Degree – from 30 years to 20 years
- 2nd Degree – from 15 years to 10 years
- 3rd Degree – from 5 years to 3 years

The bill removes requirement for the court to sentence a prison releasee reoffender to the statutory maximum penalty and requires the court to resentence those individuals who were previously sentenced as prison releasee reoffenders to a lesser term in accordance with the new sentencing scheme outlined in the bill. This would appear to create disparity as a defendant who is not a prison releasee reoffender may receive a lengthier sentence up to, and including, the statutory maximum penalty, while a defendant sentenced as a prison releasee reoffender must to be sentenced to a term below the statutory maximum under the language of the bill.

The court will continue to have the option to sentence the defendant to a greater term under s. 775.084, F.S., or any other law.

The bill also strikes language which previously prohibited a person sentenced as a prison releasee reoffender from earning gain time under s. 944.275, F.S. These inmates would still be required to serve, at minimum, 85% of the term imposed. Allowing inmates to retroactively receive gain time will have a significant impact on release dates. It is anticipated that retroactive application of gain time will result in a significant number of emergency releases with a sizable number of these released inmates reporting to supervision. The Florida Department of Corrections (FDC or Department) cannot provide the actual impact, to include the number of immediate releases, within the limited time frames of this analysis, as additional research and programming would be required.

Striking the gain time prohibition from s. 775.082(9), F.S., along with requiring a sentence below the statutory maximum, will diminish the punitive effect of sentencing under the prison releasee reoffender provision.

Currently, the Department has approximately 7,400 inmates that are serving a sentence with a minimum mandatory under s.775.082(9). Of these identified, over 3,900 will be released to some form of supervision, over 2,000 are serving an overall life sentence and 15 are serving a death sentence. Significant programming changes will be required in order to modify the Department's internal calculator.

The bill provides legislative intent which is to provide retroactive application of the reduced penalty changes as follows:

- Any person who qualified as a prison releasee reoffender prior to 7/1/2021; however, was not sentenced until after 7/1/2021.
- Any person who was sentenced prior to July 1, 2021 as a prison releasee reoffender and is serving a PRR sentence must be resentenced with the reduced minimum prison sentence under s. 775.082(9), F.S.

The bill requires the Department to provide notice to the inmate of his or her eligibility to request a sentence review hearing. The Bureau of Admission and Release would need the following full time, temporary position, funded for no more than one year, to handle the workload increase required to complete notifications for inmates that remain in custody serving a sentence with a prison.

- 1 Correctional Services Assistant Consultant.

The person seeking sentence review may submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The sentencing court retains original jurisdiction for the duration of the sentence for this purpose.

A person who is eligible for this sentence review hearing is entitled to representation by legal counsel. If the person is indigent and unable to employ counsel, the court must appoint counsel.

Upon receiving an application from an eligible person, the court of original jurisdiction must hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing. If the court determines at the sentence review hearing that the eligible person meets such criteria, the court must resentence the person as provided in the bill; however, the new sentence may not exceed the person's original sentence with credit for time served. In cases where the court sentences the defendant and the sentence length is greater than the prison releasee reoffender's mandatory minimum sentence, the inmate will be required to serve at minimum 85% of the sentence and will be eligible to earn gain time as long as he or she is not released prior to satisfying the minimum mandatory term.

If the court determines that such person does not meet the criteria for resentencing, the court must provide written reasons why such person does not meet such criteria.

A person resentenced as previously described is eligible to receive any gain-time pursuant to s. 944.275, F.S., at which he or she was previously ineligible to receive under former s. 775.082(9), F.S.

The overall impact of the bill is significant; however, indeterminate.

The bill has an effective date of July 1, 2021. Due to the significant programming changes that would be required to implement, the Department request the effective day be changed to reflect October 1, 2021.

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:	
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:	
Bill Section Number(s):	

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:	Unknown
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?	

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

Revenues:	Unknown
Expenditures:	If this bill is passed, it is anticipated that there will be a decrease in inmate population and an increase in community supervision, as all prison release offenders are required to be released to conditional release. However, the Department cannot provide the specific

	<p>number of immediate releases within the limited time frames of this analysis, thus the fiscal impact to the inmate and community supervision population is indeterminate.</p> <p>When inmate population is impacted in small increments statewide, the inmate variable per diem of \$21.70 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The Department's FY 18-19 average per diem for community supervision was \$5.62.</p> <p>In addition, the Bureau of Admission and Release would need one full time, temporary position, funded for no more than one year, to handle the workload increase required to complete notifications for 7,400 inmates. Also, significant programming changes will be required in order to modify the Department's internal calculator. These costs are estimated as follows:</p> <table><tr><th>Class Title</th><th>Class Code</th><th>Salary & Benefits</th><th>FTE #</th><th>Year 1 Annual Costs</th></tr><tr><td>Correctional Services Asst Consultant</td><td>8055</td><td>55,233</td><td>1</td><td>55,233</td></tr><tr><td colspan="3">Total salaries & benefits</td><td>1</td><td>55,233</td></tr><tr><td colspan="2">Recurring expense - Prof light travel</td><td>\$ 3,378</td><td></td><td>3,378</td></tr><tr><td colspan="2">Non-recurring expense - Prof light travel</td><td>4,429</td><td></td><td>4,429</td></tr><tr><td colspan="3">Total expenses</td><td></td><td>7,807</td></tr><tr><td colspan="2">Human Resource Services</td><td>\$ 330</td><td></td><td>330</td></tr><tr><td colspan="2">Information Technology</td><td></td><td></td><td>87,000</td></tr><tr><td colspan="3">Total</td><td>1</td><td>\$ 150,370</td></tr><tr><td colspan="5">Summary of Costs</td></tr><tr><td colspan="3">Recurring</td><td></td><td>\$ 58,941</td></tr><tr><td colspan="3">Non-recurring</td><td></td><td>91,429</td></tr><tr><td colspan="3">Total</td><td></td><td>\$ 150,370</td></tr></table>	Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs	Correctional Services Asst Consultant	8055	55,233	1	55,233	Total salaries & benefits			1	55,233	Recurring expense - Prof light travel		\$ 3,378		3,378	Non-recurring expense - Prof light travel		4,429		4,429	Total expenses				7,807	Human Resource Services		\$ 330		330	Information Technology				87,000	Total			1	\$ 150,370	Summary of Costs					Recurring				\$ 58,941	Non-recurring				91,429	Total				\$ 150,370
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Recurring				\$ 58,941																																																														
Non-recurring				91,429																																																														
Total				\$ 150,370																																																														
Does the legislation contain a State Government appropriation?	No																																																																	
If yes, was this appropriated last year?																																																																		

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y ☐ N ☐

Revenues:	Unknown
Expenditures:	Unknown
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Y ☐ N ☐

If yes, explain impact.	
Bill Section Number:	

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.	The estimated change to OBIS is 1,000 hours at \$87/hour.
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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.	
--	--

ADDITIONAL COMMENTS

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	<p>Defendants sentenced as PRRs in excess of the "minimum" sentences set out in lines 82-89 may seek to appeal the sentences because the proposed statute on its face appears to specify the exact prison term, not a minimum. The rule of lenity states that when criminal statutes are subject to competing, albeit reasonable, interpretations, they must be strictly construed most favorably to the accused. See <i>State v. Weeks</i>, 202 So.3d 1, 8 (Fla. 2016).</p> <p>As to the right to be resentenced created in this bill, the Department has the burden of notifying (lines 119-121) PRRs who qualified as a PRR before 7/1/2021 and were sentenced as such before the effective date of this bill, 7/1/2021, and who are serving such a mandatory minimum on or after 7/1/2021.</p> <p>Subsection (9)(d)6. (lines 144-147) provides that a person resentenced per this subsection is eligible to receive any gain-time pursuant to s. 944.275, F.S., which he or she was previously ineligible to receive as a PRR. The only restriction on gain-time previously for PRRs was the requirement that they serve 100 percent of the court-imposed sentence, but that provision is eliminated in this bill. (Lines 90-94) Other statutory gain-time restrictions in s. 944.275(4)(e), F.S., would still apply, however: for sentences imposed for offenses committed on or after October 1, 2014, the Department may not grant incentive gain-time if the offense is a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011; 800.04; s. 825.1025; or s. 847.0135(5), F.S.</p> <p>Because the bill removes the requirement that a defendant serve 100 percent of the court-imposed sentence, there is no reason why an inmate would not benefit from gain-time and the 85 percent requirement of 944.274(4)(f), F.S. Thus, a</p>
---------------------------	--

	<p>sentence such as the 25 years for a felony punishable by life would be eligible for the application of gain-time down to the 85 percent point.</p>
--	---



The Florida Senate

Committee Agenda Request

To: Senator Jason Pizzo ,Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 18, 2020

I respectfully request that **Senate Bill # 210**, relating to Sentencing, be placed on the:

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

A handwritten signature in dark ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

Senator Jeff Brandes
Florida Senate, District 24

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE
APPEARANCE RECORD

2/16/21

Meeting Date

210

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Executive Director, Florida Public Defender Association

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32301

City

State

Zip

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☒ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

2/16/21

Meeting Date

SB 210

Bill Number (if applicable)

Topic Sentencing Reform

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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2/16/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

210

Bill Number (if applicable)

Topic Sentencing Reform

Amendment Barcode (if applicable)

Name Carrie Boyd

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/21

Meeting Date

210

Bill Number (if applicable)

Topic

Sentencing

Amendment Barcode (if applicable)

Name

Ida V. Eskamani

Job Title

Address

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

Florida Rising

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

2/16/2021

Meeting Date

210

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

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State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Center for Fiscal and Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/16/21

Meeting Date

SB 210

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Jorge Chamizo

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City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/21
Meeting Date

SB 210
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Greg Newborn

Job Title _____

Address _____ Phone _____
Street

City _____ State _____ Zip _____ Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FAmm

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-21

Meeting Date

SB 210

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Deborah Brennan

Job Title _____

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Phone 813-599-5777

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/2021
Meeting Date

210
Bill Number (if applicable)
SB 449
Amendment Barcode (if applicable)
00000000000000000000

Topic Q.N. REFORM

Name TRACY JOHNSON

Job Title RETIRED ASST. SPECIAL AGENT IN CHARGE

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Phone _____

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Email TJohnson123@fsho.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA CARS / FAMM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2-16-2021
Meeting Date

SB 210
Bill Number (if applicable)

SB 210
Topic

Amendment Barcode (if applicable)

Keith Harris
Name

FLL
Job Title

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850-999-9628
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FJOGMA, L. LLC
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Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

210
Bill Number (if applicable)

Topic Sentencing reform

Amendment Barcode (if applicable) _____

Name Janet Cooree-Watson

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/21

Meeting Date

SB 210

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing myself

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)

2/16/21

Meeting Date

SB 210

Bill Number (if applicable)

Topic CRIMINAL JUSTICE

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/16/21
Meeting Date

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

SB210
Bill Number (if applicable)

Topic PRR - Criminal Justice

Amendment Barcode (if applicable)

Name Catherine Ragonese

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/16/21

Meeting Date

SB 210

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Laurette Philipson

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Email

adurack.philipson@gmail.com

smal

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 388

INTRODUCER: Senator Wright and others

SUBJECT: Injured Police Canines

DATE: February 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Brown</u>	<u>HP</u>	Favorable
2.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 388 authorizes an emergency service transport vehicle permit holder to transport a police canine injured in the line of duty to a veterinary clinic, hospital emergency department, or similar facility if no person requires medical attention or transport when the canine needs it. The bill authorizes emergency medical technicians (EMTs) and paramedics to provide emergency medical care to an injured police canine at the scene of an emergency or while the canine is being transported.

The bill provides civil and criminal immunity for EMTs and paramedics providing emergency care to an injured police canine and exempts them from the application of the veterinary practice act for providing medical care to a police canine injured in the line of duty.

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

The bill has an effective date of July 1, 2021.

II. Present Situation:

Police Canines

Section 843.19, F.S., defines the term “police canine” for law enforcement purposes as any canine that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

Police dogs are frequently used in conjunction with high-intensity, criminal situations and are often deployed by their handlers to chase after fleeing felons. As a result, the dogs can be caught in the line of fire while on the job. In September 2018, 3-year-old Fang, a member of

Jacksonville Sheriff's Office canine unit, was shot and killed by a teenager who was fleeing a scene after carjacking two women at a gas station minutes earlier.¹ Similarly, in December 2018, 3-year-old Cigo with the Palm Beach County Sheriff's Office was shot and killed by an attempted murder suspect outside of a shopping mall.² In Florida, there have been 49 police canines killed in the line of duty.³ In 2019, the Legislature, recognizing the ongoing danger to and violence against police canines, increased the penalty for causing harm to or using a deadly weapon against a police canine from a third degree felony to a second degree felony.^{4, 5}

Special K-9 Units

Specially-trained dogs are used by various agencies and departments throughout the state in their K-9 units. These departments employ dogs to assist with tracking and apprehending offenders, narcotics and bomb detection,⁶ and building and article searches.⁷ Additionally, some fire departments use dogs as part of arson detection programs.⁸ Various non-profit organizations also use dogs for the purpose of search and rescue, such as the Community Emergency Response Team, which provides support to the federal Emergency Management Agency.⁹

Veterinary Medical Care and Treatment for Canines

The practice of veterinary medicine is licensed and regulated by the Department of Business and Professional Regulation (DBPR), Board of Veterinary Medicine.¹⁰ A veterinarian is a licensed health care practitioner who engages in the practice of veterinary medicine which the Legislature has determined can be potentially dangerous to the public health and safety if conducted by incompetent and unlicensed practitioners.¹¹ The practice of veterinary medicine means:

- The diagnosis of medical conditions of animals;
- Prescribing, dispensing, or administering drugs, medicine, appliances, and applications for animals;
- The treatment of animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease;

¹ Tarik Mino and Colette DuChanois, *Audio, video evidence released in case of teen held in K-9's death*, NEWS4JAX (November 12, 2018), available at <https://www.news4jax.com/news/2018/11/13/audio-video-evidence-released-in-case-of-teen-held-in-k-9s-death/> (last visited February 5, 2021).

² Mark Osborne and Jason M. Volack, *Suspect kills police dog in shootout outside mall on Christmas Eve, police say*, ABC NEWS (December 25, 2018), available at <https://abcnews.go.com/US/suspect-kills-police-dog-shootout-mall-christmas-eve/story?id=60007552> (last visited February 5, 2021).

³ Officer Down Memorial Page, *Florida Line of Duty Deaths*, available at <https://www.odmp.org/search/browse/florida> (last visited February 5, 2021).

⁴ Chapter 2019-9, Laws of Fla. (2019).

⁵ A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S. A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁶ City of Orlando, *K-9 Unit*, available at <http://www.cityoforlando.net/police/k-9-unit/> (last visited February 5, 2021).

⁷ St. Petersburg Police Department, *K-9 Unit*, available at <http://police.stpete.org/k-9> (last visited February 5, 2021).

⁸ City of Orlando, *Accelerant Detection Canines*, available at <http://www.cityoforlando.net/fire/accelerant-detection-canines/> (last visited February 5, 2021).

⁹ Boondocks K9 SAR-CERT Unit, *Community Emergency Response Team (CERT)*, available at <https://www.boondocksk9.org/> (last visited February 5, 2021).

¹⁰ Chapter 474, F.S.; and *see* s. 20.165, F.S.

¹¹ Sections 474.201 and 407.202(11), F.S.

- Performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; and
- The determination of the health, fitness, or soundness of an animal.¹²

Veterinary medicine includes:

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology; and
- Any other veterinary medicine specialty.¹³

Section 474.202, F.S., defines an animal as a wild or domestic, dead or alive, bird, amphibian, fish, reptile, or mammal, other than a human being. A dog, or canine, is a mammal.¹⁴ It is the responsibility of every veterinarian licensed and practicing in Florida to provide, either personally or through another licensed veterinarian, 24-hour emergency services for all animals under his or her continuing care.¹⁵

When the DBPR has probable cause to believe that a person is practicing, or attempting to practice, veterinary medicine without a license, or aiding and abetting a person to practice veterinary medicine without a license, the DBPR may issue to the offender a notice to cease and desist. If the person fails to comply with the notice, the DBPR may file a proceeding seeking an injunction or a writ of mandamus. Additionally, the DBPR may impose an administrative penalty not to exceed \$5,000 per incident or may issue a citation.¹⁶

Emergency Medical Services, Paramedics, and Emergency Medical Technicians

Emergency Medical Transport Services

Prehospital life support transport services fall into two general categories – basic life support services (BLS) and advanced life support services (ALS).

BLS services include the assessment or treatment by a person qualified under part III of ch. 401, F.S., through the use of techniques described in the EMT-Basic National Standard Curriculum or the National Emergency Medical Services (EMS) Education Standards of the U.S. Department of Transportation.¹⁷ The term includes the administration of oxygen and other techniques that have

¹² Section 474.202(9), F.S.

¹³ Section 474.202(13), F.S.

¹⁴ Merriam-Webster On-line Dictionary, Dog or Canine is a highly variable domestic mammal (*Canis familiaris*) closely related to the gray wolf, available at <https://www.merriam-webster.com/dictionary/dog> (last visited February 5, 2021).

¹⁵ Fla. Admin. Code R. 61G18-19.001 (2019).

¹⁶ Section 455.228, F.S.

¹⁷ United States Department of Transportation, National Highway Traffic Safety Administration, *National Emergency Medical Services Education Standards*, (January 2009), available at <https://www.ems.gov/pdf/National-EMS-Education-Standards-FINAL-Jan-2009.pdf> (last visited February 5, 2021).

been approved and are performed under specific conditions.¹⁸ BLS services are usually performed by EMTs.¹⁹

ALS services include patient assessment or treatment including the implementation of advanced medical skills such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the EMT-Paramedic National Standard Curriculum or the National EMS Education Standards.²⁰ ALS services can be performed on site and are usually provided by physicians or paramedics.²¹

To obtain a transport vehicle permit to provide BLS or ALS services, an applicant must provide to the Department of Health the following:

- An application and required fees; and
- Documentation that the vehicle qualifies as follows:
 - Is furnished with essential medical supplies and equipment which is in good working order;
 - Meets appropriate standards for design and construction;
 - Is equipped with an appropriate communication system;
 - Meets appropriate safety standards;
 - Meets sanitation and maintenance standards;
 - Is insured for a minimum of \$100,000/\$300,000 against injuries to or the death of any person arising out of an accident; and
 - Has been awarded a Certificate of Public Convenience and Necessity (COPCN).²²

The following adult and pediatric medical equipment and supplies are required for BLS service vehicles:

- Bandaging, dressing, and taping supplies;
- Bandage shears;
- Patient restraints;
- Blood pressure cuffs;
- Stethoscopes;
- Blankets;
- Sheets;
- Pillows;
- Patient rain cover;
- Long and short spine boards;
- Cervical, spine and extremity immobilization devices and traction splints;
- Portable oxygen tanks, masks, and nasal cannula;
- Hand-operated bag-valve mask resuscitators;
- Portable suction;

¹⁸ Sections 401.23(7) and (8), F.S.

¹⁹ Ryyanen, et. al, *Is advanced life support better than basic life support in prehospital care? A systematic review*, Scand J Trauma Resusc. Emerg. Med. 2010; 18: 62, (November 23, 2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3001418/> (last visited February 5, 2021).

²⁰ Sections 401.23(1) and (2), F.S.

²¹ Ryyanen, et. al, *supra* note 18.

²² Section 401.26(2), F.S., and Fla. Admin. Code R. 64J-1.002 and 64J-1.003 (2019).

- Sterile obstetrical kit;
- Burn sheets;
- Flashlight;
- Occlusive dressings;
- Gloves, face masks;
- Nasopharyngeal airways;
- Biohazardous waste bags; and
- Bulb syringe.²³

The following additional adult and pediatric medical equipment and medications are required for ALS service vehicles:

- Medications:
 - Atropine;
 - Dextrose;
 - Epinephrine;
 - Ventricular dysrhythmic;
 - Benzodiazepine sedative/anticonvulsant;
 - Naloxone (Narcan);
 - Nitroglycerin; and
 - Beta adrenergic inhalant with nebulizer apparatus.
- I.V. Solutions, including Lactated Ringers or Normal Saline with stopcocks, pressure infuser, drip sets, tubing and cannula.
- Equipment:
 - Laryngoscope handle, blades and batteries;
 - I.V. arm boards or splints;
 - Disposable endotracheal tubes and stylets;
 - Magill forceps;
 - Device for intra-tracheal meconium suctioning;
 - Tourniquets;
 - Needles and syringes;
 - Portable monitor with defibrillator, pacing capabilities, ECG printout, and electrodes; and
 - Glucometer.²⁴

Emergency Medical Technicians

The primary focus of an EMT is to provide basic emergency medical care and transportation for critical and emergent patients who access the emergency medical system. This individual possesses the basic knowledge and skills necessary to provide patient care and transportation. An EMT functions as part of a comprehensive EMS response, under medical oversight. An EMT performs interventions with the basic equipment typically found on an ambulance. An EMT is a link from the scene to the emergency health care system.²⁵

²³ Fla. Admin Code R. 64J-1.002(4) (2019).

²⁴ Fla. Admin Code R. 64J-1.003(7) (2019).

²⁵ See note 16.

Paramedics

A paramedic is an allied health professional whose primary focus is to provide advanced emergency medical care for critical and emergent patients who access the emergency medical system. This individual possesses the complex knowledge and skills necessary to provide patient care and transportation. Paramedics function as part of a comprehensive EMS response, under medical oversight. Paramedics perform interventions with the basic and advanced equipment typically found on an ALS service vehicle. A paramedic is a link from the scene into the health care system.²⁶

III. Effect of Proposed Changes:

The bill creates s. 401.254, F.S., to authorize an emergency service transport vehicle permit holder to transport a police canine injured in the line of duty to a veterinary clinic, hospital emergency department, or similar facility if no person requires medical attention or transport when the canine needs it.

The bill defines the term “police canine” as any canine that is owned, or the service of which is employed, by a state or local law enforcement agency, a correctional agency, a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of criminal activity, flammable materials, or missing persons; enforcement of laws; investigation of fires; or apprehension of offenders.

The bill authorizes EMTs and paramedics to provide emergency medical care to an injured police canine at the scene of the emergency or while being transported. The bill provides civil and criminal immunity for EMTs and paramedics who act in good faith to provide emergency care to an injured police canine and exempts them from the application of the veterinary practice act for providing medical care to a police canine injured in the line of duty.

The bill has an effective date of July 1, 2021.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁶ *Id.*

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:

Should a police canine be transported to an emergency medical center for treatment of injuries suffered in the line of duty by an emergency service transport vehicle, the cost of such services would need to be covered. The bill does not specify who would pay the cost of such services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide any emergency treatment protocols for EMTs and paramedics to follow for the emergency care and treatment of police canines injured in the line of duty, nor does the bill require the collaborative development of treatment protocols for injured police canines between the boards of medicine and osteopathic medicine and the board of veterinary medicine. The emergency medical care and treatment of human beings and canines is very different, as is the training of veterinarians when compared to that of EMTs and paramedics. Further, if an injured police canine is transported to a hospital emergency department or similar facility, those treatment providers may not have veterinary training nor be willing to treat animals. The bill does not provide immunity from liability for those treatment providers.

VIII. Statutes Affected:

This bill substantially amends section 474.203 of the Florida Statutes.

This bill creates section 401.254 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Wright

14-00252-21

2021388__

A bill to be entitled

An act relating to injured police canines; creating s. 401.254, F.S.; defining the term "police canine"; authorizing licensed life support services to transport injured police canines under certain circumstances; authorizing a paramedic or an emergency medical technician to provide emergency medical care to injured police canines under certain circumstances; providing for immunity from criminal and civil liability under certain circumstances; amending s. 474.203, F.S.; providing applicability; providing an effective date.

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

Section 1. Section 401.254, Florida Statutes, is created to read:

401.254 Treatment of injured police canines.—

(1) As used in this section, the term "police canine" means any canine that is owned, or the service of which is employed, by a state or local law enforcement agency, a correctional agency, a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of criminal activity, flammable materials, or missing persons; the enforcement of laws; the investigation of fires; or the apprehension of offenders.

(2) A licensee with a valid permit for the transport vehicle may transport a police canine injured in the line of duty to a veterinary clinic, hospital emergency department, or

Page 1 of 2

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

14-00252-21

2021388__

similar facility if there is no individual requiring medical attention or transport at that time.

(3) Notwithstanding s. 474.213, a paramedic or an emergency medical technician may provide emergency medical care to a police canine injured in the line of duty while at the scene of the emergency or while the police canine is being transported to a veterinary clinic, hospital emergency department, or similar facility. A paramedic or an emergency medical technician who acts in good faith to provide emergency medical care to an injured police canine is immune from criminal or civil liability.

Section 2. Subsection (10) is added to section 474.203, Florida Statutes, to read:

474.203 Exemptions.—This chapter does not apply to:

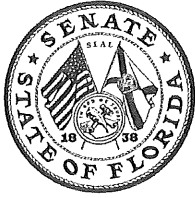
(10) A paramedic or an emergency medical technician providing emergency medical care to a police canine injured in the line of duty as authorized under s. 401.254.

For the purposes of chapters 465 and 893, persons exempt pursuant to subsection (1), subsection (2), or subsection (4) are deemed to be duly licensed practitioners authorized by the laws of this state to prescribe drugs or medicinal supplies.

Section 3. This act shall take effect July 1, 2021.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and
Domestic Security, *Chair*
Commerce and Tourism, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Children, Families, and Elder Affairs
Finance and Tax
Transportation

SENATOR TOM A. WRIGHT
14th District

February 4, 2021

The Honorable Jason W. B. Pizzo
405, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 388 – Injured Police Canines

Dear Chair Pizzo:

Senate Bill 388, relating to Injured Police Canines has been referred to the Committee on Criminal Justice. I am requesting your consideration on placing SB 388 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 black ink, appearing to read "Tom A. Wright", with a large, sweeping flourish underneath.

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
- ☐ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/16/21

Meeting Date

388

Bill Number (if applicable)

Topic Injured Police Canines

Amendment Barcode (if applicable)

Name Amy Mercer, Florida Police Chiefs Association

Job Title Executive Director

Address P.O. Box 14038

Phone 850-219-3631

Street

Tallahassee

FL

32317

City

State

Zip

Email amercer@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/16/21

Meeting Date

388

Bill Number (if applicable)

Topic Injured Canines

Amendment Barcode (if applicable)

Name Kati MacFall

Job Title State Dir.

Address 1206 Walton Dr.

Phone 850 508-1001

Street

Tallahassee

City

State

32312

Zip

Email kmacfall@hsus.org

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 614

INTRODUCER: Criminal Justice Committee and Senator Rodriguez

SUBJECT: Assault or Battery on Hospital Personnel

DATE: February 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	Fav/CS
2.			HP	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 614 amends s. 784.07, F.S., which reclassifies the misdemeanor or felony degree of assault and battery offenses knowingly committed against a law enforcement officer, firefighter, and other specified persons. The bill adds “hospital personnel,” a term defined in the bill, to the list of specified persons in this section, so that assault and battery offenses committed against hospital personnel are reclassified in the same manner as assault and battery offenses against persons currently specified in the statute. The reclassification of the offense has the effect of increasing the maximum sentence that may be imposed for the offense.

The bill defines “hospital personnel” as a health care practitioner as defined by s. 456.001, F.S., an employee, an agent, or a volunteer who is employed, under contract, or otherwise authorized by a hospital, as defined in s. 395.002, F.S., to perform duties directly associated with the care and treatment rendered by any department of a hospital or with the security thereof.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).

The bill is effective October 1, 2021.

II. Present Situation:

Hospitals

Hospitals are licensed by the Agency for Healthcare Administration (AHCA) under ch. 395, F.S., and the general licensure provisions of part II of ch. 408, F.S. A hospital is an establishment that:

- Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals who require diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and
- Regularly makes available at least clinical laboratory services, diagnostic x-ray services, and treatment facilities for surgery or obstetrical care, or other definitive treatment of similar extent.¹

Hospitals in Florida employ approximately 287,244 individuals and 59,199 medical staff.² Hospitals employ individuals in a number of occupations, including healthcare practitioners, healthcare support, office and administrative staff, janitorial and maintenance, food preparation and service, community and social services, business and financial operations, information technology, and management and executive positions.³

Violence against Healthcare Personnel

Workplace violence is defined as any act or threat of physical violence, harassment, intimidation, or other disruptive behavior that occurs at the work site.⁴ The impact of workplace violence can range from psychological issues to physical injury, or even death.⁵ There are four types of workplace violence:

- The perpetrator has no association with the workplace or employees;
- The perpetrator is a customer or patient of the workplace or employee;
- The perpetrator is a current or former employee of the workplace; and
- The perpetrator has a personal relationship with the employee but not with the workplace.⁶

¹ Section 395.002(12), F.S. The term “hospital” does not include an institution conducted by adherents of a well-recognized church or religious denomination that depends exclusively on prayer or spiritual means to heal, care for, or treat any person.

² Florida Health Care Association, *2021 Directory of Hospitals*, p. 11, available at <http://www.fha.org/reports-and-resources/hospital-directory.aspx> (select “view the digital edition online”) (last visited February 8, 2021).

³ Becker’s Hospital Review, *What Occupations Make up the Hospital Workforce?* (April 2, 2014), available at <https://www.beckershospitalreview.com/hr/what-occupations-make-up-the-hospital-workforce.html> (last visited February 8, 2021).

⁴ U.S. Department of Labor, Occupational Safety and Health Administration, *Workplace Violence*, available at <https://www.osha.gov/workplace-violence#:~:text=Workplace%20violence%20is%20any%20act,%2C%20clients%2C%20customers%20and%20visitors> (last visited February 8, 2021).

⁵ Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, *Occupational Violence*, (last rev. Sept. 22, 2020), available at <https://www.cdc.gov/niosh/topics/violence/default.html> (last visited February 8, 2021).

⁶ James P. Phillips, M.D., *Workplace Violence against Health Care Workers in the United States*, NEW ENGLAND J OF MEDICINE, 374(17) (April 28, 2016), pp. 1662, available at https://www.researchgate.net/publication/301686568_Workplace_Violence_against_Health_Care_Workers_in_the_United_States (last visited February 8, 2021).

The second type of violence, usually committed by patients, their families, or their friends, is the most common type of violence against healthcare employees.⁷ Hospitals settings create extreme levels of stress for patients, their families and friends, as well as employees of the institution.⁸ Fear, illness, and emotional circumstances contribute to agitation and aggression from patients. Additionally, substance abuse, mental illness, or drug-seeking habits may contribute to such workplace violence.⁹

The healthcare and social service industries experience the highest rates of injuries caused by workplace violence and have a 20 percent higher chance of being a victim of workplace violence than other workers.¹⁰ Healthcare workers accounted for 73 percent of all nonfatal workplace injuries and illnesses due to violence in 2018.¹¹ Patients account for 80 percent of serious violent incidents (those requiring days off for the injured worker to recuperate) reported in healthcare settings.¹² A 2017 report commissioned by the American Hospital Association estimated that violence against hospital employees resulted in \$429 million in medical care, staffing, indemnity, and other costs.¹³ Incidents of violence against healthcare workers are increasing.¹⁴

⁷ *Id* at p. 1663.

⁸ Wallace Stephens, *Violence against Healthcare Workers: A Rising Epidemic*, AM J OF MANAGED CARE (May 12, 2019), available at <https://www.ajmc.com/view/violence-against-healthcare-workers-a-rising-epidemic> (last visited February 8, 2021).

⁹ Ashleigh Watson, M.D., Mohammad Jafari, HBS, and Ali Seifi, M.D., *The Persistent Pandemic of Violence against Health Care Workers*, AM J OF MANAGED CARE 26(12) (December 11, 2020), pp. e377-e379, available at <https://www.ajmc.com/view/the-persistent-pandemic-of-violence-against-health-care-workers> (last visited February 8, 2021).

¹⁰ U.S. Bureau of Labor Statistics, *Fact Sheet: Workplace Violence in Healthcare, 2018*, (April 2020), available at <https://www.bls.gov/iif/oshwc/cfoi/workplace-violence-healthcare-2018.htm#:~:text=Workplace%20violence%20in%20healthcare%20is,issue%20and%20a%20growing%20concern.&text=The%20health%20care%20and%20social,violence%20injury%20than%20workers%20overall> and the Joint Commission, *Physical and Verbal Violence against Health Care Workers*, SENTINEL EVENT ALERT, 59 (April 17, 2018), available at https://www.jointcommission.org/-/media/documents/office-quality-and-patient-safety/sea_59_workplace_violence_4_13_18_final.pdf?db=web&hash=9E659237DBAF28F07982817322B99FFB (last visited February 8, 2021).

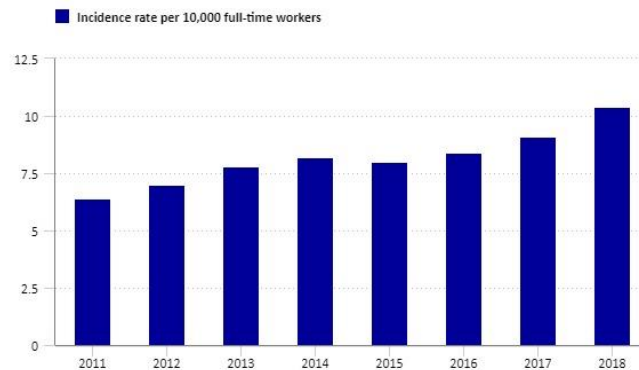
¹¹ *Id.*

¹² U.S. Department of Labor, Occupational Safety and Health Administration, *Workplace Violence in Healthcare: Understanding the Challenge*, (December 2015), available at <https://www.osha.gov/Publications/OSHA3826.pdf> (last visited February 8, 2021).

¹³ Jill Van Den Bos, ASA, MAAA et al., *Cost of Community Violence to Hospitals and Health Systems*, (July 26, 2017), p. 2, available at <https://www.aha.org/system/files/2018-01/community-violence-report.pdf> (last visited February 8, 2021).

¹⁴ U.S. Bureau of Labor Statistics, *supra* note 10.

Chart 1. Incidence rate of nonfatal workplace violence to healthcare workers, 2011-18



Workplace violence committed against healthcare workers is typically underreported. Healthcare workers do not formally report all incidents for a variety of reasons, such as no serious injury was sustained, inconvenience, and the perception that violence comes with the job.¹⁵ In fact, a study conducted in 2000, found that 82 percent of U.S. nurses had been assaulted at least once during their careers and 73 percent believed that assault was a part of their jobs.¹⁶ The American College of Emergency Physicians reported the findings of a 2018 survey which found that 47 percent of emergency room physicians had been physically assaulted at work but only 3 percent pressed charges.¹⁷ Additionally, employers may not always accurately report incidents of workplace violence.

The recent pandemic may have exacerbated violence against healthcare workers. Between February 1, 2020, and July 31, 2020, 611 incidents of violence, harassment, or stigmatization related to COVID-19 took place against healthcare workers, patients, and medical infrastructure, according to the International Committee of the Red Cross. Of these, 67 percent were directed at healthcare workers and more than 20 percent involved physical assault and 15 percent were verbal assaults or threats.¹⁸

Assault and Battery

Assault and Aggravated Assault

Section 784.011, F.S., provides that it is a second degree misdemeanor¹⁹ to commit an assault, which is an intentional, unlawful threat by word or act to do violence to the person of another,

¹⁵ U.S. Government Accountability Office, *Workplace Health and Safety: Additional Efforts Needed to Help Protect Health Care Workers from Workplace Violence*, (March 2016), pp. 16-18, available at <https://www.gao.gov/assets/680/675858.pdf> (last visited February 8, 2021).

¹⁶ Watson, *supra* note 9.

¹⁷ American College of Emergency Physicians, *Violence in the Emergency Department: Resources for a Safer Workplace*, available at <https://www.acep.org/administration/violence-in-the-emergency-department-resources-for-a-safer-workplace/> (last visited February 8, 2021).

¹⁸ Sharmila Devi, *COVID-19 Exacerbates Violence against Healthcare Workers*, THE LANCET, 396(10252), p. 658 (Sept. 5, 2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31858-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31858-4/fulltext) (last visited February 8, 2021).

¹⁹ A second degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

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 784.021, F.S., provides that an aggravated assault is an assault:

- With a deadly weapon²⁰ without intent to kill; or
- With an intent to commit a felony.

Aggravated assault is a third degree felony²¹ and is ranked in Level 6 of the Criminal Punishment Code offense severity level ranking chart.²²

Battery and Aggravated Battery

Section 784.03, F.S., provides that the offense of battery occurs when a person:

- Actually and intentionally touches or strikes another person against the will of the other; or
- Intentionally causes bodily harm to another person.

Generally, a battery under this statute is punishable as a first degree misdemeanor²³ but a person commits a third degree felony if he or she has one prior conviction for battery, aggravated battery, or felony battery and commits any second or subsequent battery.²⁴

Section 784.045, F.S., provides that a person commits aggravated battery who, in committing battery:

- Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;
- Uses a deadly weapon; or
- Knows or should have known that the victim of the battery was pregnant at the time of the offense.

Aggravated battery is a second degree felony and is ranked in Level 7 of the Criminal Punishment Code offense severity level ranking chart.²⁵

Assault or Battery on a Law Enforcement Officers or Other Specified Professional

Section 784.07(2), F.S., reclassifies the misdemeanor or felony degree of assault, aggravated assault, battery, and aggravated battery when a person is charged with knowingly committing 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:

²⁰ When undefined in statute, Florida courts have defined a “deadly weapon” as an instrument that will likely cause death or great bodily harm when used in the ordinary and usual manner contemplated by its design or an object that is used or threatened to be used in a way likely to produce death or great bodily harm. *See Brown v. State*, 86 So.3d 569, 571 (Fla. 5th DCA 2012).

²¹ A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

²² Section 921.0022(3)(g), F.S.

²³ A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

²⁴ Section 784.03(2), F.S.

²⁵ Section 921.0022(3)(g), 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(3)(d) and 775.083(1)(b), F.S.

- 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.

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,²⁶ and any person convicted of aggravated battery of a law enforcement officer is subject to a mandatory five-year minimum term of imprisonment.²⁷

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
- 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.²⁸

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;

²⁶ A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082(3)(b) and 775.083(1)(b), F.S.

²⁷ Section 784.07(2), F.S.

²⁸ 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.

- 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.²⁹

III. Effect of Proposed Changes:

The bill amends s. 784.07, F.S., to add hospital personnel to the list of officers and employees for which the degree of the offense is reclassified when an individual knowingly commits an assault or battery against hospital personnel while that hospital personnel is engaged in the lawful performance of his or her duties. The offenses are reclassified 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
- In the case of aggravated battery, from a second degree felony to a first degree felony.

The reclassification of the offense has the effect of increasing the maximum sentence that may be imposed for the offense, as noted above.

The bill defines “hospital personnel” as a health care practitioner as defined in s. 456.001, F.S.,³⁰ an employee, an agent, or a volunteer who is employed, under contract, or otherwise authorized by a hospital, as defined in s. 395.002, F.S., to perform duties directly associated with the care and treatment rendered by any department of a hospital or with the security thereof.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be 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.

²⁹ 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.

³⁰ Section 456.001, F.S., defines “health care practitioner” as any person licensed under ch. 457, F.S., (acupuncture); ch. 458, F.S., (medical practice); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathy); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry); ch. 467, F.S., (midwifery); parts I, II, III, V, X, XIII, or XIV of ch. 468, F.S. (speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, or orthotics, prosthetics, and pedorthics, respectively); ch. 478, F.S., (electrolysis); ch. 480, F.S., (massage therapy); ch. 483, F.S., (clinical laboratory personnel or medical physicists); ch. 484, F.S., (optical devices and hearing aids); ch. 486, F.S., (physical therapy practice); ch. 490, F.S., (psychological services); or ch. 491, F.S., (clinical, counseling, and psychotherapy services).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not reviewed the bill; however, the Office of Economic and Demographic Research (EDR) did provide a preliminary estimate of the bill's impact. The EDR estimates that the bill will have a positive insignificant prison bed impact (i.e. increase of 10 or fewer prison beds).³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 784.07 of the Florida Statutes.

³¹ The EDR estimate is on file with the Senate Committee on Criminal Justice.

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 16, 2021:

The committee substitute replaces the term “physician” to the broader term “health care practitioner as defined in s. 456.001” in the definition of health care personnel.

- B. **Amendments:**

None.



330330

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2021	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 36

and insert:

(c) "Hospital personnel" means a health care practitioner as defined in s. 456.001, an employee, an

By Senator Rodriguez

39-00751-21

2021614__

A bill to be entitled

An act relating to assault or battery on hospital personnel; amending s. 784.07, F.S.; defining the term "hospital personnel"; providing enhanced criminal penalties for persons who knowingly commit assault or battery upon hospital personnel; providing an effective date.

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

Section 1. Section 784.07, Florida Statutes, is amended to read:

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

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

(a) "Emergency medical care provider" means an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, medical director as defined in s. 401.23, or any person authorized by an emergency medical service licensed under chapter 401 who is engaged in the performance of his or her duties. The term "emergency medical care provider" also includes physicians, employees, agents, or volunteers of hospitals as defined in chapter 395, who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the

39-00751-21

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security thereof.

(b) "Firefighter" means any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires.

(c) "Hospital personnel" means a physician, an employee, an agent, or a volunteer who is employed, under contract, or otherwise authorized by a hospital, as defined in s. 395.002, to perform duties directly associated with the care and treatment rendered by any department of a hospital or with the security thereof.

(d) ~~(e)~~ "Law enforcement explorer" means any person who is a current member of a law enforcement agency's explorer program and who is performing functions other than those required to be performed by sworn law enforcement officers on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency and wearing a uniform that bears at least one patch that clearly identifies the law enforcement agency that he or she represents.

(e) ~~(d)~~ "Law enforcement officer" includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Florida Commission on Offender Review; a federal law

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enforcement officer as defined in s. 901.1505; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

~~(f)~~ ~~(e)~~ "Public transit employees or agents" means bus operators, train operators, revenue collectors, security personnel, equipment maintenance personnel, or field supervisors, who are employees or agents of a transit agency as described in s. 812.015(1) (1).

~~(g)~~ ~~(f)~~ "Railroad special officer" means a person employed by a Class I, Class II, or Class III railroad and appointed or pending appointment by the Governor pursuant to s. 354.01.

(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, hospital personnel, 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 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

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board of trustees of a community college, while the officer, firefighter, emergency medical care provider, hospital personnel, 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 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 minimum term of imprisonment of 5 years.

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

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

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117 (b) A semiautomatic firearm and its high-capacity
118 detachable box magazine, as defined in s. 775.087(3), or a
119 machine gun as defined in s. 790.001, shall be sentenced to a
120 minimum term of imprisonment of 8 years.
121
122 Notwithstanding s. 948.01, adjudication of guilt or imposition
123 of sentence shall not be suspended, deferred, or withheld, and
124 the defendant is not eligible for statutory gain-time under s.
125 944.275 or any form of discretionary early release, other than
126 pardon or executive clemency, or conditional medical release
127 under s. 947.149, prior to serving the minimum sentence.
128 Section 2. This act shall take effect October 1, 2021.

SB 614 – Assault or Battery on Hospital Personnel

This bill adds hospital personnel to s. 784.07, F.S., which addresses assault or battery of law enforcement officers, firefighters, emergency medical providers, public transit employees, etc. Hospital personnel is defined as “a physician, an employee, an agent, or a volunteer who is employed, under contract, or otherwise authorized by a hospital, as defined in s. 395.002, F.S., to perform duties directly associated with the care and treatment rendered by any department of a hospital or with the security thereof.”

Offenses under this statute are reclassified as follows:

Assault increased from 2nd degree misdemeanor to 1st degree misdemeanor;

Battery from 1st degree misdemeanor to 3rd degree felony

Aggravated assault from 3rd degree felony to 2nd degree felony

Aggravated battery from 2nd degree felony to 1st degree felony

Large numbers come to prison each year with these offenses as primary. In FY 18-19, there were 400 new commitments to prison for these offenses and in FY 19-20, there were 286 new commitments. It is unknown how large the hospital personnel victim pool is, but simple battery is the most common felony offense and the incarceration rate is low (16.5% in FY 18-19 and 15.0% in FY 19-20). CJIC has heard bills with the same provisions in prior years and found them to have an insignificant impact due to low volume.

EDR PROPOSED ESTIMATE: Positive Insignificant

Requested by: Senate



The Florida Senate

Committee Agenda Request

To: Senator Jason Pizzo, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 1, 2021

I respectfully request that **Senate Bill #614**, relating to Assault or Battery on Hospital Personnel , be placed on the:

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

A handwritten signature in black ink, appearing to read "AmR", is written above the printed name of the senator.

Senator Ana Maria Rodriguez
Florida Senate, District 39

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE
APPEARANCE RECORD

2/16

Meeting Date

SB 614

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Clay Meenan

Job Title Government Relations Coordinator

Address _____
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 Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 620

INTRODUCER: Senator Bracy

SUBJECT: Parole Eligibility

DATE: February 15, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Siples	Jones	CJ	Pre-meeting
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

I. Summary:

SB 620 revises the legislative intent regarding the determination of parole of eligible inmates by the Florida Commission on Offender Review (FCOR). The bill provides that the decision to parole an inmate is an act of discretion based on reliable evidence, rather than an act of grace as currently in statute. The bill further revises the intent to add that the FCOR's primary focus should be on anticipating that an inmate will become eligible for parole. It directs the FCOR to focus on the inmate's institutional achievements, lack of disciplinary reports, and all indications of the lack of risk to the public in a parole release of the inmate.

The bill requires the FCOR to partner with the Department of Corrections (DOC) to create a lifer's program for all parole-eligible inmates, which must be equally available to all inmates, male and female. The bill directs the FCOR to expedite those inmates who appear to have sufficient rehabilitation achievements attained through completion of the lifer's program.

According to the FCOR, the bill may have an indeterminate fiscal impact on the commission. The bill may have a negative fiscal impact on the DOC. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Parole

Parole is a discretionary release that allows certain offenders to serve the remainder of their court-imposed sentences in the community under strict supervision. The Florida Commission on

Offender Release (FCOR) is a 3-member body that administers parole in this state.¹ The FCOR's powers and duties, as it relates to parole, include:

- Determining what persons shall be placed on parole;
- Fixing the time and conditions of parole;
- Determining whether a person has violated parole and taking action with respect to such violation; and
- Making such investigations as may be necessary.²

In Florida, parole is limited; and the only inmates who are eligible for parole consideration are those who committed:

- Any felony prior to October 1, 1983, or those who elected to be sentenced outside the sentencing guidelines for felonies committed prior to July 1, 1984;
- A capital felony prior to October 1, 1995, except:
 - Murder or felony murder committed after May 25, 1994;
 - Making, possessing, throwing, placing, or discharging a destructive device or attempting to do so which results in the death of another after May 25, 1994;
 - First degree murder of a law enforcement officer, correctional officer, state attorney, or assistant state attorney committed after January 1, 1990; and
 - First degree murder of a justice or judge committed after October 1, 1990;
- Any continuing criminal enterprise before June 7, 1993; and
- Any attempted murder of a law enforcement officer between October 1, 1988 and October 1, 1995.³

As of January 6, 2021, there were approximately 3,754 inmates who were serving a parole-eligible sentence; however, roughly 603 of these inmates also have a parole-ineligible life sentence which renders them disqualified for release on parole.⁴ Of the remaining 3,151 parole-eligible inmates, 79 are female. In Fiscal Year 2019-20, the FCOR made 1,419 parole determinations, granted parole to 41 inmates, and released 43 inmates on parole. There are 424 releasees on parole supervision.⁵

The decision to grant parole is an act of grace of the state and is not considered a right.⁶ The FCOR established objective parole guidelines to guide its parole decisions, including setting a presumptive parole date for eligible offenders.⁷ The presumptive parole date, which is the tentative date an eligible offender may be released, can change, with the FCOR deciding to modify or suspend it.⁸

¹ Section 947.01, F.S.

² Section 947.13, F.S. The FCOR has other powers and duties related to clemency, conditional release, conditional medical release, and Control Release Authority.

³ Florida Commission on Offender Review, *2020 Annual Report*, p. 8, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202020.pdf> (last visited February 9, 2021).

⁴ The DOC, *2021 Agency Bill Analysis for SB 620*, February 10, 2021, p. 2 (on file with the Senate Committee on Criminal Justice).

⁵ *Id.*

⁶ Section 947.002(5), F.S.

⁷ Section 947.165, F.S. *See also* rr. 23-21.007-21.011, F.A.C., and Office of Program Policy Analysis and Government Accountability, *Parole and Early Release, Report No. 19-13*, (Nov. 2019), p. 5, available at <https://oppaga.fl.gov/Documents/Reports/19-13.pdf> (last visited February 9, 2021).

⁸ *Id.*

In granting parole, the FCOR must find that the inmate, if released on parole, will live and conduct himself or herself as a respectable law-abiding person and that the inmate's release will be compatible with his or her own welfare and the welfare of society.⁹ The FCOR must also be satisfied that the parolee will be suitably employed in self-sustaining employment or that he or she will not become a public charge.

If parole is to be granted, the FCOR must determine the conditions on which the inmate is released on parole.¹⁰ The FCOR has adopted standard conditions of parole in rule; however, it has authority to impose special conditions of parole.¹¹ If the inmate was convicted of a controlled substance violation, one of the conditions must be that the person submit to random substance abuse testing intermittently throughout the term of supervision. Payment of any debt due and owing to the state, as well as any payment of attorney's fees and costs due and owing to the state must also be a condition of parole, as well as the payment of any other fines, fees, restitution, or other court-ordered costs.¹²

The FCOR must provide the inmate with a certified copy of the terms and conditions of his or her parole once it authorizes the actual parole release date.¹³ If a parolee violates the terms of parole, he or she is subject to arrest and a return to prison to serve out the term for which the parolee was sentenced.¹⁴ Within 30 days of an arrest of a person charged with a violation of the terms and conditions of his or her parole, the parolee is entitled to a preliminary hearing to determine if probable cause exists to believe that the parolee has committed such violation.¹⁵ If probable cause is found, a final revocation hearing is convened to determine if the charge of parole violation is sustained and based on the findings, the FCOR may:

- Revoke parole and return the parolee to prison to serve the sentence imposed upon him or her;
- Reinstate the original order of parole;
- Order the placement of the parolee into a community control program; or
- Enter such other order as is proper.¹⁶

More than 90 percent of parolees successfully complete their supervision without revocation within the first three years.¹⁷

⁹ Section 947.18, F.S.

¹⁰ *Id.*

¹¹ *See* r. 23-21.0165, F.A.C.

¹² *Id.*, and s. 947.18, F.S.

¹³ Section 947.19, F.S.

¹⁴ Section 947.21, F.S.

¹⁵ Section 947.23(1), F.S.

¹⁶ Section 947.23(2)-(5), F.S.

¹⁷ *Supra* note 3 at 9.

Department of Corrections

Office of Programs and Re-Entry

The Office of Programs and Re-Entry (Office), within the DOC, provides programming for productive learning, positively transforming behaviors, and teaching pro-social skills that assist with re-integration into communities.¹⁸ The Office operates four sections:

- The Bureau of Program Development develops and implements technology used by institutions, community corrections, and community stakeholders to provide information about offenders.¹⁹
- The Bureau of Substance Abuse Treatment offers services and develops and fosters resources to facilitate successful reintegration from prison into the community.²⁰
- The Bureau of Education provides opportunities to inmates, such as academic education, career and technical education, library services, transition programs, and services specific to the special needs of youthful offenders.²¹
- Chaplaincy and Volunteer Services provides for the spiritual needs of inmates and coordinates religious education.²²

Programs for Parole-Eligible Inmates

Inmates incarcerated in DOC institutions generally have access to educational opportunities at faith- and character-based programs.²³ The goals of the programs are criminal rehabilitation, the successful reintegration of offenders into the community, and the reduction of recidivism.²⁴ These programs must emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.²⁵

A lifer's program is a reentry/transition program for long-term offenders that offers life skills and other social and educational courses to prepare them for successful reintegration into the community, and includes such courses as:

- Critical thinking;
- Problem solving;
- Substance abuse;
- Mental health;
- Stress/Anger management;
- Conflict resolution; and

¹⁸ The DOC, *Office of Programs and Re-Entry*, available at <http://www.dc.state.fl.us/development/index.html> (last visited February 10, 2021).

¹⁹ The DOC, *Bureau of Program Development*, available at <http://www.dc.state.fl.us/development/applied.html> (last visited February 10, 2021).

²⁰ The DOC, *Bureau of Substance Abuse Treatment*, available at <http://www.dc.state.fl.us/development/readiness.html> (last visited February 10, 2021).

²¹ The DOC, *Bureau of Education*, available at <http://www.dc.state.fl.us/development/programs.html> (last visited February 10, 2021).

²² The DOC, *Bureau of Chaplaincy and Volunteer Services*, available at <http://www.dc.state.fl.us/development/chaplaincy.html> (last visited February 10, 2021).

²³ *Id.*

²⁴ Section 944.803(7), F.S.

²⁵ Section 944.803(4)(b), F.S.

- Life planning/goal setting.²⁶

According to the DOC, the New River Correctional Institution, which houses adult male inmates, is the only prison that offers a lifer's program, the "Pathways Program." The Bureau of Education developed the program and the academic staff at the facility facilitates the program.²⁷ Program participants must:

- Complete at least 250 hours of community service activities, such as leading enrichment or wellness activities or tutoring other participants in academics;
- Participate for 100 hours in an enrichment program which is offered on Fridays, and may include activities such as art expression or creative writing; and
- Complete the available courses within each of the following paths:
 - Academic Path, which offers adult basic education and GED preparation;
 - Cognitive Path, which offers a cognitive-behavioral curriculum and includes courses that address anger management, communication skills, and critical thinking;
 - Employment Path, which offers financial literacy, computer literacy, employability, and a 100-hour course that covers job readiness and life management skills; and
 - Wellness Path, which offers courses on parenting, lifestyle and wellness, and transition elements, and a men-only workshop that addresses sensitive topics of relationships, sexuality, and intimacy.²⁸

The program is available to parole-eligible male inmates recommend by the FCOR, which typically refers an inmate as he approaches his presumptive parole release date.²⁹ Completion of the program does not guarantee that a participant will be granted parole nor will it lengthen the participant's remaining sentence time.³⁰

Although parole-eligible female inmates do not have access to the lifer's program, all female inmates have access to the faith-and character-based programs.³¹

III. Effect of Proposed Changes:

The bill revises the legislative intent of the parole statute, ch. 947, F.S., to provide that the decision to parole an inmate is an act of discretion based on reliable evidence, rather than an act of grace as currently in statute. The bill further revises the intent language to add that the FCOR's primary focus should be on anticipating that an inmate will become eligible for parole. It directs the FCOR to focus on the inmate's institutional achievements, lack of disciplinary reports, and all indications of the lack of risk to the public in a parole release of the inmate.

The bill requires the FCOR to partner with the DOC to create a lifer's program for all inmates eligible for parole, and to adopt rules ensuring that the lifer's program is equally available to all

²⁶ The FCOR, *2021 Agency Bill Analysis for SB 620*, p. 3, February 10, 2021, (on file with the Senate Committee on Criminal Justice).

²⁷ *Supra* note 4.

²⁸ E-mail correspondence from Chris Taylor, Legislative Specialist, Department of Corrections, (February 10, 2021) (on file with the Senate Committee on Criminal Justice).

²⁹ *Supra* note 26.

³⁰ *Supra* note 28.

³¹ *Supra* note 4.

inmates, both male and female. The bill requires the FCOR to expedite those inmates who appear to have sufficient rehabilitation achievements previously attained through completion of the lifer's program.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FCOR indicates that the bill may have a potential fiscal impact which cannot be determined at this time due to the bill's lack of clarity on whether the funding will be appropriated from the FCOR's or the DOC's budget.³² Additionally, the FCOR may need to create a position to coordinate the lifer's program.

The DOC is unable to precisely determine the fiscal effect on the department. The DOC estimates that it would need additional personnel and resources to develop, implement,

³² *Supra* note 26 at 4-5.

and maintain a lifer's program that is equally available to all parole-eligible inmates. The DOC would also require additional staff for its Office of Community Corrections as it is anticipated that there will be an increased caseload as the population shifts to community corrections.³³

The DOC provides that the department would need 13 additional staff to provide community supervision of parolees. The staffing and funds requested by the DOC is as follows:

Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs
Correctional Probation Specialist	8040	\$ 62,307	13	\$ 809,991
Total salaries & benefits			13	\$ 809,991
Recurring expense - P&P		\$ 8,455		\$ 109,915
Non-recurring expense - P&P		\$ 5,949		\$ 77,337
Total expenses				\$ 187,252
Human Resource Services		\$ 330		\$ 4,290
Salary incentive (if applicable)		\$ 1,128		\$ 14,664
Technology Impact (100 hours @ \$87 per hour)				\$ 8,700
Total			13	\$ 1,024,897
Summary of Costs				
Recurring				\$ 938,860
Non-recurring				\$ 86,037
Total				\$ 1,024,897

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill neither defines the term "lifer program," nor establishes criteria for the lifer program it seeks to establish. The bill requires the FCOR to partner with the DOC to create the program and adopt rules regarding the program's availability. However, the bill is unclear regarding the DOC's rulemaking authority as it relates to the implementation and operation of the program. Further, it is unclear by the bill's language if the program is to be available to all inmates or limited to parole-eligible inmates.

³³ *Supra* note 4 at 4.

VIII. Statutes Affected:

This bill substantially amends section 947.002 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) is added to section 947.002,
Florida Statutes, to read
947.002 Intent.—

(6) The commission shall consider an inmate's institutional
achievements, lack of disciplinary report, and all indications
of the lack of risk to the public in the decision to parole an



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inmates from the incarceration portion of the inmate's sentence.

Section 2. Section 947.136, Florida Statutes, is created to read:

947.136 Long-Term Inmate Program.—

(1) The commission and the department shall jointly develop a long-term inmate program, housed within the department, for inmates who are eligible for parole under this chapter to prepare such inmates for reintegration into the community.

(2) The long-term inmate program shall be a voluntary program that provides evidence-based programming to inmates who are within 3 years of their presumptive parole release date as established by the commission under s. 947.172.

(3) Inmates must be referred by the commission for participation in the long-term inmate prior to the department placing the inmate into the program. An inmate who meets the following criteria may be referred by the commission for placement into the long-term inmate program:

(a) Does not have factors, as identified in rule, which would preclude placement at an institution operating a long-term inmate program.

(b) Must be serving a parole-eligible sentence. Inmates who have subsequently received a parole-ineligible sentence may be considered for participation on a case-by-case basis.

(4) To successfully complete the long-term inmate program, inmates participating must, at a minimum:

(a) Complete at least 250 hours of community service projects, as approved by the department.

(b) Participate in at least 100 hours of enrichment programs, as defined by rule.



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(c) Complete an evidence-based curriculum, as provided in rule that, at a minimum, address:

1. Anger management;
2. Criminal thinking;
3. Educational and vocational needs;
4. Family relationships;
5. Lifestyle and wellness;
6. Substance use disorder treatment; and
7. Victim impact.

(5) Inmates participating in the long-term inmate program are expected to perform their duties and assignments as instructed by their assignment supervisor. Inmates who fail to complete duties and assignments as instructed may be removed from the program.

(6) Upon successful completion of the program, an inmate shall be awarded a certificate of completion. Successful completion of the program does not guarantee that an inmate will be paroled and program participation may not extend the length of the inmate's sentence.

(7) The commission and the department shall adopt rules as necessary to implement the long-term inmate program.

Section 3. This act shall take effect July 1, 2021.

===== 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 long-term inmates; amending s.



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947.002, F.S.; revising legislative intent concerning the granting of parole; creating s. 947.136, F.S.; requiring the Commission on Offender Review and the Department of Corrections to jointly develop a voluntary long-term inmate program; requiring the program to provide evidence-based programming to certain inmates; establishing eligibility for referral for participation in the program; providing program requirements; providing that inmates may be removed from the program under certain circumstances; requiring a certificate of completion upon successful completion of the program; providing that successful completion of the program does not guarantee parole; requiring commission and the department to adopt rules; providing an effective date.

By Senator Bracy

11-00855-21

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A bill to be entitled

An act relating to parole eligibility; amending s. 947.002, F.S.; revising legislative intent concerning the granting of parole; requiring the Commission on Offender Review to partner with the Department of Corrections to adopt a specified program with certain requirements; requiring rulemaking; providing an effective date.

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

Section 1. Subsection (5) of section 947.002, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

947.002 Intent.—

(5) It is the intent of the Legislature that the decision to parole an inmate from the incarceration portion of the inmate's sentence is an act of discretion based on reliable evidence, ~~grace of the state~~ and parole is shall not be considered a right.

(6) The commission's primary focus should be anticipating an inmate will become parole eligible. The commission should focus on an inmate's institutional achievements, lack of disciplinary reports, and all indications of the lack of risk to the public in parole release of the inmate. The commission shall partner with the department to create a lifer's program for all male and female inmates eligible for parole and adopt rules ensuring that the lifer's program is made equally available to all inmates, both male and female. The commission shall expedite

Page 1 of 2

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

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those inmates who appear to have sufficient rehabilitation achievements previously attained through completion of the lifer's program.

Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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



2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 620
BILL TITLE:	Parole Eligibility
BILL SPONSOR:	Senator Bracy
EFFECTIVE DATE:	July 1, 2021

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	HB 69
SPONSOR:	Representative Hart

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	February 10, 2021
LEAD AGENCY ANALYST:	Pat Mahoney, Jennifer Rechichi
ADDITIONAL ANALYST(S):	Julie Jean, Shana Lasseter, Angella New, Antoinette McCaskill
LEGAL ANALYST:	David Mabry
FISCAL ANALYST:	Greg Holcomb

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

SB 620 amends s. 947.002, F.S., revising legislative intent regarding the decision to grant parole, and adds Subsection 6, which directs the Florida Commission of Offender Review (FCOR) to anticipate that an inmate will be parole eligible. This subsection further directs FCOR to partner with the Florida Department of Corrections (FDC or Department) to create a lifer's program and adopt rules to ensure that the program will be made available to male and female inmates. FCOR is further directed to expedite those inmates that complete the lifer's program. SB 620 takes effect July 1, 2021.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Currently, the Department operates a program at New River Correctional Institution (New River C.I.) for male inmates that are parole-eligible, and whom FCOR has recommended. This program is under the purview of the Department's Bureau of Education within the Office of Programs and Re-entry. The Bureau of Education developed this program, and academic staff at New River C.I. facilitate.

Inmates eligible for parole are those who committed:

1. Any felony committed prior to October 1, 1983, or those who elected to be sentenced "outside the guidelines" for felonies committed prior to July 1, 1984;
2. All capital felonies committed prior to October 1, 1995, except:
 - a.) murder or felony murder committed after May 25, 1994;
 - b.) making, possessing, throwing, placing, or discharging a destructive device or attempt to do so which results in the death of another person after May 25, 1994;
 - c.) first degree murder of a law enforcement officer, correctional officer, state attorney, or assistant state attorney committed after January 1, 1990; and
 - d.) first degree murder of a justice or judge committed after October 1, 1990.
3. Any continuing criminal enterprise committed before June 17, 1993; and
4. Any attempted murder of a law enforcement officer committed between October 1, 1988, and October 1, 1995.

On January 6, 2021, there were approximately 3,754 inmates who were serving a parole eligible sentence; however, roughly 603 (16%) of those inmates also have a parole ineligible life sentence within their current sentence structure rendering them disqualified for a release on parole. Of the remaining 3,151 parole eligible inmates, 79 are females.

2. EFFECT OF THE BILL:

The proposed legislation as currently written is unclear as to the parameters for implementation. For example, lines 24 through 25 indicate that FCOR shall partner with the FDC to create a "lifer's program" and adopt rules. There is no description of "lifer's program" or program requirements. Additionally, this language appears to narrow the definition of "risk" to risk to the public (e.g., public safety), conflicting with the additional "risk" considerations within the chapter (i.e., See Section 947.18).

As previously noted, approximately 16% of inmates with a parole eligible sentence are "parole eligible", but not "release eligible", so parole would not be an option for this population. The language of the bill as written would require both groups to be offered the lifer's program.

The basis for a determination that there is an unmet need for additional programs is unclear. Under current practices, a lifer's program is already available to all male parole eligible inmates who are viable candidates for parole, and female inmates are afforded additional educational opportunities at faith and character institutions.

Ambiguity within the bill makes it difficult to precisely determine the effect on the Department. However, Department academic staff lacks the expertise and skillset to facilitate programming beyond that of academic, career and technical education, basic life/employment skills, and physical wellness. To develop, implement, and maintain a comprehensive evidence-based and gender-responsive program model addressing the needs of the parole-eligible population, FDC would need additional recurring funding. This funding would need to include skilled staff with backgrounds in substance abuse and mental health counseling in order to provide services that directly address the dynamic criminogenic factors and domains of criminal thinking/attitude, criminal associates, substance use prevention and treatment, social awareness, and leisure/holistic wellness. Additionally, increased coordination with FDC's Office of Community Corrections would also be necessary and would include the need for 13 Correctional Probation Specialist positions statewide to support the overall increase of caseloads as the population shifts to community supervision.

Additionally, FDC strategically and systematically allocates resources and program seats to the population of inmates that have determinate sentences based on evidence-based principles that inform effectiveness. Limited resources and these evidenced-based principles further segment the population of inmates with determinate sentences so that the criminogenic needs of those with shorter determinate sentences are typically addressed before the criminogenic needs of those with longer determinate sentences. The Department would likely need significant resources to support a population of inmates without a definitive release date, whose presumptive parole release date can be extended into the future, or who may not be paroled. It should be noted that there appears to be an implication that a "lifer's program" completer will be paroled, and that they will be paroled expeditiously (Lines 21-22; 29-32). There seems to be potential for conflict between program completion, objective determination of suitability for parole (e.g., substantively meeting all relevant guidelines within Chapter 947), and overall program effectiveness (e.g., likelihood of prosocial application and maintenance by the completer).

Finally, further support and resources would likely be necessary to evoke a commitment from the communities to which these parole-eligible inmates may be returning. Without support from the community, this population faces significant obstacles to successful re-entry and the likelihood of a favorable parole outcome (Refer to s. 947.165, F.S. and s. 947.18, F.S.).

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:	FCOR is directed to adopt rules ensuring the lifer's program is made equally available to all inmates.
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:	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:	
Date Due:	
Bill Section Number(s):	

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):	
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FISCAL ANALYSIS

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

Y ☐ N ☐

Revenues:	Unknown
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?	

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

Y ☒ N ☐

Revenues:	Indeterminate																																																																										
Expenditures:	<table border="1"> <thead> <tr> <th>Class Title</th> <th>Class Code</th> <th>Salary & Benefits</th> <th>FTE #</th> <th>Year 1 Annual Costs</th> </tr> </thead> <tbody> <tr> <td>Correctional Probation Specialist</td> <td>8040</td> <td>\$ 62,307</td> <td>13</td> <td>\$ 809,991</td> </tr> <tr> <td>Total salaries & benefits</td> <td></td> <td></td> <td>13</td> <td>\$ 809,991</td> </tr> <tr> <td>Recurring expense - P&P</td> <td></td> <td>\$ 8,455</td> <td></td> <td>\$ 109,915</td> </tr> <tr> <td>Non-recurring expense - P&P</td> <td></td> <td>\$ 5,949</td> <td></td> <td>\$ 77,337</td> </tr> <tr> <td>Total expenses</td> <td></td> <td></td> <td></td> <td>\$ 187,252</td> </tr> <tr> <td>Human Resource Services</td> <td></td> <td>\$ 330</td> <td></td> <td>\$ 4,290</td> </tr> <tr> <td>Salary incentive (if applicable)</td> <td></td> <td>\$ 1,128</td> <td></td> <td>\$ 14,664</td> </tr> <tr> <td>Technology Impact (100 hours @ \$87 per hour)</td> <td></td> <td></td> <td></td> <td>\$ 8,700</td> </tr> <tr> <td>Total</td> <td></td> <td></td> <td>13</td> <td>\$ 1,024,897</td> </tr> <tr> <td>Summary of Costs</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td>Recurring</td> <td></td> <td>\$ 938,860</td> </tr> <tr> <td></td> <td></td> <td>Non-recurring</td> <td></td> <td>\$ 86,037</td> </tr> <tr> <td></td> <td></td> <td>Total</td> <td></td> <td>\$ 1,024,897</td> </tr> </tbody> </table>					Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs	Correctional Probation Specialist	8040	\$ 62,307	13	\$ 809,991	Total salaries & benefits			13	\$ 809,991	Recurring expense - P&P		\$ 8,455		\$ 109,915	Non-recurring expense - P&P		\$ 5,949		\$ 77,337	Total expenses				\$ 187,252	Human Resource Services		\$ 330		\$ 4,290	Salary incentive (if applicable)		\$ 1,128		\$ 14,664	Technology Impact (100 hours @ \$87 per hour)				\$ 8,700	Total			13	\$ 1,024,897	Summary of Costs							Recurring		\$ 938,860			Non-recurring		\$ 86,037			Total		\$ 1,024,897
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Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

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

Revenues:	Unknown
Expenditures:	Unknown
Other:	

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

If yes, explain impact.	
Bill Section Number:	

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.	<p>The impact of this bill is indeterminate due to the lack of clarity on the Department's Offender Based Information System (OBIS).</p> <p>However, there are possible programming cost to update data dictionary tables, code table additions and write queries to identify those inmates affected by the Lifer's program.</p> <p>Estimated Cost: Hours: 100 Cost Per Hour: \$87.00 Total Cost: \$8,700</p>
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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

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	<p>In furtherance of the "Lifer's program", bill requires the Commission and Department to "adopt rules ensuring that the lifer's program is made equally to all inmates, both male and female" (Lines 27-29) This provision does not provide clear parameters for the Department's rulemaking authority. The Department will likely have difficulty creating rules that are "within the scope" of the bill. Therefore, with such vague guidelines, the Department's rule promulgation pursuant to this act could be vulnerable to rule challenges.</p> <p>The bill does not appear to provide the Department with sufficient authority to create a "Lifer's program" and adopt rules for its administration.</p>
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2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Commission on Offender Review

<u>BILL INFORMATION</u>	
BILL NUMBER:	<u>SB 620</u>
BILL TITLE:	<u>Parole Eligibility</u>
BILL SPONSOR:	<u>Senator Bracy</u>
EFFECTIVE DATE:	<u>07/01/2021</u>

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

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

<u>CURRENT COMMITTEE</u>
Criminal Justice

<u>SIMILAR BILLS</u>	
BILL NUMBER:	HB 69
SPONSOR:	Representative Hart

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	02/10/2021
LEAD AGENCY ANALYST:	Alec Yarger, Legislative Affairs Director
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Lisa Martin, General Counsel
FISCAL ANALYST:	Gina Giacomo, Director of Administration

POLICY ANALYSIS

EXECUTIVE SUMMARY

Revising legislative intent concerning the granting of parole; requiring the Commission on Offender Review to partner with the Department of Corrections to adopt a specified program with certain requirements; requiring rulemaking, etc. Effective Date: 7/1/2021

SUBSTANTIVE BILL ANALYSIS

PRESENT SITUATION:

Parole

Parole is a discretionary prison release, administered by the Florida Commission on Offender Review (FCOR), which allows an inmate who has been granted parole to serve the remainder of his or her prison sentence outside of the confines of the institution. Once released, the parolees are subject to strict conditions of supervision set by FCOR and supervised by Correctional Probation Officers employed by the Department of Corrections (DOC). FCOR monitors the parolee's progress through supervision reviews and may conduct revocation hearings when alleged violations are reported. If a parolee is found to have willfully and substantially violated the terms and conditions of his or her supervision, the Commission may return the parolee to prison.

Parole in Florida was largely eliminated in 1983 as a result of legislative action. Inmates eligible for parole are those who committed:

1. Any felony committed prior to October 1, 1983, or those who elected to be sentenced "outside the guidelines" for felonies committed prior to July 1, 1984;
2. All capital felonies committed prior to October 1, 1995, except:
 - a.) murder or felony murder committed after May 25, 1994;
 - b.) making, possessing, throwing, placing, or discharging a destructive device or attempt to do so which results in the death of another person after May 25, 1994;
 - c.) first degree murder of a law enforcement officer, correctional officer, state attorney, or assistant state attorney committed after January 1, 1990; and
 - d.) first degree murder of a justice or judge committed after October 1, 1990.
3. Any continuing criminal enterprise committed before June 17, 1993; and
4. Any attempted murder of a law enforcement officer committed between October 1, 1988, and October 1, 1995.

As of February 1, 2021, there were 3,862 inmates eligible for parole and 403 releasees on parole supervision. In FY 2019–20, FCOR made 1,419 parole determinations and granted parole to 41 inmates.

Objective Parole Guidelines

In 1978, the Florida Legislature directed FCOR to develop and implement objective parole guidelines for establishing a Presumptive Parole Release Date (PPRD) for parole eligible inmates (s. 947.165, F.S.). The PPRD is a tentative parole release date established during the inmate's Initial Interview Hearing. The criteria for establishing a PPRD pursuant to the Objective Parole Guidelines are set forth in FCOR's rules (Fla. Admin. Code R. 23-21.007 – 21.011).

There are six main steps in the Objective Parole Guidelines to establish a PPRD:

1. **Determining the Salient Factor Score** – Points are assessed based on the number of prior convictions, the number of prior incarcerations, the total time served in years, the number of parole/probation/conditional release revocations, the number of prior escape convictions, and if the present offense of conviction involves a burglary, breaking and entering, or robbery.
2. **Determining the Severity of the Offense** – FCOR determines what is the degree of felony or misdemeanor for the present offense of conviction.
3. **Determining the Matrix Time Range** – On the matrix time range chart, FCOR determines where the severity of offense intersects with the salient factor score calculated in the first step. This figure corresponds to a range of months. FCOR must set a number of months within that range.
4. **Aggravation and Mitigation** – FCOR may render a decision outside the matrix time range by adding months for aggravating circumstances, or removing months for mitigating circumstances, for those factors which indicate a relative likelihood of a favorable or unfavorable parole outcome.

5. **Calculating Time in Custody** – FCOR determines a date which starts with the date of the offender's conviction, subtracts the jail credit awarded by the courts, subtracts any credit awarded by FCOR, and adds in any time that the offender spent out of custody. The final date is the "time begins date."
6. **Determining the Presumptive Parole Release Date** – FCOR adds the number of months from the matrix time range and the number of months assessed for aggravating factors to the "time begins date", then subtracts any months assessed for mitigation. The result the inmate's PPRD.

Lifer's Programs

Lifer's programs are reentry/transition programs for long-term offenders that offer life skills and other social/educational courses to prepare them for successful reintegration into the community. Each program has a unique curriculum, but they generally include courses and instruction on topics such as:

- Critical thinking
- Problem solving
- Substance abuse
- Mental Health
- Stress/Anger management
- Conflict Resolution
- Life planning/goal setting

FCOR refers parole eligible inmates to lifer's programs to prepare them for potential release. Typically, FCOR makes referrals as parole eligible inmates approach their PPRD.

EFFECT OF THE BILL:

Section 1:

This bill amends 947.002(5) to provide that the decision to parole an inmate is an "act of discretion based on reliable evidence", rather than an "act of grace of the state" as the current statute provides.

The bill also creates 947.002(6) to provide that FCOR's primary focus should be anticipating an inmate will be parole eligible, as well as focusing on an inmate's:

- Institutional achievements;
- Lack of disciplinary report; and
- Indications of the lack of risk to the public.

The bill directs FCOR to partner with DOC to create a lifer's program for all male and female inmates eligible for parole. The bill further directs FCOR and DOC to adopt rules to make the lifer's program is made equal to both male and female inmates.

The bill directs FCOR to expedite those inmates who appear to have sufficient rehabilitation previously attained in the lifer's program.

Section 2:

The bill is effective July 1, 2021.

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:	Section 1 of the bill directs FCOR to adopt rules to make the proposed lifer's program equal to both male and female inmates.
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	23-21

WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

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

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

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

DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y ☐ N ☒

Revenues:	N/A
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?	Click or tap here to enter text.

DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y ☒ N ☐

Revenues:	N/A
Expenditures:	This bill has the potential to have a fiscal impact on FCOR, but it cannot be determined at this time. The bill requires FCOR to partner with DOC to create a lifer's program but does not indicate how the lifer's program will be funded. Some lifer's programs receive state funding while others are supported by

	donations or other sources. If the proposed lifer's program is intended to be supported with state funding, the bill does not indicate whether that funding would be appropriated in FCOR's budget or DOC's budget. There is also the potential fiscal impact based upon additional workload for FCOR. For example, FCOR may need to create a position for a lifer's program coordinator/point person.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y ☐ N ☒

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

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

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.

FEDERAL IMPACT

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.

ADDITIONAL COMMENTS

Click or tap here to enter text.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:

1. My first concern is that the title of this bill is "Parole Eligibility." In reading the proposed language, I cannot see where the class of persons subject to parole eligibility has been expanded. Second, I am unsure if the expansion of parole eligibility would be properly placed in the "Intent" section of the chapter.
2. I am unsure whether the proposed language in subsection (6) "*The commission should focus on an inmate's institutional achievements, lack of disciplinary reports, and all indications of the lack of risk to the public in parole release of the inmate,*" is consistent with the priorly enacted subsection (2) "*Objective parole criteria will be designed to give primary weight to the seriousness of the offender's present criminal offense and the offender's past criminal record. In considering the risk of recidivism, practice has shown that the best predictor is prior record.*"
3. The bill is silent on what would constitute "*reliable evidence*"?
4. The meaning of the following statement is unclear: "*FCOR's primary focus should be anticipating an inmate will become parole eligible.*"
5. It is unclear from the drafted language whether the joint lifer's program would be available to all parole-eligible inmates or all inmates.

	<p>6. Regarding the sentence, “<i>The commission shall expedite those inmates who appear to have sufficient rehabilitation achievements previously attained through completion of the lifer’s program,</i>” I am unsure whether “<i>expedite</i>” means to release or to give priority consideration. I am concerned whether this mandate is consistent with the considerations the Legislature determined to be of primary importance in parole release decisions, found in priorly enacted subsection (2): <i>the seriousness of the offender’s present criminal offense and the offender’s past criminal record.</i></p>
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Florida Department of Corrections
New River Correctional Institution Program for FCOR Recommended Participants
“PATHWAYS PROGRAM”

In cooperation with the Florida Commission on Offender Review (FCOR), the Florida Department of Corrections “Pathways Program” is designed for incarcerated individuals whose crimes were committed prior to October 1, 1983 and are eligible for parole consideration. The goal of this program is to increase security and public safety by providing programming for productive learning, positively transforming behaviors, and developing pro-social skills that assists with re-integration into community.

Inmate transfers to New River CI (NRCI) began in April 2018. The Department accepts individuals who have been recommended by FCOR to attend. However, participation in the New River CI program or any other program offered will not guarantee that a participant will be granted parole nor will participation lengthen an individual’s remaining time. This program is completely voluntary, and individuals who have been recommended by FCOR to attend but have no interest in participating can “opt-out” through their Classification Officer. It should be noted that refusal to participate in the recommended programming is documented by FCOR.

Detailed Program Description

Monday through Friday, program participants at New River Correctional Institution are expected to actively engage in the available courses. Participants are not expected to repeat any courses that they have previously completed at other institutions. Additionally, participants are required to participate for 100 hours in an enrichment program that are available on Fridays. Available enrichment programs include: Art Expressions, Creative Writing, and Gavel Club. Participants are encouraged to continue their participation after they have reached the required hours.

Participants are also expected to participate and lead community service projects while at NRCI. Community service projects may include collecting soda tabs for the Ronald McDonald House, dedicating time to work on murals in the education building and dorm, tutoring other participants in academics, assisting staff with the facilitation of betterment curriculum, and leading additional enrichment and wellness activities. Participants are required to log 250 hours towards various community service projects; logs are signed off by overseeing staff member.

Courses for the program participants are grouped into paths where each participant is expected to complete the available courses within each path:

Academic Path

Adult Basic Education

Adult Basic Education covers math, reading, language, and career readiness skills. This self-paced course involves individualized instruction, small group tutoring, and whole class instruction using a variety of educational resources. Academic skill improvement will be documented by the Tests of Adult Basic Education (TABE), an approved Florida Department of Education adult education assessment tool. Once participants demonstrate academic skills ranging from 9.0 - 12.9 grade level on the TABE they will be advanced to the GED® class.

GED® Preparation

Participants with no documented high school diploma or equivalency will prepare to take the GED®. Participants must have 9.0-12.9 grade level TABE scores ranging for enrollment. Instructors prepare participants in all areas of the GED®: Mathematical Reasoning, Reasoning Through Language Arts, Social Studies, and Science.

Cognitive Path

Participants are expected to participate in each cognitive-behavioral curriculum in the following sequence:

Getting Motivated to Change

Developed by the Texas Christian University, Institute of Behavioral Research, *Getting Motivated to Change* focuses on aspects of cognition that govern decisions to change behavior. It relies on visual-communication tools and related cognitive strategies to engage discussions. Participants are encouraged to make a commitment on a specific behavior or attitude they are willing to work on and report on to the group over the course of the intervention. Information is explored from a strength-based perspective that encourages participants to consider goals on which they are willing to work. Students are introduced to the thought processes and action phases of motivation and change. In addition, participants create and discuss goals and transition plans regarding their future. A certificate of completion will be reflected in the offender-based information system upon conclusion of the course.

Unlock Your Thinking, Open Your Mind

Also developed by the Texas Christian University, Institute of Behavioral Research, *Unlock Your Thinking, Open Your Mind* consists of four sessions aimed at addressing the ingrained pattern of criminal thinking. Participants are introduced to various types of mind traps and are challenged to address destructive thinking patterns. Discussions driven by the intervention lead participants towards breaking out of distorted thinking and irresponsible behavioral cycles while striving toward the goal of incorporating recovery-appropriate thoughts, actions, and habits. A certificate of completion will be reflected in the offender based information system upon conclusion of the course.

Understanding & Reducing Angry Feelings

Understanding & Reducing Angry Feelings was developed by the Texas Christian University, Institute of Behavioral Research. The curriculum includes worksheets, handouts, homework assignments and group instruction to facilitate sessions on the antecedents of anger in order to help participants become more aware of their physical cues and emotional responses to anger and frustration.

Communication and Anger

Introduces and discusses the topic of effective and prosocial communication for the purpose of increasing awareness. By increasing awareness of communication topics, the course attempts to reorient participants to concepts of healthy communication and facilitate the practice of appropriate verbal and non-verbal communication. This course also provides education about anger considering appropriate and prosocial communication. Some objectives include improving participants' verbal and non-verbal communication skills, and helping participants learn about anger triggers/cues. Communication and Anger aims to provide information to participants about unrealistic ways of thinking that could lead to anger and to provide general information on some strategies to generally deal with anger and frustration.

Victim Impact: Listen and Learn

Developed by the California Department of Corrections in conjunction with the U.S. Office of Victims of Crime. *Victim Impact: Listen and Learn* consists of material built around core crime topics: property crime, assault, robbery, hate and bias, gang violence, sexual assault, child abuse and neglect, domestic violence, drunk and impaired driving, and homicide. Through this course participants will have the opportunity to view crime through the perspective of victims and learn about the “ripple effect” their crime has on individuals and their communities.

Anger Management

The information presented in this curriculum is intended to allow qualified mental health and/or substance abuse professionals to deliver group cognitive behavioral anger management treatment to participants with substance abuse and mental health disorders. The intended outcome of this program is to reduce frequent and intense anger and its destructive consequences to lead to improved physical and mental health of involved participants. This curriculum must be delivered by an experienced substance abuse or mental health clinician.

Employment Path

Financial Literacy and Employability & Financial Freedom

The Financial Literacy and Employability curriculum provides information to participants who may be returning to a different financial and employment landscape that existed prior to their incarceration. Individuals become aware of basic financial concepts and processes, develop a personal spending plan, and become aware of job search methods, as well as other basic aspects related to

employability.

Developed by the Florida Council on Economic Education, the Financial Freedom workbook is used to supplement the Department's Financial Literacy and Employability course. The content is designed to improve the participants' financial literacy skills while reinforcing the importance of making sound financial choices and remaining devoted to a solid set of priorities.

COMPASS 100

COMPASS 100 is a 100-hour, comprehensive, individualized community readiness course that covers job readiness and life management skills. *COMPASS 100* is centered around objectives that specifically align with and satisfy the most current Florida Curriculum Frameworks related to Adult Education, Career & Technical Education, and College & Career Readiness, while also addressing the common needs of the incarcerated populations and a 21st century workforce. Throughout the course modules, participants will be developing a Readiness Portfolio which will contain all of the important documents to assist in finding employment in today's job market – a resume, cover letter, explanation of criminal history and more.

Computer Literacy/Office Specialist

This introductory-level course provides information and instruction related to everyday uses surrounding computer-technology. In this course, participants will learn to identify the different components of a computer and their uses. In addition to understanding the basic mechanisms of computers, students will have the opportunity to increase their understanding of standard workplace applications such as Microsoft Office Word, Excel, Access, and PowerPoint. At the end of this program students should be proficient with Microsoft Office programs for personal and professional use. Participants will have the opportunity to earn their Microsoft Office Specialist certification, which can be listed on their resumes upon release

Wellness Path

Time Out! For Men

Developed by the Texas Christian University, Institute of Behavioral Research, *Time Out! For Men* is a men-only workshop that addresses sensitive topics of relationships, sexuality, and intimacy. Communication skills, self-esteem, sexual health, and conflict resolution skills are presented as a foundation for helping men find solutions to relationship difficulties. In this course, men are encouraged to explore gender stereotypes, sexual myths, and societal pressures on men and women.

Parenting from Inside

The *Parenting from Inside* curriculum provides information and skill training for parenting, promotes and reinforces child welfare, positive family relationships, and mutual support among inmates, spouses/co-parents and their children. Additionally, the parenting program provides inmates an opportunity to counteract negative family consequences from his or her incarceration and to strengthen positive contact with their families.

Lifestyle and Wellness

This curriculum specifically targets health and wellness needs of aging adults. This course provides an overview of health promotion and disease prevention to promote participants' engagement in healthy lifestyles. Throughout this course participants will analyze the influence of family, peers, culture, media, technology, and other factors on health behaviors. Upon conclusion of this course participants should be able to demonstrate the ability to access valid health information, products, and services to enhance health.

Transition Elements

This course provides participants with fundamental information related to transitioning back into the community. Participants will learn about the processes associated with securing housing, employment, and healthcare. Participants are expected to develop their own detailed plan related to transition based off their individual needs.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Reset Form

February 16, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

620

Bill Number (if applicable)

Topic Parole Eligibility

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-425-1344

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NAACP Florida State Conference

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.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

2/16/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

620

Bill Number (if applicable)

Topic Parole Eligibility

Name Carrie Boyd

Amendment Barcode (if applicable)

Job Title Policy Counsel

Address 3126 Baringer Hill Drive

Street

Tallahassee

City

FL

State

32311

Zip

Phone 850-570-9560

Email carrie.boyd@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

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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2/16/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB 620

Bill Number (if applicable)

Topic Parole Eligibility

Name Kara Gross

Amendment Barcode (if applicable)

Job Title Legislative Director & Senior Policy Counsel

Address 4343 W. Flagler St.

Street

Miami

City

FL

State

33134

Zip

Phone 786-363-4436

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

2/16/21

Meeting Date

620

Bill Number (if applicable)

Topic Parole

Name Nancy Daniels

Amendment Barcode (if applicable)

Job Title Executive Director, Florida Public Defender Association

Address 103 N. Gadsden St.

Street

Phone 850-488-6850

Tallahassee

Florida

32301

City

State

Zip

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/21
Meeting Date

620
Bill Number (if applicable)

Topic Parole

Name Ida V. Eskaman

Job Title _____

Address _____
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 Florida Rising

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

2/16/21

Meeting Date

SB 620

Bill Number (if applicable)

Topic Parole Eligibility

Name Jorge Chamizo

Amendment Barcode (if applicable)

Job Title Attorney

Address 108 S Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-681-0024

Email jorge@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/21
Meeting Date

SB620
Bill Number (if applicable)

Topic Criminal Justice

Name Greg Newburn

Job Title ~~FAmm~~ ~~Legislator~~

Address _____
Street

202 822-
6700
Phone

City _____ State _____ Zip _____

gnewburn@famm.org
Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FAmm

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/14/21

Meeting Date

SB620

Bill Number (if applicable)

Topic Criminal Justice

Name Denise Laik

Job Title Executive Director

Address

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 Florida Cares

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2/16/2021

Meeting Date

SB620

Bill Number (if applicable)

Topic Parole Amendment

Amendment Barcode (if applicable)

Name Keith Harris

Job Title Director

Address P.O, Box 4366

Phone (407) 543-3724

Street

Winter Park

Fl.

32793

City

State

Zip

Email flajusticeleague@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLorida Justice League

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)

2/16/2020
Meeting Date

SB 620
Bill Number (if applicable)

Topic SB 620

Name LaNesha Johnson

Amendment Barcode (if applicable)

Job Title _____

Address 6265 Sandler Chase Trl
Street

Phone 904 2741984

Jax

City

FL

State

32222

Zip

Email funwherever@gmail.com

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/21
Meeting Date

SB620
Bill Number (if applicable)

Topic Criminal Justice

Name Mary Kontz

Job Title _____

Address 6023 Viola Rd.

Street

Venue
City

FL
State

34293
Zip

Phone 941 716-1597

Email kkontz941@venue rd

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/21

Meeting Date

SB 420

Bill Number (if applicable)

Topic Criminal Justice

Name Laurette Philipson

Amendment Barcode (if applicable)

Job Title C

Address 7240 Westwind dr

Street

Fort Richey

City

FL

State

34606

Zip

352-533-

Phone 7602

Email advocate.philipson@gmail.com

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/21

Meeting Date

SB620

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Denise Lack

Job Title Executive Director

Address _____
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 Florida Courts

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)

2/16/21
Meeting Date

SB620
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title BA

Address _____

Street

Phone 202 822-6700

City

State

Zip

Email newburn@famm.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Famm

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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Duplicate

February 16, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

620

Bill Number (if applicable)

Topic Parole Eligibility

Name Pamela Burch Fort

Amendment Barcode (if applicable)

Job Title _____

Address 104 S. Monroe Street

Street

Tallahassee

FL

State

32301

Zip

Phone 850-425-1344

Email TcgLobby@aol.com

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

2/16/21

Meeting Date

SB 620

Bill Number (if applicable)

Topic Parole Eligibility

Name Jorge Chamizo

Amendment Barcode (if applicable)

Job Title Attorney

Address 108 S Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-681-0024

Email jorge@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

2/16/21

Meeting Date

620

Bill Number (if applicable)

Topic Parole Eligibility

Name Carrie Boyd

Amendment Barcode (if applicable)

Job Title Policy Counsel

Address 3126 Baringer Hill Drive

Street

Tallahassee

City

FL

State

32311

Zip

Phone 850-570-9560

Email carrie.boyd@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S 001 (10/1/11)

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Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

2/16/21

Meeting Date

SB 620

Bill Number (if applicable)

Topic Parole Eligibility

Name Kara Gross

Amendment Barcode (if applicable)

Job Title Legislative Director & Senior Policy Counsel

Address 4343 W. Flagler St.

Street

Phone 786-363-4436

Miami

FL

33134

City

State

Zip

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/11/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/21
Meeting Date

620
Bill Number (if applicable)

Topic Parole hearing

Name Tida W Fisklamm

Amendment Barcode (if applicable)

Job Title _____

Address _____
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 Florida Rising

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

2/16/21

Meeting Date

620

Bill Number (if applicable)

Topic Parole

Name Nancy Daniels

Amendment Barcode (if applicable)

Job Title Executive Director, Florida Public Defender Association

Address 103 N. Gadsden St.

Street

Tallahassee

City

Florida

State

32301

Zip

Phone 850-488-6850

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/2020
Meeting Date

SB 620
Bill Number (if applicable)

Topic SB 620

Amendment Barcode (if applicable)

Name LaNesha Johnson

Job Title _____

Address 6265 Sandler Chase Trl
Street

Phone 904 274 1984

Jax FL 32222
City State Zip

Email funwherever@gmail.com

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/16/21
Meeting Date

SB620
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Mary Kuntz

Job Title

Address 6023 Viola Rd.

Phone 941 716-1597

Street

Venice

FL

34293

City

State

Zip

Email k.kuntz941@gmail.com

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.

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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)

2/16/21
Meeting Date

SB 620
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Laurel Phillipsen

Job Title U

Address 7940 Westwind Dr

Phone 352-533-7002

Street

City

State

Zip

Email laurel.phillipsen@senate.fl.gov

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.

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S-001 (10/14/14)

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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

2/16/2021

Meeting Date

SB620

Bill Number (if applicable)

Topic Parole Amendment

Amendment Barcode (if applicable)

Name Keith Harris

Job Title Director

Address P.O, Box 4366

Phone (407) 543-3724

Street

Winter Park

Fl.

32793

Email flajusticeleague@gmail.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLorida Justice League

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 638

INTRODUCER: Criminal Justice Committee and Senator Powell

SUBJECT: Direct Filing of an Information

DATE: February 17, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 638 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 findings, based on specified criteria, that the child should be prosecuted as an adult. Additionally, the bill permits the transfer of a child to a jail or other adult facility when the child has been charged as an adult and waives his or her right to the due process evidentiary hearing that is established in the bill.

Additionally, the bill amends s. 985.557, F.S., to remove the state attorney's judgement and discretion in determining whether public interest requires that a child be treated as an adult. The bill provides that a child who is 14 or 15 years of age during the commission of the crime may only be treated as an adult for the commission of, or attempt to commit specified crimes, but not for the conspiracy to commit a crime. A child who is 16 or 17 years of age during the commission of the crime, may not be treated as an adult for a misdemeanor unless the child has at least two previous adjudications.

The bill further amends s. 985.557, F.S., and requires the court, upon the state's filing of an information transferring a child to adult court, to advise the child and his or her parent or guardian that the child has the right to an evidentiary hearing and that the child may request such hearing. After such request, the court must hold a hearing within 30 days, and consider specified criteria in making a determination. The adult court must retain jurisdiction unless the court finds

the evidence supports returning the child to juvenile court. The order entered by the court is subject to interlocutory appeal.

The bill may have an indeterminate fiscal impact on the Department of Juvenile Justice (DJJ) and courts. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

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.¹ “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.”² There are two types of detention care, including:

- “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.³

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 juvenile⁴ offender must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order.⁵

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 constrained⁶ and that has dismissed any action

¹ Section 985.255(1), F.S.

² Section 985.03(18), F.S.

³ *Id.*

⁴ 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.

⁵ Section 985.26, F.S.

⁶ 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.,⁷ must pay 50 percent of the total shared detention cost.⁸

The 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.⁹

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.¹⁰ Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.¹¹ The DJJ will determine quarterly whether counties are complying with this section.¹²

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.¹³

Transfer of a Child to Adult Court

There are three methods of transferring a child to adult court for prosecution: judicial waiver,¹⁴ indictment,¹⁵ or direct filing an information.¹⁶

Direct File

Direct file describes the process whereby a state attorney files an information charging a child in adult court. Pursuant to s. 985.557, F.S., the decision to direct file is left to the discretion of the state attorney and does not require the court's approval. Direct file is the predominant transfer

\$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.

⁷ 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. Section 985.6865(1) and (2), F.S.

⁸ Section 985.6865(4), F.S.

⁹ *Id.*

¹⁰ Section 985.6865(6), F.S.

¹¹ Section 985.6865(7), F.S.

¹² Section 985.6865(8), F.S.

¹³ Section 985.6865(5), F.S.

¹⁴ Judicial waiver is the process in which a child or a state attorney may, or in some cases must, waive the jurisdiction of the juvenile courts and have the case transferred to adult court for prosecution. The three types of judicial waiver are voluntary, involuntary discretionary, and involuntary mandatory. *See* s. 985.556, F.S.

¹⁵ A grand jury can indict a child of any age who is charged with an offense punishable by death or life imprisonment. Upon indictment, the child's case must be transferred to adult court for prosecution. *See* s. 985.56, F.S.

¹⁶ Section 985.557, F.S.

method to adult court, accounting for 98.4 percent (788 children) of the transfers in FY 2019-20.¹⁷

Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney has discretion to file a case in adult court for specified crimes when he or she believes that the public interest requires adult sanctions be considered or imposed. Specifically, the state attorney may direct file a child when he or she is:

- 14 or 15 years of age at the time of the alleged offense and is charged with the commission of, attempt to commit, or conspiracy to commit, one of the following felony offenses:
 - Arson;
 - Sexual battery;
 - Robbery;
 - Kidnapping;
 - Aggravated child abuse;
 - Aggravated assault;
 - Aggravated stalking;
 - Murder;
 - Manslaughter;
 - Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - Armed burglary in violation of s. 810.02(2)(b), F.S.;
 - Burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
 - Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
 - Aggravated battery;
 - Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;
 - Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
 - Grand theft in violation of s. 812.014(2)(a), F.S.;
 - Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
 - Home invasion robbery;
 - Carjacking;
 - Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or
 - Grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.¹⁸
- 16 or 17 years of age and is charged with any felony offense;¹⁹ or
- 16 or 17 years of age and is charged with a misdemeanor, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.²⁰

¹⁷ Department of Juvenile Justice, *2021 Legislative Bill Analysis for SB 638*, (February 10, 2021), p. 2., (on file with the Senate Committee on Criminal Justice).

¹⁸ Section 985.557(1)(a), F.S.

¹⁹ Section 985.557(1)(b), F.S.

²⁰ *Id.*

A child who has been transferred to adult court pursuant to an information and is found to have committed a violation of state law or a lesser included offense must be treated as an adult in every respect for any subsequent offense, unless the court imposed juvenile sanctions under s. 985.565, F.S.²¹

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 contact²² 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.²³

A child who is transferred to a jail or adult facility must be housed separately from adult inmates to prevent a child from having regular contact with incarcerated adults. Supervision and monitoring of children includes physical observation and documented checks at least every 10 minutes. While multiple children may be placed in the same cell, a child may not be placed in a cell with an adult.²⁴

III. Effect of Proposed Changes:

The 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 findings, based on specified criteria, that the child should be prosecuted as an adult. Additionally, the bill permits the transfer of a child to a jail or other adult facility when the child has been charged as an adult and waives his or her right to the due process evidentiary hearing that is established in the bill.

Additionally, the bill amends s. 985.557, F.S., to remove the state attorney's *judgement and discretion* in determining whether public interest requires that a child be treated as an adult. The bill provides that a child who is 14 or 15 years of age during the commission of the crime may only be treated as an adult for the commission of, or attempt to commit specified crimes, but not for the conspiracy to commit a crime. A child who is 16 or 17 years of age during the commission of the crime, may not be treated as an adult for a misdemeanor unless the child has at least two previous adjudications. The bill removes current language that permits a child who is 16 or 17 years of age during the commission of the crime from being treated as an adult for a misdemeanor when he or she has only prior *adjudications withheld*.

²¹ Section 985.557(2)(a), F.S.

²² Section 985.265(5), F.S., defines "regular contact" as sight and sound contact.

²³ Section 985.265(5), F.S.

²⁴ Section 985.265(5), F.S.

The bill further amends s. 985.557, F.S., and requires the court, upon the state's filing of an information transferring a child to adult court, to advise the child and his or her parent or guardian that the child has the right to an evidentiary hearing and that the child may request such hearing. After such request, the court must hold a hearing within 30 days, and consider specified criteria to determine whether it is necessary for the community's protection to prosecute the child in adult court. The court must consider the following:

- Evaluations and assessments completed by the Department of Juvenile Justice (DJJ).
- The sophistication and maturity of the child, including:
 - The effect, if any, of immaturity, impetuosity, or failure to appreciate risk and consequences of the child's participation in the alleged offense.
 - The child's age, maturity, intellectual capacity, and mental and emotional health at the time of the alleged offense.
 - The effect, if any, of characteristics attributable to the child's youth on the child's judgment.
- The record and previous history of the child, including:
 - Previous contacts with the DJJ, the Department of Corrections (DOC), the Department of Children and Families, other law enforcement agencies, and the courts.
 - Prior periods of probation.
 - Prior adjudications that the child committed a delinquent act or violation of the law, with greater weight being given if a court previously found that the child committed a delinquent act or violation of the law involving violence to persons.
 - Prior commitments to institutions of the DJJ, the DOC, or agencies under contract with either department.
 - Any history of trauma, abuse or neglect, foster care placements, failed adoption, fetal alcohol syndrome, exposure to controlled substances at birth, or below-average intellectual functioning.
 - Identification of the child as a student requiring exceptional student education or having previously received psychological services.
- The nature of the alleged offense and the child's participation in it, including:
 - Whether the alleged offense is punishable by death or life imprisonment.
 - Whether the alleged offense was against persons or property.
 - Whether the alleged offense is alleged to have been committed in an aggressive, violent, or premeditated manner.
 - The extent of the child's participation in the alleged offense.
 - The effect, if any, of familial pressure or peer pressure on the child's actions.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if the child is found to have committed the alleged offense:
 - By the use of procedures, services, and facilities currently available to the juvenile court.
 - By the use of procedures, services, and facilities currently available to the adult court, including whether the Criminal Punishment Code is a nonstate prison sanction.
- Whether the child could obtain habilitative or rehabilitative services available in the juvenile justice system.
- Whether the child could receive a sentence in juvenile court which would provide adequate safety and protection for the community.
- Whether the child's best interests would be served by prosecuting the child in juvenile court.

Additionally, the court may consider any reports²⁵ that may assist the court. The child, the child's parent or guardian, defense counsel, and the state attorney may examine these reports and, at the hearing, question the parties responsible for creating them.

The adult court must retain jurisdiction unless the court finds the evidence supports returning the child to juvenile court. The court must render an order with specific findings of fact and the reasons for its decision. The order entered by the court is subject to interlocutory appeal.

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.

²⁵ The judge may consider any reports that may assist the court, including prior predisposition reports, psychosocial assessments, individual educational plans, developmental assessments, school records, abuse or neglect reports, home studies, protective investigations, and psychological and psychiatric evaluations.

C. Government Sector Impact:

The DJJ has indicated that this bill will have an indeterminate fiscal impact.²⁶ The DJJ is estimating that the detention cost to implement this bill is \$3,325,129 for the state. In accordance with the Detention Cost Share, all non-fiscally constrained counties will pay for half of their respective detention cost. Half of this cost for local counties would total up to \$1,662,565. The entire half would not be covered due to the fiscally constrained counties. Detention Cost Share is a reimbursement system, meaning the entire \$3,325,129 would need to be allocated to the DJJ in year one and \$1,662,565 allocated to the DJJ in the following years for Detention staff increases.²⁷

The bill may also have an indeterminate fiscal impact on the courts due to the requirement that the court hold a hearing within 30 days to determine whether it is necessary for the community's protection that the child be prosecuted in adult court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.265 and 985.557.

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 16, 2021:

The committee substitute permits the transfer of a child to a jail or other adult facility when he or she has been charged as an adult and waives his or her right to the due process evidentiary hearing that is established in the bill.

B. Amendments:

None.

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

²⁶ Department of Juvenile Justice, *2021 Legislative Bill Analysis for SB 638*, (February 10, 2021), p. 2. (on file with the Senate Committee on Criminal Justice).

²⁷ *Id.* at 5-6.



324466

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 51
and insert:
prosecuted as an adult, or the child waives his or her right to
such hearing; or

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

And the title is amended as follows:

Delete line 8



324466

11 and insert:
12 child should be prosecuted as an adult; providing an
13 exception; amending s.

By Senator Powell

30-00639-21

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1 A bill to be entitled
 2 An act relating to direct filing of an information;
 3 amending s. 985.265, F.S.; prohibiting a child who has
 4 been transferred to adult court for criminal
 5 prosecution pursuant to direct file from being held in
 6 a jail or other facility used for the detention of
 7 adults before a specified hearing to determine if the
 8 child should be prosecuted as an adult; amending s.
 9 985.557, F.S.; deleting references to the state
 10 attorney's discretion to direct file a juvenile;
 11 revising discretionary direct file criteria; requiring
 12 a court to advise a child and his or her parent or
 13 guardian of the child's right to a certain due process
 14 evidentiary hearing upon a state attorney filing an
 15 information transferring a child to adult court;
 16 authorizing the child or the child's parent or
 17 guardian to request an evidentiary hearing; requiring
 18 the judge to conduct the hearing within a certain
 19 timeframe; requiring a judge to consider specified
 20 information and factors; authorizing a judge to
 21 consider certain reports; providing for continued
 22 jurisdiction with regard to the child; providing an
 23 exception; requiring the adult court to render an
 24 order that includes certain findings; authorizing
 25 review of the order; reenacting s. 985.556(3), F.S.,
 26 relating to involuntary mandatory waivers, to
 27 incorporate the amendment made to s. 985.557, F.S., in
 28 a reference thereto; providing an effective date.
 29

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

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30 Be It Enacted by the Legislature of the State of Florida:
 31
 32 Section 1. Subsection (5) of section 985.265, Florida
 33 Statutes, is amended to read
 34 985.265 Detention transfer and release; education; adult
 35 jails.-
 36 (5) The court shall order the delivery of a child to a jail
 37 or other facility intended or used for the detention of adults:
 38 (a) When the child has been transferred or indicted for
 39 criminal prosecution as an adult under part X, except that:
 40 1. The court may not order or allow a child alleged to have
 41 committed a misdemeanor who is being transferred for criminal
 42 prosecution pursuant to either s. 985.556 or s. 985.557 to be
 43 detained or held in a jail or other facility intended or used
 44 for the detention of adults; however, such child may be held
 45 temporarily in a detention facility; and ~~or~~
 46 2. A child who has been transferred for criminal
 47 prosecution as an adult pursuant to s. 985.557 may not be held
 48 in a jail or other facility intended or used for the detention
 49 of adults before a court finding, as a result of a hearing
 50 provided for under s. 985.557(3), that the child should be
 51 prosecuted as an adult; or
 52 (b) When a child taken into custody in this state is wanted
 53 by another jurisdiction for prosecution as an adult.
 54
 55 The child shall be housed separately from adult inmates to
 56 prohibit a child from having regular contact with incarcerated
 57 adults, including trustees. "Regular contact" means sight and
 58 sound contact. Separation of children from adults shall permit

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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. Section 985.557, Florida Statutes, is amended to read:

985.557 Direct filing of an information; discretionary criteria.—

(1) DISCRETIONARY DIRECT FILE.—

(a) With respect to any child who was 14 or 15 years of age at the time the alleged offense was committed, the state attorney may file an information when ~~in the state attorney's judgment and discretion~~ the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, or attempt to commit, any of the following, or conspiracy to commit:

1. Arson.~~+~~
2. Sexual battery.~~+~~
3. Robbery.~~+~~
4. Kidnapping.~~+~~
5. Aggravated child abuse.~~+~~
6. Aggravated assault.~~+~~
7. Aggravated stalking.~~+~~

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8. Murder.~~+~~

9. Manslaughter.~~+~~

10. Unlawful throwing, placing, or discharging of a destructive device or bomb.~~+~~

11. Armed burglary in violation of s. 810.02(2)(b), ~~or~~ specified burglary of a dwelling or structure in violation of s. 810.02(2)(c), or burglary with an assault or battery in violation of s. 810.02(2)(a).~~+~~

12. Aggravated battery.~~+~~

13. Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age.~~+~~

14. Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony.~~+~~

15. Grand theft in violation of s. 812.014(2)(a).~~+~~

16. Possessing or discharging any weapon or firearm on school property in violation of s. 790.115.~~+~~

17. Home invasion robbery.~~+~~

18. Carjacking.~~+~~~~or~~

19. Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b) if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

(b) With respect to any child who was 16 or 17 years of age at the time the alleged offense was committed, the state attorney may file an information when ~~in the state attorney's judgment and discretion~~ the public interest requires that adult sanctions be considered or imposed. However, the state attorney may not file an information on a child charged with a

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117 misdemeanor, unless the child has had at least two previous
 118 adjudications ~~or adjudications withheld~~ for delinquent acts, one
 119 of which involved an offense classified as a felony under state
 120 law.

121 (2) NOTIFICATION TO PARENT OR GUARDIAN.—Upon a state
 122 attorney filing an information transferring a child to adult
 123 court, the court must advise the child and his or her parent or
 124 guardian that the child has the right to a due process
 125 evidentiary hearing before a judge, and the child or the parent
 126 or guardian may request such evidentiary hearing.

127 (3) DUE PROCESS EVIDENTIARY HEARING BEFORE A JUDGE.—
 128 Notwithstanding any other law, and in all cases, a child charged
 129 with a crime or his or her parent or guardian may request a due
 130 process evidentiary hearing after the state attorney's filing of
 131 an information in adult court under this section.

132 (a) The judge shall conduct the hearing within 30 days
 133 after the request, excluding Saturdays, Sundays, and legal
 134 holidays, unless the child or the child's attorney shows good
 135 cause for a delay. The purpose of the hearing is for the court
 136 to determine whether it is necessary for the community's
 137 protection that the child be prosecuted in adult court. The
 138 judge shall consider all of the following:

139 1. Evaluations and assessments completed by the department.

140 2. The sophistication and maturity of the child, including:

141 a. The effect, if any, of immaturity, impetuosity, or
 142 failure to appreciate risks and consequences of the child's
 143 participation in the alleged offense.

144 b. The child's age, maturity, intellectual capacity, and
 145 mental and emotional health at the time of the alleged offense.

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146 c. The effect, if any, of characteristics attributable to
 147 the child's youth on the child's judgment.

148 3. The record and previous history of the child, including:

149 a. Previous contacts with the department, the Department of
 150 Corrections, the Department of Children and Families, other law
 151 enforcement agencies, and the courts.

152 b. Prior periods of probation.

153 c. Prior adjudications that the child committed a
 154 delinquent act or violation of law, with greater weight being
 155 given if a court previously found that the child committed a
 156 delinquent act or violation of law involving violence to
 157 persons.

158 d. Prior commitments to institutions of the department, the
 159 Department of Corrections, or agencies under contract with
 160 either department.

161 e. Any history of trauma, abuse or neglect, foster care
 162 placements, failed adoption, fetal alcohol syndrome, exposure to
 163 controlled substances at birth, or below-average intellectual
 164 functioning.

165 f. Identification of the child as a student requiring
 166 exceptional student education or having previously received
 167 psychological services.

168 4. The nature of the alleged offense and the child's
 169 participation in it, including:

170 a. Whether the alleged offense is punishable by death or
 171 life imprisonment.

172 b. Whether the alleged offense was against persons or
 173 property.

174 c. Whether the alleged offense is alleged to have been

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175 committed in an aggressive, violent, or premeditated manner.

176 d. The extent of the child's participation in the alleged

177 offense.

178 e. The effect, if any, of familial pressure or peer

179 pressure on the child's actions.

180 5. The prospects for adequate protection of the public and

181 the likelihood of reasonable rehabilitation of the child, if the

182 child is found to have committed the alleged offense:

183 a. By the use of procedures, services, and facilities

184 currently available to the juvenile court.

185 b. By the use of procedures, services, and facilities

186 currently available to the adult court, including whether the

187 lowest permissible sentence under the Criminal Punishment Code

188 is a nonstate prison sanction.

189 6. Whether the child could obtain habilitative or

190 rehabilitative services available in the juvenile justice

191 system.

192 7. Whether the child could receive a sentence in juvenile

193 court which would provide adequate safety and protection for the

194 community.

195 8. Whether the child's best interests would be served by

196 prosecuting the child in juvenile court.

197 (b) The judge may consider any reports that may assist the

198 court, including prior predisposition reports, psychosocial

199 assessments, individual educational plans, developmental

200 assessments, school records, abuse or neglect reports, home

201 studies, protective investigations, and psychological and

202 psychiatric evaluations. The child, the child's parents or legal

203 guardians, his or her defense counsel, and the state attorney

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204 may examine these reports and, at the hearing, question the

205 parties responsible for creating them.

206 (c) The adult court shall retain jurisdiction unless the

207 court finds by a preponderance of the evidence that the factors

208 listed in paragraph (a) support returning the child to juvenile

209 court.

210 (d) The adult court shall render an order including

211 specific findings of fact and the reasons for its decision. The

212 prosecution or defense may seek immediate review of the order

213 through interlocutory appeal. The order shall be reviewable on

214 appeal under the Florida Rules of Appellate Procedure.

215 (4)(2) EFFECT OF DIRECT FILE.-

216 (a) Once a child has been transferred for criminal

217 prosecution pursuant to an information and has been found to

218 have committed the presenting offense or a lesser included

219 offense, the child shall be handled thereafter in every respect

220 as if an adult for any subsequent violation of state law, unless

221 the court imposes juvenile sanctions under s. 985.565.

222 (b) When a child is transferred for criminal prosecution as

223 an adult, the court shall immediately transfer and certify to

224 the adult circuit court all felony cases pertaining to the

225 child, for prosecution of the child as an adult, which have not

226 yet resulted in a plea of guilty or nolo contendere or in which

227 a finding of guilt has not been made. If a child is acquitted of

228 all charged offenses or lesser included offenses contained in

229 the original case transferred to adult court, all felony cases

230 that were transferred to adult court as a result of this

231 paragraph shall be subject to the same penalties to which such

232 cases would have been subject before being transferred to adult

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233 court.

234 (c) When a child has been transferred for criminal
235 prosecution as an adult and has been found to have committed a
236 violation of state law, the disposition of the case may be made
237 under s. 985.565 and may include the enforcement of any
238 restitution ordered in any juvenile proceeding.

239 (5)(3) CHARGES INCLUDED ON INFORMATION.—An information
240 filed pursuant to this section may include all charges that are
241 based on the same act, criminal episode, or transaction as the
242 primary offenses.

243 Section 3. For the purpose of incorporating the amendment
244 made by this act to section 985.557, Florida Statutes, in a
245 reference thereto, subsection (3) of section 985.556, Florida
246 Statutes, is reenacted to read:

247 985.556 Waiver of juvenile court jurisdiction; hearing.—

248 (3) INVOLUNTARY MANDATORY WAIVER.—

249 (a) If the child was 14 years of age or older, and if the
250 child has been previously adjudicated delinquent for an act
251 classified as a felony, which adjudication was for the
252 commission of, attempt to commit, or conspiracy to commit
253 murder, sexual battery, armed or strong-armed robbery,
254 carjacking, home-invasion robbery, aggravated battery,
255 aggravated assault, or burglary with an assault or battery, and
256 the child is currently charged with a second or subsequent
257 violent crime against a person; or

258 (b) If the child was 14 years of age or older at the time
259 of commission of a fourth or subsequent alleged felony offense
260 and the child was previously adjudicated delinquent or had
261 adjudication withheld for or was found to have committed, or to

30-00639-21

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262 have attempted or conspired to commit, three offenses that are
263 felony offenses if committed by an adult, and one or more of
264 such felony offenses involved the use or possession of a firearm
265 or violence against a person;

266 the state attorney shall request the court to transfer and
267 certify the child for prosecution as an adult or shall provide
268 written reasons to the court for not making such request, or
269 proceed under s. 985.557(1). Upon the state attorney's request,
270 the court shall either enter an order transferring the case and
271 certifying the case for trial as if the child were an adult or
272 provide written reasons for not issuing such an order.

273 Section 4. This act shall take effect July 1, 2021.
274



2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Juvenile Justice

BILL INFORMATION

BILL NUMBER:	SB 638
BILL TITLE:	Direct Filing of an Information
BILL SPONSOR:	Senator Powell
EFFECTIVE DATE:	July 1, 2021

COMMITTEES OF REFERENCE

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

CURRENT COMMITTEE

Criminal Justice Subcommittee

SIMILAR BILLS

BILL NUMBER:	HB 771
SPONSOR:	Representative Bush III

PREVIOUS LEGISLATION

BILL NUMBER:	SB 610
SPONSOR:	Senator Powell
YEAR:	2020
LAST ACTION:	Died in committee

IDENTICAL BILLS

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	02/10/2021
LEAD AGENCY ANALYST:	Sam Kerce, Deputy Director of Legislative Affairs, 850-717-2717
ADDITIONAL ANALYST(S):	Sherry Jackson, Research and Data Analyst
LEGAL ANALYST:	John Mila, Asst. General Counsel
FISCAL ANALYST:	Monti Brown, Interim Chief of Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill makes various changes to the adult transfer process; allows for a judge to return a youth back to juvenile court, modifies the criteria for discretionary direct file, and requires youth subject to direct file to be held in juvenile detention prior to a court finding that the child should be prosecuted as an adult.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Methods of Adult Transfer (FY 2019-20):

1. **Voluntary: 0.5% of youth (4 youth)**
2. **Involuntary waiver: 0.6% (5 youth)**
3. **Direct file: 98.4% (788 youth)**
4. **Indictment: 0.5% (4 youth)**

“Direct file” is by far the most common means of transfer, accounting for more 98% of transfers over the past 5 years.

The various methods of transfer are distinct, and recognizing their differences is critical.

VOLUNTARY: A child of any age charged with any offense can voluntarily transfer his or her case to adult court. It is rare.

INVOLUNTARY DISCRETIONARY WAIVER: Any child 14 years of age or older at the time of any offense may be subject to involuntary waiver where the state attorney files information with the court requesting transfer and the judge must review and either approve or deny the transfer.

DISCRETIONARY DIRECT FILE: Discretionary direct file is extremely broad, and comes in two forms, depending upon the youth’s age at the time of the offense. For 14- or 15-year-olds, a wide range of violent or serious felony offenses are subject to direct file, including arson, sexual battery, robbery, aggravated assault / battery, most forms of first-degree burglary, lewd or lascivious offenses, first-degree grand theft, home invasion, carjacking, carrying a weapon or firearm during the commission of a felony, and a second grand theft of a motor vehicle. A 16- or 17-year-old may be direct filed for any felony offense, or a misdemeanor if the youth has at least two previous adjudications or withholds, at least one of which involved a felony. Under Discretionary Direct File a state attorney only needs to file information to transfer the youth to adult court. A judge or court is not involved in this decision.

INDICTMENT: The narrowest form of transfer, it applies to children of any age who are accused of committing an offense for which an adult could receive death or life imprisonment. The decision to seek indictment rests entirely with the state attorney.

Judicial Review

Currently, when a youth is transferred to adult court through indictment or discretionary direct file, a judge does not have the authority to weigh in and approve or disapprove of these transfers. Instead the judge must hear the case as it was filed by the state attorney. Currently, the Department does not provide assessments or recommendations on these youth until after they have been found guilty, but prior to sentencing. At which point a judge may request a recommendation from the Department as to whether the youth should be given adult sanctions or juvenile sanctions. This adult sentencing recommendation by the Department typically consists of a comprehensive evaluation and staffing to develop the recommendation.

Awaiting Trial

Currently, when a youth is transferred to adult court they are treated as an adult and do not interact with the Department of Juvenile Justice. They are treated like an adult offender and will go through the same motions as any offender, including a hearing where a judge will decide whether to release them on bail or hold them in jail while they await their trial. However, a person under the age of 18 must be kept separate both in sight and sound from those 18 and older when held in a jail intended for adult inmates.

2. EFFECT OF THE BILL:

Section 1:

Youth Awaiting Review

The bill adds subparagraph 985.265(5)(a)(2), F.S., to require that a youth who is direct filed shall not be held in adult jail or other facility intended or used for the detention of adults prior to a court finding (as a result of a judicial hearing) that the child should be prosecuted as an adult. If the youth is not to be held in an adult jail, the bill is not clear on where the youth would be held. Lacking an alternative location to hold these youth, this analysis will assume these youth would be held in the Department's secure juvenile detention facilities. This change would require all youth direct filed that score for secure detention using the Department's Detention Risk Assessment Instrument to be held in juvenile detention as opposed to adult jail until their evidentiary hearing.

Section 2:

Narrowing of Direct File

Amends section 985.557, F.S., by removing language and restricting the use of discretionary direct file by state attorneys.

Under current law, to be discretionary direct filed at 14 or 15 years old a youth must have been charged with the commission of, attempted to commit, or conspiracy to commit a list of enumerated offenses as set forth in paragraph 985.557(1)(a), F.S. The bill would restrict this to being charged with the commission of or attempt to commit one of those specified offenses by striking "conspiracy to commit".

Upon review of FY 2019-20 youth that were transferred to adult court, the Department found one (1) youth age 14 or 15 transferred on a charge of "conspiracy to commit".

The bill also strikes language in paragraph 985.557(1)(b), F.S., to restrict a youth age 16 or 17 from being discretionary direct filed on a misdemeanor unless at least two previous adjudications or adjudications withheld of which one must have been a felony.

A review of FY 2019-20 youth that were transferred to adult court shows that only ten (10) youth were transferred on a misdemeanor and five (5) of those ten (10) had prior adjudicated delinquencies. Leaving five (5) youth who would have not been eligible for discretionary direct file under this proposed language.

Notification of a Parent or Guardian

The bill creates a new statute which requires that upon a state attorney filing an information in adult court, the court must advise the child and their guardian that the child has the right to a due process evidentiary hearing before a judge and that the child or guardian may request that hearing.

Judicial Review

Further, the bill creates a new statute that would create an evidentiary hearing before a judge. The bill allows a youth or their parent/guardian or youth to request an evidentiary hearing after the state attorney files an information in adult court. This hearing request is limited to youth who were direct filed, which is done by the sole authority of the state attorney. The bill continues by laying out the following process that a judge must adhere to when considering whether it is necessary for protection of the community that the child is prosecuted in adult court.

A judge must conduct the hearing within 30 days excluding Saturdays, Sundays, and legal holidays unless good cause is shown for a delay by the child or the child's attorney. The judge shall consider the following:

1. Evaluations and assessments completed by the Department of Juvenile Justice (DJJ). *The bill is unclear on whether the department would be required to conduct a new evaluations and assessments. The only assessments that would be readily available would be the DRAI and prior assessments if the youth had a history*

with the department. Currently, the Department does not provide a Comprehensive Evaluation to the court, in the case of adult transfer, until after the youth has been found guilty and only if the judge requests our recommendation. The bill would require an evidentiary hearing for every youth direct filed. There were 788 youth direct filed in FY 19-20.

2. The sophistication and maturity of the child, including:
 - a. The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the child's participation in the alleged offense
 - b. The child's age, maturity, intellectual capacity, and mental and emotional health at the time of the alleged offense
 - c. The effect, if any, of characteristics attributable to the child's youth on the child's judgement
3. The record and previous history of the child, including:
 - a. Previous contracts with DJJ, the Department of Corrections (FDC), the Department of Children and Families (DCF), other law enforcement agencies, and the courts
 - b. Prior periods of probation
 - c. Prior adjudications that the child committed a delinquent act or violation of law, with greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving violence to persons.
 - d. Prior commitment to institutions of DJJ, FDC, or agencies under contract with DJJ of FDC
 - e. History of trauma, abuse or neglect, foster care placements, failed adoption, fetal alcohol syndrome, exposure to controlled substance at birth, and below average intellectual functioning
 - f. Identification of the child as a student requiring exceptional student education or having previously received psychological services.
4. The nature of the alleged offense and the child's participation, including:
 - a. Whether the alleged offense is punishable by death or life imprisonment
 - b. Whether the alleged offense was against persons or property
 - c. Whether the alleged offense is alleged to have been committed in an aggressive, violent, or premeditated manner
 - d. The extent of the child's alleged participation in the alleged offense
 - e. The effect, if any, of familial pressure or peer pressure on the child's actions
5. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if the child is found to have committed the alleged offense:
 - a. By the use of procedures, services, and facilities currently available to the juvenile court
 - b. By the use of procedures, services, and facilities currently available to the adult court, including whether the lowest permissible sentence under the Criminal Punishment Code is a nonstate prison sanction
6. Whether the child could obtain habilitative or rehabilitative services available in the juvenile justice system
7. Whether the child could receive a sentence in juvenile court that would provide adequate safety and protection for the community
8. Whether the child's best interests would be served by prosecuting the child in juvenile court

In addition, the judge may consider any reports that may assist the court, including prior pre-disposition reports, psycho-social assessments, individualized educational programs (IEPs), developmental assessments, school records, abuse or neglect reports, home studies, protective investigations, and psychological and psychiatric evaluations. The child, the child's parent or legal guardians, defense counsel, and the State Attorney, may examine these reports and question the parties responsible for them at the hearing. This could require DJJ staff to be present at the hearing to answer questions on materials supplied to the judge.

Pre-disposition reports are referenced in s. 985.18, F.S., and are court ordered by a judge prior to placement. This report is a critical component in allowing a judge to get a full and evidence-based picture of an individual youth's needs.

The bill states that the adult court shall retain jurisdiction unless the court finds by a preponderance of evidence that the factors listed above support returning the child to juvenile court.

There is also a process set forth that would allow the prosecution and defense to seek immediate appeal. The bill is unclear as to whether the youth on appeal would be held in juvenile detention or adult jail.

Section 3:

The bill provides for a July 1, 2021 implementation date.

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:	Indeterminate. The Department estimates the cost to Detention specifically to be \$3,325,129 for the state (Please see explanation under fiscal impact to state government). In accordance with Detention Cost Share, all non-fiscally constrained counties will pay for half of their respective detention cost. Half of

	this cost for local counties would total up to \$1,662,565. The entire half would not be covered due to the fiscally constrained counties. Detention Cost Share is a reimbursement system, meaning the entire \$3,325,129 would need to be allocated to the Department in year one and \$1,662,565 allocated to the Department in the following years for Detention staff increases.
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>Indeterminate.</p> <p>The below fiscal impact estimate includes over \$3 million for detention cost. However, a large cost that the Department is not able to predict is the cost for those youth who receive DJJ services if a court denies the state attorney request to transfer the youth to adult court.</p> <p><u>Youth Awaiting Review</u></p> <p>In FY 2019-20 there were 788 youth direct filed to adult court who under the bill would now be held in juvenile detention as opposed to adult jail or other facility intended or used for the detention of adults prior to their judicial hearing, which should take place within 30 days of the state attorney filing information in adult court (excluding weekends and holidays). The Department predicts that these youth will likely score for juvenile secure detention and thus increase the cost of detention.</p> <p>Variable Cost: 30 days X 788 youth = 23,640 service days 23,640 service days X \$60.53 Variable Detention Cost = <u>\$1,430,929.</u> **Variable Cost includes food, medical, laundry, etc.</p> <p>Salary & Benefits: 40 Entry Level Juvenile Detention Officers= \$1,894,200</p> <p>Transportation Costs: (Court hearings and other outside appointments) 20 Additional vans and caging= \$654,125 non-recurring</p> <p>**Since not all adult courts are located with juvenile courts and the court times are different, all centers would require an extra passenger van plus an extra two staff (two staff are required to transport per Department policy) to provide the transportation to court.</p>

	<p>This cost does not take into account the possible need for additional staff members such as supervisors, food support workers, medical, etc.</p> <p><u>Judicial Review - Evaluations</u></p> <p>The bill would require every child who had an information filed in adult court to have an evidentiary hearing within 30 days after the state attorney's filing. The bill states the judge will consider "evaluations and assessments completed by the department" but is unclear on whether the department would be required to provide <i>new</i> evaluations and assessments. The standard comprehensive evaluation along with the average ad-on evaluation cost \$541. Evaluations for 100 youth could exceed \$54,100.</p> <p><u>Judicial Review – Juvenile Placement</u></p> <p>Depending on judicial behavior, a youth who would normally be direct filed by the state attorney could now be returned to juvenile court by a judge after the hearing as laid out in this bill. Any youth that stays in the custody and receives treatment services from the Department will have a fiscal impact on the Department. Additional residential beds and possibly additional residential facilities may be needed to accommodate.</p> <p>The Department does not wish to provide hypothetical estimates with so many variables that cannot be accounted for. Instead, information has been provided below on the cost for treating one youth in the various programs offered by DJJ.</p> <p><u>Max Risk Residential</u> \$247 a day X Average length of stay 645 days = \$159,315 per youth</p> <p><u>High Risk Residential</u> \$247 a day X Average length of stay 347 days = \$85,709 per youth</p> <p><u>Nonsecure Residential</u> \$223 a day X Average length of stay 229 days = \$51,067 per youth</p> <p><u>Day Treatment Probation</u> \$97 a day X Average Length of Stay 183 days = \$17,751 per youth</p> <p>These above estimates do not take into account the cost of post commitment probation or transition services.</p> <p>For example, if even 100 youth were served with juvenile sanctions and placed in high risk residential, the cost could exceed \$8,570,900.</p> <p><u>Post-Adjudicatory Detention Cost:</u></p> <p>After a youth is disposed of by a court to a residential treatment program, the youth is held in detention until their treatment facility is ready to accept them. Depending on multiple factors, a youth may wait numerous weeks prior to being placed in their bed. Using a similar cost structure as above, a single youth who waits 30 days for their treatment program could cost on average \$1,816.</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 ☒

s	Click or tap here to enter text.
---	----------------------------------

FEDERAL IMPACT

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

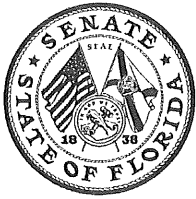
If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.
--	----------------------------------

ADDITIONAL COMMENTS

Click or tap here to enter text.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	
Lines 198-206:	This language leaves room for interpretation as to whether a judge must order new evaluations or whether they should rely on only prior reports and assessments



The Florida Senate

Committee Agenda Request

Senator Bobby Powell
2715 North Australian Avenue, Suite 105
West Palm Beach Florida 33407

To: Senator Jason Pizzo, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 4, 2021

I respectfully request that **Senate Bill #638**, relating to Direct Filing of Information, 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

Senator Jason Pizzo, Chair
Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Reset Form

February 16, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

638

Bill Number (if applicable)

Topic Direct Filing of an Information

Name Pamela Burch Fort

Amendment Barcode (if applicable)

Job Title _____

Address 104 S. Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-425-1344

Email TcgLobby@aol.com

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.

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2/16/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

638

Bill Number (if applicable)

Topic Adult Treatment of Children

Name Nancy Daniels

Amendment Barcode (if applicable)

Job Title Executive Director, Florida Public Defender Association

Address 103 N. Gadsden St.

Street

Phone 850-488-6850

Tallahassee

Florida

32301

City

State

Zip

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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02/16/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB 638

Bill Number (if applicable)

Topic Criminal Justice

Name Jennifer Adams

Job Title Co-Chair Juvenile Justice State Committee

Address PO Box 1687

Street

Winter Park

City

FL

State

32790

Zip

Phone _____

Email JenniferAdams111@outlook.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida, Juvenile Justice Committee

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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2/16/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

638

Bill Number (if applicable)

Topic Direct Filing; Pre-trial housing; Waiver

Name Carrie Boyd

Amendment Barcode (if applicable)

Job Title Policy Counsel

Address 3126 Baringer Hill Drive

Street

Tallahassee

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FL

State

32311

Zip

Phone 850-570-9560

Email carrie.boyd@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund & No Place For A Child Statewide Coalition

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

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02/16/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB 638

Bill Number (if applicable)

Topic Criminal Justice

Name Jennifer Adams

Amendment Barcode (if applicable)

Job Title Co-Chair Juvenile Justice

Address PO Box 1687

Street

Winter Park

City

FL

State

32790

Zip

Phone _____

Email JenniferAdams111@outlook.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters, Orange County, Florida, Juvenile Justice Committee

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/21

Meeting Date

638

Bill Number (if applicable)

Topic Direct File

Name Ida V. Eskamani

Job Title _____

Address _____

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 Florida Rising

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

2/16/21

Meeting Date

SB 638

Bill Number (if applicable)

Topic Direct Filing of Information

Name Kara Gross

Job Title Legislative Director & Senior Policy Counsel

Address 4343 W. Flagler St.

Street

Miami

City

FL

State

33134

Zip

Phone 786-363-4436

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/2021

Meeting Date

SB 638

Bill Number (if applicable)

Topic Direct Filing of an Information

Name Dr. Nancy Lawther

Job Title Legislation Committee Member

Address 1747 Orlando Central Parkway

Street

Orlando

City

FL 32809

State

Zip

Phone 407 855-7604

Email legislation@florida

pta.org

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 ...

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THE FLORIDA SENATE

APPEARANCE RECORD

2/16/21

Meeting Date

SB 638

Bill Number (if applicable)

Topic Direct Filing of an Information

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe Street

Phone 850-681-0024

Street

Tallahassee

FL

32301

Email jorge@flapartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

CS-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

02/16/21

Meeting Date

638

Bill Number (if applicable)

Topic Direct Filing of an Information

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate Director for Social Concerns & Respect Life

Address 201 W Park Ave

Phone

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 776

INTRODUCER: Criminal Justice Committee and Senator Gainer

SUBJECT: Racketeering

DATE: February 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			EN	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 776 amends the definition of “racketeering activity” in the Florida RICO (Racketeer Influenced and Corrupt Organization) Act to include violations of ch. 379, F.S., and Title 68, F.A.C., relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes. Chapter 379, F.S., and Title 68, F.A.C., are implemented by the Florida Fish and Wildlife Conservation Commission (FWC). The effect of this change is that it will allow such unlawful acts to be prosecuted as racketeering if the commission of the acts constitutes racketeering. A criminal violation of the Florida RICO Act is a first degree felony. The Act also provides for civil remedies.

The FWC estimates the bill will have an indeterminate impact on the commission. The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive insignificant” prison bed impact, meaning an increase of 10 or fewer prison beds. See Section V. Fiscal Impact.

The bill takes effect upon becoming a law.

II. Present Situation:

Under Article IV, s. 9, of the State Constitution, the FWC exercises the regulatory and executive powers of the state concerning wild animal life, freshwater aquatic life, and marine life.¹ The FWC implements ch. 379, F.S., and rules adopted in Title 68,² F.A.C.³

License fees for taking wild animal life, freshwater aquatic life, and marine life and penalties for violating FWC regulations are prescribed by general law.⁴ Further, the FWC's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing are provided by law.⁵ The Legislature may also enact laws in aid of the FWC that are not inconsistent with its constitutionally-conferred powers, except for special laws or general laws of local application relating to hunting or fishing.⁶

Section 379.401, F.S., details FWC's four-tier system for penalties and violations, civil penalties for noncriminal infractions, criminal penalties, and suspension and forfeiture of licenses and permits.⁷ Level One violations are considered the least serious while Level Four violations are considered the most serious.⁸

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.⁹

¹ Art. IV, s. 9, Fla. Const.

² Title 68 is also referred to as "chapter 68."

³ "The rules of the FWC have the force of a legislative act, and the Legislature is prohibited from adopting statutes that conflict with those rules." *Florida Fish and Wildlife Conservation Commission v. Daws*, 256 So.3d 907, 917 (Fla. 1st DCA 2018) (citations omitted), review denied, 2018 WL 6605838 (Fla. 2018).

⁴ Art. IV, s. 9, Fla. Const.

⁵ *Id.*

⁶ *Id.*

⁷ Information in this analysis relating to level violations and penalties was reproduced from *Bill Analysis and Fiscal Impact Statement* (CS/CS/SB 688) (Feb. 20, 2020), Florida Senate, available at <https://www.flsenate.gov/Session/Bill/2020/688/Analyses/2020s00688.rc.PDF> (last visited Feb. 8, 2021).

⁸ Section 379.401, F.S.

⁹ Section 379.401(2)(a), F.S.

The penalties for Level Two violations are as follows:

Level Two Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense	2 nd Degree Misdemeanor ¹⁰	Max: \$500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1 st Degree Misdemeanor ¹¹	Min: \$250; Max: \$1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1 st Degree Misdemeanor ¹²	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 st Degree Misdemeanor ¹³	Min: \$750; Max \$1,000 or Max: one year	Suspension of license for three years

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.¹⁴

The penalties for a Level Three violation are as follows:

Level Three Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense	1 st Degree Misdemeanor ¹⁵	Max: \$1,000 Max: one year	None
Second offense within 10 years of a previous Level Three violation (or higher)	1 st Degree Misdemeanor ¹⁶	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 st Degree Misdemeanor	Mandatory \$1,000 ¹⁷ Max: one year	May not acquire license or permit for five years

¹⁰ Section 379.401(2)(b)1., F.S.

¹¹ Section 379.401(2)(b)2., F.S.

¹² Section 379.401(2)(b)3., F.S.

¹³ Section 379.401(2)(b)4., F.S.

¹⁴ Section 379.401(3), F.S.

¹⁵ Section 379.401(3)(b)1., F.S.

¹⁶ Section 379.401(3)(b)2., F.S.

¹⁷ 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.¹⁸

The penalties for Level Four Violations are as follows:

Level Four Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense ¹⁹	3 rd Degree Felony	Max: \$5,000 Max: Five Years	None

Florida RICO Act

The “Florida RICO (Racketeer Influenced and Corrupt Organization) Act” is the short title for ss. 895.01-895.06, F.S.²⁰ “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.²¹

Section 895.03, F.S., provides that it is unlawful for any person:

- Who with criminal intent has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

¹⁸ Section 379.401(4)(a), F.S.

¹⁹ Section 379.401(4)(b), F.S.

²⁰ Section 895.01, F.S.

²¹ Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. s. 1961(1).

Section 895.04, F.S., punishes as a first degree felony:²²

- With criminal intent, receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt²³ to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;²⁴
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;
- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.²⁵

In addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.²⁶

Trafficking in Wild Animal Life, Freshwater Aquatic Life, or Marine Life

The FWC describes the problem of trafficking in wild animal life, freshwater aquatic life, or marine life:

There is a significant black-market trade in Florida's wildlife, freshwater aquatic life, and marine life. This includes live wildlife and aquatic species, including captive wildlife, as well as eggs, products, and parts thereof. Trafficking in wild species is the fourth most profitable transnational crime behind the drug trade, arms trade, and human trafficking. Criminal organizations are often involved in more than one illegal trade.

Factors such as overexploitation/harvest, increased regulation, and global trends, mean that law enforcement agencies must look broadly at the variety of wildlife and aquatic life subject to exploitation and illegal commercialization. Marine life species targeted for trafficking has included corals, live rock, sea cucumbers, reef fish, shrimp, ornamental aquarium fish, and lobsters. Wildlife targeted for trafficking has included live animals such as freshwater turtles, federal Endangered Species Act (ESA) and the Convention on

²² A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²³ Section 895.02(2), F.S., defines an "unlawful debt" as any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

²⁴ Section 895.02(3), F.S., defines "enterprise" as any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise.

²⁵ Section 895.03(4), F.S.

²⁶ Section 895.05(2), F.S.

International Trade in Endangered Species of Wild Fauna and Flora (CITES) listed species (i.e., sharks, sea turtles [including eggs]) and parts thereof, cervids, captive wildlife (monkeys, tigers, venomous/non venomous reptiles and tegus), black bears (gall bladders, paws), and alligators (including eggs). Wildlife, freshwater aquatic life, and marine life are trafficked for many reasons; the species or parts thereof that are being trafficked are usually determined by the consumer demand at the time. For these reasons, it is important that anti-racketeering efforts are not limited to one category of animal life or type of species.

Species listed under the ESA and CITES, and Florida's listed endangered and threatened species, are of particular concern as illegal collection and trafficking are significant factors in the further decline of these species. However, less regulated species are often some of the most exploited and are harvested in large numbers. Illegal wildlife markets sometimes follow a "boom and bust" cycle. Wildlife, freshwater aquatic life, and marine life will be exploited until the species is over harvested and declines to the extent the species are difficult to acquire or special protections are placed on the species. Once one species has followed this "boom and bust" cycle, markets will shift to a new species and so on.

In addition, trafficking involves offenses beyond illegal take or sale of species. Efforts to launder trafficked wildlife and aquatic life may involve the falsification of records, licenses, and documents and concealment of sources of acquisition as related crimes that further the criminal enterprise.²⁷

Prosecution of Trafficking in Wild Animal Life, Freshwater Aquatic Life, or Marine Life

In October of 2020, the FWC announced that a group of suspects were charged with racketeering, money laundering, scheming to defraud "and other organized criminal laws involving an elaborate organized enterprise to smuggle Florida's wildlife to interstate and international buyers."²⁸ The smuggling involved illegally trapping flying squirrels but FWC investigators also learned that the "Florida suspects were dealing in multiple species of poached animals. Protected freshwater turtles and alligators were illegally taken and laundered through other seemingly legitimate licensed businesses. Documents were falsified concealing the true source of the wildlife."²⁹

The FWC notes some of the problems arising from current prosecution of trafficking in wild animal life, freshwater aquatic life, or marine life:

Individuals associated with wildlife trafficking are difficult to deter exploiting fish and wildlife without the appropriate charges. While there are a variety of laws that protect wildlife and even a few that protect against the illegal sale of wildlife in Florida, the

²⁷ 2021 Agency Legislative Bill Analysis (SB 776), Feb. 8, 2021, Florida Fish and Wildlife Conservation Commission (on file with the Senate Committee on Criminal Justice). This analysis is referred to as "FWC analysis" in subsequent references.

²⁸ FWC uncovers a transnational wildlife trafficking operation in Florida (Oct. 19, 2020), Florida Fish and Wildlife Conservation Commission, available at <https://myfwc.com/news/all-news/trafficking-case-1020/> (last visited Feb. 9, 2021).

²⁹ *Id.*

current laws protecting against the illegal tak[ing], possession, purchase and sale of wildlife and aquatic life are primarily misdemeanors and typically only result in small fines and probation when traffickers are convicted. These laws do little to affect the criminal organizations engaged in trafficking.

To combat organized crime, Florida's RICO (Racketeer Influence and Corrupt Organization) Act makes it unlawful for a person to engage in a pattern of criminal activity to acquire, establish, operate, maintain, or control, or be associated with or employed by an enterprise, or conspire to do so. Currently, there are no predicate offenses under Florida's RICO Act specifically related to the illegal trafficking of wildlife and aquatic life.³⁰

The Office of Statewide Prosecution has assisted the FWC in prosecution of theft of alligators and alligator eggs by prosecuting these acts under RICO.³¹ The RICO prosecution relies on theft, a predicate RICO offense.³² However, the office notes that defense counsel has challenged the prosecution, "arguing there could be no theft of wildlife from the State as the State did not own the wildlife. The case is currently being challenged on appeal."³³

The FWC has provided the following reasons for adding violations of ch. 379, F.S., and Title 68, F.A.C., and related crimes, as predicate Florida RICO offenses:

The bill "does not enlarge any crimes related to wildlife or aquatic life, but makes these existing crimes prosecutable under RICO. The inclusion of crimes under Chapter 379, F.S., and Title 68, F.A.C., as predicate offenses under RICO would provide a powerful tool in the effort to combat wildlife trafficking and disrupt a highly profitable illegal trade. Prosecuting these cases under RICO would enable the State of Florida to pursue asset forfeiture which would greatly undermine the profitability of these criminal enterprises. Florida's legitimate businesses and its citizens who rely on natural resources for a living as well as recreational experiences would see a positive impact. The disruption of wildlife trafficking would also assist with the prevention and mitigation of communicable infectious diseases that originate from wildlife. Finally, the amendment to RICO would allow Florida to address wildlife trafficking crimes that do not have a federal nexus."³⁴

III. Effect of Proposed Changes:

The bill amends the definition of "racketeering activity" in s. 895.02(8), F.S., of the Florida RICO Act to include violations of ch. 379, F.S., and Title 68, F.A.C., relating to the illegal sale,

³⁰ 2021 Agency Legislative Bill Analysis (SB 776), Feb. 8, 2021, Florida Fish and Wildlife Conservation Commission (on file with the Senate Committee on Criminal Justice).

³¹ *RE: FWC Proposed Legislation* (undated memo), Kelly A McKnight, Assistant Statewide Prosecutor, Office of Statewide Prosecution, Office of the Attorney General (on file with the Senate Committee on Criminal Justice).

Section 895.02(8)(a)32., F.S.

³² Section 895.02(8)(a)32., F.S.

³³ See footnote 31.

³⁴ FWC analysis, *supra*.

purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life,³⁵ and related crimes. Chapter 379, F.S., and Title 68, F.A.C., are implemented by the FWC. The effect of this change is that it will allow such unlawful acts to be prosecuted as racketeering if the commission of the acts constitutes racketeering. A criminal violation of the Florida RICO Act is a first degree felony. The Act also provides for civil remedies.

The bill takes effect upon becoming a law.

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.

³⁵ The FWC notes that “[i]t is critical that the amendment’s language address the enumerated crimes under both Chapter 379, F.S., and Title 68, F.A.C. There are many crimes related to wildlife trafficking that are offenses under the Commission’s regulations, but that do not have a companion statutory offense under Chapter 379, F.S. Violations of these offenses have a prescribed penalty in statute, but the offense itself is articulated and charged under the regulations of Title 68, F.A.C. In addition, criminal organizations often utilize related crimes (i.e., mislabeling, falsifying documents or records, hiding sources of acquisitions, etc.) to conceal and further illegal activity. For this reason, prosecutors need the ability to pursue racketeering charges for related crimes under the laws and rules of the Commission.” *Id.*

C. Government Sector Impact:

The FWC estimates the bill will have an indeterminate impact on the commission.³⁶

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive insignificant" prison bed impact, meaning an increase of 10 or fewer prison beds.³⁷

The EDR provides the following additional information relevant to its estimate:

Per [Florida Department of Law Enforcement or] FDLE, there were 436 misdemeanor arrests in CY 2019, with 114 guilty/convicted and 61 adjudications withheld under Chapter 379, and there were 337 arrests in CY 2020, with 48 guilty/convicted and 40 adjudications withheld. For felony violations, in CY 2019, there were 37 arrests, with 28 guilty/convicted and 14 adjudications withheld. In CY 2020, there were 80 arrests, with 4 guilty/convicted and 8 adjudications withheld. Per [Department of Corrections or] DOC, there was one new commitment to prison in FY 18-19 and one new commitment to prison in FY 19-20 for felony violations associated with Chapter 379.

Per DOC, in FY 18-19, there were 82 new commitments to prison under s. 895.03, F.S. In FY 19-20, there were 58 new commitments. Given that under current statute there are a large number of offenses where these felonies could apply, including offenses that have a high volume of commitments each year, the additions of Chapter 379 and violations of Title 68 are not expected to have a significant impact on prison beds.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 895.02 of the Florida Statutes.

³⁶ *Id.*

³⁷ The EDR estimate is on file with the Senate Committee on Criminal Justice.

³⁸ *Id.*

IX. Additional Information:

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

CS by Criminal Justice on February 16, 2021:

The committee substitute revises the description of predicate offenses being added to the definition of “racketeering activity” in the Florida RICO Act to indicate that “racketeering activity” includes violations of ch. 379, F.S., and Title 68, F.A.C., relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

- B. **Amendments:**

None.



328704

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 27 - 125
and insert:

3. Chapter 379, relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

4. Section 403.727(3)(b), relating to environmental control.

5.4. Section 409.920 or s. 409.9201, relating to Medicaid



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fraud.

~~6.5.~~ Section 414.39, relating to public assistance fraud.

~~7.6.~~ Section 440.105 or s. 440.106, relating to workers' compensation.

~~8.7.~~ Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

~~9.8.~~ Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

~~10.9.~~ Section 499.0051, relating to crimes involving contraband, adulterated, or misbranded drugs.

~~11.10.~~ Part IV of chapter 501, relating to telemarketing.

~~12.11.~~ Chapter 517, relating to sale of securities and investor protection.

~~13.12.~~ Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

~~14.13.~~ Chapter 550, relating to jai alai frontons.

~~15.14.~~ Section 551.109, relating to slot machine gaming.

~~16.15.~~ Chapter 552, relating to the manufacture, distribution, and use of explosives.

~~17.16.~~ Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

~~18.17.~~ Chapter 562, relating to beverage law enforcement.

~~19.18.~~ Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

~~20.19.~~ Section 655.50, relating to reports of currency



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transactions, when such violation is punishable as a felony.

~~21.20.~~ Chapter 687, relating to interest and usurious practices.

~~22.21.~~ Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

~~23.22.~~ Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

~~24.23.~~ Section 777.03, relating to commission of crimes by accessories after the fact.

~~25.24.~~ Chapter 782, relating to homicide.

~~26.25.~~ Chapter 784, relating to assault and battery.

~~27.26.~~ Chapter 787, relating to kidnapping or human trafficking.

~~28.27.~~ Chapter 790, relating to weapons and firearms.

~~29.28.~~ Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.

~~30.29.~~ Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

~~31.30.~~ Chapter 806, relating to arson and criminal mischief.

~~32.31.~~ Chapter 810, relating to burglary and trespass.

~~33.32.~~ Chapter 812, relating to theft, robbery, and related crimes.

~~34.33.~~ Chapter 815, relating to computer-related crimes.



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~~35.34.~~ Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, credit card crimes, and patient brokering.

~~36.35.~~ Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

~~37.36.~~ Section 827.071, relating to commercial sexual exploitation of children.

~~38.37.~~ Section 828.122, relating to fighting or baiting animals.

~~39.38.~~ Chapter 831, relating to forgery and counterfeiting.

~~40.39.~~ Chapter 832, relating to issuance of worthless checks and drafts.

~~41.40.~~ Section 836.05, relating to extortion.

~~42.41.~~ Chapter 837, relating to perjury.

~~43.42.~~ Chapter 838, relating to bribery and misuse of public office.

~~44.43.~~ Chapter 843, relating to obstruction of justice.

~~45.44.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

~~46.45.~~ Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

~~47.46.~~ Chapter 874, relating to criminal gangs.

~~48.47.~~ Chapter 893, relating to drug abuse prevention and control.

~~49.48.~~ Chapter 896, relating to offenses related to financial transactions.

~~50.49.~~ Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and



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retaliation against a witness, victim, or informant.

~~51.50.~~ Sections 918.12 and 918.13, relating to tampering
with jurors and evidence.

(c) Any violation of Title 68, Florida Administrative Code,
relating to the illegal sale, purchase, take, or possession of
wild animal life, freshwater aquatic

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

And the title is amended as follows:

Delete lines 5 - 6

and insert:

relating to the illegal sale, purchase, take, or
possession of wild animal life,

By Senator Gainer

2-00514A-21

2021776__

A bill to be entitled

An act relating to racketeering; amending s. 895.02, F.S.; revising the definition of the term "racketeering activity" to include certain actions relating to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes; providing an effective date.

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

Section 1. Paragraph (a) of subsection (8) of section 895.02, Florida Statutes, is amended, and a new paragraph (c) is added to that subsection, to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(8) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Chapter 379, relating to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

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

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4. Section 403.727(3)(b), relating to environmental control.

5.4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

6.5. Section 414.39, relating to public assistance fraud.

7.6. Section 440.105 or s. 440.106, relating to workers' compensation.

8.7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

9.8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

10.9. Section 499.0051, relating to crimes involving contraband, adulterated, or misbranded drugs.

11.10. Part IV of chapter 501, relating to telemarketing.

12.11. Chapter 517, relating to sale of securities and investor protection.

13.12. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

14.13. Chapter 550, relating to jai alai frontons.

15.14. Section 551.109, relating to slot machine gaming.

16.15. Chapter 552, relating to the manufacture, distribution, and use of explosives.

17.16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

18.17. Chapter 562, relating to beverage law enforcement.

19.18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare

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

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59 arrangement, or s. 626.902(1)(b), relating to representing or
 60 aiding an unauthorized insurer.

61 ~~20.19.~~ Section 655.50, relating to reports of currency
 62 transactions, when such violation is punishable as a felony.

63 ~~21.20.~~ Chapter 687, relating to interest and usurious
 64 practices.

65 ~~22.21.~~ Section 721.08, s. 721.09, or s. 721.13, relating to
 66 real estate timeshare plans.

67 ~~23.22.~~ Section 775.13(5)(b), relating to registration of
 68 persons found to have committed any offense for the purpose of
 69 benefiting, promoting, or furthering the interests of a criminal
 70 gang.

71 ~~24.23.~~ Section 777.03, relating to commission of crimes by
 72 accessories after the fact.

73 ~~25.24.~~ Chapter 782, relating to homicide.

74 ~~26.25.~~ Chapter 784, relating to assault and battery.

75 ~~27.26.~~ Chapter 787, relating to kidnapping or human
 76 trafficking.

77 ~~28.27.~~ Chapter 790, relating to weapons and firearms.

78 ~~29.28.~~ Chapter 794, relating to sexual battery, but only if
 79 such crime was committed with the intent to benefit, promote, or
 80 further the interests of a criminal gang, or for the purpose of
 81 increasing a criminal gang member's own standing or position
 82 within a criminal gang.

83 ~~30.29.~~ Former s. 796.03, former s. 796.035, s. 796.04, s.
 84 796.05, or s. 796.07, relating to prostitution.

85 ~~31.30.~~ Chapter 806, relating to arson and criminal
 86 mischief.

87 ~~32.31.~~ Chapter 810, relating to burglary and trespass.

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88 ~~33.32.~~ Chapter 812, relating to theft, robbery, and related
 89 crimes.

90 ~~34.33.~~ Chapter 815, relating to computer-related crimes.

91 ~~35.34.~~ Chapter 817, relating to fraudulent practices, false
 92 pretenses, fraud generally, credit card crimes, and patient
 93 brokering.

94 ~~36.35.~~ Chapter 825, relating to abuse, neglect, or
 95 exploitation of an elderly person or disabled adult.

96 ~~37.36.~~ Section 827.071, relating to commercial sexual
 97 exploitation of children.

98 ~~38.37.~~ Section 828.122, relating to fighting or baiting
 99 animals.

100 ~~39.38.~~ Chapter 831, relating to forgery and counterfeiting.

101 ~~40.39.~~ Chapter 832, relating to issuance of worthless
 102 checks and drafts.

103 ~~41.40.~~ Section 836.05, relating to extortion.

104 ~~42.41.~~ Chapter 837, relating to perjury.

105 ~~43.42.~~ Chapter 838, relating to bribery and misuse of
 106 public office.

107 ~~44.43.~~ Chapter 843, relating to obstruction of justice.

108 ~~45.44.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
 109 or s. 847.07, relating to obscene literature and profanity.

110 ~~46.45.~~ Chapter 849, relating to gambling, lottery, gambling
 111 or gaming devices, slot machines, or any of the provisions
 112 within that chapter.

113 ~~47.46.~~ Chapter 874, relating to criminal gangs.

114 ~~48.47.~~ Chapter 893, relating to drug abuse prevention and
 115 control.

116 ~~49.48.~~ Chapter 896, relating to offenses related to

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financial transactions.

~~50.49.~~ Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

~~51.50.~~ Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

(c) Any violation of Title 68, Florida Administrative Code, relating to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

Section 2. This act shall take effect upon becoming a law.



2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Florida Fish and Wildlife Conservation Commission

BILL INFORMATION

BILL NUMBER:	<u>Senate Bill (SB) 776</u>
BILL TITLE:	<u>Racketeering</u>
BILL SPONSOR:	<u>Senator George Gainer</u>
EFFECTIVE DATE:	<u>Upon becoming a law</u>

COMMITTEES OF REFERENCE

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

CURRENT COMMITTEE

Criminal Justice

SIMILAR BILLS

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

PREVIOUS LEGISLATION

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS

BILL NUMBER:	HB 783
SPONSOR:	Representative Persons-Mulicka

Is this bill part of an agency package?

Yes.

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	February 8, 2021
LEAD AGENCY ANALYST:	Major Grant Burton
ADDITIONAL ANALYST(S):	Captain Van Barrow, Ed Bishop
LEGAL ANALYST:	Bridget McDonnell
FISCAL ANALYST:	Charlotte Jerrett

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Senate Bill 776 amends section 895.02, Florida Statutes (F.S.), to revise the definition of the term “racketeering activity” to include certain crimes related to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes under the provisions of Chapter 379, F.S., and Title 68, Florida Administrative Code (F.A.C.).¹

The bill is effective upon becoming a law.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Consumer demand and transnational organized criminal networks are driving the illicit trade of wildlife, including aquatic life, and wildlife products. The illegal trade has evolved into one of the world’s largest black markets and is valued at tens of billions of dollars. Florida is a source of wildlife and wildlife products, a transit point, and a destination for sellers and buyers.

Individuals associated with wildlife trafficking are difficult to deter from exploiting fish and wildlife without the appropriate charges. While there are a variety of laws that protect wildlife and even a few that protect against the illegal sale of wildlife in Florida, the current laws protecting against the illegal take, possession, purchase and sale of wildlife and aquatic life are primarily misdemeanors and typically only result in small fines and probation when individual traffickers are convicted. These laws do little to affect the criminal organizations engaged in trafficking.

To combat organized crime, Florida’s RICO (Racketeer Influence and Corrupt Organization) Act makes it unlawful for a person to engage in a pattern of criminal activity to acquire, establish, operate, maintain, or control, or be associated with or employed by an enterprise, or conspire to do so. Currently, there are no predicate offenses under Florida’s RICO Act specifically related to the illegal trafficking of wildlife and aquatic life.

2. EFFECT OF THE BILL:

Senate Bill 776 amends section 895.02, F.S., to revise the definition of the term “racketeering activity” to include certain actions relating to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

Section 1. The bill amends the definition of the term “racketeering activity” to include Chapter 379, relating to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes. The bill provides a new paragraph (c) to incorporate into racketeering activities any violation of Title 68, Florida Administrative Code (F.A.C.), relating to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

Section 2. Provides that the bill is effective upon becoming law.

The inclusion of offenses under the laws and rules of the Florida Fish and Wildlife Conservation Commission (Commission) as predicates for “racketeering activity” as defined in section 895.02, F.S., does not enlarge any crimes related to wildlife or aquatic life, but makes these existing crimes prosecutable under RICO. The inclusion of crimes under Chapter 379, F.S., and Title 68, F.A.C., as predicate offenses under RICO would provide a powerful tool in the effort to combat wildlife trafficking and disrupt a highly profitable illegal trade. Prosecuting these cases under RICO would enable the State of Florida to pursue asset forfeiture which would greatly undermine the profitability of these criminal enterprises. Florida’s legitimate businesses and its citizens who rely on natural resources for a living as well as recreational experiences would see a positive impact. The disruption of wildlife trafficking would also assist with the prevention and mitigation of communicable infectious diseases that originate from wildlife. Finally, the amendment to RICO would allow Florida to address wildlife trafficking crimes that do not have a federal nexus.

¹ The Commission is filing amended proposed language to SB 776 to read as follows:

895.02(8)(a)3. Chapter 379, relating to the illegal sale, purchase, take or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

...

(8)(c) Any violation of Title 68, Florida Administrative Code, relating to the illegal sale, purchase, take or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

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 checked="" 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:	<p>Likely proponents of the bill:</p> <ul style="list-style-type: none"> • U.S. Fish and Wildlife Service • National Oceanic and Atmospheric Administration • Florida Diamondback Terrapin Working Group • Turtle Survival Alliance (TSA) • American Sportfish Association (ASA) • Elise P. Bennett, Reptile and Amphibian Staff Attorney, Center for Biological Diversity: "We are supportive of higher penalties for trafficking operations and interested to see what comes of the proposal." (Bennett, 2020) • Altamaha Environmental Consulting, LLC represented by Lead Biologist and owner Dirk Stevenson • IUCN SSC Tortoise and Freshwater Turtle Specialist Group • PARC – Turtle Team • Coastal Conservation Association (CCA) • Cristina M. Gomes, Ph.D., Assistant Director, Tropical Conservation Institute at Florida International University: "From the Tropical Conservation Institute's perspective, any legislation that enhances prosecution of wildlife-crime offenders and strengthens FWC's capacity to deter and thwart wildlife trafficking is welcome." (Gomes, 2020)
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:	Indeterminate. Fines that would be imposed by this section of law shall be deposited in the county fine and forfeiture fund pursuant to s. 142.01, F.S.
Expenditures:	None.
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?	N/A

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

Revenues:	N/A
Expenditures:	N/A
Does the legislation contain a State Government appropriation?	N/A
If yes, was this appropriated last year?	N/A

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

Revenues:	None.
Expenditures:	Indeterminate. Violators of these provisions shall be imposed fines in accordance with provisions outlined in s. 775.083, F.S.
Other:	N/A

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

If yes, explain impact.	N/A
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 ☒

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

There is a significant black-market trade in Florida's wildlife, freshwater aquatic life, and marine life. This includes live wildlife and aquatic species, including captive wildlife, as well as eggs, products, and parts thereof. Trafficking in wild species is the fourth most profitable transnational crime behind the drug trade, arms trade, and human trafficking. Criminal organizations are often involved in more than one illegal trade.

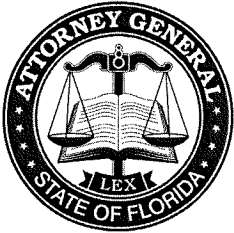
Factors such as overexploitation/harvest, increased regulation, and global trends, mean that law enforcement agencies must look broadly at the variety of wildlife and aquatic life subject to exploitation and illegal commercialization. Marine life species targeted for trafficking has included corals, live rock, sea cucumbers, reef fish, shrimp, ornamental aquarium fish, and lobsters. Wildlife targeted for trafficking has included live animals such as freshwater turtles, federal Endangered Species Act (ESA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) listed species (i.e., sharks, sea turtles [including eggs]) and parts thereof, cervids, captive wildlife (monkeys, tigers, venomous/non venomous reptiles and tegus), black bears (gall bladders, paws), and alligators (including eggs). Wildlife, freshwater aquatic life, and marine life are trafficked for many reasons; the species or parts thereof that are being trafficked are usually determined by the consumer demand at the time. For these reasons, it is important that anti-racketeering efforts are not limited to one category of animal life or type of species.

Species listed under the ESA and CITES, and Florida's listed endangered and threatened species, are of particular concern as illegal collection and trafficking are significant factors in the further decline of these species. However, less regulated species are often some of the most exploited and are harvested in large numbers. Illegal wildlife markets sometimes follow a "boom and bust" cycle. Wildlife, freshwater aquatic life, and marine life will be exploited until the species is over harvested and declines to the extent the species are difficult to acquire or special protections are placed on the species. Once one species has followed this "boom and bust" cycle, markets will shift to a new species and so on.

In addition, trafficking involves offenses beyond illegal take or sale of species. Efforts to launder trafficked wildlife and aquatic life may involve the falsification of records, licenses, and documents and concealment of sources of acquisition as related crimes that further the criminal enterprise.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	<p>The addition of crimes under Chapter 379, F.S., and Title 68, F.A.C., as predicate offenses under RICO will be a significant tool for prosecutors to combat trafficking in wildlife, freshwater aquatic life, and marine life. In Article IV, section 9, of the Florida Constitution, the Commission is tasked with exercising the regulatory and executive powers of the State with respect to wildlife, freshwater aquatic life, and marine life. Under Commission rules, the term "wildlife" is defined as "all wild or non-domestic birds, mammals, fur-bearing animals, reptiles and amphibians." The term also includes "captive wildlife." In addition to species of mammals and fish, the terms "freshwater aquatic life" and "marine life" include amphibians, reptiles, mollusks, crustacean, arthropods, invertebrates, and coral, and other animals that inhabit the freshwater or marine environments. The Commission also regulates any part, product, egg, or offspring of wildlife, freshwater aquatic life, and marine life. These terms are similarly defined for the purpose of construing the provisions of Chapter 379, F.S.</p> <p>The current laws target individuals engaged in trafficking but do little to effectively disrupt the wider criminal network or put those profiting from criminal enterprise out of business. Current laws protecting against the illegal purchase, sale, take or possession of wildlife and aquatic life are primarily misdemeanors and typically only result in small fines and probation when individuals are convicted. In some of the Commission's more complex trafficking investigations, it may take a year or longer for charges to be filed against suspects. This means some of the crimes associated with trafficking activity may be outside of the statute of limitations for prosecution and those involved in the criminal enterprise are able to evade justice.</p> <p>For a conviction under RICO, the State must prove 1) the existence of an "enterprise," and 2) the connected "pattern of racketeering activity." <i>Gross v. State</i>, 765 So. 2d 39, 42, 45 (Fla. 2000). A RICO offense is a 1st degree felony with a maximum punishment up to 30 years in prison and \$10,000 fine. In addition, RICO allows for the State to pursue asset forfeiture which would greatly undermine the profitability of these criminal enterprises. The RICO statutes also allow prosecutors to bring all the evidence related to the criminal enterprise and pattern of racketeering into one trial, rather than in separate trials for each defendant. The addition of crimes under Chapter 379, F.S., and Title 68, F.A.C., to the racketeering statutes would also assist in the prosecution of crimes committed against the State of Florida in which there is no nexus to federal law, such as intrastate crimes and crimes involving species not listed under federal laws such as the Endangered Species Act and Migratory Bird Treaty Act.</p> <p>It is critical that the amendment's language address the enumerated crimes under both Chapter 379, F.S., and Title 68, F.A.C. There are many crimes related to wildlife trafficking that are offenses under the Commission's regulations, but that do not have a companion statutory offense under Chapter 379, F.S. Violations of these offenses have a prescribed penalty in statute, but the offense itself is articulated and charged under the regulations of Title 68, F.A.C. In addition, criminal organizations often utilize related crimes (i.e., mislabeling, falsifying documents or records, hiding sources of acquisitions, etc.) to conceal and further illegal activity. For this reason, prosecutors need the ability to pursue racketeering charges for related crimes under the laws and rules of the Commission.</p>
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ASHLEY MOODY
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Office of Statewide Prosecution
NICK COX
Statewide Prosecutor

KELLY A. McKNIGHT
Assistant Statewide Prosecutor
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RE: FWC proposed legislation

The 2021 Legislative Proposal from FWC adding wildlife trafficking to the Florida Statute Chapter 895- Offenses concerning Racketeering and Illegal Debts (RICO) would be a tremendous benefit to the prosecution in tackling long term complex cases of criminals, including poachers, who are harming vital environmental resources for monetary gain.

Racketeering (RICO) is a charge reserved for organized criminal activities causing detrimental impacts on the State of Florida such as drug trafficking, human trafficking, widespread fraud/thefts crimes and the like.

The rise in the thefts of our natural resources, including marine and wildlife for profit, has become a larger issue. FWC spends years trying to infiltrate these criminal organizations that secretly poach from the wild to then sell those resources for huge profits while depleting our environmental resources.

The Office of Statewide Prosecution was asked to assist in a large undercover operation regarding the theft of alligator eggs throughout Florida. Although not a widely known issue outside of the FWC, it was discovered that poachers were taking 100% of eggs from each alligator's nest, a practice which could ultimately wipe out a generation of alligators solely to make large profits from buyers in Louisiana. The theft of this resource was only a 3rd Degree Felony. The crime was not fitting for a group of individuals that stole a valuable and once endangered resource. Additionally, these criminals were stealing tens of thousands of dollars from the State of Florida and landowners by not reporting what they stole. The Office of Statewide Prosecution was asked to become involved to assist FWC in disrupting this criminal activity. This would be the only opportunity FWC would have to infiltrate this organization and send a message to a population that largely relies on self-reporting.

The Office of Statewide Prosecution filed its first RICO for FWC charging 4 defendants for the ongoing theft of alligators and alligator eggs. However, the theft of alligators or alligator eggs is not an enumerated crime under RICO statute, therefore, the State had to explore alternative methods to pursue the case. The State proceeded under the theft statute for the theft of wildlife from the State of Florida as the pattern of racketeering activity. This charge was met with resistance from Defense counsel arguing there could be no theft of wildlife from the State as the State did not own the wildlife. The case is currently being challenged on appeal. The new legislation proposed, would have

allowed the State to not only include the codes and statutes as they relate to the theft of alligator eggs, it would have given the State the ability to pursue additional criminal activity as it related to the required paperwork, licenses, and reporting requirements under Florida Administrative Code 68A.

Another example of how the proposed legislation would enhance the prosecution of those who poach and exploit our resources is a recent case filed by the Office of Statewide Prosecution and pending trial in the Fifth Judicial Circuit. FWC investigated the illegal hunting of Florida's black bear for over a year. FWC uncovered that several individuals were using Florida as its training ground for dogs to hunt Black Bears. Because of Florida's climate, it is easy to hunt year-round. One defendant advertised year-round dog training and brought dogs from other states to train by allowing large packs of hound dogs to tree bears for hours until they no longer had the strength to remain in the tree. When the bears would fall, the defendants encouraged the dogs to attack the bears. These defendants would harass and torture the bears for the purpose of training their dogs, which on more than one occasion, resulted in killing the bears. One defendant shot a bear with a tranquilizer gun so he could remove it from Ocala National Forest to a hunt club closer to his home. Not only were the bears placed in harm's way, so were the dogs. These defendants would also exploit the harassment of bears by posting their activities throughout social media.

FWC's administrative code allows for the prosecution of anyone unlawfully taking, attempting to take, pursuing, hunting, molesting, capturing, killing, possession, injuring, shooting, collecting, or selling black bear parts, a second degree misdemeanor (currently a first degree misdemeanor with the recent passage of new legislation). Additionally, FWC code defines "taking" as pursuing, injuring, killing, molesting, and harming, a definition that encompasses all activity utilized by these defendants in using and training dogs for the purposes of seeking out and "taking" black bear.

The Office of Statewide Prosecution charged 9 defendants with conspiracy to commit Racketeering activity. However, the unlawful taking of a black bear under Florida Statute 379.401 and F.A.C. 68A-4.009, 68A-4.001, 68A-1.004 are not enumerated crimes recognized under Florida's Racketeering statutes. The State pursued charges for the pattern of racketeering activity under Animal Baiting and Fighting pursuant to Florida Statute 821.122 which prohibits the fighting or baiting of animals. Animal fighting includes fighting between dogs, bears or other animals, and "baiting" means to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in fights with or among other animals. (F.S. §828.122) Further, baiting, breeding, training, transporting, selling, owning, possessing, or using any wild or domestic animal for the purpose of animal fighting or baiting is illegal. (F.S. §828.122). This theory of prosecution, much like issues with the alligator theft case, will be met with resistance by the defense, creating legal arguments for appeal. However, illegally exploiting Florida's environmental resources year after year for monetary gain requires a greater punishment than what is currently proscribed in Florida for taking a black bear. New legislation that adds predicate offenses from the Florida Administrative Code and Florida Statutes to the RICO statute, including molestation of bears, using processed food for bait, and use of dogs outside of regulated hunting, would aid the State's ability to combat the organized criminal activity in which these enterprises engage.

The investigations conducted by FWC are lengthy and complex. The end result is usually the only opportunity to infiltrate tight-knit groups to expose the poachers and send a message to deter others. The new legislation would expand the legal resource to the State in allowing the prosecution of serious poachers who exploit for monetary gain and perverted enjoyment. Many poachers continue to poach because the penalty is usually a fine or a slap on the wrist. By expanding the definition of the pattern of racketeering activity to include Chapter 379 of the Florida Statue and Title 68A of the Florida Administrative Code, Florida will have the opportunity to stop large organizations from the poaching of various endangered species and important wildlife and aquatic life from our State. As the current legislation stands, the State is limited in the charges it can pursue and penalties it can seek for those criminal organizations who poach and exploit our resources.

If our office can be of any further assistance in explaining the issue, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kelly A. McKnight', enclosed within a large, loopy oval shape.

Kelly A. McKnight
Assistant Statewide Prosecutor

HB 783 – Racketeering of Aquatic and Wild Animal Life (Identical SB 776)

This bill amends s. 895.02, F.S., adding “Chapter 379, relating to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes” and “any violation of Title 68, Florida Administrative Code, relating to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes” to the definition of racketeering activity. These activities would now be potential Level 8, 1st degree felonies under s. 895.03, F.S. for using or investing proceeds derived from a pattern of racketeering activity, acquiring or maintaining through racketeering activity any interest in or control of any enterprise or real property, or conducting or participating in any enterprise through a pattern of racketeering activity. Furthermore, they would fall under the act of conspiring to commit these felonies.

Per FDLE, there were 436 misdemeanor arrests in CY 2019, with 114 guilty/convicted and 61 adjudications withheld under Chapter 379, and there were 337 arrests in CY 2020, with 48 guilty/convicted and 40 adjudications withheld. For felony violations, in CY 2019, there were 37 arrests, with 28 guilty/convicted and 14 adjudications withheld. In CY 2020, there were 80 arrests, with 4 guilty/convicted and 8 adjudications withheld. Per DOC, there was one new commitment to prison in FY 18-19 and one new commitment to prison in FY 19-20 for felony violations associated with Chapter 379.

Per DOC, in FY 18-19, there were 82 new commitments to prison under s. 895.03, F.S. In FY 19-20, there were 58 new commitments. Given that under current statute there are a large number of offenses where these felonies could apply, including offenses that have a high volume of commitments each year, the additions of Chapter 379 and violations of Title 68 are not expected to have a significant impact on prison beds.

EDR PROPOSED ESTIMATE: Positive Insignificant

Requested by: Senate



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Chair*
Appropriations
Appropriations Subcommittee on Criminal
and Civil Justice
Criminal Justice
Ethics and Elections
Transportation

SENATOR GEORGE B. GAINER

2nd District

February 1, 2021

Re: SB 776

Dear Chair Pizzo,

I am respectfully requesting Senate Bill 776, related to Racketeering, be placed on the agenda for the next meeting of the Committee on Criminal Justice.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A handwritten signature in cursive script, reading "George B. Gainer".

Senator George Gainer
District 2

Cc: Lauren Jones, Sue Arnold, Margarita Gerson

REPLY TO:

- ☐ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- ☐ Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville, Florida 32578 (850) 747-5454
- ☐ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/14/21

Meeting Date

776

Bill Number (if applicable)

Topic Racketeering

Amendment Barcode (if applicable)

Name Kate MacFall

Job Title State director

Address 1206 Waltham Dr

Phone 850 508 1001

Street

Tallah

FL

32312

Email kmacfall@hsusa.com

City

State

Zip

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/16/21

Meeting Date

776 (as amended)

Bill Number (if applicable)

Topic Racketeering

Amendment Barcode (if applicable)

Name Jessica Crawford

Job Title Legislative Affairs Director

Address 620 S. Meridian Street
Street

Phone 850-487-3795

Email Jessica.Crawford@myfwc.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fish & Wildlife Conservation Commission

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 890

INTRODUCER: Criminal Justice Committee and Senator Hooper

SUBJECT: Use of Electronic Databases

DATE: February 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Fav/CS
2.			TR	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 890 amends s. 119.10, F.S., increasing the maximum fine from \$500 to \$2000, for a public officer who violates any provision of ch. 119, F.S., relating to public records.

This bill amends s. 943.125, F.S., providing that the law enforcement accreditation program must address access to and use of personal identification information, as defined in s. 817.568(1)(f), F.S., contained in electronic databases.

This bill creates ss. 943.1719 and 943.17191, F.S., requiring the Criminal Justice Standards and Training Commission (CJSTC) to provide training on the authorized access to and use of personal identification information contained in electronic databases used by a law enforcement officer in his or her official capacity. This training must be part of the curriculum required for initial certification of a law enforcement officer, and as part of the 40 hours of required instruction for continued employment or appointment as an officer.

The training under ss. 943.1719 and 943.17191, F.S., must at minimum include:

- The proper use and limitations on use of electronic databases in a law enforcement officer's official capacity.
- The penalties associated with the misuse of such electronic databases.

This bill may have a negative fiscal impact on the Florida Department of Law Enforcement (FDLE). See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2021.

II. Present Situation:

Electronic Databases

Government employees have access to various electronic databases. One database frequently accessed by government employees, including law enforcement, is the Driver and Vehicle Information Database (DAVID). The DAVID is a multifaceted database that affords immediate retrieval of driver and motor vehicle information that is indispensable for law enforcement and criminal justice officials.¹ Information contained in DAVID is confidential and protected under the federal Driver's Privacy Protection Act (DPPA). The DPPA provides that government agencies, including any court or law enforcement agency, may access this information in their official capacity to carry out their duties.²

There have been recent reports of government employees abusing their access to electronic databases.³ One government employee admitted to searching both his ex-wife and ex-girlfriend. Other examples of misuse of electronic databases include an officer who was suspended for two days after using DAVID to access addresses for Christmas cards, an officer who was fired for using DAVID to access information on a teen girl he was talking to and her parents, and an officer who resigned after being accused of using DAVID to search personal information of young women he met while on duty.⁴

Violation of Public Records Laws

It is state policy that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵ Chapter 119, F.S., provides various laws regarding public records, and public record exemptions.

Section 119.10, F.S., provides that any public officer who violates any provision of ch. 119, F.S., relating to public records, commits a noncriminal infraction, punishable by a fine of up to \$500. A public officer who knowingly violates s. 119.07(1), F.S.,⁶ is subject to suspension and removal or impeachment and commits a first degree misdemeanor.⁷

¹ Florida Highway Safety and Motor Vehicles, *Driver and Vehicle Information Database (DAVID)*, available at [Driver And Vehicle Information Database \(DAVID\) - Florida Department of Highway Safety and Motor Vehicles \(flhsmv.gov\)](https://www.flhsmv.gov/Driver-And-Vehicle-Information-Database-(DAVID)-Florida-Department-of-Highway-Safety-and-Motor-Vehicles-(flhsmv.gov)) (last visited February 10, 2021).

² 18 U.S.C. s. 2721.

³ 10 Tampa Bay, *10 Investigates: Government workers abusing access to your private info face few consequences*, November 25, 2020, available at [Florida government workers abuse access to your private info | wtsp.com](https://www.wtsp.com/story/news/local/2020/11/25/florida-government-workers-abuse-access-to-your-private-info-wtsp-com/) (last visited February 10, 2021).

⁴ *Id.*

⁵ Section 119.01(1), F.S.

⁶ Section 119.07(1), F.S., relates to the responsibilities of custodians of public records.

⁷ Section 119.10(1)(a) and (b), F.S.

Additionally, any person who willfully and knowingly violates any provisions of ch. 119, F.S., commits a first degree misdemeanor.⁸ Any person who willfully and knowingly violates s. 119.105, F.S.⁹ commits a third degree felony.^{10, 11}

Misuse of an Electronic Database

Misuse of an electronic database is a violation of an officer's good moral character.¹² An officer misuses an electronic database when he or she willfully and knowingly accesses an electronic database and uses the database to access restricted information for an illegitimate or personal purpose with bad intent. Bad intent may be demonstrated by:

- A pattern of misuse that demonstrates improper access or violations.
- If the violation occurred after the officer received agency or the Criminal Justice Standards and Training Commission (CJSTC) discipline for improperly accessing a computer database, or after the officer received formal training on the database(s) that includes provisions on the improper use of a database.
- The existence of a current or past non-amicable or otherwise contentious relationship between the officer and the subject of the query, or when the purpose of the query is to identify person(s) linked or associated to the relationship.
- Pre-textual queries based on age, race, sex, gender, or other personal identifying characteristics.
- Any additional action taken by the officer as a result of the information obtained from the query, for example, retaining, copying, or reproducing the information obtained from the query, or disseminating information not listed as confidential or exempt in ch. 119, F.S., obtained as a result of the query.¹³

Misuse of an electronic database, such as DAVID, may result in disciplinary action. The recommended penalty the CJSTC should impose for misuse of an electronic database ranges from probation to suspension.¹⁴ Additionally, misuse of an electronic database may subject an officer to the penalties in s. 119.10, F.S., including being charged with a first degree misdemeanor.¹⁵

⁸ Section 119.10(2)(a), F.S.

⁹ Section 119.105, F.S., provides that police reports are public records unless otherwise made confidential and exempt. Nonexempt or nonconfidential police reports may be examined by any person. However, any person who has possession of exempt or confidential information in a police report may not commercially solicit the victims or relatives of the victims in the report and may not knowingly disclose such information for the purpose of solicitation. This does not apply to publication by any news media legally entitled to possess the information.

¹⁰ Section 119.10(2)(b), F.S.

¹¹ A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or enhanced penalties as a habitual felony offender. Sections 775.082, 775.083, and 775.084, F.S.

¹² Rule 11B-27.0011, F.A.C.

¹³ Rule 11B-27.0011(4)(c)(14), F.A.C.

¹⁴ Rule 11B-27.005(5)(c), F.A.C.

¹⁵ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

The Criminal Justice Standards and Training Commission

The CJSTC's mission is to ensure that all citizens of Florida are served by criminal justice officers who are ethical, qualified, and well-trained.¹⁶ The CJSTC is comprised of:

- Three sheriffs.
- Three chiefs of police.
- Five law enforcement officers who are neither sheriffs nor chiefs who are the rank of Sergeant or below.
- Two correctional officers, one of which is an administrator of a state correctional institution and one who is of the rank of sergeant or below.
- One Florida resident who falls into none of the above categories.
- The Attorney General or designated proxy.
- The Secretary of Department of Corrections or designated proxy.
- The Director of the Florida Highway Patrol.¹⁷

The primary responsibilities of the CJSTC are to:

- Establish uniform minimum standards for employment and training of full-time, part-time, and auxiliary law enforcement, and correctional and correctional probation officers.
- Establish and maintain officer training programs, curricula requirements, and certification of training schools and training school instructors.
- Certify officers who complete a Florida Basic Recruit Training Program, or who are diversely qualified through experience and training, and who meet minimum employment standards.
- Review and administer appropriate administrative sanctions in instances when an officer, a training school instructor, or a training school is found in violation of Florida Statutes and CJSTC standards.
- Promulgate rules and procedures to administer the requirements of ch. 943.085-943.257, F.S.
- Conduct studies of compensation, education, and training for the correctional, correctional probation, and law enforcement disciplines.
- Maintain a central repository of records of all certified officers.
- Conduct quarterly meetings to discuss issues and approve rules that relate to officer standards and training.
- Develop, maintain, and administer the State Officer Certification Examination for criminal justice officers.¹⁸

Accreditation

An accreditation program has long been recognized as a means of maintaining the highest standards of professionalism. Accreditation is the certification by an independent reviewing authority that an entity has met specific requirements and prescribed standards.¹⁹

¹⁶ Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission (CJSTC)*, available at <https://www.fdle.state.fl.us/CJSTC/Commission/CJSTC-Home.aspx> (last visited February 9, 2021).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Florida Accreditation, *Introduction to Florida Accreditation*, available at <http://www.flaccreditation.org/> (last visited February 9, 2021).

Section 943.125, F.S., provides legislative intent that law enforcement agencies voluntarily adopt meaningful standards of operation designed to promote enhanced professionalism and to maximize the capability of law enforcement agencies to enforce the law and prevent and control criminal activity.²⁰ The statute further encourages the continuation of a voluntary state accreditation program to facilitate enhanced professionalism. The accreditation program must be independent of any law enforcement agency, the Department of Corrections, the Florida Sheriff's Association, or the Florida Police Chiefs Association.²¹

The law enforcement accreditation program must address, at minimum, the following aspects of law enforcement:

- Vehicle pursuits.
- Seizure and forfeiture of contraband articles.
- Recording and processing citizens' complaints.
- Use of force.
- Traffic stops.
- Handling natural and manmade disasters.
- Special operations.
- Prisoner transfer.
- Collection and preservation of evidence.
- Recruitment and selection.
- Officer training.
- Performance evaluations.
- Law enforcement disciplinary procedures and rights.
- Use of criminal investigative funds.²²

Commission for Florida Law Enforcement Accreditation, Inc.

The Commission for Florida Law Enforcement Accreditation, Inc. (CFA) was originally formed in 1993 as a response to s. 943.125, F.S.²³ The CFA is comprised of:

- Five police chiefs, from agencies either CFA accredited or with a signed agreement to pursue accreditation;
- Five sheriffs from agencies either CFA accredited or with a signed agreement to pursue accreditation;
- One mayor, city commissioner, city manager, or other member appointed by the Florida League of Cities;
- One county commissioner or other member appointed by the Florida Association of Counties;
- One appellate or circuit court judge appointed by the Florida Supreme Court;
- One law enforcement executive from a state law enforcement agency either CFA accredited or with a signed agreement to pursue accreditation; and

²⁰ Section 943.125(1) and (2), F.S.

²¹ Section 943.125(3), F.S.

²² Section 942.125(4)(a)-(n), F.S.

²³ Florida Department of Law Enforcement, *Florida Accreditation Office*, available at <https://www.fdle.state.fl.us/Accreditation/Accreditation> (last visited February 9, 2021).

- One representative from the Office of Inspector General either CFA accredited or with a signed agreement to pursue accreditation.²⁴

The commission meets three times a year to oversee the accreditation program and to officially accredit agencies that have passed the review process.²⁵

III. Effect of Proposed Changes:

The bill amends s. 119.10, F.S., increasing the maximum fine from \$500 to \$2000, for a public officer who violates any provision of ch. 119, F.S., relating to public records.

This bill amends s. 943.125, F.S., providing that the law enforcement accreditation program must address access to and use of personal identification information contained in electronic databases.

The bill defines personal identification information as it is defined in s. 817.568(1)(f). Section 817.568(1)(f), F.S., defines “personal identification information,” as any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state issued or U.S. issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person’s financial resources.

This bill creates s. 943.1719, F.S., requiring the commission to provide training on the authorized access to and use of personal identification information contained in electronic databases used by a law enforcement officer in his or her official capacity. This training must be part of the curriculum required for initial certification of a law enforcement officer.

The bill creates s. 943.17191, F.S., providing that the commission must require by rule that each law enforcement officer receive, as part of the 40 hours of required instruction for continued employment or appointment as an officer, training on the authorized access to and use of personal identification information contained in electronic databases used by a law enforcement officer in his or her official capacity.

²⁴ Email from Ronald Draa, Chief of Staff, FDLE, RE: SB 890 Use of Electronic Databases (Email on file with Committee on Criminal Justice) (February 10, 2021).

²⁵ Florida Department of Law Enforcement, *Florida Accreditation Office*, available at <https://www.fdle.state.fl.us/Accreditation/Accreditation> (last visited February 9, 2021).

The training under ss. 943.1719 and 943.17191, F.S., must at a minimum include:

- The proper use and limitations on use of electronic databases in a law enforcement officer's official capacity.
- The penalties associated with the misuse of such electronic databases.

This bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE has indicated the department will need \$37,663 in non-recurring funds to implement the provisions of the bill. Specifically, the FDLE estimated the cost to update the law enforcement basic recruit training program and to develop a new post-basic training course is approximately \$7,663. The FDLE also provided that the technological

costs of the bill, with approximately 3 months of IT work (analysis, design, programming, and testing), will cost the department approximately \$30,000.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.10 and 943.125.

This bill creates the following sections of the Florida Statutes: 943.1719, and 943.17191.

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 16, 2021:

The committee substitute adds a reference to s. 817.568(1)(f), F.S., defining personal identification information. Additionally, the amendment changes the effective date to October 1, 2021.

B. Amendments:

None.

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

²⁶ Department of Law Enforcement, *2021 Legislative Bill Analysis for SB 890*, (February 10, 2021), p. 3-5 (on file with the Senate Committee on Criminal Justice).



377242

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2021	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 42 - 70
and insert:
information, as defined in s. 817.568(1)(f), contained in
electronic databases.

Section 3. Section 943.1719, Florida Statutes, is created
to read:

943.1719 Basic skills training relating to the use of
electronic databases.—The commission shall incorporate into the



377242

11 course curriculum required for initial certification of a law
12 enforcement officer instruction on the authorized access to and
13 use of personal identification information, as defined in s.
14 817.568(1)(f), contained in electronic databases used by a law
15 enforcement officer in his or her official capacity. This
16 training must include, but need not be limited to, the proper
17 use, and limitations on use, of electronic databases in a law
18 enforcement officer's official capacity and the penalties
19 associated with the misuse of such electronic databases.

20 Section 4. Section 943.17191, Florida Statutes, is created
21 to read:

22 943.17191 Continued employment training relating to the use
23 of electronic databases.—The commission shall by rule require
24 that each law enforcement officer receive, as part of the 40
25 hours of required instruction for continued employment or
26 appointment as an officer, instruction on the authorized access
27 to and use of personal identification information, as defined in
28 s. 817.568(1)(f), contained in electronic databases used by a
29 law enforcement officer in his or her official capacity. This
30 training must include, but need not be limited to, the proper
31 use, and limitations on use, of electronic databases in a law
32 enforcement officer's official capacity and the penalties
33 associated with the misuse of such electronic databases.

34 Section 5. This act shall take effect October 1, 2021.

By Senator Hooper

16-01010-21

2021890__

A bill to be entitled

An act relating to the use of electronic databases; amending s. 119.10, F.S.; increasing the maximum fine imposed on public officers who violate any provision of that chapter; amending s. 943.125, F.S.; requiring the law enforcement accreditation program to address access to and use of personal identification information contained in electronic databases; creating s. 943.1719, F.S.; requiring the Criminal Justice Standards and Training Commission to incorporate into the course curriculum required for initial certification of law enforcement officers instruction on the authorized access to and use of personal identification information contained in electronic databases; providing training requirements; creating s. 943.17191, F.S.; requiring the commission to adopt rules requiring that each law enforcement officer receive instruction on the authorized access to and use of personal identification information contained in electronic databases for continued employment or appointment as an officer; providing training requirements; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 119.10, Florida Statutes, is amended to read:
119.10 Violation of chapter; penalties.—
(1) Any public officer who:

Page 1 of 3

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

16-01010-21

2021890__

(a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$2,000 ~~\$500~~.

Section 2. Paragraph (o) is added to subsection (4) of section 943.125, Florida Statutes, to read:

943.125 Accreditation of state and local law enforcement agencies, correctional facilities, public agency offices of inspectors general, and certain pretrial diversion programs; intent.—

(4) The law enforcement accreditation program must address, at a minimum, the following aspects of law enforcement:

(o) Access to and use of personal identification information contained in electronic databases.

Section 3. Section 943.1719, Florida Statutes, is created to read:

943.1719 Basic skills training relating to the use of electronic databases.—The commission shall incorporate into the course curriculum required for initial certification of a law enforcement officer instruction on the authorized access to and use of personal identification information contained in electronic databases used by a law enforcement officer in his or her official capacity. This training must include, but need not be limited to, the proper use, and limitations on use, of electronic databases in a law enforcement officer's official capacity and the penalties associated with the misuse of such electronic databases.

Section 4. Section 943.17191, Florida Statutes, is created to read:

943.17191 Continued employment training relating to the use

Page 2 of 3

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

16-01010-21

2021890

59 of electronic databases.-The commission shall by rule require
60 that each law enforcement officer receive, as part of the 40
61 hours of required instruction for continued employment or
62 appointment as an officer, instruction on the authorized access
63 to and use of personal identification information contained in
64 electronic databases used by a law enforcement officer in his or
65 her official capacity. This training must include, but need not
66 be limited to, the proper use, and limitations on use, of
67 electronic databases in a law enforcement officer's official
68 capacity and the penalties associated with the misuse of such
69 electronic databases.

70 Section 5. This act shall take effect July 1, 2021.



2021 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
BILL NUMBER:	SB 890
BILL TITLE:	Use of Electronic Databases
BILL SPONSOR:	Senator Hooper
EFFECTIVE DATE:	July 1, 2021

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Transportation
3) Rules
4)
5)

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

CURRENT COMMITTEE
Criminal Justice

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	February 10, 2021
LEAD AGENCY ANALYST:	Dean Register
ADDITIONAL ANALYST(S):	Ashley Pennington, Danielle Terrell, Becky Bezemek
LEGAL ANALYST:	Jim Martin, Chris Bufano
FISCAL ANALYST:	Cynthia Barr

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill would increase the maximum fine imposed on public officers who violate any provision of that chapter. Requires the Criminal Justice Standards and Training Commission (CJSTC) to incorporate into the course curriculum required for initial certification of law enforcement officers instruction on the authorized access to and use of personal identification information (PII) contained in electronic databases. Requires CJSTC to adopt rules requiring that each law enforcement officer receive instruction on the authorized access to and use of PII contained in electronic databases for continued employment or appointment as an officer, etc.

2. SUBSTANTIVE BILL ANALYSIS

PRESENT SITUATION: Under s. 943.17, F.S., the Commission, “shall, by rule, design, implement, maintain, evaluate, and revise entry requirements and job-related curricula and performance standards for basic recruit, advanced and career development training programs and courses. The rules shall include, but are not limited to, a methodology to assess relevance of the subject matter to the job, student performance, and instructor competency.

To maintain their certification, law enforcement officers must satisfy the continuing training and education requirements of s. 943.135, FS, which requires training or education at the rate of 40 hours every four years. The employing agency must document the training or education is job-related and consistent with the needs of the employing agency and report completion of the training to CJSTC through the Automated Training Management System (ATMS).

Currently, s. 943.125, F.S., does not address access to and the use of PII contained in electronic databases.

EFFECT OF THE BILL: Requires the basic skills course required for law enforcement officers to obtain initial certification include instruction on the authorized access to and use of PII contained in electronic databases used by a law enforcement officer in his or her official capacity. This is already included in the basic skills course; however, it may need to be expanded, pending the final version of the bill. Requires continued employment training relating to the use of electronic databases. A post-basic course would need to be developed and approved by the Commission in order to meet this requirement. Requires staff to draft and submit proposed standard language addressing access to and the use of personal identification information contained in electronic databases to the Commission on Florida Law Enforcement Accreditation (CFA) Standards Review and Interpretation Committee for approval. If approved, the standard language would be presented to the full CFA for approval and adoption.

1. 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:	CFA required to adopt standards on access to and the use of PII contained in electronic databases.
What is the expected impact to the agency's core mission?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

2. 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:	

3. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☐

If yes, provide a description:	
Date Due:	

Bill Section Number:	
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4. 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:	<ul style="list-style-type: none"> Estimated cost to update the law enforcement basic recruit training program and develop a new post-basic training course is approximately \$7,663 (see Additional Comments). Modifications to the department's ATMS would require \$30,000 in non-recurring funds (see Technology Impact). <p>Total FDLE Fiscal: \$37,663 (non-recurring)</p>
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.	The department estimates three months of IT work (analysis, design, programming and testing) with an estimated cost of \$37,000 (non-recurring). FDLE recommends the effective date be amended to October 1, 2021.
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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 bill does not define PII or cite an existing statutory definition. PII is defined in s. 817.568(f), FS.
- Updating the Law Enforcement Basic Recruit Training Program and creating a CJSTC post-basic mandatory retraining course to include instruction on the authorized access to and use of PII contained in electronic databases:

Tasks	Hours	Cost
Analysis		
Identify SMEs	20	\$ 372
Research existing material	20	\$ 372
SME Workshop—Instructional Analysis	20	\$ 372
Design/Development		

Develop course content	240	\$ 4,464
Review/Revisions	80	\$ 1,488
Implementation		
Course edit	32	\$ 595
Total cost		\$ 7,663

From: Draa, Ronald <RonaldDraa@fdle.state.fl.us>
Sent: Wednesday, February 10, 2021 6:08 PM
To: Stokes, Amanda <Stokes.Amanda@flsenate.gov>
Cc: Smith, Bobbie <BobbieSmith@fdle.state.fl.us>
Subject: FW: SB 890 Use of Electronic Databases

Please see response below to your question about CFA. Analysis of SB 890 should be coming your way this evening.
Appreciate your patience...Ron

From: Terrell, Danielle
Sent: Wednesday, February 10, 2021 6:01 PM
To: Draa, Ronald <RonaldDraa@fdle.state.fl.us>
Cc: Smith, Bobbie <BobbieSmith@fdle.state.fl.us>
Subject: RE: SB 890 Use of Electronic Databases

Ron,

Page seven of the manual is mostly correct, but it appears the language was simplified from our bylaw language. The CFA Bylaw language is below:

1. The CFA shall be comprised of fifteen (15) voluntary members as follows:
 - A. Five Sheriffs from agencies either CFA accredited or with a signed agreement to pursue such accreditation on file, appointed by the Florida Sheriffs Association; **Retired Director Juan Perez does occupy one of the FSA spots and is finishing his current term, this may be one of the things that is confusing because his title is not Sheriff.**
 - B. Five Police Chiefs from agencies either CFA accredited or with a signed agreement to pursue such accreditation on file, appointed by the Florida Police Chiefs Association; **There is currently a vacancy for a chief of police. We are waiting on an appointment from FPCA**
 - C. A Mayor, City Commissioner, City Manager, or other member appointed by the Florida League of Cities;
 - D. A County Commissioner or **other member** appointed by the Florida Association of Counties; **This spot is occupied by Mayor Demings of Orange County**
 - E. An Appellate or Circuit Court Judge appointed by the Florida Supreme Court; and
 - F. A law enforcement executive from a state law enforcement agency either CFA accredited or with a signed agreement to pursue such accreditation on file, appointed by the State Law Enforcement Chiefs' Association. **This spot is occupied by Director Simon Blank.**
 - G. One representative from an Office of Inspector General either CFA accredited or with a signed agreement to pursue such accreditation on file, appointed by the Chief Inspector General of Florida.

I hope this answers the question.

Thanks,

Danielle Terrell
Executive Director
Florida Accreditation Office
Phone: 850-410-7202
E-mail: DanielleTerrell@fdle.state.fl.us

www.Flaccreditation.org



From: Draa, Ronald
Sent: Wednesday, February 10, 2021 4:56 PM
To: Terrell, Danielle <DanielleTerrell@fdle.state.fl.us>
Cc: Smith, Bobbie <BobbieSmith@fdle.state.fl.us>
Subject: FW: SB 890 Use of Electronic Databases

Can you please advise of the highlight below?

Ronald E. Draa, Jr. | Chief of Staff
Florida Department of Law Enforcement
850.410.7020 (Office)
850.528.2755 (Cell)

From: Stokes, Amanda <Stokes.Amanda@flsenate.gov>
Sent: Wednesday, February 10, 2021 4:39 PM
To: Draa, Ronald <RonaldDraa@fdle.state.fl.us>
Cc: Smith, Bobbie <BobbieSmith@fdle.state.fl.us>
Subject: RE: SB 890 Use of Electronic Databases

Hey Ron,

I just wanted to check in to see if it is possible to get the analysis by the end of this week since this bill is on the agenda.

Also, I wanted to see if you could clarify something- the composition of the CFA is different on FDLE's website [Accreditation \(state.fl.us\)](http://Accreditation.state.fl.us) than in the CFA handbook (page 7) [2164454 \(powerdms.com\)](http://2164454.powerdms.com)- do you know which is correct?

Thanks,

Amanda

From: Draa, Ronald <RonaldDraa@fdle.state.fl.us>
Sent: Friday, February 5, 2021 9:16 AM
To: Stokes, Amanda <Stokes.Amanda@flsenate.gov>
Cc: Smith, Bobbie <BobbieSmith@fdle.state.fl.us>
Subject: RE: SB 890 Use of Electronic Databases

We just started working on this one last week. We'll get you a copy when its done...Ron

Ronald E. Draa, Jr. | Chief of Staff
Florida Department of Law Enforcement

850.410.7020 (Office)
850.528.2755 (Cell)

From: Stokes, Amanda <Stokes.Amanda@flsenate.gov>
Sent: Friday, February 05, 2021 9:10 AM
To: Draa, Ronald <RonaldDraa@fdle.state.fl.us>
Subject: SB 890 Use of Electronic Databases

Good morning Ron,

Does the Department have an analysis on SB 890? Is it possible to get one?

Thanks,

Amanda D. Stokes
Senior Attorney
Criminal Justice Committee
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100
850 487 5192
850 410 0077 (FAX)



The Florida Senate

Committee Agenda Request

To: Senator Jason Pizzo, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 4, 2021

I respectfully request that **Senate Bill # 890**, relating to Use of Electronic Databases, be placed on the:

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

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

Senator Ed Hooper
Florida Senate, District 16

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Criminal Justice Committee

Judge:

Started: 2/16/2021 9:01:07 AM

Ends: 2/16/2021 11:14:40 AM

Length: 02:13:34

9:01:05 AM Meeting called to order by Chair Pizzo
9:01:09 AM Roll call by CAA Sue Arnold
9:01:22 AM Quorum present
9:01:26 AM Senator Boyd is excused
9:01:38 AM Comments from Chair Pizzo
9:02:07 AM Introduction of Tab 1, SB 68 by Chair Pizzo
9:02:26 AM Explanation of SB 68, Public Records/Staff and Volunteers of Domestic Violence Centers by Senator Garcia
9:02:44 AM Introduction of Amendment Barcode 215070 by Chair Pizzo
9:02:49 AM Explanation of Amendment by Senator Garcia
9:03:18 AM Question from Chair Pizzo
9:03:29 AM Question from Senator Gainer
9:03:43 AM Response from Senator Garcia
9:04:07 AM Comments from Chair Pizzo
9:04:40 AM Closure on Amendment by Senator Garcia
9:04:50 AM Amendment adopted
9:04:55 AM Comments from Chair Pizzo
9:05:16 AM Closure waived
9:05:21 AM Roll call by CAA
9:05:25 AM CS/SB 68 reported favorably
9:05:44 AM Introduction of Tab 2, CS/SB 70 by Chair Pizzo
9:05:48 AM Explanation of CS/SB 70, Domestic Violence Centers by Senator Garcia
9:06:15 AM Comments from Chair Pizzo
9:06:20 AM Question from Senator Brandes
9:06:27 AM Response from Senator Garcia
9:07:24 AM Follow-up question from Senator Brandes
9:07:32 AM Response from Senator Garcia
9:08:32 AM Follow-up question from Senator Brandes
9:08:40 AM Response from Senator Garcia
9:08:58 AM Follow-up question from Senator Brandes
9:09:06 AM Response from Lauren Jones, Staff Director
9:10:09 AM Question from Senator Taddeo
9:10:16 AM Response from Senator Garcia
9:11:25 AM Follow-up question from Senator Taddeo
9:11:32 AM Response from Senator Garcia
9:11:52 AM Question from Chair Pizzo
9:12:06 AM Response from Senator Garcia
9:13:07 AM Senator Baxley in debate
9:14:26 AM Comments from Chair Pizzo
9:15:01 AM Closure waived
9:15:05 AM Roll call by CAA
9:15:12 AM CS/SB 70 reported favorably
9:15:20 AM Introduction of Tab 10, SB 890 by Chair Pizzo
9:15:45 AM Explanation of SB 890, Use of Electronic Databases by Senator Hooper
9:17:00 AM Introduction of Amendment Barcode 377242 by Chair Pizzo
9:17:06 AM Explanation of Amendment by Senator Hooper
9:17:29 AM Comments from Chair Pizzo
9:17:40 AM Closure waived
9:17:41 AM Amendment adopted
9:17:45 AM Comments from Chair Pizzo
9:17:59 AM Closure waived
9:18:02 AM Roll call by CAA

9:18:12 AM CS/SB 890 reported favorably
9:18:22 AM Introduction of Tab 6, SB 614 by Chair Pizzo
9:18:40 AM Explanation of SB 614, Assault or Battery on Hospital Personnel by Senator Rodriguez
9:19:02 AM Introduction of Amendment Barcode 330330 by Chair Pizzo
9:19:06 AM Explanation of Amendment by Senator Rodriguez
9:19:32 AM Question from Senator Baxley
9:19:40 AM Response from Senator Rodriguez
9:19:48 AM Question from Senator Brandes
9:19:53 AM Response from Senator Rodriguez
9:20:02 AM Follow-up question from Senator Brandes
9:20:09 AM Response from Senator Rodriguez
9:20:32 AM Closure waived
9:20:56 AM Amendment adopted
9:20:59 AM Question from Senator Powell
9:21:09 AM Response from Senator Rodriguez
9:22:24 AM Question from Senator Brandes
9:22:29 AM Response from Lauren Jones, Staff Director
9:23:07 AM Question from Chair Pizzo
9:23:12 AM Additional question from Chair Pizzo
9:24:06 AM Response from Senator Rodriguez
9:24:52 AM Follow-up question from Chair Pizzo
9:24:58 AM Response from Senator Rodriguez
9:26:18 AM Clay Meenan, Florida Hospital Association waives in support
9:27:38 AM Senator Baxley in debate
9:28:43 AM Senator Brandes in debate
9:30:55 AM Senator Powell in debate
9:32:20 AM Chair Pizzo in debate
9:35:21 AM Senator Rodriguez in closure
9:35:45 AM Roll call by CAA
9:36:46 AM CS/SB 614 reported favorably
9:37:14 AM Introduction of Tab 3, SB 194 by Chair Pizzo
9:37:52 AM Explanation of SB 194, Crimes Evidencing Prejudice by Senator Berman
9:38:32 AM Introduction of Amendment Barcode 332962 by Chair Pizzo
9:38:36 AM Explanation of Amendment by Senator Berman
9:38:55 AM Comments from Chair Pizzo
9:39:08 AM Closure waived
9:39:11 AM Amendment adopted
9:39:18 AM Question from Senator Perry
9:39:24 AM Response from Senator Berman
9:39:52 AM Follow-up question from Senator Perry
9:40:00 AM Response from Senator Berman
9:40:29 AM Question from Chair Pizzo
9:40:33 AM Response from Senator Berman
9:41:04 AM Follow-up question from Senator Perry
9:41:11 AM Response from Senator Berman
9:42:04 AM Question from Senator Brandes
9:42:09 AM Response from Senator Berman
9:42:44 AM Comments from Chair Pizzo
9:43:02 AM Question from Senator Gainer
9:43:08 AM Response from Senator Berman
9:44:43 AM Follow-up question from Senator Gainer
9:44:52 AM Response from Senator Berman
9:45:05 AM Question from Chair Pizzo
9:45:10 AM Response from Senator Berman
9:46:37 AM Follow-up question from Chair Pizzo
9:46:44 AM Response from Senator Berman
9:47:32 AM Follow-up question from Chair Pizzo
9:47:39 AM Response from Senator Berman
9:48:23 AM Comments from Chair Pizzo
9:49:03 AM Response from Senator Berman
9:49:11 AM Question from Senator Brandes
9:49:19 AM Response from Senator Berman

9:50:03 AM Follow-up question from Senator Brandes
9:50:20 AM Amendment adopted
9:51:28 AM Response from Senator Berman
9:52:15 AM Question from Senator Perry
9:52:23 AM Response from Senator Berman
9:52:37 AM Follow-up question from Senator Perry
9:52:45 AM Response from Senator Berman
9:52:52 AM Follow-up question from Senator Perry
9:52:58 AM Response from Senator Berman
9:53:27 AM Follow-up question from Senator Perry
9:53:34 AM Response from Senator Berman
9:54:04 AM Follow-up question from Senator Perry
9:54:11 AM Response from Senator Berman
9:54:47 AM Follow-up question from Senator Perry
9:54:53 AM Response from Senator Berman
9:55:24 AM Question from Chair Pizzo
9:55:34 AM Question from Senator Perry
9:56:10 AM Response from Senator Berman
9:56:20 AM Ida Eskamani, Florida Rising waives in support
9:56:39 AM Karen Woodall, Florida Center for Fiscal and Economic Policy waives in support
9:57:10 AM Speaker Jon Harris Maurer, Equality Florida in support
9:58:38 AM Speaker Janel Diaz in support
10:00:28 AM Question from Chair Pizzo
10:01:28 AM Response from Janel Diaz
10:03:50 AM Speaker Allen R. Grossman, Anti Defamation League in support
10:07:07 AM Speaker Lakey Love, Florida Coalition for Transgender Liberation in support
10:07:46 AM Speaker Jeff Binkley, Maura's Voice in support
10:15:08 AM Comments from Chair Pizzo
10:15:16 AM Senator Brandes in debate
10:17:10 AM Senator Perry in debate
10:19:43 AM Senator Gainer in debate
10:20:13 AM Response from Chair Pizzo
10:21:00 AM Question from Senator Gainer
10:21:09 AM Response from Chair Pizzo
10:22:22 AM Follow-up question from Senator Gainer
10:22:29 AM Response from Chair Pizzo
10:23:37 AM Follow-up question from Senator Gainer
10:23:46 AM Response from Chair Pizzo
10:25:03 AM Senator Taddeo in debate
10:25:56 AM Chair Pizzo in debate
10:29:46 AM Senator Berman in closure
10:31:17 AM Roll call by CAA
10:32:19 AM CS/SB 194 reported favorably
10:32:42 AM Explanation of SB 388, Injured Police Canines by Senator Wright
10:35:15 AM Comments from Chair Pizzo
10:35:20 AM Question from Senator Powell
10:35:28 AM Response from Senator Wright
10:35:35 AM Follow-up question
10:35:41 AM Response from Senator Wright
10:35:47 AM Question from Chair Pizzo
10:35:52 AM Response from Senator Wright
10:36:03 AM Amy Mercer, Florida Police Chiefs Association waives in support
10:36:09 AM Speaker Kate MacFall, Humane Society of the United States waives in support
10:36:27 AM Comments from Chair Pizzo
10:36:34 AM Closure waived
10:36:37 AM Roll call by CAA
10:36:46 AM SB 388 reported favorably
10:36:54 AM Introduction of Tab 9, SB 776 by Chair Pizzo
10:37:10 AM Explanation of SB 776, Racketeering by Senator Gainer
10:38:05 AM Introduction of Amendment Barcode 328704 by Chair Pizzo
10:38:09 AM Explanation of Amendment by Senator Gainer
10:38:28 AM Closure waived

10:38:34 AM Amendment adopted
10:38:38 AM Comments from Chair Pizzo
10:38:49 AM Speaker Kate MacFall, Humane Society of the United States in support
10:38:56 AM Jesse Crawford, Florida Fish and Wildlife Conservation Commission waives in support
10:39:15 AM Closure waived
10:39:18 AM Roll call by CAA
10:39:25 AM CS/SB 776 reported favorably
10:39:37 AM Introduction of Tab 8, SB 638 by Chair Pizzo
10:39:46 AM Explanation of SB 638, Direct Filing of an Information by Senator Powell
10:40:30 AM Introduction of Amendment Barcode 324466 by Chair Pizzo
10:40:33 AM Explanation of Amendment by Senator Powell
10:40:54 AM Comments from Chair Pizzo
10:41:03 AM Closure waived
10:41:07 AM Amendment adopted
10:41:23 AM Pamela Burch Fort waives in support
10:41:28 AM Nancy Daniels, Florida Public Defender Association waives in support
10:41:33 AM Jennifer Adams, League of Women Voters of Florida, Juvenile Justice Committee waives in support
10:41:42 AM Carrie Boyd, SPLC Action Fund & No Place For A Child Statewide Coalition waives in support
10:41:48 AM Jennifer Adams, League of Women Voters, Orange County, Florida, Juvenile Justice Committee waives in support
10:41:54 AM Ida Eskamani, Florida Rising waives in support
10:41:59 AM Kara Gross, ACLU of Florida waives in support
10:42:02 AM Dr. Nancy Lawther, Florida PTA waives in support
10:42:08 AM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support
10:42:15 AM Ingrid Delgado, Florida Conference of Catholic Bishops waives in support
10:42:28 AM Comments from Chair Pizzo
10:42:34 AM Senator Powell in closure
10:42:40 AM Roll call by CAA
10:42:58 AM CS/SB 638 reported favorably
10:43:19 AM Introduction of Tab 4, SB 210 by Chair Pizzo
10:43:31 AM Explanation of SB 210, Sentencing by Senator Brandes
10:44:08 AM Comments from Chair Pizzo
10:44:18 AM Nancy Daniels, Florida Public Defender Association waives in support
10:44:42 AM Kara Gross, ACLU of Florida waives in support
10:44:44 AM Carrie Boyd, SPLC Action Fund waives in support
10:44:48 AM Ida Eskamani, Florida Rising waives in support
10:44:52 AM Karen Woodall, Florida Center for Fiscal and Economic Policy waives in support
10:44:56 AM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support
10:45:01 AM Greg Newburn, FAMM waives in support
10:45:15 AM Speaker Deborah Brennan in support
10:49:06 AM Speaker Tracy Johnson, Florida Cares/FAMM in support
10:52:31 AM Speaker Keith Harris in support
10:54:17 AM Question from Chair Pizzo
10:54:25 AM Response from Mr. Harris
10:54:32 AM Follow-up question from Chair Pizzo
10:54:38 AM Response from Mr. Harris
10:54:52 AM Continued speaking by Mr. Harris
10:55:23 AM Speaker Janet Goree-Watson in support
10:58:55 AM Question from Chair Pizzo
10:59:02 AM Response from Ms. Goree-Watson
10:59:16 AM Speaker Mary Kuntz in support
11:01:44 AM Speaker Thomas Ragonese in support
11:06:15 AM Speaker Catherine Ragonese in support
11:10:03 AM Speaker Laurette Philipson in support
11:11:21 AM Comments from Chair Pizzo
11:11:27 AM Senator Brandes in closure
11:12:01 AM Roll call by CAA
11:12:15 AM SB 210 reported favorably
11:13:16 AM SB 620 temporarily TP'd per Chair Pizzo
11:13:39 AM Senator Brandes moves to give staff license to make technical and conforming changes to the Committee Substitutes
11:14:00 AM Senator Baxley votes no on SB 194, and yes on SB 388, CS/SB 776 and CS/SB 638

11:14:22 AM Senator Brandes moves to adjourn

11:14:29 AM Meeting adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Criminal Justice
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JIM BOYD
21st District

February 11, 2021

Senator Jason Pizzo
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Pizzo:

I am writing to request approval to be excused from the Committee on Criminal Justice meeting scheduled for Tuesday, February 16, 2021, due to testing positive for Covid-19.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Boyd".

Jim Boyd

cc: Lauren Jones
Sue Arnold

REPLY TO:

- ☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore