

<b>Tab 1</b>	<b>SB 328 by Rouson;</b> (Identical to H 00801) Sentencing					
968060	A	S	RCS	CJ, Rouson	Delete L.57 - 151:	03/30 03:39 PM
<b>Tab 2</b>	<b>SB 410 by Rodriguez;</b> (Compare to CS/H 00545) Materials Harmful to Minors					
943370	PCS	S	RCS	CJ		03/30 03:39 PM
856276	PCS:D	S	RCS	CJ, Brandes	Delete everything after	03/30 03:39 PM
<b>Tab 3</b>	<b>CS/SB 468 by JU, Bracy;</b> (Compare to H 00189) Expunction of Criminal History Records Relating to Certain Cannabis Offenses					
<b>Tab 4</b>	<b>CS/SB 470 by JU, Bracy;</b> (Similar to H 00191) Public Records/Expunged Criminal History Records					
<b>Tab 5</b>	<b>SB 552 by Thurston;</b> (Compare to H 00113) Assault or Battery on Courtroom Personnel					
<b>Tab 6</b>	<b>SB 718 by Book (CO-INTRODUCERS) Stewart;</b> (Identical to H 01471) Gay and Transgender Panic Legal Defenses					
662326	A	S	RCS	CJ, Book	Delete L.33:	03/30 03:39 PM
<b>Tab 7</b>	<b>SB 818 by Burgess;</b> (Similar to H 00941) Mental Health Professionals					
526946	A	S	RCS	CJ, Burgess	Delete L.16 - 18:	03/30 03:39 PM
<del>840726</del>	SA	S	WD	CJ, Burgess	Delete L.16 - 25:	03/30 07:46 AM
<b>Tab 8</b>	<b>SB 1156 by Brandes;</b> Serious Mental Illness as Bar to Execution					
<b>Tab 9</b>	<b>SB 1346 by Brandes;</b> Felony Settlement Conferences					
<b>Tab 10</b>	<b>SB 1384 by Rodrigues;</b> (Identical to H 01081) Involuntary Civil Commitment of Sexually Violent Predators					
<b>Tab 11</b>	<b>SB 1566 by Bradley;</b> (Similar to CS/H 00777) Tampering With or Fabricating Physical Evidence					
522212	D	S	RCS	CJ, Bradley	Delete everything after	03/30 03:39 PM
<b>Tab 12</b>	<b>SB 1810 by Powell;</b> (Similar to H 01405) Care for Retired Law Enforcement Dogs					
<b>Tab 13</b>	<b>CS/SB 1854 by CF, Farmer;</b> Defendants with a Traumatic Brain Injury					

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

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

**MEETING DATE:** Tuesday, March 30, 2021  
**TIME:** 9:00—11:30 a.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	<b>SB 328</b> Rouson (Identical H 801, Compare H 97, S 1304)	Sentencing; Prohibiting certain persons from being sentenced to mandatory minimum terms of imprisonment for aggravated assault or attempted aggravated assault committed before a specified date; requiring resentencing for persons who committed such violations before a specified date and are serving mandatory minimum terms of imprisonment; requiring the initial sentencing and the resentencing of certain persons who committed certain violations before a specified date which involved trafficking in hydrocodone or codeine, etc.  CJ      03/30/2021 Fav/CS ACJ AP	Fav/CS Yeas 7 Nays 0
<b>A proposed committee substitute</b> for the following bill (SB 410) is expected to be considered:			
2	<b>SB 410</b> Rodriguez (Compare CS/H 545)	Materials Harmful to Minors; Prohibiting a person from selling or renting specified materials to a minor for monetary consideration; providing that a public school student may be exposed to certain teaching only in accordance with a specified procedure; requiring school districts or specified schools to notify and request the written consent of parents before the teaching of reproductive health or any sexually transmitted disease; authorizing a student's parent or a county resident to contest on specified grounds a district school board's adoption of certain instructional material, etc.  CJ      03/30/2021 Fav/CS ED RC	Fav/CS Yeas 5 Nays 2

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, March 30, 2021, 9:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>CS/SB 468</b> Judiciary / Bracy (Compare H 189, H 191, H 343, H 1597, S 710, S 1916, Linked CS/S 470)	Expunction of Criminal History Records Relating to Certain Cannabis Offenses; Requiring a petitioner to obtain a certificate of eligibility from the Department of Law Enforcement; providing application requirements and contents of a certificate of eligibility for expunction; requiring the department to issue a certificate of eligibility for expunction if a person meets specified criteria; providing court procedures for expungement, etc.  JU 03/15/2021 Fav/CS CJ 03/30/2021 Favorable AP	Favorable Yeas 6 Nays 1
4	<b>CS/SB 470</b> Judiciary / Bracy (Similar H 191, Compare H 189, Linked CS/S 468)	Public Records/Expunged Criminal History Records; Providing an exemption from public records requirements for specified expunged criminal history records; providing exceptions; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  JU 03/15/2021 Fav/CS CJ 03/30/2021 Favorable AP	Favorable Yeas 8 Nays 0
5	<b>SB 552</b> Thurston (Compare H 113)	Assault or Battery on Courtroom Personnel; Prohibiting an assault or a battery on specified courtroom personnel; providing criminal penalties, etc.  CJ 03/30/2021 Temporarily Postponed ACJ AP	Temporarily Postponed
6	<b>SB 718</b> Book (Identical H 1471)	Gay and Transgender Panic Legal Defenses; Citing this act as the "Gay and Transgender Panic Legal Defense Prohibition Act"; prohibiting individuals from using a nonviolent sexual advance or specified perceptions or beliefs about another individual as a defense to a criminal offense, to excuse or justify the conduct of the individual who commits a criminal offense, or to mitigate the severity of a criminal offense, etc.  CJ 03/30/2021 Fav/CS JU RC	Fav/CS Yeas 6 Nays 2

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, March 30, 2021, 9:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 818</b> Burgess (Similar H 941)	Mental Health Professionals; For purposes of clinical experience requirements for licensure as a mental health counselor, deleting a requirement that a licensed mental health professional be on the premises when a registered intern is providing clinical services in a private practice setting; authorizing courts to appoint mental health professionals licensed under ch. 491, F.S., as experts in criminal cases, etc.  HP 03/17/2021 Favorable CJ 03/30/2021 Fav/CS RC	Fav/CS Yeas 7 Nays 0
8	<b>SB 1156</b> Brandes	Serious Mental Illness as Bar to Execution; Prohibiting the imposing of a sentence of death upon a defendant convicted of a capital felony if the defendant had a serious mental illness at the time of committing the offense; requiring a defendant to provide a certain notice if he or she intends to raise serious mental illness as a bar to a death sentence; requiring the defendant to file a written motion if he or she intends to raise serious mental illness as a bar to a death sentence; requiring certain court orders if the court finds by clear and convincing evidence that the defendant had a serious mental illness at the time of the commission of the crime, etc.  CJ 03/30/2021 Favorable JU RC	Favorable Yeas 8 Nays 0
9	<b>SB 1346</b> Brandes	Felony Settlement Conferences; Authorizing circuit courts to establish settlement conferences in felony matters; requiring settlement conferences to be presided over by a settlement conference judge; specifying requirements for settlement conference judges; prohibiting the trial judge presiding over the pending matter from presiding over the felony settlement conference; authorizing circuit courts using felony settlement conferences to adopt procedures, etc.  JU 03/15/2021 Favorable CJ 03/30/2021 Favorable RC	Favorable Yeas 7 Nays 0



**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, March 30, 2021, 9:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	<b>SB 1384</b> Rodrigues (Identical H 1081)	Involuntary Civil Commitment of Sexually Violent Predators; Specifying that the Florida Rules of Criminal Procedure apply to certain proceedings relating to competency; requiring proceedings to cease when a person is found to be mentally incompetent to proceed; authorizing counsel to move for a hearing on the issue of the respondent's competence; requiring a court to conduct biannual evaluations for competency for certain persons, etc.  CJ 03/30/2021 Temporarily Postponed JU AP	Temporarily Postponed
11	<b>SB 1566</b> Bradley (Similar CS/H 777)	Tampering With or Fabricating Physical Evidence; Providing enhanced criminal penalties for tampering with or fabricating physical evidence in certain criminal proceedings and investigations, etc.  CJ 03/30/2021 Fav/CS JU RC	Fav/CS Yeas 6 Nays 1
12	<b>SB 1810</b> Powell (Similar H 1405)	Care for Retired Law Enforcement Dogs; Designating the "Care for Retired Law Enforcement Dogs Program Act"; creating the Care for Retired Law Enforcement Dogs Program within the Department of Law Enforcement; requiring the department to contract with a nonprofit corporation to administer and manage the program; prohibiting a former handler or an adopter from accumulating unused funds from a current year for use in a future year; prohibiting a former handler or an adopter from receiving reimbursement if funds are depleted for the year for which the reimbursement is sought; requiring the department to adopt rules, etc.  CJ 03/30/2021 Favorable ACJ AP	Favorable Yeas 7 Nays 0
13	<b>CS/SB 1854</b> Children, Families, and Elder Affairs / Farmer	Defendants with a Traumatic Brain Injury; Redefining the term "intellectual disability" as it relates to defendants who have been found to be incompetent to proceed by adding the terms "significantly deficient in adaptive functioning" and "traumatic brain injury"; requiring the Agency for Persons with Disabilities to assist certain defendants found incompetent to proceed with application to the long-term care managed care program, etc.  CF 03/23/2021 Fav/CS CJ 03/30/2021 Favorable AP	Favorable Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, March 30, 2021, 9:00—11:30 a.m.

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

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

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

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

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BILL: CS/SB 328

INTRODUCER: Criminal Justice Committee and Senator Rouson

SUBJECT: Sentencing

DATE: March 30, 2021

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

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

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 328 retroactively applies the 2016 amendments to s. 775.087, F.S., the “10-20-Life” statute, which removed aggravated assault and attempted aggravated assault as predicate offenses for sentencing under that statute. The 2016 amendments were prospective in application and only benefitted offenders who committed those offenses on or after the effective date of the 2016 amendments. Retroactive application of the amendments benefits those offenders subject to the mandatory sentencing provisions of “10-20-Life” based on aggravated assault or attempted aggravated assault committed before the effective date of the 2016 amendments. They would no longer be subject to this statute and its mandatory penalties.

The bill also retroactively applies:

- The 2019 amendments to the gram weight thresholds and ranges applicable to hydrocodone trafficking and codeine trafficking; and
- The 2014 amendments to the gram weight thresholds and ranges applicable to oxycodone trafficking.

These amendments were prospective in application and only benefited those offenders with relevant trafficking offenses committed on or after the effective date of the amendments. Retroactive application of the amendments may benefit those offenders who committed hydrocodone, codeine, or oxycodone trafficking before the effective date of the amendments. Depending on the quantity trafficked, the offenders may no longer be subject to mandatory trafficking penalties or may be subject to reduced mandatory trafficking penalties.

The bill also provides procedures for resentencing eligible offenders.

The Criminal Justice Impact Conference estimates that the bill will have a “negative indeterminate” prison bed impact (an unquantifiable decrease in prison beds). The Department of Corrections (DOC) indicates that impact of the bill on the department is indeterminate but may require \$17,400 for programming changes to adjust gain-time and identify impacted offenders. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2021.

## **II. Present Situation:**

### **2016 Amendments to the “10-20-Life” Statute**

Section 775.087, F.S., otherwise known as the “10-20-Life” statute, requires a judge to sentence a person convicted of a specified offense to a minimum term of imprisonment if, while committing the offense, the person possesses or discharges a firearm or destructive device<sup>1</sup> or if the discharge of the firearm results in death or great bodily harm. Specified offenses include such offenses as murder, sexual battery, robbery, and burglary.<sup>2</sup>

Under s. 775.087, F.S., a person convicted of a specified offense, or the attempt to commit such offense, must be sentenced to the following mandatory minimum term of imprisonment:

- 10 years for possession of a firearm;
- 15 years for possession of a semi-automatic/machine gun;
- 20 years for discharge of a firearm (any type); or
- 25 years to life imprisonment for discharge with great bodily injury or death.<sup>3</sup>

However, s. 775.087(2)(a)(1), F.S., provides for a minimum mandatory sentence of 3 years, instead of 10 years, for the possession of a firearm by a felon or burglary of a conveyance if the possession occurred during the commission of the offense.

A person sentenced under s. 775.087, F.S., is not eligible for statutory gain-time under s. 944.275, F.S.<sup>4</sup>

Section 775.087, F.S.,<sup>5</sup> used to include aggravated assault and attempted aggravated assault as predicate offenses for purposes of mandatory minimum sentencing under the statute, until the Legislature removed those offenses from the statute in 2016. Further, the statute in effect immediately prior to its 2016 amendment also prohibited imposing the mandatory minimum sentence for aggravated assault and attempted aggravated assault if the court made written findings that:

- The defendant had a good faith belief that the aggravated assault was justifiable pursuant to ch. 776, F.S.;

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<sup>1</sup> The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

<sup>2</sup> For a complete list of offenses, *see* s. 775.087(3)(a)1., F.S.

<sup>3</sup> Section 775.087(2)(a)1.-3. and (3)(a)1.-3., F.S.

<sup>4</sup> Section 775.087(2)(b) and (3)(b), F.S.

<sup>5</sup> Chapter 2016-7, L.O.F. (effective July 1, 2016).

- The aggravated assault was not committed in the course of committing another criminal offense;
- The defendant does not pose a threat to public safety; and
- The totality of the circumstances involved in the offense do not justify the imposition of such sentence.<sup>6</sup>

The 2016 legislation had prospective application.

### **Drug Trafficking Offenses**

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of controlled substances, including hydrocodone, codeine, and oxycodone.

Most drug trafficking offenses are first degree felonies<sup>7</sup> and are subject to a mandatory minimum term of imprisonment and a mandatory fine,<sup>8</sup> which is determined by the weight or quantity of the substance.<sup>9</sup> For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000.<sup>10</sup> Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.<sup>11</sup>

Changes have been made over the years to gram weight threshold and ranges for trafficking in hydrocodone, codeine, and oxycodone (described below). As a result of changes to gram weight thresholds, the bar became higher for charging trafficking. As a result of changes to gram weight ranges, some persons were subject to less severe mandatory minimum terms and mandatory fines than they would have been subject to had the law not been changed. All of these changes were prospective in application.

### **Trafficking in Oxycodone**

Prior to 2014 legislative changes to s. 893.135, F.S., the statute provided for the following gram weight threshold and ranges and mandatory penalties for trafficking in oxycodone, any salt of oxycodone, and any mixture containing oxycodone:

- If 4 grams or more but less than 14 grams, a mandatory minimum term of imprisonment of 3 years and a fine of \$50,000;

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<sup>6</sup> Section 775.087(6), F.S. (2015). This exception to mandatory minimum sentencing was created by ch. 2014-195, L.O.F. (effective June 20, 2014).

<sup>7</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>8</sup> Section 893.135, F.S., provides for mandatory fines which are greater than the maximum \$10,000 fine prescribed in s. 775.083, F.S., for a first degree felony. However, s. 775.083, F.S., which relates to fines, authorizes any higher amount if specifically authorized by statute.

<sup>9</sup> See s. 893.135, F.S.

<sup>10</sup> Section 893.135(1)(b)1.a., F.S.

<sup>11</sup> Section 893.135(1)(b)1.b., F.S.

- If 14 grams or more but less than 28 grams, a mandatory minimum term of imprisonment of 15 years and a fine of \$100,000; or
- If 28 grams or more but less than 30 kilograms, a mandatory minimum term of imprisonment of 25 years and a fine of \$500,000.<sup>12</sup>

In 2014, the Legislature revised the gram weight threshold and ranges for trafficking in oxycodone, any salt of oxycodone, and any mixture containing oxycodone:

- If 7 grams or more but less than 14 grams, a mandatory minimum term of imprisonment of 3 years and a fine of \$50,000;
- If 14 grams or more but less than 25 grams, a mandatory minimum term of imprisonment of 7 years and a fine of \$100,000;
- If 25 grams or more but less than 100 grams, a mandatory minimum term of imprisonment of 15 years and a fine of \$500,000; or
- If 100 grams or more but less than 30 kilograms, a mandatory minimum term of imprisonment of 25 years and a fine of \$750,000.<sup>13</sup>

### **Trafficking in Hydrocodone**

Prior to 2014 legislative changes to s. 893.135, F.S., the statute provided the same gram weight threshold and ranges and mandatory penalties for trafficking in hydrocodone, any salt of hydrocodone, and any mixture containing hydrocodone as were provided for trafficking in oxycodone, any salt of oxycodone, and any mixture containing oxycodone (see description above of the oxycodone trafficking offense before the 2014 legislative changes).

The 2014 legislation that amended the oxycodone trafficking offense also revised the gram weight threshold and ranges for trafficking in hydrocodone, any salt of hydrocodone, and any mixture containing hydrocodone:

- If 14 grams or more but less than 28 grams, a mandatory minimum term of imprisonment of 3 years and a fine of \$50,000;
- If 28 grams or more but less than 50 grams, a mandatory minimum term of imprisonment of 7 years and a fine of \$100,000;
- If 50 grams or more but less than 200 grams, a mandatory minimum term of imprisonment of 15 years and a fine of \$500,000; or
- If 200 grams or more but less than 30 kilograms, a mandatory minimum term of imprisonment of 25 years and a fine of \$750,000.<sup>14</sup>

In 2019, the Legislature further revised the gram weight threshold and ranges for trafficking in hydrocodone, any salt of hydrocodone, and any mixture containing hydrocodone:

- If 28 grams or more but less than 50 grams, a mandatory minimum term of imprisonment of 3 years and a fine of \$50,000;
- If 50 grams or more but less than 100 grams, a mandatory minimum term of imprisonment of 7 years and a fine of \$100,000;

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<sup>12</sup> Section 893.135(1)(c)1., F.S. (2013).

<sup>13</sup> Chapter 2014-176, L.O.F. (effective July 1, 2014) and s. 893.135(1)(c)3., F.S.

<sup>14</sup> Chapter 2014-176, L.O.F. (effective July 1, 2014) and s. 893.135(1)(c)2., F.S.

- If 100 grams or more but less than 300 grams, a mandatory minimum term of imprisonment of 15 years and a fine of \$500,000; or
- If 300 grams or more but less than 30 kilograms, a mandatory minimum term of imprisonment of 25 years and a fine of \$750,000.<sup>15</sup>

### Trafficking in Codeine

The offense of trafficking in codeine, which was created in 2017,<sup>16</sup> was also amended by the 2019 legislation that amended the hydrocodone trafficking offense.<sup>17</sup> Prior to the 2019 legislative changes to s. 893.135, F.S., the statute provided for the following gram weight threshold and ranges and mandatory penalties for trafficking in codeine, any salt of codeine, and any mixture containing codeine:

- If 14 grams or more but less than 28 grams, a mandatory minimum term of imprisonment of 3 years and a fine of \$50,000;
- If 28 grams or more but less than 50 grams, a mandatory minimum term of imprisonment of 7 years and a fine of \$100,000;
- If 50 grams or more but less than 200 grams, a mandatory minimum term of imprisonment of 15 years and a fine of \$500,000; and
- If 200 grams or more but less than 30 kilograms, a mandatory minimum term of imprisonment of 25 years and a fine of \$750,000.<sup>18</sup>

The 2019 legislation that amended the hydrocodone trafficking offense<sup>19</sup> also revised the gram weight threshold and ranges for trafficking in codeine, and salt of codeine, and any mixture containing codeine in the same manner as for the hydrocodone trafficking offense (see description above of the 2019 legislative changes to the hydrocodone trafficking offense).<sup>20</sup>

### Constitutional and Statutory Savings Clauses

Until recently, Article X, s. 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."<sup>21</sup>

In 2018, Florida voters adopted the following amendment to Article X, s. 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.

<sup>15</sup> Chapter 2019-167, L.O.F. (effective Oct. 1, 2019) and s. 893.135(1)(c)2., F.S.

<sup>16</sup> Chapter 2017-197, L.O.F. (effective Oct. 1, 2017) and s. 893.135(1)(c)2., F.S.

<sup>17</sup> Chapter 2019-167, L.O.F. (effective Oct. 1, 2019).

<sup>18</sup> Section 893.135(1)(c)2., F.S. (2018).

<sup>19</sup> Chapter 2019-167, L.O.F. (effective Oct. 1, 2019).

<sup>20</sup> Section 893.135(1)(c)2., F.S.

<sup>21</sup> Comment, *Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 129 (1972).

Revised Article X, s. 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 Court 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.”<sup>22</sup>

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.<sup>23</sup>

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 repeal<sup>24</sup> of a criminal statute for purposes of Article X, s. 9, of the State Constitution.<sup>25</sup>

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.<sup>26</sup>

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.<sup>27</sup> 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

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<sup>22</sup> *Jimenez v. Jones*, 261 So.3d 502, 504 (Fla. 2018).

<sup>23</sup> Section 775.022(2), F.S.

<sup>24</sup> 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).

<sup>25</sup> Section 775.022(1), F.S.

<sup>26</sup> Section 775.022(3), F.S.

<sup>27</sup> Section 775.022(4), F.S.



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 prospectively. The Legislature only has to “expressly provide” for this retroactive application.<sup>28</sup>

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.<sup>29</sup>

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

#### **Retroactive Application of Amendments to the “10-20-Life” Statute**

The bill creates s. 775.08701, F.S., to retroactively apply the 2016 legislative changes<sup>30</sup> to s. 775.087, F.S., the “10-20-Life” statute, which removed aggravated assault and attempted aggravated assault from the list of predicate offenses for mandatory minimum sentencing under the statute. The 2016 legislative changes are retroactively applied in the following manner:

- A person who committed aggravated assault or attempted aggravated assault before July 1, 2016, (the effective date of the 2016 legislation) but was not sentenced under former s. 775.087, F.S., before October 1, 2021 (the effective date of the bill), may not be sentenced for that violation to a mandatory minimum term of imprisonment under former s. 775.087, F.S.
- A person who committed aggravated assault or attempted aggravated assault before July 1, 2016, who was sentenced before October 1, 2021, to a mandatory minimum term of imprisonment pursuant to former s. 775.087, F.S., and who is serving such mandatory minimum term of imprisonment on or after October 1, 2021, must be resentenced in accordance with resentencing procedures (described below) to a sentence without such mandatory minimum term of imprisonment. The new sentence must be as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

Resentencing must occur in the following manner:

- The DOC must notify the person described above of his or her eligibility to request a sentence review hearing.
- The person seeking sentence review under s. 775.08701, F.S., 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 a sentence review hearing under s. 775.08701, F.S., is entitled to be represented by counsel, and the court must appoint a public defender to represent the person if he or she cannot afford an attorney.
- Upon receiving an application from the eligible person, the court of original sentencing jurisdiction must hold a sentence review hearing to determine if the eligible person meets the

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<sup>28</sup> Section 775.022(3), F.S.

<sup>29</sup> Section 775.022(5), F.S.

<sup>30</sup> Chapter 2016-7, L.O.F. (effective July 1, 2016).

criteria for resentencing under s. 775.08701, F.S. If the court determines at the sentence review hearing that the eligible person meets the criteria in s. 775.08701, F.S., for resentencing, the court must resentence the person as provided in this statute; 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 s. 775.08701, F.S., the court must provide written reasons why such person does not meet such criteria.

A person sentenced or resentenced (as described above) is eligible to receive any gain-time pursuant to s. 944.275, F.S., which he or she was previously ineligible to receive because of the imposition of the mandatory minimum term of imprisonment.

### **Retroactive Application of Changes to the Hydrocodone Trafficking and Codeine Trafficking Offenses**

The bill creates s. 893.13501, F.S., to retroactively apply the 2019 legislative changes to the gram weight threshold and ranges for trafficking in hydrocodone, codeine, any salt of hydrocodone or codeine, and any mixture containing either controlled substance.<sup>31</sup> The 2019 legislative changes are reflected in current law.<sup>32</sup> The retroactive application does not change the felony degree of the trafficking offense (first degree felony), because the 2019 legislation, did not change the felony degree.

The retroactive application applies to the following persons:

- A person who committed a first degree felony violation involving trafficking in hydrocodone, codeine, any salt of hydrocodone or codeine, or any mixture containing either controlled substance before October 1, 2019 (the effective date of the 2019 legislation) but who was not sentenced for such violation before October 1, 2021, must be sentenced as described below.
- A person who committed a previously-described trafficking violation involving hydrocodone, codeine, etc., before October 1, 2019, and who is serving a mandatory minimum term of imprisonment for such violation on or after October 1, 2021, must be resentenced as described below and in accordance with resentencing procedures (also described below).

The bill provides that if the person trafficked in hydrocodone, codeine, any salt of hydrocodone or codeine, or any mixture containing either substance, in a quantity of:

- 4 grams or more but less than 28 grams, the person must be sentenced or resentenced as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.;
- 28 grams or more but less than 50 grams, the person must be sentenced or resentenced to a mandatory minimum term of imprisonment of 3 years and ordered to pay a fine of \$50,000;
- 50 grams or more but less than 100 grams, the person must be sentenced or resentenced to a mandatory minimum term of imprisonment of 7 years and pay a fine of \$100,000;
- 100 grams or more but less than 300 grams, the person must be sentenced or resentenced to a mandatory minimum term of imprisonment of 15 years and pay a fine of \$500,000; and

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<sup>31</sup> Chapter 2019-167, L.O.F. (effective Oct. 1, 2019).

<sup>32</sup> Section 893.135(1)(c)2., F.S.

- 300 grams or more but less than 30 kilograms, the person must be sentenced or resented to a mandatory minimum term of imprisonment of 25 years and pay a fine of \$500,000 if the trafficking involves hydrocodone, any salt thereof, or any mixture containing hydrocodone, or \$750,000, if the trafficking involves codeine, or any salt thereof, or any 101 mixture containing codeine.<sup>33</sup>

Resentencing must occur in the following manner:

- The DOC must notify the person described above of his or her eligibility to request a sentence review hearing.
- The person seeking sentence review under s. 893.13501, F.S., 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 a sentence review hearing under s. 893.13501, F.S., is entitled to be represented by counsel, and the court must appoint a public defender to represent the person if he or she cannot afford an attorney.
- Upon receiving an application from the eligible person, the court of original sentencing jurisdiction must hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing under s. 893.13501, F.S. If the court determines at the sentence review hearing that the eligible person meets the criteria in s. 893.13501, F.S., for resentencing, the court must resentence the person as provided in this statute; 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 s. 893.13501, F.S., the court must provide written reasons why such person does not meet such criteria.

### **Retroactive Application of Amendments to the Oxycodone Trafficking Offense**

Section 893.13501, F.S., also retroactively applies the 2014 legislative changes to the gram weight thresholds and ranges for trafficking in oxycodone, any salt thereof, and a mixture containing oxycodone.<sup>34</sup> The 2014 legislative changes are reflected in current law.<sup>35</sup> The retroactive application does not change the felony degree of the trafficking offense (first degree felony), because the 2014 legislation, did not change the felony degree.

The retroactive application applies to the following persons:

- A person who committed a first degree felony violation of former s. 893.135(1)(c)1., F.S., before July 1, 2014 (the effective date of the 2014 legislation), which involved trafficking in oxycodone, any salt of oxycodone, or any mixture containing oxycodone, but who was not sentenced for such violation before October 1, 2021, must be sentenced as described below.
- A person who was sentenced before October 1, 2021, for a first degree felony violation of former s. 893.135(1)(c)1., F.S., which was committed before July 1, 2014, and which involved trafficking in oxycodone, any salt of oxycodone, or any mixture containing oxycodone, must be resented as described below and in accordance with resentencing

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<sup>33</sup> The highest level codeine trafficking offense, which was created in 2017, has always been subject to the \$750,000 mandatory fine. *See* ch. 2017-197, L.O.F. (effective Oct. 1, 2017).

<sup>34</sup> Chapter 2014-176, L.O.F. (effective July 1, 2014).

<sup>35</sup> Section 893.135(1)(c)3., F.S.

procedures (see description above of resentencing procedures relating to hydrocodone trafficking and codeine trafficking).

The bill provides that if the person trafficked in oxycodone, any salt of oxycodone, or any mixture containing oxycodone, in a quantity of:

- 4 grams or more but less than 7 grams, the person must be sentenced or resentenced as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.;
- 7 grams or more but less than 14 grams, the person must be sentenced or resentenced to a mandatory minimum term of imprisonment of 3 years and pay a fine of \$50,000;
- 14 grams or more but less than 25 grams, of oxycodone, any salt thereof, or an oxycodone mixture, the person must be sentenced or resentenced to a mandatory minimum term of imprisonment of 7 years and pay a fine of \$100,000;
- 25 grams or more but less than 100 grams, the person must be sentenced or resentenced to a mandatory minimum term of imprisonment of 15 years and a fine of \$500,000; and
- 100 grams or more but less than 30 kilograms, the person must be sentenced or resentenced to a mandatory minimum term of imprisonment of 25 years and a fine of \$500,000.

Resentencing occurs in the same manner as previously described for resentencing in cases involving retroactive application of changes involving trafficking in hydrocodone or codeine.

#### **Effective Date**

The bill takes effect October 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.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have a “negative indeterminate” prison bed impact (an unquantifiable decrease of more than 25 prison beds).<sup>36</sup>

The Legislature’s Office of Economic and Demographic Research (EDR) provided the following information relevant to retroactive application of changes to the 10-20-Life statute: “Per DOC, there are currently 145 cases eligible under this criteria, though it is unknown how their new sentences would be structured. Furthermore, it is not known how many offenders committed their offenses prior to July 1, 2016 and have yet to be sentenced.”<sup>37</sup>

The EDR also provided the following information regarding relevant to retroactive application of changes to provisions relating to trafficking in oxycodone, hydrocodone, and codeine.

Per DOC, as of February 28, 2021, there were 754 offenders incarcerated for trafficking in illegal drugs with an offense committed before July 1, 2014. For the 4 or more, but less than 14 gram threshold group, of the 217 incarcerated, there were no offenders with sentence lengths less than 3 years, though this is likely the outcome of when the offenses were committed, since most with smaller sentences would no longer be incarcerated over six years after committing an offense. For the 14 or more, but less than 28 gram threshold group, of the 244 incarcerated, there are some with sentence lengths less than 15 years (37, 15.16%), with 138 (56.56%) having sentences of exactly fifteen years. Finally, for the 28 or more, but less than 30 kilogram threshold group, of the 293 incarcerated, there is also a large number with sentence lengths less than 25 years (123, 41.98%), with 105 (35.84%) having sentences of exactly 25 years. Though it is possible that those offenders clustered around the mandatory minimum sentences could see an impact from this bill, it is not known how many of these offenders would be eligible for resentencing since DOC does not have information on how many were incarcerated for hydrocodone/codeine or oxycodone prior to July 1, 2014. It is

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<sup>36</sup> Email received by staff of the Senate Committee on Criminal Justice from staff of the Office of Economic and Demographic Research, dated March 24, 2021, (on file with the Senate Committee on Criminal Justice).

<sup>37</sup> EDR estimate information on file with the Senate Committee on Criminal Justice.

also not known how many additional offenders have yet to be sentenced who committed their offenses prior to October 1, 2021.

There have been no commitments to prison since the change in hydrocodone/codeine thresholds on October 1, 2019. However, there are currently 53 offenders incarcerated under the hydrocodone/codeine thresholds prior to that date. For the 14 or more, but less than 28 gram threshold group, of the 29 incarcerated, there are some with sentence lengths less than 3 years (2, 6.9%), with 8 (27.59%) having sentences of exactly three years. Finally, for the 28 or more, but less than 50 grams threshold group, of the 16 incarcerated, there are also a few with sentence lengths less than 7 years (3, 18.75%), with 7 (43.75%) having sentences of exactly 7 years. There are only 8 incarcerated at higher thresholds, and all fall below the mandatory minimums for these thresholds. Given the new thresholds for hydrocodone/codeine removing the 3 year mandatory minimum for more than 14 and less than 28 grams, as well as reducing the mandatory minimum from 7 years to 3 years for more than 28 and less than 50 grams, these two incarcerated groups, especially the 15 offenders with sentence lengths that line up with mandatory minimums, could possibly be impacted by this language. However, it is also not known how many additional offenders have yet to be sentenced who committed their offenses prior to October 1, 2021.

Since hydrocodone and oxycodone were initially recorded under trafficking in illegal drugs, it is not known how many would be eligible for resentencing, nor is it known how offenders are currently sentenced when hydrocodone and oxycodone fall below their trafficking thresholds. However, both sentence length and incarceration rates are significantly lower for offenses under s. 893.13, F.S. when compared to the trafficking in illegal drugs threshold where these drug types initially were (4 grams or more, less than 14 grams), and could impact resentencing decisions for those who are eligible.<sup>38</sup>

The DOC indicates that impact of the bill on the department is indeterminate but may require \$17,400 for programming changes to adjust gain time and identify impacted offenders (200 hrs. x \$87.00/per hr.).<sup>39</sup>

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

None.

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

None.

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<sup>38</sup> *Id.*

<sup>39</sup> 2021 Agency Legislative Bill Analysis (SB 328) (Feb. 26, 2021), Department of Corrections (on file with the Senate Committee on Criminal Justice).

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 775.08701 and 893.13501.

**IX. Additional Information:**

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

**CS by Criminal Justice on March 30, 2021:**

The committee substitute corrects an incorrect date and fine amount.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
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The Committee on Criminal Justice (Rouson) recommended the following:

**Senate Amendment**

Delete lines 57 - 151  
and insert:  
October 1, 2021, to a mandatory minimum term of imprisonment  
pursuant to former s. 775.087, and who is serving such mandatory  
minimum term of imprisonment on or after October 1, 2021, must  
be resentenced in accordance with paragraph (c) to a sentence  
without such mandatory minimum term of imprisonment. The new  
sentence must be as provided in s. 775.082, s. 775.083, or s.





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775.084.

(c) Resentencing under this section must occur in the following manner:

1. The Department of Corrections shall notify the person described in paragraph (b) of his or her eligibility to request a sentence review hearing.

2. The person seeking sentence review under this section 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.

3. A person who is eligible for a sentence review hearing under this section is entitled to be represented by counsel, and the court shall appoint a public defender to represent the person if he or she cannot afford an attorney.

4. Upon receiving an application from the eligible person, the court of original sentencing jurisdiction shall hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing under this section. If the court determines at the sentence review hearing that the eligible person meets the criteria in this section for resentencing, the court must resentence the person as provided in this section; 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 this section, the court must provide written reasons why such person does not meet such criteria.

(d) A person sentenced or resentenced pursuant to this section is eligible to receive any gain-time pursuant to s.



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944.275 which he or she was previously ineligible to receive because of the imposition of the mandatory minimum term of imprisonment pursuant to former s. 775.087.

Section 2. Section 893.13501, Florida Statutes, is created to read:

893.13501 Retroactive application relating to s. 893.135; legislative intent; sentencing or resentencing for trafficking in hydrocodone, codeine, or oxycodone; penalties; resentencing procedures.—

(1) It is the intent of the Legislature to retroactively apply changes to gram-weight thresholds and ranges and to penalties for trafficking in hydrocodone or codeine which are applicable to offenders who committed these offenses on or after October 1, 2019, the effective date of amendments to s. 893.135 by chapter 2019-167, Laws of Florida.

(a) If a violation of s. 893.135(1)(c) involving trafficking in hydrocodone, as described in s. 893.03(2)(a)1.k.; trafficking in codeine, as described in s. 893.03(2)(a)1.g.; or trafficking in any salt of hydrocodone or of codeine, or any mixture containing any such substance, as described in s. 893.03(2)(a)2., was committed before October 1, 2019, and was punishable as a felony of the first degree at the time the violation was committed, the changes must be retroactively applied as provided in this subsection.

(b) A person who committed a trafficking violation described in paragraph (a) before October 1, 2019, but who was not sentenced for such violation before October 1, 2021, must be sentenced as provided in paragraph (d).

(c) A person who committed a trafficking violation



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described in paragraph (a) before October 1, 2019, and who is serving a mandatory minimum term of imprisonment for such violation on or after October 1, 2021, must be resentenced as provided in paragraph (d) and in accordance with subsection (3).

(d)1. A violation described in paragraph (a) for which the person is to be sentenced or resentenced pursuant to this subsection is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity of hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g., any salt thereof, or any mixture containing any such substance involved in the violation of s. 893.135:

a. Was 4 grams or more, but less than 28 grams, such person must be sentenced or resentenced as provided in s. 775.082, s. 775.083, or s. 775.084.

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

c. Was 50 grams or more, but less than 100 grams, such person must be sentenced or resentenced to a mandatory minimum term of imprisonment of 7 years and ordered to pay a fine of \$100,000.

d. Was 100 grams or more, but less than 300 grams, such person must be sentenced or resentenced to a mandatory minimum term of imprisonment of 15 years and ordered to pay a fine of \$500,000.

e. Was 300 grams or more, but less than 30 kilograms, such person must be sentenced or resentenced to a mandatory minimum



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98 term of imprisonment of 25 years and ordered to pay a fine of  
99 \$500,000 if the trafficking involves hydrocodone, any salt  
100 thereof, or any mixture containing hydrocodone, or \$750,000, if  
101 the trafficking involves codeine, or any salt thereof, or any  
102 mixture containing codeine.  
103

By Senator Rouson

19-00275-21

2021328\_\_

1 A bill to be entitled  
 2 An act relating to sentencing; creating s. 775.08701,  
 3 F.S.; providing legislative intent; providing for the  
 4 retroactive applicability of s. 775.087, F.S.;  
 5 prohibiting certain persons from being sentenced to  
 6 mandatory minimum terms of imprisonment for aggravated  
 7 assault or attempted aggravated assault committed  
 8 before a specified date; requiring resentencing for  
 9 persons who committed such violations before a  
 10 specified date and are serving mandatory minimum terms  
 11 of imprisonment; specifying procedures for such  
 12 resentencing; providing eligibility for gain-time for  
 13 such sentenced or resented persons; creating s.  
 14 893.13501, F.S.; providing legislative intent;  
 15 providing for the retroactive applicability of s.  
 16 893.135, F.S.; requiring the initial sentencing and  
 17 the resentencing of certain persons who committed  
 18 certain violations before a specified date which  
 19 involved trafficking in hydrocodone or codeine;  
 20 providing criminal penalties for such violations that  
 21 are subject to an initial sentencing or a  
 22 resentencing; providing legislative intent; providing  
 23 for the retroactive applicability of s. 893.135, F.S.;  
 24 requiring the initial sentencing and the resentencing  
 25 of certain persons who committed certain violations  
 26 before a specified date which involved trafficking in  
 27 oxycodone; providing criminal penalties for such  
 28 violations that are subject to an initial sentencing  
 29 or a resentencing; specifying procedures for such

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30 resentencing; providing an effective date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. Section 775.08701, Florida Statutes, is created  
 35 to read:  
 36 775.08701 Retroactive application relating to s. 775.087;  
 37 legislative intent; prohibiting mandatory minimum sentencing for  
 38 certain offenses; resentencing procedures.-  
 39 (1) It is the intent of the Legislature to retroactively  
 40 apply chapter 2016-7, Laws of Florida, only as provided in this  
 41 section, to persons who committed aggravated assault or  
 42 attempted aggravated assault before July 1, 2016, the effective  
 43 date of chapter 2016-7, Laws of Florida, which amended s.  
 44 775.087 to remove aggravated assault and attempted aggravated  
 45 assault from the list of predicate offenses for mandatory  
 46 minimum terms of imprisonment under that section.  
 47 (2) As used in this section, a reference to "former s.  
 48 775.087" is a reference to s. 775.087 as it existed at any time  
 49 before its amendment by chapter 2016-7, Laws of Florida.  
 50 (3) (a) A person who committed aggravated assault or  
 51 attempted aggravated assault before July 1, 2016, but was not  
 52 sentenced under former s. 775.087 before October 1, 2021, may  
 53 not be sentenced for that violation to a mandatory minimum term  
 54 of imprisonment under former s. 775.087.  
 55 (b) A person who committed aggravated assault or attempted  
 56 aggravated assault before July 1, 2016, who was sentenced before  
 57 October 1, 2019, to a mandatory minimum term of imprisonment  
 58 pursuant to former s. 775.087, and who is serving such mandatory

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59 minimum term of imprisonment on or after October 1, 2021, must  
60 be resentenced in accordance with paragraph (c) to a sentence  
61 without such mandatory minimum term of imprisonment. The new  
62 sentence must be as provided in s. 775.082, s. 775.083, or s.  
63 775.084.

64 (c) Resentencing under this section must occur in the  
65 following manner:

66 1. The Department of Corrections shall notify the person  
67 described in paragraph (b) of his or her eligibility to request  
68 a sentence review hearing.

69 2. The person seeking sentence review under this section  
70 may submit an application to the court of original jurisdiction  
71 requesting that a sentence review hearing be held. The  
72 sentencing court retains original jurisdiction for the duration  
73 of the sentence for this purpose.

74 3. A person who is eligible for a sentence review hearing  
75 under this section is entitled to be represented by counsel, and  
76 the court shall appoint a public defender to represent the  
77 person if he or she cannot afford an attorney.

78 4. Upon receiving an application from the eligible person,  
79 the court of original sentencing jurisdiction shall hold a  
80 sentence review hearing to determine if the eligible person  
81 meets the criteria for resentencing under this section. If the  
82 court determines at the sentence review hearing that the  
83 eligible person meets the criteria in this section for  
84 resentencing, the court must resentence the person as provided  
85 in this section; however, the new sentence may not exceed the  
86 person's original sentence with credit for time served. If the  
87 court determines that such person does not meet the criteria for

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88 resentencing under this section, the court must provide written  
89 reasons why such person does not meet such criteria.

90 (d) A person sentenced or resentenced pursuant to this  
91 section is eligible to receive any gain-time pursuant to s.  
92 944.275 which he or she was previously ineligible to receive  
93 because of the imposition of the mandatory minimum term of  
94 imprisonment pursuant to former s. 775.087.

95 Section 2. Section 893.13501, Florida Statutes, is created  
96 to read:

97 893.13501 Retroactive application relating to s. 893.135;  
98 legislative intent; sentencing or resentencing for trafficking  
99 in hydrocodone, codeine, or oxycodone; penalties; resentencing  
100 procedures.—

101 (1) It is the intent of the Legislature to retroactively  
102 apply changes to gram-weight thresholds and ranges and to  
103 penalties for trafficking in hydrocodone or codeine which are  
104 applicable to offenders who committed these offenses on or after  
105 October 1, 2019, the effective date of amendments to s. 893.135  
106 by chapter 2019-167, Laws of Florida.

107 (a) If a violation of s. 893.135(1)(c) involving  
108 trafficking in hydrocodone, as described in s. 893.03(2)(a)1.k.;  
109 trafficking in codeine, as described in s. 893.03(2)(a)1.g.; or  
110 trafficking in any salt of hydrocodone or of codeine, or any  
111 mixture containing any such substance, as described in s.  
112 893.03(2)(a)2., was committed before October 1, 2019, and was  
113 punishable as a felony of the first degree at the time the  
114 violation was committed, the changes must be retroactively  
115 applied as provided in this subsection.

116 (b) A person who committed a trafficking violation

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 described in paragraph (a) before October 1, 2019, but who was  
 not sentenced for such violation before October 1, 2021, must be  
 sentenced as provided in paragraph (d).

(c) A person who committed a trafficking violation  
 described in paragraph (a) before October 1, 2019, and who is  
 serving a mandatory minimum term of imprisonment for such  
 violation on or after October 1, 2021, must be resentenced as  
 provided in paragraph (d) and in accordance with subsection (3).

(d)1. A violation described in paragraph (a) for which the  
 person is to be sentenced or resentenced pursuant to this  
 subsection is a felony of the first degree, punishable as  
 provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity of hydrocodone, as described in s.  
 893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g.,  
 any salt thereof, or any mixture containing any such substance  
 involved in the violation of s. 893.135:

a. Was 4 grams or more, but less than 28 grams, such person  
 must be sentenced or resentenced as provided in s. 775.082, s.  
 775.083, or s. 775.084.

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

c. Was 50 grams or more, but less than 100 grams, such  
 person must be sentenced or resentenced to a mandatory minimum  
 term of imprisonment of 7 years and ordered to pay a fine of  
 \$100,000.

d. Was 100 grams or more, but less than 300 grams, such  
 person must be sentenced or resentenced to a mandatory minimum

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 term of imprisonment of 15 years and ordered to pay a fine of  
 \$500,000.

e. Was 300 grams or more, but less than 30 kilograms, such  
 person must be sentenced or resentenced to a mandatory minimum  
 term of imprisonment of 25 years and ordered to pay a fine of  
 \$500,000.

(2) It is the intent of the Legislature to retroactively  
 apply the changes to gram-weight thresholds and ranges and to  
 penalties for trafficking in oxycodone which are applicable to  
 offenders who committed this offense on or after July 1, 2014,  
 the effective date of amendments to s. 893.135 by chapter 2014-  
 176, Laws of Florida.

(a) If a violation of s. 893.135(1)(c) involving  
 trafficking in oxycodone, as described in s. 893.03(2)(a)1.g.,  
 any salt thereof, or any mixture containing any such substance  
 was committed before July 1, 2014, and was punishable as a  
 felony of the first degree at the time the violation was  
 committed, the changes must be retroactively applied as provided  
 in this subsection.

(b) A person who committed a trafficking violation  
 described in paragraph (a) before July 1, 2014, but who was not  
 sentenced for such violation before October 1, 2021, must be  
 sentenced as provided in paragraph (d).

(c) A person who committed a trafficking violation  
 described in paragraph (a) before July 1, 2014, and who is  
 serving a mandatory minimum term of imprisonment for such  
 violation on or after October 1, 2021, must be resentenced as  
 provided in paragraph (d) and in accordance with subsection (3).

(d)1. A violation described in paragraph (a) for which the

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175 person is to be sentenced or resented pursuant to this  
 176 subsection is a felony of the first degree, punishable as  
 177 provided in s. 775.082, s. 775.083, or s. 775.084.

178 2. If the quantity of oxycodone, as described in s.  
 179 893.03(2)(a)1.g., any salt thereof, or any mixture containing  
 180 any such substance involved in the violation of s. 893.135:

181 a. Was 4 grams or more, but less than 7 grams, such person  
 182 must be sentenced or resented as provided in s. 775.082, s.  
 183 775.083, or s. 775.084.

184 b. Was 7 grams or more, but less than 14 grams, such person  
 185 must be sentenced or resented to a mandatory minimum term of  
 186 imprisonment of 3 years and ordered to pay a fine of \$50,000.

187 c. Was 14 grams or more, but less than 25 grams, such  
 188 person must be sentenced or resented to a mandatory minimum  
 189 term of imprisonment of 7 years and ordered to pay a fine of  
 190 \$100,000.

191 d. Was 25 grams or more, but less than 100 grams, such  
 192 person must be sentenced or resented to a mandatory minimum  
 193 term of imprisonment of 15 years and ordered to pay a fine of  
 194 \$500,000.

195 e. Was 100 grams or more, but less than 30 kilograms, such  
 196 person must be sentenced or resented to a mandatory minimum  
 197 term of imprisonment of 25 years and ordered to pay a fine of  
 198 \$500,000.

199 (3) Resentencing under this section must occur in the  
 200 following manner:

201 (a) The Department of Corrections shall notify the person  
 202 described in paragraph (1)(c) or paragraph (2)(c) of his or her  
 203 eligibility to request a sentence review hearing.

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204 (b) The person seeking sentence review under this section  
 205 may submit an application to the court of original jurisdiction  
 206 requesting that a sentence review hearing be held. The  
 207 sentencing court retains original jurisdiction for the duration  
 208 of the sentence for this purpose.

209 (c) A person who is eligible for a sentence review hearing  
 210 under this section is entitled to be represented by counsel, and  
 211 the court shall appoint a public defender to represent the  
 212 person if he or she cannot afford an attorney.

213 (d) Upon receiving an application from the eligible person,  
 214 the court of original sentencing jurisdiction shall hold a  
 215 sentence review hearing to determine if the eligible person  
 216 meets the criteria for resentencing under this section. If the  
 217 court determines at the sentence review hearing that the  
 218 eligible person meets the criteria in this section for  
 219 resentencing, the court must resentence the person as provided  
 220 in this section; however, the new sentence may not exceed the  
 221 person's original sentence with credit for time served. If the  
 222 court determines that such person does not meet the criteria for  
 223 resentencing under this section, the court must provide written  
 224 reasons why such person does not meet such criteria.

225 Section 3. This act shall take effect October 1, 2021.



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E-mail referenced in my analysis of SB 328.

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**From:** Hasbrouck, Matthew <HASBROUCK.MATTHEW@leg.state.fl.us>  
**Sent:** Wednesday, March 24, 2021 5:03 PM  
**To:** Erickson, Mike <ERICKSON.MIKE@flsenate.gov>  
**Cc:** Baker, Amy <BAKER.AMY@leg.state.fl.us>  
**Subject:** RE: Question regarding SB 328

Hey Mike,

We did approve the estimate, but it was actually “negative indeterminate,” rather than negative significant.

Thanks,  
Matt

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**From:** Erickson, Mike <[ERICKSON.MIKE@flsenate.gov](mailto:ERICKSON.MIKE@flsenate.gov)>  
**Sent:** Wednesday, March 24, 2021 4:58 PM  
**To:** Hasbrouck, Matthew <[HASBROUCK.MATTHEW@leg.state.fl.us](mailto:HASBROUCK.MATTHEW@leg.state.fl.us)>  
**Subject:** Question regarding SB 328

Did CJIC approve your estimate of “negative significant” on SB 328?

## **HB 801 – Resentencing for Persons Serving Mandatory Minimum Sentences (Identical SB 328)**

This bill creates s. 775.08701, F.S., retroactively applying “chapter 2016-7, Laws of Florida, only as provided in this section, to persons who committed aggravated assault or attempted aggravated assault before July 1, 2016, the effective date of chapter 2016-7, Laws of Florida, which amended s. 775.087, F.S. to remove aggravated assault and attempted aggravated assault from the list of predicate offenses for mandatory minimum terms of imprisonment under that section.” This would apply to those who committed their offenses before July 1, 2016 and had not yet been sentenced, as well as someone sentenced before October 1, 2021, but who committed these offenses before July 1, 2016, and received a mandatory minimum term of imprisonment. The first group would be sentenced under current law and the group who have already been sentenced to a mandatory minimum term of imprisonment under prior law “must be resentenced...to a sentence without such mandatory minimum term of imprisonment” and will be “eligible to receive any gain-time pursuant to s. 944.275, F.S. which he or she was previously ineligible to receive because of the imposition of the mandatory minimum term of imprisonment.” However, ultimately it is up to the individual offender to seek a sentence review hearing once DOC informs the person of eligibility, and the court might determine that a person does not meet the criteria for resentencing.

Per DOC, there are currently 145 cases eligible under this criteria, though it is unknown how their new sentences would be structured. Furthermore, it is not known how many offenders committed their offenses prior to July 1, 2016 and have yet to be sentenced.

### **EDR PROPOSED ESTIMATE: Negative Indeterminate**

This bill also creates s. 893.13501, F.S., establishing that someone who committed trafficking offenses involving hydrocodone/codeine and oxycodone must be resentenced if the offender was serving a mandatory minimum prison sentence under prior weight thresholds that were changed on July 1, 2014 for both of these drugs and changed once more on October 1, 2019 for hydrocodone. If the offense was committed before either one of these dates and the person had not been sentenced as of October 1, 2021, those offenders would also be subject to the new weight thresholds. However, ultimately it is up to the individual offender to seek a sentence review hearing once DOC informs the person of eligibility, and the court might determine that a person does not meet the criteria for resentencing.

Under prior law (before July 1, 2014), hydrocodone/codeine and oxycodone were included under trafficking in illegal drugs with the following thresholds:

- 4 grams or more, less than 14 grams – Level 7, 1<sup>st</sup> degree felony; 3 year mandatory minimum
- 14 grams or more, less than 28 grams – Level 8, 1<sup>st</sup> degree felony; 15 year mandatory minimum

- 28 grams or more, less than 30 kilograms – Level 9, 1<sup>st</sup> degree felony; 25 year mandatory minimum

Under current law for hydrocodone/codeine (thresholds most recently increased on October 1, 2019):

- 28 grams or more, less than 50 grams – Level 7, 1<sup>st</sup> degree felony; 3 year mandatory minimum
- 50 grams or more, less than 100 grams – Level 7, 1<sup>st</sup> degree felony; 7 year mandatory minimum
- 100 grams or more, less than 300 grams – Level 8, 1<sup>st</sup> degree felony; 15 year mandatory minimum
- 300 grams or more, less than 30 kilograms – Level 9, 1<sup>st</sup> degree felony; 25 year mandatory minimum

Under current law for oxycodone (thresholds most recently increased on July 1, 2014):

- 7 grams or more, less than 14 grams – Level 7, 1<sup>st</sup> degree felony; 3 year mandatory minimum
- 14 grams or more, less than 25 grams – Level 7, 1<sup>st</sup> degree felony; 7 year mandatory minimum
- 25 grams or more, less than 100 grams – Level 8, 1<sup>st</sup> degree felony; 15 year mandatory minimum
- 100 grams or more, less than 30 kilograms – Level 9, 1<sup>st</sup> degree felony; 25 year mandatory minimum

Per DOC, as of February 28, 2021, there were 754 offenders incarcerated for trafficking in illegal drugs with an offense committed before July 1, 2014. For the 4 or more, but less than 14 gram threshold group, of the 217 incarcerated, there were no offenders with sentence lengths less than 3 years, though this is likely the outcome of when the offenses were committed, since most with smaller sentences would no longer be incarcerated over six years after committing an offense. For the 14 or more, but less than 28 gram threshold group, of the 244 incarcerated, there are some with sentence lengths less than 15 years (37, 15.16%), with 138 (56.56%) having sentences of exactly fifteen years. Finally, for the 28 or more, but less than 30 kilogram threshold group, of the 293 incarcerated, there is also a large number with sentence lengths less than 25 years (123, 41.98%), with 105 (35.84%) having sentences of exactly 25 years. Though it is possible that those offenders clustered around the mandatory minimum sentences could see an impact from this bill, it is not known how many of these offenders would be eligible for resentencing since DOC does not have information on how many were incarcerated for hydrocodone/codeine or oxycodone prior to July 1, 2014. It is also not known how many additional offenders have yet to be sentenced who committed their offenses prior to October 1, 2021.

There have been no commitments to prison since the change in hydrocodone/codeine thresholds on October 1, 2019. However, there are currently 53 offenders incarcerated under the hydrocodone/codeine thresholds prior to that date. For the 14 or more, but less than 28 gram threshold group, of the 29 incarcerated, there are some with sentence lengths less than 3 years (2, 6.9%), with 8 (27.59%) having sentences of exactly three years. Finally, for the 28 or more, but less than 50 grams threshold group, of the 16 incarcerated, there are also a few with sentence lengths less than 7 years (3, 18.75%), with 7 (43.75%) having sentences of exactly 7 years. There are only 8 incarcerated at higher thresholds, and all fall below the mandatory minimums for these thresholds. Given the new thresholds for hydrocodone/codeine removing the 3 year mandatory minimum for more than 14 and less than 28 grams, as well as reducing the mandatory minimum from 7 years to 3 years for more than 28 and less than 50 grams, these two incarcerated groups, especially the 15 offenders with sentence lengths that line up with mandatory minimums, could possibly be impacted by this language. However, it is also not known how many additional offenders have yet to be sentenced who committed their offenses prior to October 1, 2021.

Since hydrocodone and oxycodone were initially recorded under trafficking in illegal drugs, it is not known how many would be eligible for resentencing, nor is it known how offenders are currently sentenced when hydrocodone and oxycodone fall below their trafficking thresholds. However, both sentence length and incarceration rates are significantly lower for offenses under s. 893.13, F.S. when compared to the trafficking in illegal drugs threshold where these drug types initially were (4 grams or more, less than 14 grams), and could impact resentencing decisions for those who are eligible.

**EDR PROPOSED ESTIMATE: Negative Indeterminate**

**EDR PROPOSED ESTIMATE FOR ENTIRE BILL: Negative Indeterminate**

**Requested by: Senate**



## 2021 AGENCY LEGISLATIVE BILL ANALYSIS

### AGENCY: Department of Corrections

<b><u>BILL INFORMATION</u></b>	
<b>BILL NUMBER:</b>	SB 328
<b>BILL TITLE:</b>	Sentencing
<b>BILL SPONSOR:</b>	Senator Rouson
<b>EFFECTIVE DATE:</b>	October 1, 2021

<b><u>COMMITTEES OF REFERENCE</u></b>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

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

<b><u>CURRENT COMMITTEE</u></b>

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

<b><u>IDENTICAL BILLS</u></b>	
<b>BILL NUMBER:</b>	HB 801
<b>SPONSOR:</b>	Representative Williams

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

<b><u>BILL ANALYSIS INFORMATION</u></b>	
<b>DATE OF ANALYSIS:</b>	February 26, 2021
<b>LEAD AGENCY ANALYST:</b>	Michelle Palmer
<b>ADDITIONAL ANALYST(S):</b>	Mary Le, Antoinette McCaskill
<b>LEGAL ANALYST:</b>	Ryan Orbe
<b>FISCAL ANALYST:</b>	Tommy Milito

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

Creates s. 775.08701, F.S., providing legislative intent; requiring retroactive application of 2016-17 Laws of Florida for s. 775.087, F.S., as it relates to minimum mandatory sentencing under s. 775.087 for aggravated assault convictions; prohibits minimum mandatory sentencing under 10-20-Life for aggravated assault convictions before a specified date; requires resentencing for persons who committed those violations before a specified date and are serving mandatory minimum terms of imprisonment; specifying procedure for such resentencing; providing eligibility for gain time upon resentencing. Creating s. 893.13501, F.S.; providing legislative intent; providing for sentencing or resentencing for persons who committed certain violations before a specified date which involved trafficking in hydrocodone or codeine; requiring resentencing for persons who committed those violations before a specified date and are serving mandatory minimum terms of imprisonment; providing criminal penalties for such violations that are subject to resentencing; providing legislative intent; requiring sentencing or resentencing for persons who committed certain violations before a specified date which involved trafficking in oxycodone; providing criminal penalties for such violation that is subject to resentencing; specifying the procedures for such resentencing; providing an effective date.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

##### Section 1

Section 775.087(1), F.S., provides for the upward re-classification of felony degree for carrying, displaying, using or threatening to use a weapon during commission of a felony when the weapon is not an essential element of the crime.

Section 775.087(2)(a)1, F.S., requires a court to impose a sentence of either 3 or 10 years for possession of a firearm or destructive device during commission of an enumerated offense. For offenses committed on or after July 1, 2016, aggravated assault was removed from the list of enumerated offenses in s. 775.087, F.S; thereby, no longer requiring a mandatory minimum sentencing.

Subsection 2 requires imposition of a sentence of 20 years for discharging a firearm or destructive device during commission of an enumerated offense. Subsection 3 requires imposition of a sentence of 25 years to life for discharging a firearm or destructive device resulting in death or great bodily harm during commission of an enumerated offense.

Section 775.087(3), F.S., repeats the same pattern as section (2). It mandates minimum sentences of 15, 20 or 25 years to life when “a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun” is possessed, discharged, or discharged resulting in death or great bodily harm during commission of an enumerated crime.

An inmate is ineligible to earn gain time prior to serving the mandatory minimum sentence.

Prior to July 1, 2016, s. 775.087(6), F.S., provided that the mandatory sentence shall not be imposed upon a conviction for aggravated assault if the court makes written findings that:

- (a) The defendant had a good faith belief that the aggravated assault was justifiable pursuant to chapter 776.
- (b) The aggravated assault was not committed in the course of committing another criminal offense.
- (c) The defendant does not pose a threat to public safety.
- (d) The totality of the circumstances involved in the offense do not justify the imposition of such sentence.

Section 27.366, F.S., provides State Attorneys discretion over seeking the mandatory minimum sentence “in those cases in which the offenders’ possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime.”

In 2016, s. 775.087, F.S., was amended to remove aggravated assault from the list of crimes for which 10-20-Life minimum mandatory provisions apply.

The Florida Department of Corrections (FDC or Department) is obligated to record sentencing provisions as reflected on the sentencing orders. If the inmate does not agree with the order of the court, they must contact the sentencing court or go through an appeal process to address any concerns.

## Section 2

Section 893.135, F.S. prohibits trafficking in specified quantities of various substances and upon conviction requires imposition of minimum terms of imprisonment, based on the type of drug and the quantity trafficked. All of the trafficking crimes in the section are at least level 7 offenses, which score 56 points on the CPC, and at least 1st degree felonies, which are punishable by up to 30 years in prison.

Section 893.135(3) provides, “Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section.”

Section 893.135(4) F.S. provides that, “The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances.” Under current law the trial court may not impose less than the mandatory without the state's recommendation.

Prior to 2014, oxycodone and hydrocodone were lumped under s. 893.135(1)(c)(1), F.S., with other opioids and the criminal penalties associated with trafficking in these drugs were as follows:

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

- a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of \$100,000.
- c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of \$500,00

Effective July 1, 2014, hydrocodone and oxycodone were separated from other opioids under s. 893.135(1)(c)(1), F.S., for offenses under 30 kilograms and s. 893.135(1)(c)(2) and (3), F.S., were created as follows:

### Hydrocodone

- S. 893.135(1)(c)(2), F.S. - A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, or any salt, derivative, isomer, or salt of an isomer thereof, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as “trafficking in hydrocodone,” punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S. If the quantity involved:
  - a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.
  - b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.
  - c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.
  - d. Is 200 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

### Oxycodone

- S. 893.135(1)(c)(3), F.S. - A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, or any salt, derivative, isomer, or salt of an isomer thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as “trafficking in oxycodone,” punishable as provided in s. 775.082 F.S., s. 775.083, F.S., or s. 775.084, F.S. If the quantity involved:

- a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.
- b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.
- c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.
- d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

In 2019 (effective October 1, 2019), s. 893.135(1)(c)(2), F.S., was again amended to revise the threshold amounts for trafficking in hydrocodone, codeine, or trafficking in any salt of hydrocodone or of codeine, or any mixture containing any such substance to bring them in line with similar controlled substances as follows:

- 28 grams or more, less than 50 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- 50 grams or more, less than 100 grams – Level 7, 1st degree felony; 7 year mandatory minimum
- 100 grams or more, less than 300 grams – Level 8, 1st degree felony; 15 year mandatory minimum
- 300 grams or more, less than 30 kilograms – Level 9, 1st degree felony; 25 year mandatory minimum

The threshold amount for trafficking in hydrocodone was raised from 14 grams to 28 grams, 28 to less than 50 to less than 100, 100 to less than 300, and 300 to less than 30 kilograms. This change was prospective only.

## 2. EFFECT OF THE BILL:

### Section 1

Bill creates s. 775.08701, F.S., providing for retroactive application of the 2016-7, Laws of Florida as it relates to s. 775.087, F.S., (10-20-Life) (which removed aggravated assault or attempted aggravated assault from the list of predicate offenses for mandatory minimum terms of imprisonment under that section) to persons who committed aggravated assault or attempt before July 1, 2016.

The bill states that persons who committed aggravated assault or attempted aggravated assault before July 1, 2016 but were not sentenced until after October 1, 2021, may not be sentenced for that violation to a mandatory minimum term of imprisonment under the former s. 775.087, F.S.

The bill mandates resentencing without a mandatory minimum for any person who committed an aggravated assault or attempted aggravated assault before July 1, 2016, and who was sentenced before October 1, 2019 to a mandatory minimum term of imprisonment pursuant to former s. 775.087 and who is serving such mandatory minimum term of imprisonment on or after October 1, 2021. The person must be resentenced to a sentence as provided in s. 775.082, F.S., or s. 775.083, F.S., or s. 775.084, F.S.

It appears there is a missing group for inmates who committed aggravated assault or attempted aggravated assault before July 1, 2016 who were sentenced on after October 1, 2019 but before October 1, 2021. It is unclear what the significance of the October 1, 2019 date has to this portion of the bill.

The Department's role is limited to identifying eligible inmates and notifying them of their potential eligibility to request a hearing. This would require minor data base programming.

In order to be resentenced, the inmate would have to submit an application to the court of original jurisdiction requesting a sentence review hearing be held. Once received, the court is required to conduct a sentence review hearing to determine if the inmate meets the criteria for resentencing. If it is determined the inmate meets the criteria, the court must resentence the inmate in accordance with s. 775.082, F.S., or s. 775.083, F.S., or s. 775.084, F.S.; however, the new sentence may not exceed the original sentence with credit for time served. If the court determines the inmate is not eligible for resentencing, the court must provide written reasons as to their findings.

The bill also provides for retroactive application of eligible gain time for any inmate who is sentence or resentenced pursuant to this section for which he or she was previously ineligible to receive due to imposition of the mandatory minimum term under the former s. 775.087, F.S. Once the Department is in receipt of original sentencing orders and/or sentencing modifications, a review of gain time eligibility is conducted to ensure the inmate is receiving the lawful amount of gain-time based on the law in effect at the time the offense occurred, applicable case law, and/or other retroactive statutory changes.

There are approximately 1470 inmates who appear to meet the criteria as outlined in the bill. Some inmates may not receive an overall benefit from a resentencing, as they may be serving sentences unrelated to the aggravated assault/minimum mandatory sentencing, that control the overall release date. In addition, there is no way to know if the inmate will submit an application to the court for a sentencing review subsequent to the Department's notification.



## Section 2

The bill creates s. 893.13501, F.S., providing for retroactive application of the 2014-176 and 2019-167, Laws of Florida, in which the gram-weight thresholds and ranges to penalties for trafficking in oxycodone, any salt thereof, or any mixture containing any such substance, as well as for trafficking in hydrocodone, codeine, any salt thereof, or any mixture containing any such substance were changed as indicated above.

The bill mandates resentencing as follows:

- For any person who was convicted of trafficking in hydrocodone, codeine, or trafficking in any salt of hydrocodone or of codeine, or any mixture containing any such substance, if the violation was committed before October 1, 2019, and who was sentenced before October 1, 2019 to a mandatory minimum term of imprisonment pursuant to former s. 775.087, F.S., and who is serving such mandatory minimum term of imprisonment on or after October 1, 2021. The person must be resentenced to a sentence as provided in s. 775.082, F.S., or s. 775.083, F.S., or s. 775.084, F.S. If the quantity involved was:
  - 4 grams or more, but less than 28 grams – must be resentenced as provided in s. 775.082, F.S., s. 775.083, F.S. or s. 775.084, F.S.; no mandatory minimum term.
  - 28 grams or more but less than 50 grams – must be resentenced to a 3-year mandatory minimum.
  - 50 grams or more, but less than 100 grams – must be resentenced to a 7-year mandatory minimum.
  - 100 grams or more, but less than 300 grams – must be resentenced to a 15-year mandatory minimum.
  - 300 grams or more, but less than 30 kilograms – must be resentenced to a 25-year mandatory minimum.
- For any person who was convicted of trafficking in oxycodone, any salt thereof, or any mixture containing any such substance if the offense was committed before July 1, 2014 and who is serving a mandatory minimum term of imprisonment on or after October 1, 2021 The person must be resentenced to a sentence as provided in s. 775.082, F.S., or s. 775.083, F.S., or s. 775.084, F.S. If the quantity involved was:
  - 4 grams or more, but less than 7 grams – must be resentenced as provided in s. 775.082, F.S., s. 775.083, F.S. or s. 775.084, F.S.; no mandatory minimum.
  - 7 grams or more but less than 14 grams – must be resentenced to a 3-year mandatory minimum.
  - 14 grams or more, but less than 25 grams – must be resentenced to a 7-year mandatory minimum.
  - 25 grams or more, but less than 100 grams – must be resentenced to a 15-year mandatory minimum.
  - 100 grams or more, but less than 30 kilograms – must be resentenced to a 25-year mandatory minimum.

The Department's role in the resentencing process is limited to identifying eligible inmates and notifying them of their potential eligibility to request a hearing. This would require minor data base programming.

In order to be resentenced, the inmate would have to submit an application to the court of original jurisdiction requesting a sentence review hearing be held. Once received, the court is required to conduct a sentence review hearing to determine if the inmate meets the criteria for resentencing. If it is determined the inmate meets the criteria, the court must resentence the inmate in accordance with s. 775.082, F.S., or s. 775.083, F.S., or s. 775.084, F.S; however, the new sentence may not exceed the original sentence with credit for time served. If the court determines the inmate is not eligible for resentencing, the court must provide written reasons as to their findings.

Prior to July 1, 2014, all opioids were lumped together under s. 893.135(1)(c)(1), F.S. In order to determine which inmates would be eligible for resentencing under this bill, a manual review of each inmate's sentencing order would be required to determine if the offenses involved oxycodone or hydrocodone, as the Department's records do not separate these specific drugs.

There are approximately 1,131 inmates in custody that will require a manual review as outlined above. A taskforce will need to be created in order to review the information for each case. There are approximately 278 inmates whose offense dates are on or after July 1, 2014, that will require a notice without manual review.

While it is anticipated that there would be an increased need for Correctional Probation Officers, because it is unknown how resentencing will impact supervision population, a projection of increased staffing needs cannot be provided.

The overall impact of the bill is indeterminate as it is unknown how the resentencing will impact the overall inmate's sentence or how many inmates will apply for the sentencing review.

The effective date of the bill is 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:	
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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:	N/A
Opponents and summary of position:	N/A

**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):	

<b>FISCAL ANALYSIS</b>
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**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?	
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**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?**Y ☒ N ☐

Revenues:	Indeterminate
Expenditures:	<p>If this bill is passed, the overall inmate and community supervision population fiscal impact is indeterminate. However, it is anticipated that there is a potential of a decrease in prison admissions and an increase in Community Corrections admissions.</p> <p>When inmate population is impacted in small increments statewide, the inmate variable per diem of \$22.29 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 19-20 average per diem for community supervision was \$6.01</p> <p>However, there would be a technology cost related to reprogramming systems, this cost is estimated at \$17,400.</p>
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 on OBIS is indeterminate. However, it may require programming to the Gain time adjustment (inmate calculator) and Programming to identify those impacted inmates/offenders.</p> <p>Cost Estimate:            Estimated Hours: 200            Estimated Cost Per Hour: \$87.00            Estimated Total Cost: \$17,400</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.	
--	--

## ADDITIONAL COMMENTS

N/A.

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	<p>Legal Analysis –</p> <p>775.08701</p> <p>The Bill proposes to create s. 775.08701, F.S., making s. 775.087, F.S., retroactive to persons who committed aggravated assault or attempted aggravated assault before July 1, 2016.</p> <p>Thus, persons who are serving time for aggravated assault (or attempt) under s. 775.087, F.S., committed before July 1, 2016 are not subject to the mandatory minimum sentence. (Lines 39-46).</p> <p>Further, a person who has committed such an offense before July 1, 2016, and was sentenced before October 1, 2019 to a mandatory minimum sentenced for such violation, and who is serving the sentence on or after October 1, 2021, must be resentenced. (55-63)</p> <p>Legal Effect – In essence, a new legal interest would be established for some inmates—those who violated s. 775.087, F.S., before July 1, 2016. The Department would be required to notify such inmates as may be eligible, of their eligibility to request a sentencing hearing. (66-68) This will mean that the Department must determine who may be eligible and then notify them, and then participate in the sentence review hearing.</p>
---------------------------	---

	<p>Further, a person resentenced according to this section is eligible to receive gain-time, which had previously been denied them because of their mandatory minimum sentence. Thus, the Department will have to recalculate these sentences. The Department's calculation of gain-time is frequently the subject of civil actions brought by inmates. Therefore, the Department may experience an increase in gain-time litigation.</p> <p>893.13501</p> <p>The Bill proposes to create s. 893.13501, F.S., making s. 893.135, F.S., retroactive to persons who were involved in trafficking in hydrocodone, codeine, and oxycodone (and such derivative salts or mixtures) before October 1, 2019 (if such offenses were punishable as a first-degree felony). (107-115)</p> <p>Such offenders who committed the violation before October 1, 2019 and serving a mandatory minimum sentence on or after 10/1/21 must be resentenced. (120-124)</p> <p>The gram-weight threshold ranges and penalties contained in 893.135 are to be retroactively applied to offenders who committed these hydrocodone/codeine related offenses before October 1, 2019. Thus, anyone who committed such a violation before October 1, 2019 must be resentenced</p> <p>Further, a person who committed such a violation before October 1, 2019, but who was not sentenced for such violation before October 1, 2021 must be sentenced according to the provisions in the bill.</p> <p>A person who committed such a violation before October 1, 2019, and is serving a mandatory minimum sentence for such on or after October 1, 2021, must be resentenced.</p> <p>(Applicable sentencing and resentencing guidelines for hydrocodone and codeine appear in lines 125-151)</p> <p>The gram-weight threshold ranges and penalties contained in s. 893.135, F.S., are to be retroactively applied to offenders who committed these oxycodone related offenses before July 1, 2014. Thus, anyone who committed such a violation before July 1, 2014 must be resentenced</p> <p>Further, a person who committed such a violation before July 1, 2014, but who was not sentenced for such violation before October 1, 2021 must be sentenced according to the provisions in the bill.</p> <p>A person who committed such a violation before July 1, 2014, and is serving a mandatory minimum sentence for such on or after October 1, 2021, must be resentenced.</p> <p>(Applicable resentencing guidelines oxycodone are in Lines 181-199)</p> <p>Legal Effect – In essence, a new legal interest will be established for some inmates—those who are serving time for such identified trafficking offenses that were committed before the relevant dates. The Department must determine and notify the eligible inmates of their right to request a sentencing review hearing, and then participate in the hearing. (Lines 201-203)</p>
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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)

March 30, 2021  
Meeting Date

SB 328.  
Bill Number (if applicable)

Topic SB 328 Retroactivity

Amendment Barcode (if applicable)

Name Michelle Rothwell.

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

Address 1400 Grand Blvd #1416

Phone \_\_\_\_\_

Street

St. Petersburg FL.

City

State

33702

Zip

Email \_\_\_\_\_

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.*

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

S-001 (10/14/14)

## APPEARANCE RECORD

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

3/30

Meeting Date

SB 328

Bill Number (if applicable)

Topic SB 328 Aggravated assault

Amendment Barcode (if applicable)

Name Christina Miholics

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

Address 2261 Curlew Ave Apt C

Street

Phone 727 808 9015

Dunedin

FL

34698

City

State

Zip

Email Cmiholics@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing Brother / self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

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)

3-30-2021

Meeting Date

SB 328

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Omayra Martin

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

Address 417A Blackbird Way

Street

Phone 407-747-4444

Kissimmee

City

FL

State

34759

Zip

Email Omayramartin1987@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing My family

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)

3/30/21

Meeting Date

328

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th St

Phone 305 545-1900

Street

Miami

City

FL

State

33145

Zip

Email cmartinez@pdmi.fl.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

WAIVE

THE FLORIDA SENATE  
**APPEARANCE RECORD**

WAIVE  
SUPPORT

3/30/21

Meeting Date

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

SB 328

Bill Number (if applicable)

Topic SB 328

Amendment Barcode (if applicable)

Name Anne Williams

Job Title RN BSN

Address 4835 Andrade

Phone 850-712-0100

Street

Pensacola, FL

City

State

32504

Zip

Email AnneWilliamsRN@yahoo.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.

**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)

3/30/21  
Meeting Date

328  
Bill Number (if applicable)

Topic Man Minimums

Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Director

Address P.O. Box 10788

Phone 850 570 9560

Tallahassee FL 32303

City State Zip

Email carrie.boyd@water.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SLC 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.

**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)

3/30/21

Meeting Date

328

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

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

Reset Form

3/30/2021

Meeting Date

THE FLORIDA SENATE

## APPEARANCE RECORD

328

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Pamela Burch Fort

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

Address 104 South Monroe Street

Phone 850-425-1344

Street

Tallahassee

FL

32301

City

State

Zip

Email TcgLobby@aol.com

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.

S-001 (10/14/14)

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

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/30/21

*Meeting Date*

SB 328

*Bill Number (if applicable)*

Topic Sentencing

*Amendment Barcode (if applicable)*

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St.

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 Florida 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.***

S-001 (10/14/14)

Speaking  
THE FLORIDA SENATE

APPEARANCE RECORD

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

03/30/2021  
Meeting Date

SB328  
Bill Number (if applicable)

Topic SB328 Aggravated Assault

Amendment Barcode (if applicable)

Name DIANA J. Bernard

Job Title Nurse

Address 12 Clear Pl  
Street

Phone (352) 812-2978

Ocala FL 34472  
City State Zip

Email dianabernard.db@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self and family

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)

speaking

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

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

SB 328

Bill Number (if applicable)

Topic SB 328 Aggravated Assault

Amendment Barcode (if applicable)

Name Delva Charlemagne

Job Title Nurse

Address 2313 NE 35th St

Street

Phone 352 426-1060

Ocala

City

FL

State

34479

Zip

Email JasJedmd@hotmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing husband / and self.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



Speaking

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/21

Meeting Date

SB 328

Bill Number (if applicable)

Topic SB 328 Aggravated Assault

Amendment Barcode (if applicable)

Name Joel Charlemagne

Job Title Self employed

Address 2313 NE 35th St

Street

Phone 392-613-6231

City Ocala

State FL

Zip

Email stj04122@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.

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** January 14, 2021

---

I respectfully request that **Senate Bill # 328**, relating to Sentencing, be placed on the:

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

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

---

Senator Darryl Ervin Rouson  
Florida Senate, District 19

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

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

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

---

BILL: PCS/SB 410 (943370)

INTRODUCER: Criminal Justice Committee

SUBJECT: Reproductive Health and Disease Education

DATE: March 29, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	<b>Pre-meeting</b>
2.			ED	
3.			RC	

---

## **I. Summary:**

PCS/SB 410 prohibits a school from teaching students about reproductive health or any sexually transmitted disease, including HIV/AIDS, without prior written consent from his or her parent. A student whose parent does not give written consent for such teaching may not be penalized.

The bill amends s. 1002.20, F.S., to make it a right for parents of public school students to be provided an opportunity to review curriculum used to teach reproductive health or any sexually transmitted disease, including HIV/AIDS, before providing written consent.

The bill amends s. 1003.42, F.S., requiring each school district or school to provide parents the opportunity to review curriculum used to teach reproductive health or any sexually transmitted disease, including HIV/AIDS and, its symptoms, development, and treatment.

The bill is effective July 1, 2021.

## **II. Present Situation:**

### **K-12 Student and Parent Rights**

Parents of public school students are required by law to receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child succeed in school.<sup>1</sup> K-12 students and their parents are afforded numerous statutory rights pertaining to student education, including reproductive health and disease education.<sup>2</sup>

Florida law requires district school boards to provide comprehensive health education that among other issues addresses community health, family life (including awareness of the benefits

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<sup>1</sup> Section 1002.20, F.S.

<sup>2</sup> See s. 1002.20, F.S.

of sexual abstinence as the expected standard and the consequences of teenage pregnancy), personal health, and the prevention and control of disease.<sup>3</sup> One right a parent of a public school student has is to make a written request to the school principal to exempt his or her student from reproductive health and disease instruction, including instruction relating to HIV/AIDS. If such a request is made the student must be exempt from such instruction and may not be penalized.<sup>4</sup>

Health education is included in the required instruction to ensure that students meet Florida State Board of Education (SBE) standards.<sup>5</sup> Course curriculum refers to the lessons and academic content taught in a school or specific course. It may include but is not limited to a course syllabus and standards, instructional materials, or other resources an instructor may use in the class.<sup>6</sup> Standards and instructional materials are subject to specific selection, adoption, and review processes.<sup>7</sup>

### ***Instructional Materials***

Each district school board has the constitutional duty and responsibility to select and provide adequate instructional materials<sup>8</sup> to each student for core courses in mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12.<sup>9</sup> School districts may purchase instructional materials from a list of state-reviewed and adopted instructional materials<sup>10</sup> or establish their own review and adoption program.<sup>11</sup> District school boards receive state funding for instructional materials through the instructional materials allocation.<sup>12</sup>

Each district school board is responsible for the content of all instructional materials and any other materials used in the classroom, made available in a school library, or included on a reading list.<sup>13</sup> Each district school board must maintain on its website a current list of instructional materials, purchased by the district, separated by grade level.<sup>14</sup> Florida law establishes that the parent of a public school student has the right to receive effective communication from the school principal about the manner in which instructional materials are used to implement curricular objectives.<sup>15</sup>

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<sup>3</sup> Section 1003.42(2)(n), F.S.

<sup>4</sup> Section 1002.20(3)(d), F.S.

<sup>5</sup> See CPALMS, *Browse and Search Standards*, available at <https://www.cpalms.org/Public/search/Standard> (last visited March 24, 2021) (Select “Subject” and filter by “Health Education”).

<sup>6</sup> See The Glossary of Education Reform, *Curriculum*, available at <https://www.edglossary.org/curriculum/> (last visited March 24, 2021).

<sup>7</sup> See ss. 1003.41 and 1006.28, F.S. See also text accompanying notes 14-19.

<sup>8</sup> “Instructional materials” are items with intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. See ss. 1006.28(1) and 1006.29(2), F.S.

<sup>9</sup> See s. 1006.40(2) and (4), F.S.

<sup>10</sup> See Florida Department of Education, *Instructional Materials*, available at <http://www.fldoe.org/academics/standards/instructional-materials/> (last visited March 24, 2021).

<sup>11</sup> See ss. 1006.283 and 1006.40, F.S.

<sup>12</sup> See s. 1006.40, F.S. See also Florida Department of Education, *2020-21 Funding for Florida School Districts*, at 20, available at <http://www.fldoe.org/core/fileparse.php/7507/urlt/fefpdist.pdf> (last visited March 24, 2021).

<sup>13</sup> Section 1006.28(2)(a)1., F.S.

<sup>14</sup> Section 1006.28(2)(a)1., F.S.

<sup>15</sup> Section 1002.20(19)(b), F.S.

District school boards are required to adopt a policy for objections by a parent or resident of the county to the use of a specific instructional material.<sup>16</sup> The policy must clearly describe a process, in which the objector has the opportunity to provide specific evidence<sup>17</sup> to the district school board, and provide for resolution.<sup>18</sup>

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

The bill prohibits a school from teaching students about reproductive health or any sexually transmitted disease, including HIV/AIDS, without prior written consent from his or her parent. A student whose parent does not give written consent for such teaching may not be penalized.

The bill amends s. 1002.20, F.S., to make it a right for parents of public school students to be provided an opportunity to review curriculum used to teach reproductive health or any sexually transmitted disease, including HIV/AIDS, before providing written consent.

The bill amends s. 1003.42, F.S., requiring each school district or school to provide parents the opportunity to review curriculum used to teach reproductive health or any sexually transmitted disease, including HIV/AIDS and, its symptoms, development, and treatment.

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.

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<sup>16</sup> Section 1006.28(2)(a)2., F.S.

<sup>17</sup> The parent or resident may present evidence to show that the material does not meet the criteria or requirements of the instructional material selection or adoption process. The parent or resident may also present evidence that the instructional material contains pornographic or prohibited content, as described by s. 847.012, F.S., is not suited to student needs and comprehension of the materials presented, or is inappropriate for the grade level and age group. Section 1006.28(2)(a)2.a.-b., F.S.

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

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1002.20 and 1003.42.

**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.



856276

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (d) of subsection (3) of section  
1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public  
school students must receive accurate and timely information  
regarding their child's academic progress and must be informed  
of ways they can help their child to succeed in school. K-12



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students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(d) *Reproductive health and disease education.*—A public school student whose parent makes written request to the school principal shall be exempted from the teaching of reproductive health or any disease, including HIV/AIDS, in accordance with the provisions of s. 1003.42(3). Each school district shall notify parents of this right through publication on the district website of the curriculum, including the process for a parent to exercise this right.

Section 2. Subsections (1) and (3) of section 1003.42, Florida Statutes, are amended to read:

1003.42 Required instruction.—

(1)(a) Each district school board shall provide all courses required for middle grades promotion, high school graduation, and appropriate instruction designed to ensure that students meet State Board of Education adopted standards in the following subject areas: reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts. The state board must remove a middle grades course in the Course Code Directory that does not fully integrate all appropriate curricular content required by s. 1003.41 and may approve a new course only if it meets the required curricular content.

(b) The curriculum of any teaching of reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment, as part of the courses required by paragraph (a) must be annually approved by a district school board in an open,





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noticed public meeting.

(3) Any student whose parent makes written request to the school principal shall be exempted from the teaching of reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment. A student so exempted may not be penalized by reason of that exemption. Course descriptions for comprehensive health education shall not interfere with the local determination of appropriate curriculum which reflects local values and concerns. Each school district shall notify parents of this right through publication on the district website of the curriculum, including the process for a parent to exercise this right.

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 reproductive health and disease education; amending s. 1002.20, F.S.; requiring each school district to publish specified materials on the district website to notify parents of their right to exempt their student from reproductive health and disease education; amending s. 1003.42, F.S.; requiring district school boards to annually approve curriculum relating to reproductive health and disease education in an open, noticed public meeting; requiring each school district to publish specified



856276

69 materials on the district website to notify parents of  
70 their right to exempt their student from reproductive  
71 health and disease education; providing an effective  
72 date.



943370

591-03265-21

Proposed Committee Substitute by the Committee on  
Criminal Justice

A bill to be entitled

An act relating to reproductive health and disease  
education; amending s. 1002.20, F.S.; providing that a  
public school student may be exposed to certain  
teaching only after the student's parents have an  
opportunity to review the curriculum; amending s.  
1003.42, F.S.; requiring school districts or specified  
schools to notify and obtain written parental consent  
before teaching a student about reproductive health or  
any sexually transmitted disease; prohibiting schools  
from allowing a student to be exposed to such teaching  
without written parental consent; prohibiting  
penalizing a student whose parent does not give such  
written consent; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) of section  
1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public  
school students must receive accurate and timely information  
regarding their child's academic progress and must be informed  
of ways they can help their child to succeed in school. K-12  
students and their parents are afforded numerous statutory  
rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(d) Reproductive health and disease education.—Parents of A



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591-03265-21

public school students must be provided an opportunity to review  
curriculum used to teach about student whose parent makes  
~~written request to the school principal shall be exempted from~~  
~~the teaching of~~ reproductive health or any sexually transmitted  
disease, including HIV/AIDS, before providing written consent  
required by in accordance with the provisions of s. 1003.42(3).

Section 2. Subsection (3) of section 1003.42, Florida  
Statutes, is amended to read:

1003.42 Required instruction.—

(3) Each school district, or school as defined in s.  
1003.01(2), shall provide parents the opportunity to review  
curriculum used for Any student whose parent makes written  
~~request to the school principal shall be exempted from the~~  
teaching of reproductive health or any sexually transmitted  
disease, including HIV/AIDS ~~and,~~ its symptoms, development, and  
treatment. A school may not allow a student to be exposed to  
such teaching without prior written consent of his or her  
parent. A student whose parent does not give written consent for  
such teaching so exempted may not be penalized by reason of that  
withholding of consent exemption. Course descriptions for  
comprehensive health education ~~may shall~~ not interfere with the  
local determination of appropriate curriculum which reflects  
local values and concerns.

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

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

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

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

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BILL: CS/SB 410

INTRODUCER: Criminal Justice Committee and Senator Rodriguez

SUBJECT: Reproductive Health and Disease Education

DATE: March 30, 2021

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	<b>Fav/CS</b>
2. _____	_____	ED	_____
3. _____	_____	RC	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 410 amends s. 1002.20, F.S., providing that each school district must notify parents of the right to make a written request to exempt his or her child from the teaching of reproductive health or any disease, including HIV/AIDS. This notification must be through publication on the district website of the curriculum and the process for a parent to exercise this right.

The bill amends s. 1003.42, F.S., providing that the curriculum of any teaching of reproductive health or any disease, including HIV/AIDS, and its symptoms, development, and treatment, as part of a required course must be annually approved by a district school board in an open, noticed public meeting.

The bill is effective July 1, 2021.

**II. Present Situation:**

**K-12 Student and Parent Rights**

Parents of public school students are required by law to receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child

succeed in school.<sup>1</sup> K-12 students and their parents are afforded numerous statutory rights pertaining to student education, including reproductive health and disease education.<sup>2</sup>

Florida law requires district school boards to provide comprehensive health education that among other issues addresses community health, family life (including awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy), personal health, and the prevention and control of disease.<sup>3</sup> One right a parent of a public school student has is to make a written request to the school principal to exempt his or her student from reproductive health and disease instruction, including instruction relating to HIV/AIDS. If such a request is made the student must be exempt from such instruction and may not be penalized.<sup>4</sup>

Health education is included in the required instruction to ensure that students meet Florida State Board of Education (SBE) standards.<sup>5</sup> Course curriculum refers to the lessons and academic content taught in a school or specific course. It may include but is not limited to a course syllabus and standards, instructional materials, or other resources an instructor may use in the class.<sup>6</sup> Standards and instructional materials are subject to specific selection, adoption, and review processes.<sup>7</sup>

### ***Instructional Materials***

Each district school board has the constitutional duty and responsibility to select and provide adequate instructional materials<sup>8</sup> to each student for core courses in mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12.<sup>9</sup> School districts may purchase instructional materials from a list of state-reviewed and adopted instructional materials<sup>10</sup> or establish their own review and adoption program.<sup>11</sup> District school boards receive state funding for instructional materials through the instructional materials allocation.<sup>12</sup>

Each district school board is responsible for the content of all instructional materials and any other materials used in the classroom, made available in a school library, or included on a reading list.<sup>13</sup> Each district school board must maintain on its website a current list of

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<sup>1</sup> Section 1002.20, F.S.

<sup>2</sup> See s. 1002.20, F.S.

<sup>3</sup> Section 1003.42(2)(n), F.S.

<sup>4</sup> Section 1002.20(3)(d), F.S.

<sup>5</sup> See CPALMS, *Browse and Search Standards*, available at <https://www.cpalms.org/Public/search/Standard> (last visited March 24, 2021) (Select “Subject” and filter by “Health Education”).

<sup>6</sup> See The Glossary of Education Reform, *Curriculum*, available at <https://www.edglossary.org/curriculum/> (last visited March 24, 2021).

<sup>7</sup> See ss. 1003.41 and 1006.28, F.S. See also text accompanying notes 14-19.

<sup>8</sup> “Instructional materials” are items with intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. See ss. 1006.28(1) and 1006.29(2), F.S.

<sup>9</sup> See s. 1006.40(2) and (4), F.S.

<sup>10</sup> See Florida Department of Education, *Instructional Materials*, available at <http://www.fldoe.org/academics/standards/instructional-materials/> (last visited March 24, 2021).

<sup>11</sup> See ss. 1006.283 and 1006.40, F.S.

<sup>12</sup> See s. 1006.40, F.S. See also Florida Department of Education, *2020-21 Funding for Florida School Districts*, at 20, available at <http://www.fldoe.org/core/fileparse.php/7507/urlt/fefpdist.pdf> (last visited March 24, 2021).

<sup>13</sup> Section 1006.28(2)(a)1., F.S.

instructional materials, purchased by the district, separated by grade level.<sup>14</sup> Florida law establishes that the parent of a public school student has the right to receive effective communication from the school principal about the manner in which instructional materials are used to implement curricular objectives.<sup>15</sup>

District school boards are required to adopt a policy for objections by a parent or resident of the county to the use of a specific instructional material.<sup>16</sup> The policy must clearly describe a process, in which the objector has the opportunity to provide specific evidence<sup>17</sup> to the district school board, and provide for resolution.<sup>18</sup>

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

This bill amends s. 1002.20, F.S., providing that each school district must notify parents of the right to make a written request to exempt his or her child from the teaching of reproductive health or any disease, including HIV/AIDS. This notification must be through publication on the district website of the curriculum and the process for a parent to exercise this right.

The bill amends s. 1003.42, F.S., providing that the curriculum of any teaching of reproductive health or any disease, including HIV/AIDS, and its symptoms, development, and treatment, as part of a required course must be annually approved by a district school board in an open, noticed public meeting.

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.

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<sup>14</sup> Section 1006.28(2)(a)1., F.S.

<sup>15</sup> Section 1002.20(19)(b), F.S.

<sup>16</sup> Section 1006.28(2)(a)2., F.S.

<sup>17</sup> The parent or resident may present evidence to show that the material does not meet the criteria or requirements of the instructional material selection or adoption process. The parent or resident may also present evidence that the instructional material contains pornographic or prohibited content, as described by s. 847.012, F.S., is not suited to student needs and comprehension of the materials presented, or is inappropriate for the grade level and age group. Section 1006.28(2)(a)2.a.-b., F.S.

<sup>18</sup> *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:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1002.20 and 1003.42.

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

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

**CS by Criminal Justice on March 30, 2021:**

The committee substitute provides that:

- Each school district must notify parents of the right to exempt his or her child from the teaching of reproductive health or any disease including HIV/AIDS. This notification must be through publication on the district's website of the curriculum and the process of how parents can exercise such right.
- The curriculum of any teaching of reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment, as part of a required course

must be annually approved by a district school board in an open noticed public meeting.

B. Amendments:

None.

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

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By Senator Rodriguez

39-00282-21

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1 A bill to be entitled  
 2 An act relating to materials harmful to minors;  
 3 amending s. 847.001, F.S.; revising the definitions of  
 4 the terms "child pornography," "harmful to minors,"  
 5 "obscene," and "person"; amending s. 847.012, F.S.;  
 6 prohibiting a person from selling or renting specified  
 7 materials to a minor for monetary consideration;  
 8 prohibiting a person from loaning specified materials  
 9 to a minor for any reason; requiring school districts  
 10 to proactively remove specified materials; requiring  
 11 school districts to remove such materials independent  
 12 of a parent or resident complaint; amending s.  
 13 1002.20, F.S.; providing that a public school student  
 14 may be exposed to certain teaching only in accordance  
 15 with a specified procedure; making a technical change;  
 16 amending s. 1003.42, F.S.; requiring school districts  
 17 or specified schools to notify and request the written  
 18 consent of parents before the teaching of reproductive  
 19 health or any sexually transmitted disease;  
 20 prohibiting schools from allowing students to be  
 21 exposed to such teaching without the written consent  
 22 of their parent; prohibiting a student whose parent  
 23 does not give such written consent from being  
 24 penalized; amending s. 1006.28, F.S.; adding certain  
 25 materials to the policy district school boards are  
 26 required to adopt which allows certain objections from  
 27 parents or county residents; requiring district school  
 28 boards to annually review specified materials and  
 29 immediately discontinue the use of any found to be

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30 inappropriate or unsuitable, regardless of whether a  
 31 complaint was received; authorizing a student's parent  
 32 or a county resident to contest on specified grounds a  
 33 district school board's adoption of certain  
 34 instructional material; specifying a certain petition  
 35 to be filed and the form required for the filing;  
 36 requiring the school board to make the form available  
 37 to the public and to publish the form on the school  
 38 district's website; requiring the school board to  
 39 grant the petition or refer the matter to a hearing  
 40 within a certain timeframe; providing that an  
 41 administrative law judge has final order authority to  
 42 rule on the petition; providing for the award of  
 43 attorney fees and costs under certain circumstances;  
 44 reenacting ss. 92.561(1) and 288.1254(1)(b) and (j),  
 45 F.S., relating to the prohibition against reproducing  
 46 child pornography and the exclusion of obscene content  
 47 under the entertainment industry financial incentive  
 48 program, respectively, to incorporate the amendments  
 49 made to s. 847.001, F.S., in references thereto;  
 50 providing effective dates.

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

52  
 53  
 54 Section 1. Effective October 1, 2021, subsections (3), (6),  
 55 (10), and (11) of section 847.001, Florida Statutes, are amended  
 56 to read:  
 57 847.001 Definitions.—As used in this chapter, the term:  
 58 (3) "Child pornography" means any image depicting or text

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describing a minor engaged in sexual conduct.

(6) "Harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

(a) Predominantly appeals to a prurient, shameful, or morbid interest; and

(b) Is patently offensive to prevailing standards for minors in the adult community as a whole with respect to what is suitable material or conduct ~~for minors~~; and

~~(c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.~~

~~A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."~~

(10) "Obscene" means the status of materials that ~~material which:~~

(a) 1. The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

2. ~~(b)~~ Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and

3. ~~(c)~~ Taken as a whole, lacks serious literary, artistic, political, or scientific value; or

(b) 1. The average person, applying contemporary community standards for appropriate materials for minors, would object to as depicting or describing, in a patently offensive way, sexual conduct as defined herein which is harmful to minors; and

2. Taken as a whole, lacks serious literary, artistic,

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political, or scientific value for minors.

A mother's breastfeeding of her baby is not under any circumstance "obscene."

(11) "Person" includes individuals, minors ~~children~~, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Section 2. Effective October 1, 2021, section 847.012, Florida Statutes, is amended to read:

847.012 Harmful materials; sale or distribution to minors or using minors in production prohibited; use in public schools prohibited; penalty.—

(1) As used in this section, "knowingly" means having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(a) The character and content of any material described in this section which is reasonably susceptible of examination by the defendant; and

(b) The age of the minor.

(2) A person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in a prosecution for a violation of this section.

(3) A person may not knowingly sell or ~~rent~~ for monetary consideration ~~or loan for any reason~~ ~~monetary consideration~~ to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or

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117 image of a person or portion of the human body which depicts  
 118 nudity or sexual conduct, sexual excitement, sexual battery,  
 119 bestiality, or sadomasochistic abuse and which is harmful to  
 120 minors; ~~or~~

121 (b) Any book, pamphlet, magazine, printed matter however  
 122 reproduced, or sound recording that contains any matter defined  
 123 in s. 847.001, explicit and detailed verbal descriptions or  
 124 narrative accounts of sexual excitement, or sexual conduct and  
 125 that is harmful to minors; or

126 (c) Any material used in a public K-12 school classroom,  
 127 made available in a public K-12 school library, or included on a  
 128 public K-12 school recommended reading list which contains  
 129 obscene content or is harmful to minors or is prohibited as  
 130 conduct inappropriate for minors. Such materials are not  
 131 acceptable and the school district shall proactively remove all  
 132 such materials. If the district school board finds that any  
 133 instructional material, including any materials used in the  
 134 classroom or assigned or offered as reading material, violates  
 135 this section, the material shall be proactively removed. This  
 136 required action is not dependent on a parent or resident  
 137 complaint.

138 (4) A person may not knowingly use a minor in the  
 139 production of any material described in subsection (3),  
 140 regardless of whether the material is intended for distribution  
 141 to minors or is actually distributed to minors.

142 (5) An adult may not knowingly distribute to a minor on  
 143 school property, or post on school property, any material  
 144 described in subsection (3). As used in this subsection, the  
 145 term "school property" means the grounds or facility of any

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146 kindergarten, elementary school, middle school, junior high  
 147 school, or secondary school, whether public or nonpublic. This  
 148 subsection does not apply to the distribution or posting of  
 149 school-approved instructional materials that by design serve as  
 150 a major tool for assisting in the instruction of a subject or  
 151 course by school officers, instructional personnel,  
 152 administrative personnel, school volunteers, educational support  
 153 employees, or managers as those terms are defined in s. 1012.01.

154 (6) Any person violating any provision of this section  
 155 commits a felony of the third degree, punishable as provided in  
 156 s. 775.082, s. 775.083, or s. 775.084.

157 (7) Every act, thing, or transaction forbidden by this  
 158 section constitutes a separate offense and is punishable as  
 159 such.

160 (8)(a) The circuit court has jurisdiction to enjoin a  
 161 violation of this section upon complaint filed by the state  
 162 attorney in the name of the state upon the relation of such  
 163 state attorney.

164 (b) After the filing of such a complaint, the judge to whom  
 165 it is presented may grant an order restraining the person  
 166 complained of until final hearing or further order of the court.  
 167 Whenever the relator state attorney requests a judge of such  
 168 court to set a hearing upon an application for a restraining  
 169 order, the judge shall set the hearing for a time within 3 days  
 170 after the making of the request. The order may not be made  
 171 unless the judge is satisfied that sufficient notice of the  
 172 application therefor has been given to the party restrained of  
 173 the time when and place where the application for the  
 174 restraining order is to be made.

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(c) The person sought to be enjoined is entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days after the conclusion of the trial.

(d) If a final decree of injunction is entered, it must contain a provision directing the defendant having the possession, custody, or control of the materials, matters, articles, or things affected by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of her or his compliance.

(e) In any action brought as provided in this section, a bond or undertaking may not be required of the state or the state attorney before the issuance of a restraining order provided for by paragraph (b), and the state or the state attorney may not be held liable for costs or for damages sustained by reason of the restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(f) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon her or him of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents and character thereof.

(9) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(10) This section does not apply to the exhibition of

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motion pictures, shows, presentations, or other representations regulated under s. 847.013.

Section 3. Paragraph (d) of subsection (3) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(d) *Reproductive health and disease education.*—A public school student ~~whose parent makes written request to the school principal shall be exempted from~~ may be exposed to the teaching of reproductive health or any sexually transmitted disease, including HIV/AIDS, only in accordance with ~~the provisions of s. 1003.42(3).~~

Section 4. Subsection (3) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

(3) School districts, or schools as defined in s. 1003.01(2), shall notify and request the written consent of parents at least 10 instructional days before ~~Any student whose parent makes written request to the school principal shall be exempted from~~ the teaching of reproductive health or any sexually transmitted disease, including HIV/AIDS, ~~and its~~ symptoms, development, and treatment. A school may not allow a student to be exposed to such teaching without the prior written consent of his or her parent. A student ~~whose parent does not~~

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233 give written consent for such teaching ~~so exempted~~ may not be  
 234 penalized by reason of that withholding of consent ~~exemption~~.  
 235 Course descriptions for comprehensive health education may shall  
 236 not interfere with the local determination of appropriate  
 237 curriculum which reflects local values and concerns.

238 Section 5. Paragraph (a) of subsection (2) of section  
 239 1006.28, Florida Statutes, is amended to read:

240 1006.28 Duties of district school board, district school  
 241 superintendent; and school principal regarding K-12  
 242 instructional materials.—

243 (2) DISTRICT SCHOOL BOARD.—The district school board has  
 244 the constitutional duty and responsibility to select and provide  
 245 adequate instructional materials for all students in accordance  
 246 with the requirements of this part. The district school board  
 247 also has the following specific duties and responsibilities:

248 (a) *Courses of study; adoption.*—Adopt courses of study,  
 249 including instructional materials, for use in the schools of the  
 250 district.

251 1. Each district school board is responsible for the  
 252 content of all instructional materials and any other materials  
 253 used in a classroom, made available in a school library, or  
 254 included on a reading list, whether adopted and purchased from  
 255 the state-adopted instructional materials list, adopted and  
 256 purchased through a district instructional materials program  
 257 under s. 1006.283, or otherwise purchased or made available.  
 258 Each district school board shall maintain on its website a  
 259 current list of instructional materials, by grade level,  
 260 purchased by the district.

261 2. Each district school board must adopt a policy regarding

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262 an objection by a parent or a resident of the county to the use  
 263 of a specific instructional material, which clearly describes a  
 264 process to handle all objections and provides for resolution.  
 265 The process must provide the parent or resident the opportunity  
 266 to proffer evidence to the district school board that:

267 a. An instructional material does not meet the criteria of  
 268 s. 1006.31(2) or s. 1006.40(3)(d) if it was selected for use in  
 269 a course or otherwise made available to students in the school  
 270 district but was not subject to the public notice, review,  
 271 comment, and hearing procedures under s. 1006.283(2)(b)8., 9.,  
 272 and 11.

273 b. Any material used in a classroom, made available in a  
 274 school library, or included on a reading list contains content  
 275 that constitutes child pornography, is harmful to minors, or is  
 276 obscene, as those terms are defined in s. 847.001, is  
 277 pornographic or prohibited under s. 847.012, is not suited to  
 278 student needs and their ability to comprehend the material  
 279 presented, or is inappropriate for the grade level and age group  
 280 for which the material is used.

281

282 By July 1, 2022, and each July 1 thereafter, district school  
 283 boards shall complete a review of all instructional material  
 284 used in a public K-12 school classroom, made available in a  
 285 public K-12 school library, or included on a public K-12 school  
 286 reading list within the district. If the district school board  
 287 finds that an instructional material does not meet the criteria  
 288 under sub-subparagraph a. or that any other material contains  
 289 prohibited content under sub-subparagraph b., the school  
 290 district shall immediately discontinue use of the material for

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any grade level or age group for which such use is inappropriate or unsuitable, regardless of whether the district school board has received any complaint about the material.

3. Each district school board must establish a process by which the parent of a public school student or a resident of the county may contest the district school board's adoption of a specific instructional material. The parent or resident must file a petition, on a form provided by the school board, within 30 calendar days after the adoption of the material by the school board. The school board must make the form available to the public and publish the form on the school district's website. The form must be signed by the parent or resident, include the required contact information, and state the objection to the instructional material based on the criteria of s. 1006.31(2) or s. 1006.40(3)(d). Within 30 days after the 30-day period has expired, the school board must, for all petitions timely received, conduct at least one open public hearing before an unbiased and qualified hearing officer. The hearing officer may not be an employee or agent of the school district. The hearing is not subject to ~~the provisions of~~ chapter 120; however, the hearing must provide sufficient procedural protections to allow each petitioner an adequate and fair opportunity to be heard and present evidence to the hearing officer. The school board's decision after convening a hearing is final and not subject to further petition or review.

4. Notwithstanding subparagraph 3., the parent of a public school student or a resident of the county may contest the district school board's adoption of a specific instructional material at any time before or after the material's adoption by

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the district school board on the grounds that the material constitutes child pornography, is harmful to minors, or is obscene, as those terms are defined in s. 847.001, or is pornographic or prohibited under s. 847.012. The parent or resident must file a petition on a form provided by the school board. The school board shall make the form available to the public and publish the form on the school district's website. The form must be signed by the parent or resident, include any required contact information, and state the objection to the instructional material, based on the criteria in s. 847.001 or s. 847.012. Within 30 days, the school board must either grant the petition or refer the matter to the Division of Administrative Hearings for a hearing under chapter 120. The administrative law judge has final order authority to rule on the parent or resident's petition. The administrative law judge shall award a prevailing parent or resident reasonable attorney fees and costs incurred during the administrative proceeding and any appeals.

Section 6. For the purpose of incorporating the amendments made by this act to section 847.001, Florida Statutes, in a reference thereto, subsection (1) of section 92.561, Florida Statutes, is reenacted to read:

92.561 Prohibition on reproduction of child pornography.—

(1) In a criminal proceeding, any property or material that portrays sexual performance by a child as defined in s. 827.071, or constitutes child pornography as defined in s. 847.001, must remain secured or locked in the care, custody, and control of a law enforcement agency, the state attorney, or the court.

Section 7. For the purpose of incorporating the amendments

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made by this act to section 847.001, Florida Statutes, in  
 references thereto, paragraphs (b) and (j) of subsection (1) of  
 section 288.1254, Florida Statutes, are reenacted to read:  
 288.1254 Entertainment industry financial incentive  
 program.—  
 (1) DEFINITIONS.—As used in this section, the term:  
 (b) "Digital media project" means a production of  
 interactive entertainment that is produced for distribution in  
 commercial or educational markets. The term includes a video  
 game or production intended for Internet or wireless  
 distribution, an interactive website, digital animation, and  
 visual effects, including, but not limited to, three-dimensional  
 movie productions and movie conversions. The term does not  
 include a production that contains content that is obscene as  
 defined in s. 847.001.  
 (j) "Qualified production" means a production in this state  
 meeting the requirements of this section. The term does not  
 include a production:  
 1. In which, for the first 2 years of the incentive  
 program, less than 50 percent, and thereafter, less than 60  
 percent, of the positions that make up its production cast and  
 below-the-line production crew, or, in the case of digital media  
 projects, less than 75 percent of such positions, are filled by  
 legal residents of this state, whose residency is demonstrated  
 by a valid Florida driver license or other state-issued  
 identification confirming residency, or students enrolled full-  
 time in a film-and-entertainment-related course of study at an  
 institution of higher education in this state; or  
 2. That contains obscene content as defined in s.

39-00282-21 2021410\_\_

847.001(10).  
 Section 8. Except as otherwise expressly provided in this  
 act, this act shall take effect July 1, 2021.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/30/21

Meeting Date

SB 410

Bill Number (if applicable)

856276

Amendment Barcode (if applicable)

Topic Materials Harmful to Minors - Delete All

Name Jon Harris Maurer

Job Title Public Policy Dir

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

TLH 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.

**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

3/30/2021

Meeting Date

410

Bill Number (if applicable)

856276

Topic Materials Harmful to Minors

Amendment Barcode (if applicable)

Name Doug Bell

Job Title

Address 119 South Monroe St.

Phone 850-205-9000

Street

Tallahassee

FL

32312

Email doug.bell@mhdfirm.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The AIDS Institute; & The Florida Chapter of the American Academy of Pediatrics

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)

3/30/21

410

Meeting Date

Bill Number (if applicable)

943370

Amendment Barcode (if applicable)

Topic Anti sex-ed bill

Name Laura Hernandez

Job Title Legislative Manager

Address 8889 Fort Lauderdale Blvd #202

Phone 781 547 0087

Street

Miami

FL

33172

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Alliance of Planned Parenthood Affiliates

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)

03/30

Meeting Date

418

Bill Number (if applicable)

943370

Amendment Barcode (if applicable)

Topic Sex ed

Name Patrice Randolph

Job Title Singer & Song writer

Address 2707 Lake Palm Dr

Street

Tallahassee

City

FL

State

32310

Zip

Phone 850-901-3299

Email patrice.randolph@lyndee.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)

3/30/21

Meeting Date

410

Bill Number (if applicable)

943370

Amendment Barcode (if applicable)

Topic Sex Ed

Name Emily Richeson

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

Address 1433 Branch St

Street

TLH

City

FL

State

32303

Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

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)

03/30  
Meeting Date

410  
Bill Number (if applicable)

Topic sex ed

943370  
Amendment Barcode (if applicable)

Name Kathlyn Lilly

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

Address 2636 Mission Rd  
Street  
Tallahassee FL 32313  
City State Zip

Phone 813-992-3419

Email lilly.kathlynm@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)

03/30

Meeting Date

410

Bill Number (if applicable)

943370

Amendment Barcode (if applicable)

Topic sex education

Name Rhamira Corbett

Job Title Digital Communications

Address 2300 Bluff Oak Way

Street

Tallahassee

FL

City

State

32311

Zip

Phone 248-696-9026

Email rhamira@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)

03/30  
Meeting Date

416  
Bill Number (if applicable)  
943370  
Amendment Barcode (if applicable)

Topic SEX Ed

Name Hannah Fulk

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

Address 1638 Atkamire Drive  
Street  
Tallahassee FL 32304  
City State Zip

Phone 850 240 1319

Email hannahniefulk53@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Democrat Party

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)

3/30

Meeting Date

410

Bill Number (if applicable)

Topic Sex ed

943370

Amendment Barcode (if applicable)

Name Chloe Ilaus

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

Address 75 N Woodward Ave

Street

Phone 561 324 7499

Tallahassee

City

FL

State

32313

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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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)

6/3/30

Meeting Date

410

Bill Number (if applicable)

943370

Amendment Barcode (if applicable)

Topic Sex Ed

Name Madeira Riley

Job Title 3448 Village Green Dr

Address 3448 Village Green Dr

Street

Sarasota  
City

FL  
State

34239  
Zip

Phone (941) 275-5006

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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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)

3/30/21

Meeting Date

SB 410

Bill Number (if applicable)

Topic Materials harmful to minors

Amendment Barcode (if applicable)

Name Julie Vayne

Job Title Retired

Address 12950 Estates Ter S.

Phone 727 501 3078

Street

Seminole FL 33776

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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

3/30/21

Meeting Date

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

410

Bill Number (if applicable)

Topic materials Harmful to Minors

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)

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

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

3/30

Meeting Date

410

Bill Number (if applicable)

Topic Sex ed

Amendment Barcode (if applicable)

Name Chloe Elms

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

Address 75 N Woodward Ave

Phone 5613247499

Street

Tallahassee

City

FL

State

32313

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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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)

03/30

Meeting Date

410

Bill Number (if applicable)

Topic Sex ed

Amendment Barcode (if applicable)

Name Hannah Fulk

Job Title §

Address 1638 Atkamire Drive

Street

Tallahassee FL 32304

City

State

Zip

Phone 850 340 1319

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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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)

03/30

Meeting Date

910

Bill Number (if applicable)

Topic sex Education

Amendment Barcode (if applicable)

Name Madeline Riley

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

Address 3148 Village Green Dr

Phone (941) 275-5006

Street

Sarasota

City

FL

State

34239

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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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)

03/30

Meeting Date

410

Bill Number (if applicable)

Topic Sex Education

Amendment Barcode (if applicable)

Name Abigail O'Laughlin

Job Title Student

Address ~~20100~~ 854 Coldwater Creek Circle

Phone 850 630 2995

Street

Niceville

City

FL

State

32578

Zip

Email abigailolaughlin@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)

03/30

Meeting Date

410

Bill Number (if applicable)

Topic sex education

Amendment Barcode (if applicable)

Name Kaitlyn Lilly

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

Address 2636 Mission Rd Apt 16  
Street

Phone 813-992-3414

Tallahassee  
City

FL  
State

32313  
Zip

Email lilly.kaitlynm@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

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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)

3/30/21

Meeting Date

SB410

Bill Number (if applicable)

Topic Anti sex ed bill

Amendment Barcode (if applicable)

Name Cody Nunez

Job Title Teacher

Address 13844 SW 281 ST

Street

Phone 786 246 5252

Honolulu

City

FL

State

33033

Zip

Email codynunez@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**

3/30/21

Meeting Date

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

410

Bill Number (if applicable)

Topic Anti sex-ed bill

Amendment Barcode (if applicable)

Name Laura Hernandez

Job Title Legislative Manager

Address 8889 Fontainebleau Blvd #202  
Street

Phone 786-547-0087

Miami  
City

FL  
State

33177  
Zip

Email laura.hernandez@fla11.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Alliance of Planned Parenthood Attorneys

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

03/30

Meeting Date

410

Bill Number (if applicable)

Topic sex ed

Amendment Barcode (if applicable)

Name Patrice Randolph

Job Title Single Songwriter

Address 2702 Lake Palm Dr

Phone 850 901-3299

Street

Tallahassee

City

FL

State

32310

Zip

Email patrice.randolph@yahoo.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

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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)

03/30

Meeting Date

SB 410

Bill Number (if applicable)

Topic sex ed

Amendment Barcode (if applicable)

Name Lauren Brenzel

Job Title organizer

Address \_\_\_\_\_

Street

Tallahassee FL

City

State

32301

Zip

Phone 880-574-7455  
688 777 746 9802

Email \_\_\_\_\_

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)

03/30

Meeting Date

410

Bill Number (if applicable)

Topic sex education

Amendment Barcode (if applicable)

Name Rhamira Corbett

Job Title Digital Communications Intern

Address 2300 Bluff Oak Way

Phone 240-696-9026

Street

Tallahassee

FL

32311

City

State

Zip

Email rhamira@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)

3/30/21

Meeting Date

410

Bill Number (if applicable)

Topic Sex Education

Amendment Barcode (if applicable)

Name Emily Richeson

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

Address 1433 Branch St

Phone \_\_\_\_\_

Street

Tallahassee

FL

32303

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 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)

03/30

Meeting Date

410

Bill Number (if applicable)

Topic SEX Education

Amendment Barcode (if applicable)

Name Abigail O'Laughlin

Job Title Student

Address 854 Coldwater Creek Circle

Phone 850 530 2995

Street

Niceville

City

FL

State

32578

Zip

Email abigailolaughlin@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)

3/30/2021

Meeting Date

SB 410

Bill Number (if applicable)

Topic Materials Harmful to Minors

Amendment Barcode (if applicable)

Name Jan McAloon

Job Title Registered Nurse Retired

Address 108 Homestead Drive

Phone 727-421-1608

Street

Palm Harbor

Fla.

34683

City

State

Zip

Email jmaloo@aol.com

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.

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

S-001 (10/14/14)





The Florida Senate

## Committee Agenda Request

**To:** Senator Jason Pizzo, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** January 22, 2021

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I respectfully request that **Senate Bill #410**, relating to Materials Harmful to Minors, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

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Senator Ana Maria Rodriguez  
Florida Senate, District 39

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

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

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

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BILL: CS/SB 468

INTRODUCER: Judiciary Committee and Senator Bracy

SUBJECT: Expunction of Criminal History Records Relating to Certain Cannabis Offenses

DATE: March 29, 2021      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	<b>Fav/CS</b>
2.	Stokes	Jones	CJ	<b>Favorable</b>
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 468 creates s. 943.0586, F.S., providing for the expunction of certain criminal history records relating to the misdemeanor offense of possession of 20 grams or less of cannabis, regardless of disposition. The language in the bill closely mirrors the procedures and requirements for court ordered expunction under s. 943.0585, F.S.

The bill provides that a person may only receive one expunction under this section, and may only petition the court for an expunction after at least one year has elapsed since the disposition of the criminal activity to which the petition pertains, and he or she is no longer under court supervision. A person who receives an expunction under this section is not precluded from seeking a sealing or expunction provided under any other section of law.

The bill may have a negative indeterminate fiscal impact on the Florida Department of Law Enforcement (FDLE) and the state courts. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

**II. Present Situation:**

There are several limited forms of relief that may be sought in order to seal or expunge a criminal history record. The public will not have access to a criminal history record that has been sealed or expunged. Certain government or related entities have access to records even after they

are sealed. Most of the entities who have access to sealed records also have access to see whether a person has had an expunction. However, those entities do not have access to the expunged criminal history record without a court order.<sup>1</sup>

### **Expunction of Criminal History Records**

A criminal history record includes any non-judicial record maintained by a criminal justice agency<sup>2</sup> that contains criminal history information.<sup>3</sup> Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of individuals and notations of arrests, detentions, indictments, information, other formal criminal charges, and criminal dispositions.<sup>4</sup>

State courts have continuing jurisdiction over their own procedures, including the expunction and sealing of judicial records that contain criminal history information.<sup>5</sup> Pursuant to statute, judges have the discretion to order criminal records maintained by the court system and records held by law enforcement agencies to be sealed<sup>6</sup> or expunged for either a minor or an adult.<sup>7</sup> However, no one has a right to have a record expunged and the request may be denied at the sole discretion of the court.<sup>8</sup>

A person may have his or her criminal history record<sup>9</sup> expunged under certain enumerated circumstances.<sup>10</sup> When a record is expunged, the criminal justice agencies<sup>11</sup> that possess the record must physically destroy or obliterate it. However, a criminal justice agency may retain a notation indicating compliance with an order to expunge.<sup>12</sup> The FDLE maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the

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<sup>1</sup> *Florida Department of Law Enforcement Frequently Asked Questions*, Florida Department of Law Enforcement, available at [http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Frequently-Asked-Questions#Sealed\\_vs\\_Expunged](http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Frequently-Asked-Questions#Sealed_vs_Expunged) (last visited March 22, 2021).

<sup>2</sup> Section 943.045(11), F.S., provides that criminal justice agencies include the court, the FDLE, the Department of Juvenile Justice, components of the Department of Children and Families, and other governmental agencies that administrate criminal justice.

<sup>3</sup> Section 943.045(6), F.S.

<sup>4</sup> Section 943.045(5), F.S.

<sup>5</sup> Sections 943.0585(4)(a) and 943.059(4)(a), F.S. The procedures, however, must be consistent with the duties established in statute. *See also* Henry P. Trawick, Jr., *Florida Pleading and Practice Forms* 11B. Fla. Pl. & Pr. Forms s. 97:14 (May 2020).

<sup>6</sup> In general terms, sealing makes records confidential in most cases while expunction requires the actual physical destruction of records held by courts and most law enforcement agencies. When a record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained within the record. A court may order a criminal history record sealed, rendering it confidential and exempt from Florida's public records laws. Sections 943.045(19), 943.059(6), and 119.07(1), F.S., and Art. I, s. 24(a), Fla. Const.

<sup>7</sup> Sections 943.0585(4)(b) and 943.059(4)(b), F.S.

<sup>8</sup> Section 943.0585(4)(b) and (e), F.S.

<sup>9</sup> Section 943, 045(6), F.S., provides that a "criminal history record" is any judicial record maintained by a criminal justice agency containing criminal history information.

<sup>10</sup> Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

<sup>11</sup> Section 943.045(11), F.S., provides that "criminal justice agency," means: (1) A court; (2) the FDLE; (3) The Department of Juvenile Justice; (4) The protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and (5) Any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

<sup>12</sup> Section 943.0585(6)(a), F.S.

event a court vacates the order to expunge.<sup>13</sup> The criminal history record retained by the FDLE is confidential and exempt.<sup>14</sup> Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.<sup>15, 16</sup>

### **Court-Ordered Expunction**

A court, in its discretion, may order the expunction of a person's criminal history record if the FDLE issues the person a certificate of eligibility for expunction.<sup>17</sup> Generally, a person is eligible for expunction if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.
- An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the State, was dismissed by the court, a judgment of acquittal was rendered, or a verdict of not guilty was rendered.
- The person is not seeking to expunge a criminal history record that is ineligible under s. 943.0584, F.S.<sup>18</sup>

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<sup>13</sup> Section 943.045(16), F.S.

<sup>14</sup> Section 943.0585(6)(a), F.S.

<sup>15</sup> Section 943.0585(6), F.S.

<sup>16</sup> Section 943.0585(6), F.S., provides that enumerated entities include criminal justice agencies, The Florida Bar, the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, the Department of Juvenile Justice, the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, a local governmental entity that licenses child care facilities, the Division of Insurance Agent and Agency Services within the Department of Financial Services, and the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services.

<sup>17</sup> Section 943.0585(4), F.S.

<sup>18</sup> Section 943.0584, F.S., A criminal history record is not eligible for court-ordered sealing if it relates to: Sexual misconduct (Sections 393.135, 394.4593, and 916.1075, F.S.); Illegal use of explosives (Chapter 552, F.S.); Terrorism (Section 775.30, F.S.); Murder (Sections 782.04, 782.065, and 782.09, F.S.); Manslaughter or homicide (Sections 782.07, 782.071, and 782.072, F.S.); Assault or battery of one family or household member by another family or household member (Sections 784.011 and 784.03, F.S.); Aggravated assault (Section 784.021, F.S.); Felony battery, domestic battery by strangulation, or aggravated battery (Sections 784.03, 784.041, and 784.045, F.S.); Stalking or aggravated stalking (Section 784.048, F.S.); Luring or enticing a child (Section 787.025, F.S.); Human trafficking (Section 787.06, F.S.); Kidnapping or false imprisonment (Sections 787.01 and 787.02, F.S.); Sexual battery, unlawful sexual activity with a minor, or female genital mutilation (Chapter 794, F.S.); Procuring a person under the age of 18 for prostitution (Section 796.03, F.S. (2013) (repealed by ch. 2014-160, s. 10, L.O.F.)); Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (Section 800.04, F.S.); Arson (Section 806.01, F.S.); Burglary of a dwelling (Section 810.02, F.S.); Voyeurism or video voyeurism (Sections 810.14 and 810.145, F.S.); Robbery or robbery by sudden snatching (Sections 812.13 and 812.131, F.S.); Carjacking (Section 812.133, F.S.); Home invasion robbery (Section 812.135, F.S.); A violation of the Florida Communications Fraud Act (Section 817.034, F.S.); Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult (Section 825.102, F.S.); Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person (Section 825.1025, F.S.); Child abuse or aggravated child abuse (Section 827.03, F.S.); Sexual performance by a child (Section 827.071, F.S.); Offenses by public officers and employees (Chapter 839, F.S.); Certain acts in connection with obscenity (Section 847.0133, F.S.); A violation of the Computer Pornography and Child Exploitation Prevention Act (Section 893.0135, F.S.); Selling or buying of minors (Section 847.0145, F.S.); Aircraft piracy (Section 860.16, F.S.); Manufacturing a controlled substance (Chapter 893, F.S.); Drug trafficking (Section 893.135, F.S.); Any violation specified as a predicate offense for registration as a sexual predator or sexual offender. (Sections 775.21 and 943.0535, F.S.).

- The person is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses.<sup>19</sup>
- The person has never, prior to filing the application for a certificate of eligibility, been either:
  - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
  - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- The person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.
- The person has never secured a prior sealing or expunction, unless:
  - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
  - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered.<sup>20</sup>

### *Certificate of Eligibility*

A person must first apply to the FDLE for a certificate of eligibility. The FDLE must issue a certificate of eligibility for court-ordered expunction to a person who:<sup>21</sup>

- Is eligible for expunction, as described above.
- Has submitted to the department a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies with certain requirements described above.
- Has submitted to the FDLE a certified copy of the disposition of the charge to which the petition pertains.
- Pays a \$75 processing fee to the FDLE for placement in the FDLE Operating Trust Fund, unless the executive director waives such fee.<sup>22</sup>

Upon receiving a certificate of eligibility from the FDLE, a person must petition the court to expunge the record.<sup>23</sup> A complete petition contains both a valid certificate of eligibility, issued within the previous 12 months, and a sworn statement from the petitioner attesting to his or her eligibility.<sup>24</sup> It is solely within the court's discretion to grant or deny a petition to expunge.<sup>25</sup>

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<sup>19</sup> Section 943.0585(1)(d)1.-13., F.S. Assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a), F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; open carrying of a weapon, as defined in s. 790.053, F.S.; unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property, as defined in s. 790.115, F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; arson, as defined in s. 806.031(1), F.S.; petit theft, as defined in s. 812.014(3), F.S.; or cruelty to animals, as defined in s. 828.12(1), F.S.

<sup>20</sup> Section 943.0585(1), F.S.

<sup>21</sup> Section 943.0585(2), F.S.

<sup>22</sup> Section 943.0585(2), F.S.

<sup>23</sup> Section 943.0585(3), F.S.

<sup>24</sup> Section 943.0585(3), F.S.

<sup>25</sup> Section 943.0585(4), F.S.

***Fees to Expunge Records***

The application for a certificate of eligibility to seal or expunge under either statute must include a certified copy of the disposition. The clerk charges \$2 per document for a certification fee<sup>26</sup> plus \$1 a page for copying<sup>27</sup> the disposition. The FDLE charges \$75 for the certificate of eligibility.<sup>28</sup>

***Other Types of Expunction***

Other types of expunction include:

- Lawful self-defense expunction.<sup>29</sup>
- Human trafficking victim expunction.<sup>30</sup>
- Automatic Juvenile expunction.<sup>31</sup>
- Early juvenile expunction.<sup>32</sup>
- Administrative expunction.<sup>33</sup>
- Juvenile diversion program expunction.<sup>34</sup>

**III. Effect of Proposed Changes:**

The bill creates s. 943.0586, F.S., providing for the expunction of certain criminal history records relating to the misdemeanor offense of possession of 20 grams or less of cannabis.

A person is eligible to petition the court for an expunction if:

- The person was arrested or given a notice to appear for a misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis, regardless of disposition.
- The person was not convicted of, nor pled no contest to, a contemporaneous offense other than the misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis.
- At least 1 year has elapsed since disposition of the offense or alleged criminal activity.
- The person is no longer under court supervision related to the cannabis offense.
- The person has not previously received this type of expunction.

A person must apply to the FDLE for a certificate of eligibility before he or she petitions a court to expunge a criminal history record. The bill directs the FDLE to establish procedures for applying for and issuing a certificate of eligibility. The FDLE must issue a certificate of eligibility to a person who is the subject of a criminal history record if that person:

- Satisfies the criteria listed above, and is not ineligible under s. 943.0584, F.S.<sup>35</sup>

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<sup>26</sup> Section 28.24(2), F.S.

<sup>27</sup> Section 28.24(5)(a), F.S.

<sup>28</sup> Section 943.0585(2)(a)4., F.S.

<sup>29</sup> Section 943.0578, F.S.

<sup>30</sup> Section 943.0583, F.S.

<sup>31</sup> Section 943.0515(1)(b)1., F.S.

<sup>32</sup> Section 943.0515(1)(b)2., F.S.

<sup>33</sup> Section 943.0581, F.S.

<sup>34</sup> Section 943.0582, F.S.

<sup>35</sup> See footnote 21.

- Has submitted to the FDLE a written certified statement from the appropriate state attorney or statewide prosecutor that confirms the criminal history record complies with the criteria listed above.
- Has submitted a certified copy of the disposition of the charge.
- Remits a processing fee.

A certificate of eligibility is valid for 12 months after the date it is issued by the FDLE.

The following must be submitted with the petition to expunge a criminal history record:

- A valid certificate of eligibility.
- The petitioner's sworn statement that he or she satisfies the eligibility requirements for expunction, and is eligible for expunction and to the best of his or her knowledge does not have any other petition to seal or expunge pending before any court.

A person who knowingly provides false information commits a third degree felony.

The bill further provides that courts have jurisdiction over their own procedures to the extent that such procedures are not inconsistent with the conditions, responsibilities, and duties established in the bill. A court may order a criminal justice agency to expunge a criminal history record of a person who complies with the requirements established in the bill.

The court may order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. However, the court may order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest.

The bill provides that it does not confer any right to expunction of any criminal history record and any request for expunction may be denied at the sole discretion of the court.

A copy of the completed petition must be served upon the state attorney or the statewide prosecutor, who, with the arresting agency, may respond to the petition. If the expunction is granted, the clerk must certify copies of the order to:

- The appropriate state attorney or statewide prosecutor.
- The arresting agency who must forward the order to any agency to which the arresting agency disseminated the criminal history record information.
- Any other agency which the court records reflect has received the criminal history record from the court.

Additionally, the FDLE must forward the order to the Federal Bureau of Investigations.

The FDLE and any other criminal justice agency is only required to act on a court order if the order is in compliance with the criteria described above. Upon receipt of an order that is not in compliance, the FDLE must notify:

- The appropriate state attorney or statewide prosecutor.
- The petitioner or the petitioner's attorney.
- The arresting agency.

The appropriate state attorney or statewide prosecutor must take action within 60 days to correct the record and petition the court to void the order. A cause of action, including contempt of court, may not arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the certificate of eligibility or comply with other requirements.

A person who has received an expunction may lawfully deny or fail to acknowledge the arrests and notices to appear covered by the expunged record, except in specified circumstances.<sup>36</sup>

Except as provided above, a person who has been granted an expunction under this bill may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by a person's failure to recite or acknowledge an expunged criminal history record.

The bill provides that a person who receives an expunction under this section is not precluded from seeking a sealing or expunction provided under ss. 943.0583, 943.0585, and 943.059, F.S., if the person is otherwise eligible.

The bill is effective July 1, 2021.

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

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

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

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

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

To the extent the bill authorizes the imposition of a processing fee for a certificate of eligibility issued by the FDLE, the bill may be unconstitutional as a violation of the single-subject requirement for the imposition, authorization, or raising of a state tax or fee under Article VII, Section 19 of the Florida Constitution. Under that section, a "state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject." A "fee" is defined by the Florida

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<sup>36</sup> Exceptions include, when the person is a defendant in a criminal prosecution; Is a candidate for admission to The Florida Bar; Is seeking employment or licensing with specified entities; Is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.



Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”<sup>37</sup>

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill may have a negative indeterminate fiscal impact on the FDLE. The FDLE estimates a cost of \$911,038 (\$856,508 recurring) to manage the additional workload, and a cost of \$1,005,000 for technology modifications.<sup>38</sup> However, this estimate was provided prior to the inclusion of a fee in CS/SB 468. It is likely that the cost incurred by the FDLE will be offset by the fee provided in this bill.

This bill may have a negative indeterminate fiscal impact on the courts due to eligible persons filing petitions for expunction.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 943.0586 of the Florida Statutes.

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<sup>37</sup> FLA. CONST. art. VII, s. 19(d)(1).

<sup>38</sup> The FDLE, *2021 Agency Analysis for SB 468*, p. 3, February 16, 2021 (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 Judiciary on March 16, 2021:**

The committee substitute re-drafted the bill in order to closely follow existing expungement law codified at s. 943.0585, F.S. Significant policy changes made by the Committee Substitute include:

- The process is no longer completely free to the applicant, but will require a \$75 fee to the Department of Law Enforcement for a certificate of eligibility.
- The one year wait and the probation limitation are added.
- The petition must be filed with the sentencing court.
- The clerk of court is not responsible for service on the state attorney.
- Expungement is limited to one time under this new section.
- No other contemporaneous offense is allowed.
- Expungement is not automatic, it may be denied by the court.
- The exceptions allowing future access for select agencies was added.
- The CS specifies that expungement under this new section is not a bar to sealing or expungement of a different offense under another law.

**B. Amendments:**

None.

By the Committee on Judiciary; and Senator Bracy

590-02872-21

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A bill to be entitled

An act relating to expunction of criminal history records relating to certain cannabis offenses; creating s. 943.0586, F.S.; providing for eligibility; requiring a petitioner to obtain a certificate of eligibility from the Department of Law Enforcement; requiring the department to adopt rules; providing application requirements and contents of a certificate of eligibility for expunction; requiring the department to issue a certificate of eligibility for expunction if a person meets specified criteria; providing contents of a petition; providing court procedures for expungement; providing that the subject of an expungement order may lawfully deny or fail to acknowledge the arrest and notice to appear; providing exceptions; providing that a petition for expunction of certain cannabis offenses does not foreclose the petitioner from applying to seal or expunge other criminal arrests; providing an effective date.

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

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

943.0586 Expunction of criminal history records relating to qualifying cannabis offenses.-

(1) ELIGIBILITY.-A person is eligible to petition a court to expunge a criminal history record under this section if all of the following apply:

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(a) The person was arrested or given a notice to appear for a misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis, regardless of disposition.

(b) The person was not convicted of, or did not plead no contest to, a contemporaneous offense other than the misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis.

(c) At least one year has elapsed since the disposition of the arrest or alleged criminal activity to which the petition to expunge pertains.

(d) The person is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to expunge pertains.

(e) The person has not previously been granted relief under this section.

(2) CERTIFICATE OF ELIGIBILITY.-Before petitioning a court to expunge a criminal history record, a person seeking to expunge a criminal history record must apply to the department for a certificate of eligibility for expunction. The department shall adopt rules to establish procedures for applying for and issuing a certificate of eligibility for expunction.

(a) The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

1. Satisfies the eligibility criteria in paragraphs (1) (a)-(e) and is not ineligible under s. 943.0584;

2. Has submitted to the department a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies

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with the criteria in paragraphs (1)(a)-(d);

3. Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains; and

4. Remits a processing fee, equal to that fee charged pursuant to s. 943.0585(2)(a)4., to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless the executive director waives such fee.

(b) A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. The petitioner's status and the law in effect at the time of the renewal application determine the petitioner's eligibility.

(3) PETITION.—Each petition to expunge a criminal history record must be accompanied by all of the following:

(a) A valid certificate of eligibility issued by the department.

(b) The petitioner's sworn statement that he or she:

1. Satisfies the eligibility requirements for expunction in subsection (1).

2. Is eligible for expunction to the best of his or her knowledge and does not have any other petition to seal or expunge a criminal history record pending before any court.

A person who knowingly provides false information on such sworn statement commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) COURT AUTHORITY.—

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(a) The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information, to the extent that such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section.

(b) A court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court may not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility under subsection (2).

(c) The court may order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity only, except that the court may order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity.

(d) This section does not confer any right to expunction of any criminal history record, and any request for expunction of a

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criminal history record may be denied at the sole discretion of the court.

(5) PROCESSING OF A PETITION OR AN ORDER.—

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

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency shall forward the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) The department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide

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prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or such order does not otherwise comply with the requirements of this section.

(6) EFFECT OF EXPUNCTION ORDER.—

(a) The person who is the subject of a criminal history record that is expunged under this section may lawfully deny or fail to acknowledge the arrests and notices to appear covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Is a candidate for admission to The Florida Bar;

4. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

5. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial

590-02872-21

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175 school, or any local governmental entity that licenses child  
176 care facilities;

177 6. Is seeking to be licensed by the Division of Insurance  
178 Agent and Agency Services within the Department of Financial  
179 Services; or

180 7. Is seeking to be appointed as a guardian pursuant to s.  
181 744.3125.

182 (b) Subject to the exceptions in paragraph (a), a person  
183 who has been granted an expunction under this section may not be  
184 held under any provision of law of this state to commit perjury  
185 or to be otherwise liable for giving a false statement by reason  
186 of such person's failure to recite or acknowledge an expunged  
187 criminal history record.

188 (7) RELATION TO OTHER LAWS ON EXPUNCTION OR SEALING.—  
189 Expunction or sealing granted under this section does not  
190 prevent the person who receives such relief from petitioning for  
191 the expunction or sealing of a criminal history record as  
192 provided for in ss. 943.0583, 943.0585, and 943.059, if the  
193 person is otherwise eligible under those sections.

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



# 2021 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
<b>BILL NUMBER:</b>	SB 468
<b>BILL TITLE:</b>	Expunction of Criminal History Records Relating to Certain Cannabis Offenses
<b>BILL SPONSOR:</b>	Senator Bracy
<b>EFFECTIVE DATE:</b>	July 1, 2021

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

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

CURRENT COMMITTEE
Judiciary

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

IDENTICAL BILLS	
<b>BILL NUMBER:</b>	189
<b>SPONSOR:</b>	McCurdy

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
<b>DATE OF ANALYSIS:</b>	February 16, 2021
<b>LEAD AGENCY ANALYST:</b>	Charles Schaeffer
<b>ADDITIONAL ANALYST(S):</b>	Robin Sparkman, Ebony Tisby, Becky Bezemek
<b>LEGAL ANALYST:</b>	Jim Martin, Wes Petkovsek
<b>FISCAL ANALYST:</b>	Cynthia Barr

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

Creates s. 943.0586, FS, authorizing courts to order criminal justice agencies to expunge, by physically destroying or obliterating, certain qualifying cannabis offenses within the criminal history record of an individual. This bill allows an individual to directly petition the court (without a process to first determine eligibility) and prohibits the imposition of a fee. This bill allows an individual to lawfully deny, fail to acknowledge, and not commit perjury or be liable for giving a false statement, without exception.

### 2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Current statutes covering the court ordered sealing and expunction of criminal history records require that determination of eligibility be completed by FDLE and a certificate be issued prior to petitioning the court for relief. Both ss. 943.0585 and 943.059, FS, require the Florida criminal history record be free from convictions including the charge the individual is seeking to seal or expunge. If adjudication is withheld on the charge the individual is seeking to seal or expunge, the charge may not be on the disqualifying list found in s. 943.0584, FS. A processing fee of \$75 is due at the time the application for certificate of eligibility is submitted to FDLE and fees can be assessed by the courts. Individuals may lawfully deny or fail to acknowledge arrests where relief has been granted except to those entitled entities expressly listed in the statutes.
2. **EFFECT OF THE BILL:** Allows an individual to directly petition any court within a circuit, where a qualifying cannabis offense occurred, towards a court-ordered expunction thereby eliminating the application processes which includes documentation, research of criminal history records, state attorney written statement, notification and payment of processing fees. It further eliminates the ability for specified entitled entities to receive notification of an individual criminal history record where the qualifying cannabis offense existed.

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:	
What is the expected impact to the agency's core mission?	
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:	Various entities.
Provide a summary of the proponents' and opponents' positions:	Eliminates various entities from receiving disclosure of qualifying charges when an individual granted expungement is a candidate for employment, Florida Bar membership or appointment as a Florida Guardian ad Litem by the respective entity.

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

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



**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:	Local criminal justice agencies, county/municipal courts must comply with expunction orders.
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"> <li>Currently, the Computerized Criminal History (CCH) files contain 194,900 individuals with a criminal history record containing a conviction using a variation of the word cannabis under 20 grams without a connection to a guilty felony offence, driving under the influence or an act of domestic violence. This does not account for additional records contained in CCH without a disposition.</li> <li>Assuming 10 percent of those individuals apply to seek relief through the courts there would be an increase of 19,490 court orders to comply with in order to update CCH.</li> <li>To manage the increased workload, the department is requesting 14 FTE positions (one Operations and Management Consultant Manager, one Criminal Justice Information Consultant II, two Criminal Justice Consultant I, four Criminal Justice Information Analyst II, two Criminal Justice Information Analyst I and four Criminal Justice Information Examiners) totaling \$911,038 (\$856,508 recurring).</li> <li>The department is also requesting \$1,005,000 in nonrecurring funding for necessary technology modifications (see Technology Impact).</li> </ul> <p><b>Total FDLE Fiscal: \$1,916,038 (\$856,508 recurring)</b></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 bill will have a significant impact to CCH system, as it has an established workflow for the Seal/Expunge process, which will need to be modified based on new legislation. This will also require additional business rules and changes to the suppression rules regarding the Seal/Expunge dissemination status. The department would need to make programmatic changes to CCH (including analysis, development, integration testing and deployment) totaling \$1,005,000 (nonrecurring). This does not include any non-functional testing and support time.
--	--

### 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.	
--	--

### LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

<p>Issues/concerns/comments and recommended action:</p>	<ul style="list-style-type: none"> <li>• There is no language permitting FDLE to retain, in sealed form or otherwise, records in its possession. Certain employment and licensure entities require disclosure of arrests even if they have been sealed or expunged. For example, The Florida Bar frequently asks applicants to provide records from an expunged case, which in turn requires the applicant to move a court and receive an order for FDLE to reproduce and supply the records. The current bill language doesn't allow for this.</li> <li>• Requires a court to expunge records, apparently with no obligation upon the courts to scrutinize petitions for eligibility criteria if the State Attorney's Office (SAO) or arresting agency does not file an objection. Stated differently, the expungement is essentially automatic if no objection is made from the SAO or arresting agency. This situation essentially places the burden of screening for eligibility on the SAO or arresting agency. The degree to which these entities are able to assume those additional responsibilities is not known, but it is foreseeable that different entities may handle this situation differently.</li> <li>• Allowing the subject of the record to apply with any court (not just the court where the case was prosecuted) can introduce multiple problems. Statutory expungement only covers nonjudicial records. However, courts often and in the exercise of their own discretion will additionally order the sealing or expunction of judicial records in possession of the court itself. However, it appears unlikely that a court in one judicial circuit could legally order judicial records of another judicial circuit to be sealed or expunged. This could create a situation where nonjudicial records are expunged, while judicial records with the clerk of court remain publicly available. Separately, it appears highly questionable whether it would be legal for a court in one judicial circuit to order the expungement of nonjudicial records which were made and held in another judicial circuit. Additionally, regarding the ability of the SAO or arresting agency to object, this ability will be diminished by allowing the subject of the record to petition in the courts of another judicial circuit/jurisdiction.</li> <li>• Definition of "domestic violence" is in conflict with itself. It "has the same meaning as in s. 741.28, FS. However, the bill goes on to attempt to include within the definition "domestic violence between dating partners as described in s. 784.046(1)(d)." The definition of "domestic violence" at s. 741.28, FS, does not necessarily include acts of dating violence. So either "domestic violence" can have the same meaning as in s. 741.28, FS, or a different meaning can be assigned for purposes of this statute. The dating violence reference seems like surplusage since it seems to only desire to capture dating violence that qualifies as "domestic violence."</li> <li>• Courts are likely to be inundated with applications due to the high number of misdemeanor marijuana arrests coupled with there being no entity responsible for screening the applicants for eligibility before they petition the court.</li> <li>• FDLE understands criminal history records to be generally divided at the arrest level. Historically, the entire record unit must be statutorily eligible in order to receive relief. Stated differently, there has not historically been the ability to partially seal or expunge a record. For example, say there's an arrest for misdemeanor possession of marijuana and misdemeanor petit theft. The individual is formally charged by the SAO and ends up receiving a withhold of adjudication on both counts. FDLE does not have the ability to only expunge the marijuana charge and it would appear to lack authority to expunge the petit theft along with the marijuana charge for purposes of this bill.</li> <li>• FDLE has historically been vested with authority to preserve the integrity of the state's criminal history records by reviewing court orders to seal/expunge for compliance with the governing statutes and has further been granted unique authority to not act upon orders which do not comply with the law. The Legislature has provided orderly procedures for FDLE to make these instances known to the appropriate SAO, and the courts, so as to remedy</li> </ul>
---	---

	any legal defects. See s. 943.0585(5)(c), FS, for this language and procedure, which FDLE would respectfully recommend incorporating.
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### ADDITIONAL COMMENTS

- Line 43 – 50: Because there is no requirement to first establish eligibility, FDLE may receive court orders to expunge charges that are contrary to law due to a finding of guilt on a disqualifying companion charge. By eliminating the eligibility determination process and requiring a direct filing with the court, it is likely FDLE will experience an increase of an issue currently experienced with human trafficking expungements which is the court obliterates the documents at a local level before FDLE can process the court order making it difficult to match case information and correctly apply the court order.
- Lines 102 – 105: “physically destroyed or obliterated” means the information would not be available for future dissemination to include use by drug court or any entity otherwise entitled to receive expunged information.
- Lines 106 – 114: allows an individual to lawfully deny and does not make an exception for entitled entities.
- Lines 115 – 118: does not allow for a fee to be assessed, current court order processes have a \$75 processing fee, creating a situation where simultaneously the unit will need additional unit staff to process the orders and will face a loss in revenue.
- Clarification is needed to address the impact this relief would have on the current seal and expunge court order processes. For example, if the individual has not applied to have a misdemeanor marijuana charge expunged, should the finding of guilt remain a disqualifier for other charges for which an application to seal or expunge has been received?
- There is an impact to firearm purchasing as there remains a federal firearm disqualification for a conviction for possession of a controlled substance (of any amount). Federal legislation prohibits the purchase or possession of a firearm by a person who has been found guilty of a misdemeanor drug crime (for a period of one-year post conviction), there remains a need to have access to this information to correctly assess eligibility under federal law to purchase a firearm. Proposed language indicates that firearm related background queries would not have access to this information. There may be further ramifications for concealed carry permits and security guard licenses.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/30/2021

SB 468

Meeting Date

Bill Number (if applicable)

Topic Cannabis Offenses

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address Po Box 11254

Phone (850) 354-8424

Street

City

State

Zip

Tch

FL 32302

Email NORM Tallahassee@gmail.com

Speaking: ☒ For ☐ Against ☒ Information

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

Representing NORM Tallahassee

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)

3/30/21  
Meeting Date

SB 408  
Bill Number (if applicable)

Topic Expungement/Cannabis

Amendment Barcode (if applicable)

Name Josephine Annella-Krehl

Job Title Licensed Clinical Social Worker

Address 500 W. Sawyer St.

Phone (850) 653-6928

Street

St. George Island, Fl. 32328

City

State

Zip

Email jokreh@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Cannabis Action Network

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)

3/30/21  
Meeting Date

448  
Bill Number (if applicable)

Topic Cannabis expunction

Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Director

Address P.O. Box 10788

Phone 850 570 9560

Tallahassee FL 32303  
City State Zip

Email carrie.boyd@spcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPUC 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)

3/30/21  
468

Meeting Date

468

Bill Number (if applicable)

Topic Expunction

Amendment Barcode (if applicable)

Name Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th St.

Phone 305-545-1900

Street

Miami, FL

City

State

33145

Zip

Email C Martinez @ pdmiami.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/30/21  
Meeting Date

468  
Bill Number (if applicable)

Topic Expunction Cannabis Offense

Amendment Barcode (if applicable)

Name \_\_\_\_\_

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 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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Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/2021

Meeting Date

468

Bill Number (if applicable)

Topic Expunction of Criminal History Records to Certain Cannabis Offenses

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 South Monroe Street

Phone 850-425-1344

Street

Tallahassee

FL

32301

City

State

Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of FL and NAACP Florida State Conference

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**

3/30/21

*Meeting Date*

SB 468

*Bill Number (if applicable)*

Topic Expunction of Criminal History Records Relating to Certain Cannabis Offenses

*Amendment Barcode (if applicable)*

Name Jorge Chamizo

Job Title Attorney

Address 108 S. Monroe St.

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 Florida 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.***

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)

03/30/21

Meeting Date

SB468

Bill Number (if applicable)

Topic Expungement

Amendment Barcode (if applicable)

Name MARY ADAMS

Job Title Cannabis Educator

Address 4141 Wood DR

Street

Phone 770-710-1315

MOUNT PORA

City

FL

State

32757

Zip

Email maryadamsone@yahoo

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA CANN

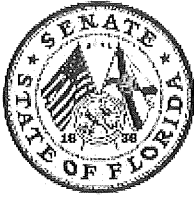
Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Ethics and Elections  
Rules  
Transportation

### SELECT COMMITTEE:

Select Committee on Pandemic  
Preparedness and Response, *Vice Chair*

**SENATOR RANDOLPH BRACY**  
11th District

March 17, 2021

The Honorable Jason W.B. Pizzo  
Chairman, Committee on Criminal Justice  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Pizzo:

I write to respectfully request that the following bills be placed on the agenda of the Senate Criminal Justice Committee.

- **SB 468 - Expunction of Criminal History Records Relating to Certain Cannabis Offenses:** Specifies that a person may be granted an expungement for a cannabis conviction of 20 grams or less. This would be in addition to the one general expungement that offenders may apply for.
- **SB 470 - Public Records/Expunged Criminal History Records:** Public record exemptions bill that is linked to SB 468 and constitutionally required to be in a separate bill.

Your consideration to this agenda request is highly appreciated. Please reach out if you have any questions or concerns regarding the legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randolph Bracy".

Senator Randolph Bracy  
District 11

### REPLY TO:

- 6965 Piazza Grande Avenue, Suite 302, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
- 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

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

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

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

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

---

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

---

BILL: CS/SB 470

INTRODUCER: Judiciary Committee and Senator Bracy

SUBJECT: Public Records/Expunged Criminal History Records

DATE: March 29, 2021

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2. <u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	<b>Favorable</b>
3. _____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 470 is the public records exemption bill linked to CS/SB 468. The bill provides that criminal history records relating to certain misdemeanor cannabis offenses that have been expunged and are retained by the Florida Department of Law Enforcement (FDLE) are confidential and exempt from public disclosure. Exceptions permit specified entities to access such records for limited purposes. CS/SB 468 creates s. 943.0586, F.S., providing for the expunction of certain criminal history records relating to the misdemeanor offense of possession of 20 grams or less of cannabis, regardless of disposition.

Additionally, the bill provides that it is a first degree misdemeanor for any employee of a specified entity to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to:

- The person to whom the record relates.
- Persons having direct responsibility for employment, access authorization, or licensure decisions.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from the repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

The bill may have a negative indeterminate fiscal impact on the Florida Department of Law Enforcement and the state courts. See Section V. Fiscal Impact Statement.

This bill takes effect on the same date as CS/SB 468 or similar legislation takes effect. CS/SB 468 is effective on July 1, 2021.

## **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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> 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.<sup>5</sup>

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

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

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

<sup>3</sup> 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).

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

<sup>5</sup> 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.”

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

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.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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

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.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

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

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> It requires the automatic repeal of such exemption on October 2nd of the

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

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

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

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

<sup>11</sup> *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).

<sup>12</sup> *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).

<sup>13</sup> *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).

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

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

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> 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. Section 119.15(4)(b), F.S.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., provides 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.



fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>19</sup>

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.<sup>20</sup> 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;<sup>21</sup>
- 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;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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

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

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> 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?

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

## **Expunction**

A criminal history record includes any non-judicial record maintained by a criminal justice agency<sup>27</sup> that contains criminal history information.<sup>28</sup> Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of individuals and notations of arrests, detentions, indictments, information, other formal criminal charges, and criminal dispositions.<sup>29</sup>

A person may have his or her criminal history record expunged under certain circumstances.<sup>30</sup> When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it. The FDLE maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.<sup>31</sup> The criminal history record retained by the FDLE is confidential and exempt.<sup>32</sup> Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.<sup>33</sup>

### ***SB 468 Expunction of Criminal History Records Relating to Certain Cannabis Offenses***

CS/SB 468 creates s. 943.0586, F.S., providing for the expunction of certain criminal history records relating to the misdemeanor offense of possession of 20 grams or less of cannabis, regardless of disposition. The language in the bill closely mirrors the procedures and requirements for court ordered expunction under s. 943.0585, F.S.

The bill provides that a person may only receive one expunction under this section, and may only petition the court for an expunction after at least one year has elapsed since the disposition of the criminal activity to which the petition pertains, and he or she is no longer under court supervision. A person who receives an expunction under this section is not precluded from seeking a sealing or expunction provided under any other section of law.

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

CS/SB 470 is the public records exemption bill linked to CS/SB 468. The bill provides that criminal history records relating to certain misdemeanor cannabis offenses that have been expunged and are retained by the FDLE are confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the State Constitution. The bill provides exceptions to permit specified entities to access such records for limited purposes. The FDLE must disclose the existence of a criminal history record ordered expunged to specified entities for their respective licensing, access authorization, employment purposes, and to criminal justice agencies for criminal justice purposes. Such entities include:

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<sup>27</sup> Section 943.045(11), F.S., provides that criminal justice agencies include the court, the FDLE, the Department of Juvenile Justice, components of the Department of Children and Families, and other governmental agencies that administrate criminal justice.

<sup>28</sup> Section 943.045(6), F.S.

<sup>29</sup> Section 943.045(5), F.S.

<sup>30</sup> Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

<sup>31</sup> Section 943.045(16), F.S.

<sup>32</sup> Section 943.0585(6)(a), F.S.

<sup>33</sup> Section 943.0585(6), F.S.

- Criminal justice agencies.
- The Florida Bar.
- The Department of Children and Families.
- The Division of Vocational Rehabilitation with the Department of Education.
- The Agency for Health Care Administration.
- The Agency for Persons with Disabilities.
- The Department of Health.
- The Department of Elderly Affairs.
- The Department of Juvenile Justice.
- Any district school board, university laboratory school, charter school, private or parochial school, or local governmental entity that licenses child care facilities.
- The Division of Insurance Agent and Agency Services within the Department of Financial Services.
- The guardian ad litem program.

The bill creates a first degree misdemeanor for any employee of an entity listed above to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to:

- The person to whom the record relates.
- Persons having direct responsibility for employment, access authorization, or licensure decisions.

This subsection is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from the repeal through reenactment by the Legislature.

This bill provides a public necessity statement as required by article I, section 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that individuals who petition a court and are granted expunction of certain low-level and nonviolent criminal history records have such criminal history records made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes the disproportionate harm that criminalizing the purchase or possession of small amounts of cannabis has had on minorities and disadvantaged communities. The Legislature further recognizes the trends in this state, and nationally, of counties and localities decriminalizing the purchase or possession of small amounts of cannabis. Without this public records exemption, individuals with such low-level and nonviolent criminal history records who are granted expunction of such records might not be able to seek gainful employment and become productive, contributing members of this state. For these reasons, the Legislature finds that it is a public necessity that such records be made confidential and exempt.

This bill takes effect on the same date as CS/SB 468 or similar legislation takes effect. As currently in the Senate, CS/SB 468 is effective July 1, 2021.

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

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

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

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

###### ***Vote Requirement***

Article I, section 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meeting exemption. The bill creates a public record exemption for a judicial record that is expunged, and therefore, requires a two-thirds vote for final passage.

###### ***Public Necessity Statement***

Article I, section 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for a judicial record that is expunged. Section 2 of the bill provides a public necessity statement.

###### ***Breadth of Exemption***

Article I, section 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill makes confidential and exempt limited criminal history records. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill may have a negative indeterminate fiscal impact on the FDLE. The FDLE estimates a cost of \$911,038 (\$856,508 recurring) to manage the additional workload, and a cost of \$1,005,000 for technology modifications.<sup>34</sup> However, this estimate was provided prior to the inclusion of a fee in CS/SB 468. It is likely that the cost incurred by the FDLE will be offset by the fee provided in this bill.

**VI. Technical Deficiencies:**

The Open Government Sunset Review repeal language refers to repeal of the entire section, but perhaps should only repeal subsection (8) of s. 943.0586, F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates subsection (8) in section 943.0586, Florida Statutes, which section is created by companion bill, CS/SB 468.

**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 Judiciary on March 15, 2020:**

The committee substitute added references to the companion bill SB 468, added exceptions to the public records exemption consistent with changes made by amendment to SB 468 at the same committee meeting, and added a first degree misdemeanor related to those exceptions, which is consistent with similar public records laws.

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<sup>34</sup> The FDLE, *2021 Agency Analysis for SB 468*, p. 3, February 16, 2021 (On file with the Senate Committee on Criminal Justice).

B. Amendments:

None.

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

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By the Committee on Judiciary; and Senator Bracy

590-02873-21

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A bill to be entitled

An act relating to public records; amending s. 943.0586, F.S.; providing an exemption from public records requirements for specified expunged criminal history records; providing exceptions; providing criminal penalties; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (8) is added to section 943.0586, Florida Statutes, as created by SB 468 or similar legislation, 2021 Regular Session, to read:

943.0586 Expunction of criminal history records relating to qualifying cannabis offenses.—

(8) PUBLIC RECORDS.—A criminal history record ordered expunged under this section which is retained by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (6)(a)1. and 3.-7. for their respective licensing, access authorization, and employment purposes and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (6)(a)1., subparagraph (6)(a)3., subparagraph (6)(a)4., subparagraph (6)(a)5., subparagraph (6)(a)6., or subparagraph (6)(a)7. to

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disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that individuals who petition a court and are granted expunction of certain low-level and nonviolent criminal history records have such criminal history records made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes the disproportionate harm that criminalizing the purchase or possession of small amounts of cannabis has had on minorities and disadvantaged communities. The Legislature further recognizes the trends in this state, and nationally, of counties and localities decriminalizing the purchase or possession of small amounts of cannabis. The Legislature also recognizes the need for certain limited exceptions are necessary for public safety. Without this public records exemption, individuals having such low-level and nonviolent criminal history records who are granted expunction of such records might not be able to seek gainful employment and become productive, contributing

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59 members of this state. For these reasons, the Legislature finds  
60 that it is a public necessity that such records be made  
61 confidential and exempt.

62       Section 3. This act shall take effect on the same date that  
63 SB 468 or similar legislation takes effect, if such legislation  
64 is adopted in the same legislative session or an extension  
65 thereof and becomes a law.





# 2021 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
<b>BILL NUMBER:</b>	SB 468
<b>BILL TITLE:</b>	Expunction of Criminal History Records Relating to Certain Cannabis Offenses
<b>BILL SPONSOR:</b>	Senator Bracy
<b>EFFECTIVE DATE:</b>	July 1, 2021

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

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

CURRENT COMMITTEE
Judiciary

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

IDENTICAL BILLS	
<b>BILL NUMBER:</b>	189
<b>SPONSOR:</b>	McCurdy

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
<b>DATE OF ANALYSIS:</b>	February 16, 2021
<b>LEAD AGENCY ANALYST:</b>	Charles Schaeffer
<b>ADDITIONAL ANALYST(S):</b>	Robin Sparkman, Ebony Tisby, Becky Bezemek
<b>LEGAL ANALYST:</b>	Jim Martin, Wes Petkovsek
<b>FISCAL ANALYST:</b>	Cynthia Barr

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

Creates s. 943.0586, FS, authorizing courts to order criminal justice agencies to expunge, by physically destroying or obliterating, certain qualifying cannabis offenses within the criminal history record of an individual. This bill allows an individual to directly petition the court (without a process to first determine eligibility) and prohibits the imposition of a fee. This bill allows an individual to lawfully deny, fail to acknowledge, and not commit perjury or be liable for giving a false statement, without exception.

### 2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Current statutes covering the court ordered sealing and expunction of criminal history records require that determination of eligibility be completed by FDLE and a certificate be issued prior to petitioning the court for relief. Both ss. 943.0585 and 943.059, FS, require the Florida criminal history record be free from convictions including the charge the individual is seeking to seal or expunge. If adjudication is withheld on the charge the individual is seeking to seal or expunge, the charge may not be on the disqualifying list found in s. 943.0584, FS. A processing fee of \$75 is due at the time the application for certificate of eligibility is submitted to FDLE and fees can be assessed by the courts. Individuals may lawfully deny or fail to acknowledge arrests where relief has been granted except to those entitled entities expressly listed in the statutes.
2. **EFFECT OF THE BILL:** Allows an individual to directly petition any court within a circuit, where a qualifying cannabis offense occurred, towards a court-ordered expunction thereby eliminating the application processes which includes documentation, research of criminal history records, state attorney written statement, notification and payment of processing fees. It further eliminates the ability for specified entitled entities to receive notification of an individual criminal history record where the qualifying cannabis offense existed.

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:	
What is the expected impact to the agency's core mission?	
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:	Various entities.
Provide a summary of the proponents' and opponents' positions:	Eliminates various entities from receiving disclosure of qualifying charges when an individual granted expungement is a candidate for employment, Florida Bar membership or appointment as a Florida Guardian ad Litem by the respective entity.

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

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

**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:	Local criminal justice agencies, county/municipal courts must comply with expunction orders.
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"> <li>Currently, the Computerized Criminal History (CCH) files contain 194,900 individuals with a criminal history record containing a conviction using a variation of the word cannabis under 20 grams without a connection to a guilty felony offence, driving under the influence or an act of domestic violence. This does not account for additional records contained in CCH without a disposition.</li> <li>Assuming 10 percent of those individuals apply to seek relief through the courts there would be an increase of 19,490 court orders to comply with in order to update CCH.</li> <li>To manage the increased workload, the department is requesting 14 FTE positions (one Operations and Management Consultant Manager, one Criminal Justice Information Consultant II, two Criminal Justice Consultant I, four Criminal Justice Information Analyst II, two Criminal Justice Information Analyst I and four Criminal Justice Information Examiners) totaling \$911,038 (\$856,508 recurring).</li> <li>The department is also requesting \$1,005,000 in nonrecurring funding for necessary technology modifications (see Technology Impact).</li> </ul> <p><b>Total FDLE Fiscal: \$1,916,038 (\$856,508 recurring)</b></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 bill will have a significant impact to CCH system, as it has an established workflow for the Seal/Expunge process, which will need to be modified based on new legislation. This will also require additional business rules and changes to the suppression rules regarding the Seal/Expunge dissemination status. The department would need to make programmatic changes to CCH (including analysis, development, integration testing and deployment) totaling \$1,005,000 (nonrecurring). This does not include any non-functional testing and support time.
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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

<p>Issues/concerns/comments and recommended action:</p>	<ul style="list-style-type: none"> <li>• There is no language permitting FDLE to retain, in sealed form or otherwise, records in its possession. Certain employment and licensure entities require disclosure of arrests even if they have been sealed or expunged. For example, The Florida Bar frequently asks applicants to provide records from an expunged case, which in turn requires the applicant to move a court and receive an order for FDLE to reproduce and supply the records. The current bill language doesn't allow for this.</li> <li>• Requires a court to expunge records, apparently with no obligation upon the courts to scrutinize petitions for eligibility criteria if the State Attorney's Office (SAO) or arresting agency does not file an objection. Stated differently, the expungement is essentially automatic if no objection is made from the SAO or arresting agency. This situation essentially places the burden of screening for eligibility on the SAO or arresting agency. The degree to which these entities are able to assume those additional responsibilities is not known, but it is foreseeable that different entities may handle this situation differently.</li> <li>• Allowing the subject of the record to apply with any court (not just the court where the case was prosecuted) can introduce multiple problems. Statutory expungement only covers nonjudicial records. However, courts often and in the exercise of their own discretion will additionally order the sealing or expunction of judicial records in possession of the court itself. However, it appears unlikely that a court in one judicial circuit could legally order judicial records of another judicial circuit to be sealed or expunged. This could create a situation where nonjudicial records are expunged, while judicial records with the clerk of court remain publicly available. Separately, it appears highly questionable whether it would be legal for a court in one judicial circuit to order the expungement of nonjudicial records which were made and held in another judicial circuit. Additionally, regarding the ability of the SAO or arresting agency to object, this ability will be diminished by allowing the subject of the record to petition in the courts of another judicial circuit/jurisdiction.</li> <li>• Definition of "domestic violence" is in conflict with itself. It "has the same meaning as in s. 741.28, FS. However, the bill goes on to attempt to include within the definition "domestic violence between dating partners as described in s. 784.046(1)(d)." The definition of "domestic violence" at s. 741.28, FS, does not necessarily include acts of dating violence. So either "domestic violence" can have the same meaning as in s. 741.28, FS, or a different meaning can be assigned for purposes of this statute. The dating violence reference seems like surplusage since it seems to only desire to capture dating violence that qualifies as "domestic violence."</li> <li>• Courts are likely to be inundated with applications due to the high number of misdemeanor marijuana arrests coupled with there being no entity responsible for screening the applicants for eligibility before they petition the court.</li> <li>• FDLE understands criminal history records to be generally divided at the arrest level. Historically, the entire record unit must be statutorily eligible in order to receive relief. Stated differently, there has not historically been the ability to partially seal or expunge a record. For example, say there's an arrest for misdemeanor possession of marijuana and misdemeanor petit theft. The individual is formally charged by the SAO and ends up receiving a withhold of adjudication on both counts. FDLE does not have the ability to only expunge the marijuana charge and it would appear to lack authority to expunge the petit theft along with the marijuana charge for purposes of this bill.</li> <li>• FDLE has historically been vested with authority to preserve the integrity of the state's criminal history records by reviewing court orders to seal/expunge for compliance with the governing statutes and has further been granted unique authority to not act upon orders which do not comply with the law. The Legislature has provided orderly procedures for FDLE to make these instances known to the appropriate SAO, and the courts, so as</li> </ul>
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	to remedy any legal defects. See s. 943.0585(5)(c), FS, for this language and procedure, which FDLE would respectfully recommend incorporating.
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### ADDITIONAL COMMENTS

- Line 43 – 50: Because there is no requirement to first establish eligibility, FDLE may receive court orders to expunge charges that are contrary to law due to a finding of guilt on a disqualifying companion charge. By eliminating the eligibility determination process and requiring a direct filing with the court, it is likely FDLE will experience an increase of an issue currently experienced with human trafficking expungements which is the court obliterates the documents at a local level before FDLE can process the court order making it difficult to match case information and correctly apply the court order.
- Lines 102 – 105: “physically destroyed or obliterated” means the information would not be available for future dissemination to include use by drug court or any entity otherwise entitled to receive expunged information.
- Lines 106 – 114: allows an individual to lawfully deny and does not make an exception for entitled entities.
- Lines 115 – 118: does not allow for a fee to be assessed, current court order processes have a \$75 processing fee, creating a situation where simultaneously the unit will need additional unit staff to process the orders and will face a loss in revenue.
- Clarification is needed to address the impact this relief would have on the current seal and expunge court order processes. For example, if the individual has not applied to have a misdemeanor marijuana charge expunged, should the finding of guilt remain a disqualifier for other charges for which an application to seal or expunge has been received?
- There is an impact to firearm purchasing as there remains a federal firearm disqualification for a conviction for possession of a controlled substance (of any amount). Federal legislation prohibits the purchase or possession of a firearm by a person who has been found guilty of a misdemeanor drug crime (for a period of one-year post conviction), there remains a need to have access to this information to correctly assess eligibility under federal law to purchase a firearm. Proposed language indicates that firearm related background queries would not have access to this information. There may be further ramifications for concealed carry permits and security guard licenses.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/30/21

Meeting Date

470

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th St.

Phone 305-479-5835

Street

Miami

FL

33145

City

State

Zip

Email 3 Carlos Martinez

@fdmiami.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/30/21  
Meeting Date

470  
Bill Number (if applicable)

Topic Expunge Criminal records

Amendment Barcode (if applicable)

Name Ida Vi Eskamani

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 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.

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

S-001 (10/14/14)





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Ethics and Elections  
Rules  
Transportation

### SELECT COMMITTEE:

Select Committee on Pandemic  
Preparedness and Response, *Vice Chair*

**SENATOR RANDOLPH BRACY**  
11th District

March 17, 2021

The Honorable Jason W.B. Pizzo  
Chairman, Committee on Criminal Justice  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Pizzo:

I write to respectfully request that the following bills be placed on the agenda of the Senate Criminal Justice Committee.

- **SB 468 - Expunction of Criminal History Records Relating to Certain Cannabis Offenses:** Specifies that a person may be granted an expungement for a cannabis conviction of 20 grams or less. This would be in addition to the one general expungement that offenders may apply for.
- **SB 470 - Public Records/Expunged Criminal History Records:** Public record exemptions bill that is linked to SB 468 and constitutionally required to be in a separate bill.

Your consideration to this agenda request is highly appreciated. Please reach out if you have any questions or concerns regarding the legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randolph Bracy".

Senator Randolph Bracy  
District 11

### REPLY TO:

- ☐ 6965 Piazza Grande Avenue, Suite 302, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
- ☐ 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

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

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

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

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

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

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BILL: SB 552

INTRODUCER: Senator Thurston

SUBJECT: Assault or Battery on Courtroom Personnel

DATE: March 29, 2021

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	<b>Pre-meeting</b>
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

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## **I. Summary:**

SB 552 provides that it is a third degree felony for a person to commit an assault or a battery on courtroom personnel who he or she knows or reasonably should know to be such a person and who is acting in the course of his or her duties, regardless of whether the assault or battery occurs on the premises of a courthouse or other judicial facility. Generally, simple assault is a second degree misdemeanor and simple battery is a first degree misdemeanor.

A person who commits a second or subsequent violation commits a third degree felony with a three-year mandatory minimum term of imprisonment.

The bill defines “courtroom personnel” as any person employed by or performing contractual services in a courthouse or other judicial facility in this state and whose work is directly related to a trial, hearing, grand jury proceeding, or other judicial proceeding. The term includes attorneys, court reporters, probation officers, judges, bailiffs, and clerks.

The Criminal Justice Impact Conference 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 October 1, 2021.

## **II. Present Situation:**

### **Violence Against Florida Court Personnel**

“In 2019, ... [U.S.] marshals recorded 4,449 threats and inappropriate communications against judges and other protected persons, including federal prosecutors. That’s compared with only

926 in 2015. Such threats increased steadily for the next three years, peaking at 4,542 in 2018. Part of that increase is tied to doing a better job at watching for, and flagging, potential threats.”<sup>1</sup>

Data is not collected by the Office of the State Courts Administrator on incidents of violence or threats of violence against Florida court personnel.<sup>2</sup> However, staff of the Judicial Assistants Association of Florida provided the comments of several judicial assistants who provided personal accounts of threats, harassment, or unsolicited and unwelcomed visitation.<sup>3</sup>

Staff of the Florida Public Defenders Association reported that violence or threats of violence against public defenders or assistant public defenders has occurred,<sup>4</sup> though the number of such cases could not be provided.<sup>5</sup> Staff of the Florida Prosecuting Attorneys Association surveyed state attorney offices. As of March 24, 2021, two-thirds of circuits reported approximately 44 cases within the last 5 years in which charges were filed. These cases involved state attorney personnel and other courtroom personnel.<sup>6</sup>

### **Assault and Aggravated Assault**

Assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.<sup>7</sup> Assault is generally a second degree misdemeanor.<sup>8</sup> However, if a person commits assault using a deadly weapon without intent to kill or commits assault with the intent to commit a felony, the person commits aggravated assault, a third degree felony.<sup>9</sup>

### **Battery, Felony Battery, and Aggravated Battery**

Battery is actually and intentionally touching or striking another person against the will of that person or intentionally causing bodily harm to another person.<sup>10</sup> Battery is generally a first degree misdemeanor,<sup>11</sup> but is a third degree felony when the perpetrator has one or more prior

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<sup>1</sup> Charles Toutant, *Attacks on Judges Can't Be Eliminated, But Vigilance Can Reduce the Number of Attacks, Experts Say* (July 23, 2020), New Jersey Law Journal, available at <https://www.law.com/njlawjournal/2020/07/23/attacks-on-judges-cant-be-eliminated-but-vigilance-can-reduce-the-number-of-attacks-experts-say/> (last visited March 24, 2021).

<sup>2</sup> E-mail received by staff of the Senate Committee on Criminal Justice from staff of the Office of the State Courts Administrator, dated Jan. 22, 2021 (on file with the Senate Committee on Criminal Justice).

<sup>3</sup> Information received by staff of Senate Committee on Criminal Justice from staff of the Judicial Assistants Association of Florida (on file with the Senate Committee on Criminal Justice).

<sup>4</sup> E-mail received by staff of Senate Committee on Criminal Justice from staff of the Florida Public Defenders Association, dated March 18, 2021 (on file with the Senate Committee on Criminal Justice).

<sup>5</sup> E-mail received by staff of Senate Committee on Criminal Justice from staff of the Florida Prosecuting Attorneys Association, dated March 24, 2021 (on file with the Senate Committee on Criminal Justice).

<sup>6</sup> E-mails to staff of the Senate Committee on Criminal Justice from staff of the Florida Prosecuting Attorneys Association, dated March 24, 2021 (on file with the Senate Committee on Criminal Justice).

<sup>7</sup> Section 784.011(1), F.S.

<sup>8</sup> Section 784.011(2), F.S. A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>9</sup> Section 784.021(1) and (2), F.S. A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>10</sup> Section 784.03(1)(a), F.S.

<sup>11</sup> Section 784.03(1)(b), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

convictions for battery, aggravated battery, or felony battery, and commits a subsequent battery.<sup>12</sup>

A person commits “felony battery,” a third degree felony, if the person actually and intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement to the victim.<sup>13</sup>

A person commits aggravated battery, a second degree felony, if the person, in committing battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; uses a deadly weapon; or the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.<sup>14</sup>

### **Sentencing of Aggravated Assault and Aggravated Battery Upon Certain Florida Court Personnel**

Section 775.0823(10) and (11), F.S., in part, prohibits suspending, deferring, or withholding adjudication of guilt or imposition of sentence for aggravated assault or aggravated battery committed against a state attorney, assistant state attorney, or justice or judge of a court described in Art. V of the State Constitution, if the offense arises out of or in the scope of the officer’s or official’s duty.<sup>15</sup>

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

The bill provides that it is a third degree felony for a person to commit an assault or a battery on courtroom personnel who he or she knows or reasonably should know to be such a person and who is acting in the course of his or her duties, regardless of whether the assault or battery occurs on the premises of a courthouse or other judicial facility.

Generally, simple assault is a second degree misdemeanor and simple battery is a first degree misdemeanor. The third degree penalty for assault against courtroom personnel is two degrees above the general penalty for assault and is a more severe penalty than assault against a law enforcement officer, which is reclassified to a first degree misdemeanor under s. 784.07, F.S.

A person who commits a second or subsequent violation commits a third degree felony with a 3-year mandatory minimum term of imprisonment.

The bill defines “courtroom personnel” as any person employed by or performing contractual services in a courthouse or other judicial facility in this state and whose work is directly related to a trial, hearing, grand jury proceeding, or other judicial proceeding. The term includes attorneys, court reporters, probation officers, judges, bailiffs, and clerks. (See “Technical Deficiencies” section of this bill analysis.)

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<sup>12</sup> Section 784.03(2), F.S.

<sup>13</sup> Section 784.041(1) and (3), F.S.

<sup>14</sup> Section 784.045(1) and (2), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>15</sup> The statute also applies to an assault or battery upon a law enforcement officer or correctional officer.

The bill takes effect October 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.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference (CJIC), which provides, the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).<sup>16</sup>

The Legislature’s Office of Economic and Demographic Research provided the following information relevant to the estimate:

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<sup>16</sup> *Criminal Justice Impact Conference* (Complete 2021 Conference Results), Office of Economic and Demographic Research, available at <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/CJIC21.xls> (last visited March 24, 2021).

Level 4, 3rd degree felony exists for battery of law enforcement officers, firefighters, emergency medical providers, public transit employees, etc. Per [Department of Corrections or] DOC, in FY 18-19, the incarceration rate for this felony was 16.6% (mean sentence length = 26.1 months) and in FY 19-20 the incarceration rate was 15.0% (mean sentence length = 27.7 months). Per DOC, in FY 18-19, the incarceration rate for a Level 1, 3rd degree felony was 9.5% (mean sentence length = 22.2 months), and in FY 19-20 the incarceration rate was 8.1% (mean sentence length = 23.1 months).

It is not known how large the courtroom personnel victim pool is, nor is it known how many offenders would commit such an act a second or subsequent time, but CJIC heard bills with the same provisions in prior years and found them to have an insignificant impact due to low volume.<sup>17</sup>

## **VI. Technical Deficiencies:**

Staff recommends that the bill sponsor consider removing reference to probation officers and bailiffs in the bill's definition of "courtroom personnel." Assault or battery upon probation officers and bailiffs is already covered under s. 784.07(2), F.S., which reclassifies the misdemeanor or felony degree of assault, aggravated assault, battery, and aggravated battery when a person knowingly commits any of these offenses upon a law enforcement officer or specified professional.<sup>18</sup>

## **VII. Related Issues:**

None.

## **VIII. Statutes Affected:**

This bill creates section 784.079 of the Florida Statutes.

## **IX. Additional Information:**

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

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

None.

### **B. Amendments:**

None.

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

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<sup>17</sup> SB 552 – *Assault or Battery on Courtroom Personnel*, Office of Economic and Demographic Research, available at <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/SB552.pdf> (last visited March 24, 2021).

<sup>18</sup> Both are covered in the definition of "law enforcement officer" in s. 784.07(1)(d), F.S. Bailiffs are deputy sheriffs. Information from staff of the Florida Sheriffs Association communicated telephonically to staff of the Senate Committee on Criminal Justice on Jan. 22, 2021.

By Senator Thurston

33-00332-21

2021552\_\_

A bill to be entitled

An act relating to assault or battery on courtroom personnel; creating s. 784.079, F.S.; defining the term "courtroom personnel"; prohibiting an assault or a battery on specified courtroom personnel; providing criminal penalties; providing an effective date.

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

Section 1. Section 784.079, Florida Statutes, is created to read:

784.079 Assault or battery on courtroom personnel.-

(1) As used in this section, the term "courtroom personnel" means any person employed by or performing contractual services in a courthouse or other judicial facility in this state and whose work is directly related to a trial, hearing, grand jury proceeding, or other judicial proceeding. The term includes attorneys, court reporters, probation officers, judges, bailiffs, and clerks.

(2) It is unlawful for any person to commit an assault or a battery on courtroom personnel who he or she knows or reasonably should know to be such a person and who is acting in the course of his or her duties, regardless of whether the assault or battery occurs on the premises of a courthouse or other judicial facility.

(3)(a) Except as provided in paragraph (b), a person who violates subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who commits a second or subsequent violation

Page 1 of 2

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

33-00332-21

2021552\_\_

of subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 3 years.

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

Page 2 of 2

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

CIRCUIT	THREAT
6 <sup>TH</sup> CIRCUIT - CLEARWATER - JJ	<p>My Judge served as a referee in a case with the Florida bar. During the 2<sup>nd</sup> day of hearings where she was going to disbar the attorney, he brought a loaded 45 gun with extra magazines through security. He was stopped and apprehended however, for the year leading up to the hearing, I had contact with him as he was pro se. My name is on all of the letterhead and business cards for my Judge.</p> <p>In addition to speaking to the defendants, I speak to victims as we are on our 5<sup>th</sup> year of domestic violence criminal court so I am the one that is blamed for ruined families. Sadly, growing up in this area, I have seen multiple arrests of people from high school and a former neighborhood. It just exposes us too much now.</p>
2 <sup>nd</sup> DCA-JO	<p>I had to prepare an order once that prevented an individual from pulling money from his account. That individual showed up and also called several times threatening me. We had to get the HCSO involved and his picture had to be put up in the courthouse with the hopes that he would not get through to my office. Being a Judicial Assistant can be just as threatening at times. We are the gateway to our Judges</p>
1 <sup>ST</sup> CIRCUIT - PENSACOLA-KA	<p>I have defendant's families friend me and send me messages on Facebook all the time. It really freaks me out. But I know that is just all part of being on social media.</p> <p>It has always worried me that all anyone has to do is a google search of my Judge's name and it pulls up my name also. Then all they have to do is pull up my name on property records, etc. to pull up my home address, etc. or type my name in on "anywho" to pull up my address and phone number. It's really scary.</p> <p>My Judge sentences murderers, drug addicts and thieves, if they get mad enough and can't find out the judge's information, they just might come after the JA.</p>
18 <sup>TH</sup> CIRCUIT - VIERA-NA	<p>When I was married to my ex-husband. He is a deputy at the jail, in many instances the inmates were so smart that they would figure out in their orders, or paperwork that my last name was the same as his. Somehow they knew I was married to him and who I worked for. Couple of years ago, an inmate told my ex, "when I come out I will go to your house because I know where you live and rape your wife XXXXXX and make you watch it." Even if it was just talk...these inmates receive paperwork with our names on there, they can easily find where we live.</p>
6 <sup>TH</sup> CIRCUIT - CLEARWATER - AF	<p>As my name is a little unusual, it would be very easy to find me, if one knew how to look. I have been a JA since 1997 and recall at least once that I had to call deputies to patrol my neighborhood when I was frightened by a criminal defendant. I usually refuse to give my last name when speaking to defendants or their families on the phone, but again, if one knows where to look, they can easily find my last name.</p>



1 <sup>ST</sup> CIRCUIT - PENSACOLA-KA	<p>XXXXXX has numerous cases in our county. If he doesn't like the ruling he will file lawsuits on Judges and also list the Judge's JA's names in the lawsuits. He has threatened my Judge and his family, along with several other Judges here in Escambia County. He is a very scary individual. I wouldn't put it past him to wait until we got off work and follow a JA home. He has found out where some judges live and have mentioned it in emails and documents before. If he can find their addresses, he can certainly find the JAs addresses that aren't protected.</p>
1 <sup>ST</sup> CIRCUIT - MILTON-NM	<p>There is a man in our circuit deemed a vexatious litigant by the DCA and by Circuit Court Judge XXXXX. This man has sued almost every judge in Escambia County, and a few judicial assistants, including myself. This person has a family law case before Judge XXXXX. A 2009 family law case involving his child – who is 9 years old.</p> <p>Long story short, former wife was granted authorization to relocate to Tampa from Pensacola (Tampa is approx. 450 miles from Pensacola). The distance restricted the former husband's contact w/ his son, who is autistic and enrolled in a special program for autistic children at USF. Basically, this person feels like he lost everything.</p> <p>It was the granting of the former wife's relocation that triggered the former husband. He stated in a voice mail message to the maternal grandmother that he was a man with nothing to lose (this was admitted into evidence in the DV case). The former husband emailed me an answer to Judge XXXXXX order to show cause and in it he described where Judge XXXXXX lived and said a lesser person in his shoes would grab Judge XXXXXX on her way to the check the mail, pull her hair back, tilt her neck back and slice her throat from ear to ear. He also described in great detail how a person could hire a hit man using bitcoins and a TOR browser to kill her.</p> <p>No, I am not the judge but I am the one who answers the phone when he calls. A judicial assistant is an extension of their judge so it would be very appreciated if judicial assistants could have their personal info and their family's info protected.</p> <p>This man was arrested for threatening Judge XXXXX. But it made me wonder how he was able to find her information, so I decided google her name. Her address appeared using google. So, then I googled my name and my address populated. Then, what sickened me, was my house's Zillow listing and all its photos populated.</p>
1 <sup>ST</sup> CIRCUIT - DEFUNIAK SPRINGS-DA	<p>I have been working for Judge XXXXX for 15 years and throughout those years I have had numerous defendants contact me via my home phone, cell phone and even show up at my house to try and get me to persuade the Judge to rule differently for them. The one incident that really stood out for me is the following:</p> <p>A defendant, a habitual offender was looking at 11month 29 days jail sentence. A few days before he was to be sentenced he showed up at my house very drunk. Only myself and young daughter were there. I told her to stay inside. I managed to keep him on my front porch and he insisted that I could make the Judge change his sentence. I tried to explain that was not possible and to keep him from getting any more upset. He was belligerent,</p>

	<p>refusing to leave and not wanting to listen to anything I said. I was very afraid. Thankfully, my sister just happened to drive up to my house shortly after he had gotten there. He immediately left. The next day, we learned that he had committed suicide by blowing his head off with a shotgun. I have never really gotten over this, it could have so easily been another scenario. One where he decided that he would take my life and possibly my daughter's life and his own.</p>
17 <sup>th</sup> CIRCUIT- PLANTATION - PG	<p>I was the victim of numerous threats from a Defendant in a Tenant Eviction case. The Defendant eventually went to jail because of his threats and I as well as my Judge had to testify. It was a nightmare on top of being extremely scary for myself and my family. He left messages on the answering machine at the office and threatened to kill me, and my family. The case is documented in the 17th Circuit.</p>
17 <sup>th</sup> CIRCUIT- FT. LAUDERDALE - AQ	<p>My Judge was threatened and the man threatening him also threatened me. (The man harassed many judges in the Broward courthouse and now is in jail pending trial.) It has turned into a criminal case. I had to sit for a depo and will be called to testify in trial.</p> <p>You can read more about the case in the article below.</p> <p><a href="https://www.miamiherald.com/news/local/community/broward/article162469033.html">https://www.miamiherald.com/news/local/community/broward/article162469033.html</a></p>
17 <sup>th</sup> CIRCUIT-FT. LAUDERDALE - WM	<p>A few years ago, I had 3 young people showed up to my <b>home</b> harassing me and saying I had stolen their car. I immediately called the police. It turned out there was a fatality DUI that happened up the block from me and the driver was a defendant before my judge. I was contacted several times by BSO and eventually I was advised the individuals found me on line and were family of the defendant</p>
20 <sup>TH</sup> CIRCUIT - FORT MYERS - LT	<p>We have a case pending in Lee County where the Defendant has 15 pending charges for the following:</p> <ul style="list-style-type: none"> <li>-Obstructing Justice Influence/Intimidate/Hinder Leo Duties</li> <li>-Fraud Simulate Legal Process Fraudulent Actions</li> </ul> <p>The victims in this case include Judges, The Clerk of Court, Attorneys, a CFO and a CEO. The charges allege that the victims were all targeted by the Defendant. It is a general fear to have my name listed on any of the court documents due to his current pending charges as I do not want to become one of his victims.</p> <p>I work for Judge XXXXX and Judge XXXXX is one of the victims in this particular case. It is alleged that the defendant did simulate legal process to wit: fictitious documents from the "International Court of Commerce," which target Circuit Judge Joseph XXXXX and include actions affecting title to real estate or personal property, liens, orders, judgments, or other legal documents or proceedings or the basis of any such actions to be fraudulent, contrary to Florida Statute(s) 843.0855(3); 777.011. Judge XXXXX was recently served with a summons in this case and they requested I sign the summons and requested my full name be listed on the summons. I requested that the summons simply say it was served on Judicial Assistant to prevent my name from appearing on any documents in the case.</p> <p>If I remember correctly, this Defendant was able to successfully place a lien against Judge Fuller in Pinellas County. A Civil lawsuit was filed to get this lien set aside. This is even</p>

	<p>more scary because Judge XXXXX personal information is kept confidential and the Defendant was still able to obtain enough information to place a lien against him. Since my information is all public it would be much easier for the defendant to place a lien against me.</p> <p>We currently handle felony cases and deal with a large number of convicted felons. I am required to interact with the defendants on a daily basis and I often have to tell them things they do not want to hear. They are often very upset with me because I am not able to give them legal advice, I cannot allow them to speak with the judge on the phone, I cannot give them expedited hearing time or just simply because the ruling the court gave was not in their favor.</p>
17 <sup>th</sup> CIRCUIT-FT. LAUDERDALE - JS	<p>1. While working for my prior judge who happened to be in the middle of a lengthy divorce and domestic violence case, one of the parties somehow obtained my cell phone number and called me wanting to talk about the cases. After that judge retired, a new judge took over the case and even though I have been away from that division for 3 years, the same litigant called me once again on my cell phone. This was about 3 months ago. She wanted information about the new staff working on the case and I was worried that she was going to be waiting at my home to try to speak to me about the case.</p> <p>2. A few years ago our division was handing a child custody case and one of the parties started harassing me by leaving 50-80 voice mail messages after hours each night and over the weekends. The judge hearing the case entered an order preventing the litigant entry into the court house. She was still able to enter the court house, walk into my office and right up to my desk and threaten me. She was detained by police and then arrested for battery on a law enforcement officer. I was afraid of her because she projected all of her feelings that she had about the judge on to me because she had better access to me. I was fearful that she would look up property records and find my home.</p>
2 <sup>ND</sup> DCA - CA	<p>I had a situation about a year ago, when an attorney in Sarasota harassed me to the point the Judge I was working with at the time, told me to stop answering the phone. He was mad because he promised his client something, but his motion was denied by the judge. He was upset that he couldn't get the judge, so he decided to come after me. He was crying and screaming every time he called. He would call from three different phone numbers to get me to answer him. The last time I spoke to him, he threatened to look up my personal information, and file a lawsuit against me.</p>
9 <sup>TH</sup> CIRCUIT – ORLANDO -JH	<p>I have had an experience with a Respondent in a Domestic case that my Judge and I have had. This Respondent would call and fill our voicemail with loud music nightly. He started leaving messages giving detailed information about the Judge's personal life. Enough detail that it showed us that he was doing his research. His calls to me in the office would become more and more aggressive. He was trespassed from the building and was only allowed to be here when he would have a court date. He became so well known here in our large courthouse that when any deputy would see him, though he was here for court, the deputies would call me to let me know so that I would stay in my office unless I absolutely had to go out. The Sheriff's Office did an investigation into the harassment that became a daily issue for my Judge and I. His picture was posted in our office.</p>

	<p>This Respondent knew my name but did not know me by sight. I walked around the courthouse with my hand over my name badge so that when he was here he would not know who I was.</p> <p>The Sheriff's Office was able to gather enough evidence to hand over to the State Attorney who did charge him with harassment of a public official. The case went to a jury trial and the Judge and I had to testify. This was the first time this Respondent had seen me and it was extremely uncomfortable to know that he now knows what I look like. The jury found him guilty as charged and he was given a jail sentence.</p> <p>These are the types of people that concern me and with the information age what it is today, I fear for my personal information to be public</p>
9 <sup>TH</sup> CIRCUIT - ORLANDO - LH	<p>I was sitting at my desk one morning when I received this text attached. It was very early and I was probably the only person in the building. I had no idea who this was from and needless to say I was pretty shocked and a little disturbed by it. I immediately contacted the corporal for the criminal division to report it to him. He came to my office and took this screenshot. He said he would look into it but didn't seem that concerned by it and told me to ignore it. I, of course told my Judge about it.</p> <p>I researched the case number and found out that the case referenced was set for arraignment that day so I contacted the State attorney to try to get more info. Apparently, whoever sent this was "probably" the victim in the identity theft case that was set. I reached out to the defense attorney for that case and he said he also was receiving threats of sort via email, personal texts, etc.. from this person and they were actually a co-defendant for this case. Confused? Me too.</p> <p>My main concern was how the heck they got my personal cell phone number? I was scared because the Judges receive threatening letters all the time, which we as JAs open. We're the person they call to gripe to. They know our names and due to social media and the accessibility to same, it is easy to find our info, family members info, etc... Please express the importance of our personal safety concerns. Thank you so much.</p>
9 <sup>TH</sup> CIRCUIT - ORLANDO - ML	<p>My judge has had threats made against her from an inmate who said he was in a gang and his gang would kill her, chop up her body and her family would never find her. When you are dealing with people of that mentality it is not unreasonable to believe if they can't find the judge they will get at the judge by attacking the judge's assistant.</p>
9 <sup>TH</sup> CIRCUIT - ORLANDO-LM	<p>I don't have the specific case # or defendant, but when I was in Civil I had to call and tell someone his Motion to Stay was denied. He asked, "What time does your shift end?" Needless to say, since we give our names when we call, he could easily look up my information if he so desired. In County Civil, we had to make those types of calls almost on a daily basis.</p>
9 <sup>TH</sup> CIRCUIT - ORLANDO - LS	<p>A girl that was on our list to bring in as a temporary substitute JA if we were out of the office was removed from the list because she was doing some crazy things while in the offices. She mistakenly thought I was to blame (it was another JA as I had never used her</p>

	<p>in my office). One evening I came out of my garage and she was at the end of my driveway staring at me. I live an hour from the courthouse so it was no accident that she was at my house. I reported it and then asked court administration to remove my personal information from any address lists, including ones that the other JAs may have. I now only give my personal information to those I know I can trust.</p> <p>When I worked for Judge XXXXX we had a defendant that was charged with attempted murder, stalking, etc. Throughout the pendency of the case he threatened the judge and staff constantly. He went to victims houses and watched them prior to trial. Eventually he was tried, while representing himself, and sent to prison. He continued to send letters to the Court with threats while in prison. Upon release from prison several years later, he was transported back from DOC and told to report directly to probation a block away from where he was released. They had deputies watching him and instead of reporting to probation, he walked towards the courthouse. We were put on lock down until they detained him and a VOP warrant was issued and signed for failure to report. He was put back in prison for VOP. I had his mug shot on the bulletin board for years so others would know he was a problem if he should return for any reason.</p> <p>Recently, Judge XXXXX had a RICO case where MBI would come to the office weekly and give reports and have the Judge sign warrants, phone orders, etc. This went on for several months. During the investigation it was determined that the defendants were threatening witnesses and dismembering people involved in the case. The investigators would warn the judge and she was concerned that her signature was on all these documents but felt a little safer since her personal information was private. It didn't make me feel the same as my information is public record and could be obtained by anyone in attempt to get to her.</p>
12 <sup>th</sup> CIRCUIT - JH	I've never had an issue that I can recall off the top of my head, but I know of someone that was contacted from an inmate in custody on her home phone since her name was on a document. I've always felt this is an issue. There are other people that are afforded privacy due to their job – probation officers, JPO's, etc – and I think if it's looked from that angle, it may be better understood where we are coming from.
12 <sup>TH</sup> CIRCUIT - MM	Over the past 9 years I have received threatening phone calls from a man named XXXXX and have been threatened and cussed at approximately 10 other times by pro se litigants and their family members. He has left numerous voice messages threatening the Judge and me.
12 <sup>TH</sup> CIRCUIT - PL	
5 <sup>TH</sup> CIRCUIT – TAVARES-SM	Several years ago, my judge and I were notified by the Sheriff's department that one of the defendants had made threats against us and were actually following both of us to our homes.
2 <sup>ND</sup> CIRCUIT – TALLAHASSEE-KP	I originally worked as the JA for Judge XXXXX before being hired to work as the JA for Judge XXXXX. In 2015/16 Judge XXXXX presided over a case involving Florida's bears and how they should be managed. It involved the Florida Wildlife Commission requesting approval to allow a hunt for black bears. There were several people and organizations who opposed the hunt including the Sierra Club.

	<p>I received emails through my work email, one of which was a bit personal from XXXXX who commented "[E]njoy that a gov'ment paycheck, huh? Bet you do... ." The subject line was "Kelly &amp; George, the idiot team" which initially made me laugh until I read his message. It was a bit disconcerting to become the focus of this man's attention. There were protests outside the courthouse regarding the case. My response was to forward all similar emails to our Court Administration Director so that security would be aware of any possible threats.</p> <p>The emails weren't sent to my personal email, but it made me much more aware that if someone wanted to find me it wouldn't be that difficult.</p> <p>[Obviously, Mr. XXXXX wasn't aware that Circuit Court JAs (and County Court JAs) salaries are near the poverty level, but I love my job and balance happy job with not so happy paycheck.]</p>
2 <sup>ND</sup> CIRCUIT – APALACHICOLA- LW	<p>Several years ago, we had a local Defendant who was sentenced to Chattahoochee for murdering his grandmother. The Circuit Court handled the case but somehow the Defendant got it in his head it was Judge XXXXX. After being in Chattahoochee some time; they let him use the phone and every morning he would call our office wanting to talk to the Judge and every day I would have to explain why he could not talk to the Judge. He would get very angry and upset with me and if I did not answer the phone; he would take up my entire answering machine space with his rambling messages. His father was a retired post office clerk who came by my office and told me how upset his son was with me and how the father thought I should know in case they let him out. I did finally call Chattahoochee and had his telephone privileges modified so he could not call our office.</p>
BC	<p>I had a very scary incident in Circuit Court with this. They had to put up flyers throughout the courthouse and extra security because of the individual threatening me</p>
MS	<p>We have a dependency case in which the mom has left me hundreds of messages (Many of them are saved on a zip drive) she threatens the lives of myself, my child, and my grandchild on a regular basis. So I am in total agreement of this passing</p>
18 <sup>TH</sup> CIRCUIT – VIERA - KM	<p>Last year when I was pregnant back in March 10<sup>th</sup>, 2020, I received a phone call from the defendant's father, he was very upset about his daughter's case and before he hung up he said: "I'm going to go to Florida and f#\$%%&amp; shoot all of you in that office". Of course, being pregnant I was very emotional and scared. I filed a police report with BCSO. The police called the defendant but of course he denied ever saying that. The police said they were going to keep an eye out but thank God nothing occurred after that. But I was scared for a few weeks, always watching my back. I'll never forget his mugshot for sure</p>
18 <sup>TH</sup> CIRCUIT – VIERA - PA	<p>This may have been reported to her already, but there was a criminal court case in Martin County that stemmed from a threat from a litigant to a judge &amp; JA, and their families. The defendant's last name is XXXXX and the case number for the criminal charges is XXXXX. Judge XXXXX was the judge assigned by the Supreme Court to handle it due to all of Martin County judges recusing themselves. Sorry if this is duplicated information</p>
18 <sup>TH</sup> CIRCUIT – VIERA - DL	<p>Judge XXXXX and I actually have an active case right now where the Respondent (father), XXXXX, threatened many times in emails to kill us or harm us. The emails started to list our exact addresses of our homes</p>

VM	<p>I have personally had two prose litigants appear in chambers demanding to see me, refusing to leave. On both occasions, they got confrontational with the bailiff and ended up having to be escorted out of the building by liaison. Both of these litigants have emailed me after hours, on weekends and have included me in pleadings, etc. I have felt, on both occasions, afraid for my safety. One of the litigants even shoved the bailiff in an attempt to enter chambers to speak to me. There are too many resources available online and I definitely feel like our addresses are easy to find with just the slightest bit of research. These two gentlemen could certainly find mine if they wanted to.</p>
SE	<p>I had an experience with a pro se defendant in a foreclosure matter who felt I was hindering his case. He subpoenaed me to be deposed. In his pleadings he made various accusations stating that I was “in cahoots with the banks attorney”, he called me “uneducated” and “arrogant”. If I were to go back through the court file, I’m sure I could find plenty of examples of him calling me names and accusing me of wrong-doing. There were never threats of violence but when I saw my home address filed in the court file, I was pretty shaken up and had to have a conversation with my family.</p> <p>He completed the subpoena with my work address however when the sheriff’s office received the subpoena and entered my name into their system my home address printed onto their Deputy Worksheet. That was then filed into the court file, unreacted so, now the pro se defendant, and everyone else, knows where my children and I live</p>
LG	<p>Just yesterday this occurred, I am still waiting to find out if they can download the 5 messages this man left. He kept calling throughout day but did not leave any further messages. I was worried he would find me on social media (my stuff is private anyway but just in case) since he repeatedly said my full name in the messages left, and I was able to locate and blocked him.</p> <p>The defendant in the matter he was upset over has a history of mental issues and per report, claims that her parents do all well. This heightens my concern.</p> <p>You would have to hear his tone of voice, the anger, the grasping of air – clearly heard from his rambling, and overload of ugly words. Once I get them to download, I will ask if I can send. Or if there’s an alternative available. He did make sure we were of his full name and at one point said, “I’m coming for you.”</p> <p>After my Judge heard the messages and I explained what he initially called and said – that caused me to terminate the call – he said for me to make a report.</p>

**From:** [Erickson, Mike](#)  
**To:** [Arnold, Sue](#)  
**Subject:** FW: SB 552  
**Date:** Wednesday, March 24, 2021 4:09:52 PM

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E-mail referenced in SB 552 analysis.

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**From:** Nancy Daniels <ndaniels@flpda.org>  
**Sent:** Thursday, March 18, 2021 9:20 AM  
**To:** Erickson, Mike <ERICKSON.MIKE@flsenate.gov>  
**Subject:** Re: SB 552

Hi Mike. I know there have been a number of injuries and I believe a family law attorney was killed over in the Panama City area about 10 years ago. However, we do not support the bill because it is yet another upward classification of battery offenses. Aren't there something like 18 categories of batteries that are felonies now?

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**From:** Erickson, Mike <[ERICKSON.MIKE@flsenate.gov](mailto:ERICKSON.MIKE@flsenate.gov)>  
**Sent:** Thursday, March 18, 2021 8:55:39 AM  
**To:** Nancy Daniels <[ndaniels@flpda.org](mailto:ndaniels@flpda.org)>  
**Subject:** RE: SB 552

Hi, Nancy-

Hope you are doing well.

We have a bill, SB 552, that penalizes assault and battery on courtroom personnel. The term "courtroom personnel" includes attorneys. Do you know of any information or data regarding assaults, batteries, threats of violence, or other incidents of violence against Florida public defenders and assistant public defenders?

Mike

Mike Erickson  
Chief Legislative Analyst  
The Committee on Criminal Justice  
The Florida Senate  
(850) 487-5192



**From:** [Erickson, Mike](#)  
**To:** [Arnold, Sue](#)  
**Subject:** FW: Time-sensitive request: Question regarding court data  
**Date:** Wednesday, March 24, 2021 4:07:28 PM

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E-mail referenced in SB 552 analysis.

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**From:** Sarah Naf Biehl <nafs@flcourts.org>  
**Sent:** Friday, January 22, 2021 10:56 AM  
**To:** Erickson, Mike <ERICKSON.MIKE@flsenate.gov>  
**Subject:** Re: Time-sensitive request: Question regarding court data

Hi, Mike!

I know the court system does not maintain that information, but I will check with the judicial conferences. You may also want to check with the judicial assistant association.

Sarah Naf Biehl  
Chief of Legislative Affairs  
Office of the State Courts Administrator  
The Florida Supreme Court  
500 South Duval Street  
Tallahassee, Florida 32399  
850.922.5692  
[nafs@flcourts.org](mailto:nafs@flcourts.org)

On Jan 22, 2021, at 10:35 AM, Erickson, Mike <[ERICKSON.MIKE@flsenate.gov](mailto:ERICKSON.MIKE@flsenate.gov)> wrote:

**CAUTION**

This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, Sarah,

I have a bill dealing with assault or battery on court personnel. Are you aware of any report or collection of data regarding violence against Florida court personnel?

Thank you for your assistance.

Mike Erickson  
Chief Legislative Analyst  
The Committee on Criminal Justice  
The Florida Senate  
(850) 487-5192

**From:** [Erickson, Mike](#)  
**To:** [Arnold, Sue](#)  
**Subject:** FW: SB 552  
**Date:** Wednesday, March 24, 2021 4:13:02 PM

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E-mail referenced in SB 552 analysis

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**From:** Garrett Berman <gberman@yourfpaa.org>  
**Sent:** Wednesday, March 24, 2021 11:36 AM  
**To:** Erickson, Mike <ERICKSON.MIKE@flsenate.gov>  
**Subject:** RE: SB 552

Good morning Mike:

As of right now, with about two-thirds of the circuits responding to my query, it looks like there would have been about 49 cases (with 3-5 of those occurring on courtroom personnel but outside a courtroom or judicial facility, or outside the 5 year period). Of course, that's just the number of cases where charges were filed, not necessarily incidents, which I suspect would raise that number.

One of the offices did raise two interesting issues: 1) is this offense going to stay as unranked, and 2) for the second or subsequent offense, is the prior offense meant to be as an element of the crime (to be proven by the state) or simply as a sentencing enhancement.

If I receive any further information from the other offices, I will forward you the numbers. Please let me know if there is anything you might need.

--GB

**Garrett M. Berman**

Executive Director

Florida Prosecuting Attorneys Association

107 West Gaines Street, Suite L-047

Tallahassee, FL 32399-1050

E-mail: [gberman@yourfpaa.org](mailto:gberman@yourfpaa.org)

Office: (850) 488-3070

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**From:** [Erickson, Mike](#)  
**To:** [Arnold, Sue](#)  
**Subject:** FW: SB 552  
**Date:** Wednesday, March 24, 2021 4:11:58 PM

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E-mail referenced in SB 552 analysis

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**From:** Garrett Berman <[gberman@yourfpaa.org](mailto:gberman@yourfpaa.org)>  
**Sent:** Wednesday, March 24, 2021 12:50 PM  
**To:** Erickson, Mike <[ERICKSON.MIKE@flsenate.gov](mailto:ERICKSON.MIKE@flsenate.gov)>  
**Subject:** RE: SB 552

Mike:

Although I did request just numbers for SAs and ASAs, it is most likely a mix. One circuit only had one case where it was a judge who was threatened, whereas another had a battery on a bailiff, and one circuit included several cases that ran the entire gambit.

I think what you are going to report is a good estimate. Because, as I wrote earlier, many times it happens, but the cases are just not filed. One circuit said they had a great case for assault, but didn't file charge because the defendant was already sentenced to life in prison.

Thanks for answering those questions. If there's anything else I can do for you, please don't hesitate to reach out.

--GB

**Garrett M. Berman**

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Office: (850) 488-3070



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Agriculture  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Banking and Insurance  
Education  
Judiciary  
Rules

**SENATOR PERRY E. THURSTON, JR.**

33rd District

March 9, 2021

The Honorable Jason Pizzo  
405 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Senator Jason Pizzo,

Please be advised that I am writing this letter with regards to my bill, SB 552: Assault or Battery on Courtroom Personnel. It has been referred to the Senate Criminal Justice Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions.

Respectfully,

*Perry E. Thurston, Jr.*

Perry E. Thurston, Jr., District 33

### REPLY TO:

- ☐ 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (888) 284-6086
- ☐ 206 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

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

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

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

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

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

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BILL: CS/SB 718

INTRODUCER: Criminal Justice Committee and Senators Book and Stewart

SUBJECT: Gay and Transgender Panic Legal Defenses

DATE: March 30, 2021

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 718 creates the “Gay and Transgender Panic Legal Defense Prohibition Act.” The bill prohibits a nonsexual advance or the perception or belief, even if inaccurate, of the sex, sexual orientation, gender identity, or gender expression, from being used as a defense to a criminal offense or to justify the conduct of an individual who commits a criminal offense, or to mitigate the severity of a criminal offense during sentencing.

The bill provides legislative findings and defines the terms “gay and transgender panic legal defense,” “gender expression,” and “sexual orientation.”

The bill is effective July 1, 2021.

**II. Present Situation:**

In a criminal case, the prosecution must prove every element of the crime charged, beyond a reasonable doubt. However, there are circumstances in which the defendant’s conduct may have caused the alleged crime, but she or he is not criminally culpable based on certain legal defenses.

**Affirmative Defenses**

An affirmative defense is any defense that assumes the charges to be correct but raises other facts, which if true, would establish a valid excuse or justification or a right to engage in the

conduct in question.<sup>1</sup> In addition to the affirmative defenses listed below, some criminal offenses contain affirmative defenses specific to those crimes.<sup>2</sup>

### ***Justifiable Use of Force***

A person charged with a criminal offense in which force was used, such as battery or murder, may argue at trial that he or she was justified in using such force. Chapter 776, F.S., contains a variety of provisions for the instances in which a person is justified in using force.

Florida law provides that a person is justified in using or threatening to use force against another to defend himself or herself or another against the other's imminent use of unlawful force or the commission of forcible felony.<sup>3</sup> There is no duty to retreat prior to using or threatening such force. A person is likewise justified to use or threaten to use force to defend his or her home<sup>4</sup> or property,<sup>5</sup> with certain exceptions.

However, this defense is not absolute. This affirmative defense is not available to a person who is in the process of attempting to commit, committing, or escaping after the commission of a forcible felony and is precluded from claiming a justifiable use of force.<sup>6</sup> It is also generally not available to a person who initially provokes the use or threatened use of force against himself or herself, with exceptions.<sup>7</sup>

A person who uses justifiable force, as authorized under Florida law, is immune from criminal prosecution and civil liability for such conduct, unless the person against whom the use or threat of use of force is a law enforcement officer performing his or her official duties.<sup>8</sup> Immunity from criminal prosecution includes immunity from being arrested, detained in custody, and charged or prosecuted.<sup>9</sup>

### ***Insanity Defense***

In Florida, it is an affirmative defense to criminal prosecution that, at the time of the commission of a criminal offense, the defendant was insane.<sup>10</sup> Insanity is established when:

- The defendant had a mental infirmity, disease, or defect; **and**
- Because of this condition, the defendant:
  - Did not know what he or she was doing or its consequences; **or**
  - Although the defendant knew what he or she was doing and its consequences, the defendant did not know that what he or she was doing was wrong.<sup>11</sup>

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<sup>1</sup> *Herrera v. State*, 594 So.2d 275, 277 (Fla. 1992).

<sup>2</sup> For example, *see* s. 817.5685(5), F.S., relating to unlawful possession of the personal identification information of another; s. 893.101, F.S., relating to controlled substances; and s. 910.006(4), F.S., relating to maritime crime.

<sup>3</sup> Section 776.012, F.S.

<sup>4</sup> Section 776.013, F.S.

<sup>5</sup> Section 776.031, F.S.

<sup>6</sup> Section 776.041(1), F.S.

<sup>7</sup> Section 776.041(2), F.S.

<sup>8</sup> Section 776.032, F.S.

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

<sup>10</sup> Section 775.027(1), F.S.

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

The defendant has the burden of proving the defense of insanity by clear and convincing evidence.<sup>12</sup>

### ***Entrapment***

Entrapment occurs when a law enforcement officer, a person engaged in cooperation with a law enforcement, or a person acting as an agent of a law enforcement officer, for the purposes of obtaining evidence, induces or encourages, and as a direct result, causes another person to engage in criminal conduct.<sup>13</sup> A person who is prosecuted for such crime must be acquitted if he or she proved by a preponderance of the evidence that his or her criminal conduct occurred as a result of entrapment.<sup>14</sup>

### ***Necessity Defense***

The necessity defense, sometimes referred to as the justification offense, that there may be circumstances under which a crime would be justified and the conduct declared not criminal.<sup>15</sup> The essential elements of the defense of necessity are that:

- The defendant reasonably believed that his or her action was necessary to avoid an imminent threat of death or serious bodily injury to himself or herself or others;
- The defendant did not intentionally or recklessly place himself or herself in a situation in which it would be probable that he or she would be forced to choose the criminal conduct;
- There existed no other adequate means to avoid the threatened harm except the criminal conduct;
- The harm sought to be avoided was more egregious than the criminal conduct perpetrated to avoid it; and
- The defendant ceased the criminal conduct as soon as the necessity or apparent necessity for it ended.<sup>16</sup>

### ***Coercion or Duress***

The defense of coercion or duress allows a defendant to avoid liability because coercive conditions negate a conclusion of guilt even though the defendant acted knowingly or willingly.<sup>17</sup> To be entitled to the defense of duress, these six elements must be demonstrated:

- The defendant reasonably believed that a danger or emergency existed that he did not intentionally cause;
- The danger or emergency threatened significant harm to himself or herself or another person;
- The threatened harm must have been real, imminent, and impending;
- The defendant had no reasonable means to avoid the danger or emergency except by committing the crime;
- The crime must have been committed out of duress to avoid the danger or emergency; and

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<sup>12</sup> Section 775.027(2), F.S.

<sup>13</sup> Section 777.201, F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Knight v. State*, 187 So.3d 307, 309 (Fla. 5th DCA 2016), citing *Marrero v. State*, 516 So.2d 1051, 1054 (Fla 3d DCA 1987).

<sup>16</sup> *Id.*

<sup>17</sup> *Tyler v. State*, 131 So.2d 811, 812 (Fla. 1st DCA 2014), citing *Dixon v. U.S.*, 548 U.S. 1, 7 (2006).



- The harm the defendant avoided outweighs the harm caused by committing the crime.<sup>18</sup>

### Gay and Transgender Panic Defenses

According to a Gallup report, 5.6 percent of U.S. adults identify as lesbian, gay, bisexual, or transgender.<sup>19</sup> Crimes based on a person's sexual orientation or gender identity accounted for 19.4 percent of hate crimes in the U.S., in 2019.<sup>20</sup>

The term “homosexual panic” was first coined in 1920 by a psychiatrist who saw a pattern in his patients that self-identified as heterosexual but were attracted to members of the same sex.<sup>21</sup> The Diagnostic and Statistical Manual of Mental Disorders, the official list of psychiatric disorders published by the American Psychiatric Association, listed “homosexual panic disorder” in its 1952 edition, but it has not appeared in the manual since then.<sup>22</sup> In the 1960's, criminal defense attorneys began using the idea of gay panic to explain why their male clients who were accused of murdering men should be found not guilty.<sup>23</sup>

Although there is no officially recognized “gay panic” or “trans panic” defense, it is often used to bolster claims of insanity, diminished capacity, provocation, and self-defense. The “gay panic” defense refers to defense strategies that rely on the notion that a criminal defendant's conduct should be excused or justified if his or her actions were in response to a homosexual advance.<sup>24</sup> The “trans panic” defense refers to defense strategies in which a criminal defendant claims that the discovery of the victim's biological sex was so upsetting that he or she panicked and lost self-control.<sup>25</sup>

In 2013, the American Bar Association adopted a resolution urging federal, tribal, state, local, and territorial governments to take action to curtail the availability and effectiveness of “gay panic” and “trans panic” defenses.<sup>26</sup> Eleven states and the District of Columbia have enacted

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<sup>18</sup> *Stannard v. State*, 113 So.2d 929, 932 ((Fla. 5th DCA 2013), quoting *Driggers v. State*, 917 So.2d 329, 330 (Fla. 5th DCA 2005).

<sup>19</sup> Jones, Jeffrey, *LGBT Identification Rises to 5.6% in Latest U.S. Estimate*, GALLUP, (February 24, 2021), available at <https://news.gallup.com/poll/329708/lgbt-identification-rises-latest-estimate.aspx> (last visited March 24, 2021).

<sup>20</sup> U.S. Dep't of Justice, *2019 Hate Crime Statistics*, available at <https://www.justice.gov/hatecrimes/hate-crime-statistics> (last visited March 24, 2021).

<sup>21</sup> Lee, Cynthia, *The Gay Panic Defense*, 42 U.C. DAVIS L. REV. 471, 482 (2008), available at [https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1796&context=faculty\\_publications](https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1796&context=faculty_publications) (last visited March 24, 2021).

<sup>22</sup> *Id* at 483.

<sup>23</sup> *Id* at 475.

<sup>24</sup> *Id* at 475.

<sup>25</sup> Lee, Cynthia, *The Trans Panic Defense Revisited*, 57 Am. Crim L. Rev. 1411 (2020), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3481295](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3481295) (last visited March 24, 2021). Click “Download this Paper” to access the article.

<sup>26</sup> American Bar Association, *Resolution 113A*, (August 2013), available at <https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/aug-13-gay-panic.authcheckdam.pdf> (last visited March 24, 2021).

laws prohibiting the use of “gay panic” and “trans panic” defenses.<sup>27</sup> Several other states have bills prohibiting the defenses pending before their legislatures.<sup>28</sup>

Bills prohibiting the defenses in federal criminal proceedings was also introduced in the 115th Congress (2017-2018)<sup>29</sup> and the 116th Congress (2019-2020).<sup>30</sup> The bills have not yet been reintroduced in the 117th Congress.

### III. Effect of Proposed Changes:

The bill provides that the act may be cited as the “Gay and Transgender Panic Legal Defense Prohibition Act.”

The bill provides legislative findings that gay and transgender panic legal defenses, which continue to be raised in proceedings, characterize the sexual orientation and gender expression or gender identity as objectively reasonable excuses for the loss of self-control, and thereby illegitimately attempt to mitigate the responsibility of a perpetrator for harm done to a lesbian, gay, bisexual, or transgender individual.

The bill prohibits a defendant from using a gay or transgender panic legal defense to justify a criminal offense or mitigate the severity of a criminal offense during sentencing when such conduct is based on a nonviolent sexual advance or the perception or belief, even if inaccurate, of the sex, sexual orientation, gender identity, or gender expression of an individual.

The bill defines the following terms:

- “Gay and transgender panic legal defense” means a legal strategy that asks a judge or jury to find that the victim’s sexual orientation or gender identity is the cause of the defendant’s reaction and commission of a criminal offense.
- “Gender expression” or “gender identity” means gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with a person’s physiology or assigned sex at birth.
- “Sexual orientation” means an individual’s actual or perceived heterosexuality, homosexuality, or bisexuality.

The bill is effective July 1, 2021.

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<sup>27</sup> The LGBT Bar, *LGBTQ+ “Panic” Defense Legislation Map*, available at <https://lgbtbar.org/programs/advocacy/gay-trans-panic-defense/gay-trans-panic-defense-legislation/> (last visited March 24, 2021). The states that have enacted laws include: California, Colorado, Connecticut, Hawaii, Illinois, Maine, Nevada, New Jersey, New York, Rhode Island, and Washington.

<sup>28</sup> *Id.* States where legislation has been introduced include: Florida, Iowa, Maryland, Massachusetts, Minnesota, Nebraska, New Hampshire, New Mexico, Oregon, Pennsylvania, Texas, Vermont, Virginia, and Wisconsin.

<sup>29</sup> See Gay and Trans Panic Defense Prohibition Act of 2018, S. 3188, 115th Cong. (2017-2018), and Gay and Trans Panic Defense Prohibition Act of 2018, H.R. 6358, 115th Cong. (2017-2018).

<sup>30</sup> See Gay and Trans Panic Defense Prohibition Act of 2019, S. 1721, 116th Cong. (2019-2020), and Gay and Trans Panic Defense Prohibition Act of 2019, H.R. 3133, 116th Cong. (2019-2020).

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

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

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 900.06 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Criminal Justice on March 30, 2021:**

The committee substitute removes the descriptor “violent” in reference to the defendant’s reaction in the definition of “gay and transgender legal defense.”

- B. **Amendments:**

None.



662326

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
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	.	

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

**Senate Amendment**

Delete line 33  
and insert:  
defendant's reaction and commission of a criminal

By Senator Book

32-00204A-21

2021718\_\_

A bill to be entitled

An act relating to gay and transgender panic legal defenses; creating s. 900.06, F.S.; providing a short title; providing legislative findings; defining terms; prohibiting individuals from using a nonviolent sexual advance or specified perceptions or beliefs about another individual as a defense to a criminal offense, to excuse or justify the conduct of the individual who commits a criminal offense, or to mitigate the severity of a criminal offense; providing an effective date.

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

Section 1. Section 900.06, Florida Statutes, is created to read:

900.06 Use of gay and transgender panic legal defense prohibited.—

(1) SHORT TITLE.—This act may be cited as the "Gay and Transgender Panic Legal Defense Prohibition Act."

(2) LEGISLATIVE FINDINGS.—The Legislature finds that gay and transgender panic legal defenses, which continue to be raised in criminal proceedings, characterize sexual orientation and gender expression or gender identity as objectively reasonable excuses for the loss of self-control, and thereby illegitimately attempt to mitigate the responsibility of a perpetrator for harm done to a lesbian, gay, bisexual, or transgender individual.

(3) DEFINITIONS.—As used in this section, the term:

Page 1 of 2

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

32-00204A-21

2021718\_\_

(a) "Gay and transgender panic legal defense" means a legal strategy that asks a judge or a jury to find that a victim's sexual orientation or gender identity is the cause of the defendant's violent reaction and commission of a criminal offense.

(b) "Gender expression" or "gender identity" means gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with a person's physiology or assigned sex at birth.

(c) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, or bisexuality.

(4) PROHIBITION ON GAY AND TRANSGENDER PANIC LEGAL DEFENSE.—A nonviolent sexual advance or the perception or belief, even if inaccurate, of the sex, sexual orientation, gender identity, or gender expression of an individual may not be used as a defense to a criminal offense, to excuse or to justify the conduct of an individual who commits a criminal offense, or to mitigate the severity of a criminal offense during sentencing.

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

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/21

Meeting Date

718

Bill Number (if applicable)

Topic Gay & Transgender Panic

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)

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

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

3/30

Meeting Date

SB718

Bill Number (if applicable)

Topic LGBTQ rights

Amendment Barcode (if applicable)

Name Chloe Elias

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

Address 75 N Woodward Ave

Phone 561 324 7499

Street

Tallahassee

City

FL

State

32313

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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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)

3/30/21

Meeting Date

SB 718

Bill Number (if applicable)

Topic Gay and Trans Panic Legal Defenses 

Amendment Barcode (if applicable)

Name Annie Filkowski

Job Title Legislative Representative

Address \_\_\_\_\_

Phone (239) 849-2644

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City

FL

State

32311

Zip

Email anniejac.filkowski@ppsentfl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Alliance of Planned Parenthood Affiliates

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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3/30

Meeting Date

SB718

Bill Number (if applicable)

Topic LC1BTQ Rights

Amendment Barcode (if applicable)

Name Madeline Riley

Job Title

Address 3148 Village Green Dr

Phone (941) 275-5006

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Sarasota

FL

34239

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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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)

03/30

Meeting Date

SB 718

Bill Number (if applicable)

Topic LGBTQ Right

Amendment Barcode (if applicable)

Name Hannah Fulk

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

Address 1638 Atkumire Drive

Phone 850 340 1319

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32304

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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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)

3-30-21

Meeting Date

718

Bill Number (if applicable)

Topic

Trans Legal Defense

Amendment Barcode (if applicable)

Name

Barbara DeNane

Job Title

Address

625 E Bernard St

Phone

Street

Tallahassee

State

FL 32308

Zip

Email

barb@denane1.com

City

Speaking:

☐

For

☐

Against

☐

Information



Waive Speaking:

☒

In Support

☐

Against

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

Representing

FL NOW

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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3/30/2021  
Meeting Date

718  
Bill Number (if applicable)

Topic Gay & Transgender Panic Legal Defense Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Coll St.

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Tallahassee

City

FL

State

32301

Zip

Phone 850-321-9386

Email fcsep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Center for Fiscal & Economic Policy

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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03/30

Meeting Date

SB 718

Bill Number (if applicable)

Topic LGBTQ Rights

Amendment Barcode (if applicable)

Name Abigail O'Laughlin

Job Title Student

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Street

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32578  
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Email abigailolaughlin@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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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03/30

Meeting Date

SB 718

Bill Number (if applicable)

Topic LG BTQ Rights

Amendment Barcode (if applicable)

Name Kaitlyn Lilly

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

Address 2636 Mission Rd Apt 16

Street

Phone 813-992-3419

Tallahassee

City

FL

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32313

Zip

Email lilly.kaitlyn@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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

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

718

Bill Number (if applicable)

Topic Gay Trans Panic Legal Defense Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Director

Address P.O. Box 10788

Phone 850 570 9560

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Tallahassee

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32303

Zip

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 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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03/30

Meeting Date

SB 718

Bill Number (if applicable)

Topic LG BTG rights

Amendment Barcode (if applicable)

Name Patrice Randolph

Job Title Singer Songwriter

Address 2707 Lake Palm Dr

Phone 850 901-3299

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32310

City

State

Zip

Email patricerandolph@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Planned Parenthood Se 10

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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03/30

Meeting Date

SB 718

Bill Number (if applicable)

Topic LGBTQ rights

Amendment Barcode (if applicable)

Name Lauren Brenzel

Job Title organizer

Address ~~2000 N. Magnolia Avenue~~  
Street

Phone 850-514-7455  
661-212-1482

Tallahassee FL 32303  
City State Zip

Email lauren.brenzel@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**

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03130

Meeting Date

SB 718

Bill Number (if applicable)

Topic

LGBTQ+ rights

Amendment Barcode (if applicable)

Name

Rhamira Corbett

Job Title

Digital Communications Intern

Address

2300 Bluff Oak Way

Phone

240-696-9026

Street

Tallahassee

FL

32311

Email

rhamira@gmail.com

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

~~Planned Parenthood~~

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)

3/30/21

Meeting Date

SB 718

Bill Number (if applicable)

Topic LGBTQ+ Rights

Amendment Barcode (if applicable)

Name Emily Richeson

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

Address 1433 Branch St

Phone \_\_\_\_\_

Street

TLH FL 32303

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 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)

3/30/21

Meeting Date

SB 718

Bill Number (if applicable)

Topic Panic Defense

Amendment Barcode (if applicable)

Name Jon Harris Maurer

Job Title Public Policy Dir.

Address 201 E Park Ave, Ste. 200A  
Street

Phone 850-681-0980

TLH FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Equality Florida

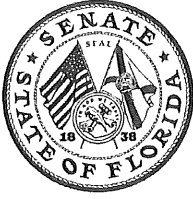
Appearing at request of Chair: ☐ Yes ☒ No

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.

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Jason Pizzo, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** February 4, 2021

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I respectfully request that **Senate Bill 718**, relating to Gay and Transgender Panic Legal Defenses, be placed on the:

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

Thank you for your consideration.

A handwritten signature in cursive script that reads "Lauren Book".

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Senator Lauren Book  
Florida Senate, District 32

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

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

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

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BILL: CS/SB 818

INTRODUCER: Criminal Justice Committee and Senator Burgess

SUBJECT: Mental Health Professionals

DATE: March 30, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van Winkle	Brown	HP	<b>Favorable</b>
2.	Siples	Jones	CJ	<b>Fav/CS</b>
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 818 revises licensure requirements for marriage and family therapists. The bill revises the educational requirements for licensure as a marriage and family therapist; and grandfather's certain programs that do not hold accreditation from certain accrediting organizations. The bill also requires the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (board) to designate theory and practice examination for licensure as a marriage and family therapist.

The bill deletes the current-law requirement that a licensed mental health professional must remain on the premises when clinical services are provided by a registered mental health counseling intern or a marriage and family therapy intern in a private practice setting. When a registered marriage and family therapy intern is providing clinical services through telehealth, the bill requires that a licensed mental health professional be accessible by telephone or other electronic means.

The bill also authorizes the appointment of physicians licensed under chs. 458 or 459, F.S., and mental health professionals licensed under ch. 491, F.S., as experts in criminal cases.

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

## II. Present Situation:

The Legislature created the Department of Health (DOH) to protect and promote the health of all residents and visitors in the state.<sup>1</sup> The DOH is charged with the regulation of health care practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards<sup>2</sup> and professions within the DOH.<sup>3</sup>

### **Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling**

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (board) within the DOH regulates the practices of social work, marriage and family therapy, and mental health counseling.<sup>4</sup> Chapter 491, F.S., sets forth the licensure requirements for each profession, as well as requirements for licensure renewal, continuing education, discipline, and professional conduct.

Section 491.005, F.S., sets out the educational and examination requirements for a clinical social worker, marriage and family therapist, or mental health counselor to obtain a license by examination in Florida. An individual applying for licensure by examination who has satisfied the clinical experience requirements of s. 491.005, F.S., or an individual applying for licensure by endorsement pursuant to s. 491.006, F.S., intending to provide clinical social work, marriage and family therapy, or mental health counseling services in Florida, while satisfying coursework or examination requirements for licensure, must obtain a provisional license in the profession for which he or she is seeking licensure prior to beginning practice.<sup>5</sup>

### ***Marriage and Family Therapists***

A marriage and family therapist uses scientific and applied marriage and family theories, methods, and procedures to describe, evaluate, and modify marital, family, and individual behavior within the context of marital and family systems, including the context of marital formation and dissolution, and is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques.<sup>6</sup> The practice of marriage and family therapy includes, but is not limited to, marriage and family therapy, psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether

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<sup>1</sup> Section 20.43(1), F.S.

<sup>2</sup> Under s. 456.001(1), F.S., the term “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MQA.

<sup>3</sup> Section 20.43(3)(g), F.S.

<sup>4</sup> Section 491.004, F.S.

<sup>5</sup> Section 491.0046, F.S.

<sup>6</sup> Section 491.003(8), F.S.



cognitive, affective, or behavioral), behavioral disorders, sexual dysfunction, alcoholism, or substance abuse.<sup>7</sup>

Section 491.005(3), F.S., provides the licensure by examination requirements for marriage and family therapists. The DOH must issue a license to an applicant as a marriage and family therapist if the board certifies that the applicant:

- Has submitted an application and appropriate fees;
- Has a minimum of a master's degree from:
  - A program accredited by the Commission on Accreditation for Marriage and Family Therapy Education,<sup>8</sup> which has an emphasis on marriage and family therapy or a closely related field; or
  - A Florida university program accredited by the Council for the Accreditation of Counseling and Related Educational Programs (CACREP)<sup>9</sup> and graduate courses approved by the board;
- Has had at least two years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, at the post-master's level, under the supervision of a licensed marriage and family therapist who is a board-qualified supervisor;
- Has passed the examination developed by the Examinations Advisory Committee of the Association of Marital and Family Therapy Regulatory Boards;<sup>10</sup> and
- Has completed a board-approved 8-hour course on Florida laws and rules governing the practice of clinical social work, marriage and family, and mental health counseling.<sup>11</sup>

### ***Mental Health Counselors***

A mental health counselor is someone who is licensed in this state to practice mental health counseling.<sup>12</sup> The practice of mental health counseling involves the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development and is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation.<sup>13</sup> The practice of mental health counseling includes, but is not limited to, psychotherapy, hypnotherapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate,

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<sup>7</sup> *Id.*

<sup>8</sup> See Commission on Accreditation for Marriage and Family Therapy Education, *Accreditation Manual: Policies and Procedures*, November 2019, available at <https://www.coamfte.org/documents/COAMFTE/COAMFTE%20Accreditation%20Manual%20Policies%20and%20Procedures.pdf> (last visited March 29, 2021).

<sup>9</sup> See Council for Accreditation of Counseling & Related Educational Programs, *2016 CACREP Standards*, available at <http://www.cacrep.org/wp-content/uploads/2018/05/2016-Standards-with-Glossary-5.3.2018.pdf> (last visited March 29, 2021).

<sup>10</sup> Fla Admin. Code R. 64B4-3.003(2)(c), (2021).

<sup>11</sup> Fla Admin. Code R. 64B4-3.0035, (2021).

<sup>12</sup> Section 491.003(6), F.S.

<sup>13</sup> Section 491.003(9), F.S.

assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), behavioral disorders, sexual dysfunction, alcoholism, or substance abuse.<sup>14</sup>

Section 491.005(4), F.S., relates to licensure by examination for mental health counselors. The DOH must issue a license to an applicant as a mental health counselor if the board certifies that the applicant:

- Has submitted an application and appropriate fees;
- Has a minimum of a master's degree from:
  - A mental health counseling program accredited by the CACREP which includes clinical and didactic instruction, including courses in human sexuality and substance abuse; or
  - A non-CACREP accredited program related to the practice of mental health counseling, but with coursework and practicum, internship, or fieldwork that meet all of the following:
    - Thirty-three semester hours, or 44 quarter hours, which must include a minimum of three semester hours, or four quarter hours of graduate-level coursework in 11 content areas;<sup>15</sup>
    - Includes a minimum of three semester hours, or four quarter hours, of coursework in the diagnostic processes and emphasized the common core curricular experience; and
    - Includes at least 700 hours of university-sponsored supervised clinical practicum, internship, or field experience that includes 280 hours of direct client services, as required in the accrediting standards of the CACREP for mental health counseling programs; or the equivalent, as determined by the board;
- Has passed the National Clinical Mental Health Counseling Examination, the clinical simulation examination by the National Board for Certified Counselors;<sup>16</sup> and
- Has had at least two years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor who is a board-qualified supervisor.<sup>17</sup>

In 2020, the Legislature enacted legislation that requires applicants who apply for licensure as a licensed mental health counselor on or after July 1, 2025, to hold a master's degree from a program accredited by the CACREP.<sup>18</sup>

### ***Registered Mental Health Interns***

An individual who has not satisfied the postgraduate or post-master's level of experience requirements under s. 491.005, F.S., must register as an intern in the profession for which he or she is seeking licensure before commencing the post-master's experience requirement. An

<sup>14</sup> *Id.*

<sup>15</sup> See s. 491.005(4)(b)1.a., F.S. The graduate course work must include the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

<sup>16</sup> Fla Admin. Code R. 64B4-3.003(2)(b), (2021).

<sup>17</sup> Section 491.005(4), F.S.

<sup>18</sup> Chapter 2020-133, s. 44, L.O.F.

individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience outside the academic arena, must register as an intern in the profession for which he or she is seeking licensure before commencing the practicum, internship, or field experience.<sup>19</sup>

A licensed mental health professional is required to be on the premises when clinical services are provided by a registered intern in a private practice setting.<sup>20</sup> Neither the statute, nor board rule, define a “private practice setting.”

Section 491.005, F.S., contains the same provision for registered clinical social worker interns and registered marriage and family therapy interns.

In response to the COVID-19 pandemic, the board revised Rule 64B4-2.002 of the Florida Administrative Code, defining supervision, to authorize registered interns to provide face-to-face psychotherapy by electronic methods (telehealth) if the intern establishes a written telehealth protocol and safety plan with their qualified supervisor.<sup>21</sup> The protocol must include a provision that the supervisor remain readily available during electronic therapy sessions and that the registered intern and their qualified supervisor have determined that providing face-to-face psychotherapy by electronic methods is not detrimental to the patient, is necessary to protect the health, safety, or welfare of the patient, and does not violate any existing statutes or regulations.<sup>22</sup>

### **Accreditation of Educational Programs**

The goal of accreditation is to ensure that higher education institutions and programs meet acceptable levels of quality.<sup>23</sup> There are two types of accreditation: institutional and specialized or programmatic. Institutional accreditation applies to the entire institution, and specialized or programmatic accreditation normally applies to programs, departments, or schools that are part of an institution.<sup>24</sup>

Colleges and universities are accredited by one of 19 recognized institutional accrediting organizations, and programs are accredited by one of approximately 60 recognized programmatic accrediting organizations.<sup>25</sup> Accrediting organizations are private, nongovernmental organizations created to review higher education institutions and programs for quality.<sup>26</sup> All recognized accrediting organizations have been reviewed for quality by the U.S. Department of Education (DOE) or the Council for Higher Education Accreditation (CHEA).<sup>27</sup>

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<sup>19</sup> Section 491.0045, F.S.

<sup>20</sup> Section 491.005(4)(c), F.S.

<sup>21</sup> Florida Department of Health, State Surgeon General, Emergency Order, DOH No.20-002, filed Mar. 16, 2020, available at <https://www.flhealthsource.gov/pdf/emergencyorder-20-002.pdf> (last visited March 29, 2021).

<sup>22</sup> Fla Admin. Code R. 64B4-2.002(6), (2021).

<sup>23</sup> U.S. Dep’t of Education, *Overview of Accreditation in the United States*, (last rev. February 2, 2021), available at <https://www2.ed.gov/admins/finaid/accred/accreditation.html#Overview> (last visited March 29, 2021).

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

<sup>25</sup> Council for Higher Education Accreditation, *About Accreditation*, available at <https://www.chea.org/about-accreditation> (last visited March 29, 2021).

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

<sup>27</sup> *Id.*

The U.S. DOE oversees the accreditation of post-secondary educational institutions and programs by reviewing all federally-recognized accrediting organizations. The Secretary of Education will recognize an accrediting organization that is determined to be a reliable authority as to the quality of education or training provided by the institutions it accredits.<sup>28</sup> The primary functions of accreditation are:

- Assessment of the quality of academic programs;
- To create a culture of continuous improvement and simulate a general raising of the standards;
- To involve faculty and staff in institutional evaluation and planning; and
- To establish criteria for professional certification and licensure and for upgrading courses offering such preparation.<sup>29</sup>

The CHEA is an association of degree-granting colleges and universities that recognizes institutional and programmatic accrediting organizations.<sup>30</sup> Recognition by the CHEA affirms that the standards and processes of the accrediting organization are consistent with the academic quality, improvement, and accountability expectations that the CHEA has established.<sup>31</sup>

Both the CHEA and the U.S. DOE recognize the Commission of Accreditation for Marriage and Family Therapy Education and the CACREP.<sup>32</sup>

### **Appointment of Experts**

In criminal proceedings involving mentally ill and intellectually disabled persons, s. 916.115, F.S., authorizes a court to appoint no more than three experts to determine the mental condition of a defendant in a criminal case. Under current law, the appointed experts must be a psychiatrist, licensed psychologist, or physician.<sup>33</sup>

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

The bill revises the licensure requirements for marriage and family therapists and licensed mental health counselors and the supervision requirements for registered mental health interns.

The bill revises the educational requirements for licensure by examination for marriage and family therapy to require an applicant to hold, at a minimum, one of the following degrees:

- A master's degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education;

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<sup>28</sup> *Supra*, note 23.

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

<sup>30</sup> Council for Higher Education Accreditation, *CHEA at a Glance*, July 1, 2019, available at <https://www.chea.org/about> (last visited March 29, 2021).

<sup>31</sup> Council for Higher Education Accreditation, *2020-2021 Directory of CHEA-Recognized Accrediting Organizations*, February 2021, available at <https://www.chea.org/2020-2021-directory-chea-recognized-accrediting-organizations-pdf> (last visited March 29, 2021).

<sup>32</sup> Council for Higher Education Accreditation, *CHEA- and USDE-Recognized Accrediting Organizations*, April 1, 2018, available at <https://www.chea.org/chea-and-usde-recognized-accrediting-organizations> (last visited March 29, 2021).

<sup>33</sup> Section 916.115(1)(a), F.S.

- A master's degree with a major emphasis in marriage and family therapy or a closely related field from a university program accredited by the CACREP and graduate programs approved by the board; or
- A master's degree with an emphasis in marriage and family therapy or a closely related field, which is conferred before July 1, 2026, from an institutionally accredited college or university and graduate courses approved by the board.

The bill requires course work for licensure as a marriage and family therapist to be taken at an institutionally accredited institution, rather than one accredited by a regional accrediting body. The bill requires marriage and family licensure applicants to pass a theory and practice examination designated by board rule, rather than an examination provided by the DOH, conforming the law to current practice.

The bill removes the requirement that a licensed mental health professional remain on the premises when clinical services are provided by a registered mental health counselor intern or a registered marriage and family therapy intern in a private practice setting. The bill requires that a licensed mental health professional be accessible by telephone or other electronic means when a registered marriage and family therapy intern is providing clinical services through telehealth.

The bill also authorizes the appointment of mental health professionals licensed under ch. 491, F.S., as experts in criminal cases, in addition to psychiatrists, licensed psychologists, or physicians currently authorized to serve as experts.

The bill provides 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.

**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:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 491.005 and 916.115.

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

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

**CS by Criminal Justice on March 30, 2021:**

The committee substitute:

- Revises the educational requirements for licensure by examination for marriage and family therapists;
- Removes the requirement that a licensed mental health professional be on the premises when a registered marriage and family therapy intern is providing clinical services in a private setting;
- Requires that a licensed mental health professional be accessible by telephone or other electronic means when a registered marriage and family therapy intern is providing clinical services through telehealth; and
- Requires the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling designate a theory and practice examination by rule; rather than the Department of Health providing the examination.

B. Amendments:

None.

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

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526946

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
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The Committee on Criminal Justice (Burgess) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 16 - 18

and insert:

Section 1. Subsection (3) and paragraph (c) of subsection (4) of of section 491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by





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board rule, plus the actual cost of the purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or similar national organization, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies has met the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b) 1. Obtained one of the following:

a. A minimum of a master's degree in marriage and family therapy from a program accredited by the Commission on Accreditation from Marriage and Family Therapy Education.

b. A minimum of a master's degree with major emphasis in marriage and family therapy or a closely related field from a university program accredited by the Council for Accreditation of Counseling and Related Educational Programs and graduate courses approved by the board.

c. A minimum of a master's degree with an emphasis in marriage and family therapy or a closely related field, with a degree conferred date before July 1, 2026, from an institutionally accredited college or university and graduate course approved by the board.

~~Has a minimum of a master's degree with major emphasis in marriage and family therapy or a closely related field from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs and graduate courses approved by the Board of Clinical Social Work, Marriage~~



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~~and Family Therapy, and Mental Health Counseling.~~

2. If the course title that appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course. The required master's degree must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by an institutional ~~a regional~~ accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation or publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by an institutional ~~a regional~~ accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were



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equivalent to an accredited program in this country. An applicant with a master's degree from a program that did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education.

(c) ~~Has~~ Had at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must have been ~~be~~ at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field which did not include all of the coursework required by paragraph (b), credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of 10 of the courses required by paragraph (b), as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 years of required experience, the applicant must ~~shall~~ provide direct individual, group, or family therapy and counseling to cases including those involving unmarried dyads, married couples, separating and divorcing couples, and family groups that include



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children. A doctoral internship may be applied toward the clinical experience requirement. When a registered intern is providing clinical services through telehealth, a licensed mental health professional must be accessible by telephone or other electronic means. ~~A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.~~

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department.~~

(e) ~~Has~~ Demonstrated, in a manner designated by board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure may not exceed those stated in this subsection.

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

And the title is amended as follows:

Delete line 3

and insert:

amending s. 491.005, F.S.; revising the licensure requirements for licensure by examination by marriage and family therapists; revising education requirements; for purposes of clinical experience, deleting a requirement that a licensed mental health professional be on the premises when a registered



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127 intern is providing clinical services in a private  
128 setting; requiring a licensed mental health  
129 professional to be accessible by telephone or  
130 electronic means when a registered intern is providing  
131 services through telehealth; requiring the board to  
132 designate a theory and practice examination by rule;  
133 for purposes of clinical



840726

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/30/2021	.	
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The Committee on Criminal Justice (Burgess) recommended the following:

**Senate Substitute for Amendment (526946) (with title amendment)**

Delete lines 16 - 25  
and insert:

Section 1. Subsection (3) and paragraphs (b) and (c) of subsection (4) of of section 491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of



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documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual cost of the purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or similar national organization, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies has met the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b) 1. Obtained one of the following:

a. A minimum of a master's degree in marriage and family therapy from a program accredited by the Commission on Accreditation from Marriage and Family Therapy Education.

b. A minimum of a master's degree with major emphasis in marriage and family therapy or a closely related field from a university program accredited by the Council for Accreditation of Counseling and Related Educational Programs and graduate courses approved by the board.

c. A minimum of a master's degree with an emphasis in marriage and family therapy or a closely related field, with a degree conferred date before July 1, 2026, from an institutionally accredited college or university and graduate course approved by the board.

~~Has a minimum of a master's degree with major emphasis in marriage and family therapy or a closely related field from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs and graduate~~



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~~courses approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.~~

2. If the course title that appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course. The required master's degree must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by an institutional ~~a regional~~ accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation or publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by an institutional ~~a regional~~ accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the





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applicant's graduate degree program and education were equivalent to an accredited program in this country. An applicant with a master's degree from a program that did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education.

(c) ~~Has~~ Had at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must have been ~~be~~ at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field which did not include all of the coursework required by paragraph (b), credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of 10 of the courses required by paragraph (b), as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 years of required experience, the applicant must ~~shall~~ provide direct individual, group, or family therapy and counseling to cases including those involving unmarried dyads, married couples,



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separating and divorcing couples, and family groups that include children. A doctoral internship may be applied toward the clinical experience requirement. When a registered intern is providing clinical services through telehealth, a licensed mental health professional must be accessible by telephone or other electronic means. ~~A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.~~

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department.~~

(e) ~~Has~~ Demonstrated, in a manner designated by board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure may not exceed those stated in this subsection.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual per applicant cost of purchase of the examination from the National Board for Certified Counselors or its successor organization, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

(b) 1. Has a minimum of an earned master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs



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which consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse. If the master's degree is earned from a program related to the practice of mental health counseling which is not accredited by the Council for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet all of the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

b. A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework addressing diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. The graduate program must have emphasized the common core curricular experience.



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c. The equivalent, as determined by the board, of at least 700 hours of university-sponsored supervised clinical practicum, internship, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. Has provided additional documentation if a course title that appears on the applicant's transcript does not clearly identify the content of the coursework. The documentation must include, but is not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by a regional accrediting body recognized by the Council for Higher Education Accreditation or its successor organization or publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Council for Higher Education Accreditation or its successor organization. Such foreign education and training must have been received in an



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institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as mental health counselors. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. Beginning July 1, 2025, an applicant must have a master's degree from a program that is accredited by the Council for Accreditation of Counseling and Related Educational Programs, Masters in Psychology and Counseling Accreditation Council, or an equivalent accrediting body, as determined by board rule, which consists of at least 60 semester hours or 80 quarter hours to apply for licensure under this paragraph.

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

And the title is amended as follows:

Delete line 3

and insert:

amending s. 491.005, F.S.; revising the licensure requirements for licensure by examination by marriage and family therapists; revising education requirements; for purposes of clinical experience, deleting a requirement that a licensed mental health professional be on the premises when a registered intern is providing clinical services in a private



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214        setting; requiring a licensed mental health  
215        professional to be accessible by telephone or  
216        electronic means when a registered intern is providing  
217        services through telehealth; requiring the board to  
218        designate a theory and practice examination by rule;  
219        providing additional organizations that may accredit  
220        educational programs for purposes of licensure as a  
221        licensed mental health counselor; for purposes of  
222        clinical

By Senator Burgess

20-00725-21

2021818\_\_

1 A bill to be entitled  
 2 An act relating to mental health professionals;  
 3 amending s. 491.005, F.S.; for purposes of clinical  
 4 experience requirements for licensure as a mental  
 5 health counselor, deleting a requirement that a  
 6 licensed mental health professional be on the premises  
 7 when a registered intern is providing clinical  
 8 services in a private practice setting; amending s.  
 9 916.115, F.S.; authorizing courts to appoint mental  
 10 health professionals licensed under ch. 491, F.S., as  
 11 experts in criminal cases; providing an effective  
 12 date.  
 13  
 14 Be It Enacted by the Legislature of the State of Florida:  
 15  
 16 Section 1. Paragraph (c) of subsection (4) of section  
 17 491.005, Florida Statutes, is amended to read:  
 18 491.005 Licensure by examination.—  
 19 (4) MENTAL HEALTH COUNSELING.—Upon verification of  
 20 documentation and payment of a fee not to exceed \$200, as set by  
 21 board rule, plus the actual per applicant cost of purchase of  
 22 the examination from the National Board for Certified Counselors  
 23 or its successor organization, the department shall issue a  
 24 license as a mental health counselor to an applicant who the  
 25 board certifies:  
 26 (c) Has had at least 2 years of clinical experience in  
 27 mental health counseling, which must be at the post-master's  
 28 level under the supervision of a licensed mental health  
 29 counselor or the equivalent who is a qualified supervisor as

Page 1 of 3

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

20-00725-21

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30 determined by the board. An individual who intends to practice  
 31 in Florida to satisfy the clinical experience requirements must  
 32 register pursuant to s. 491.0045 before commencing practice. If  
 33 a graduate has a master's degree with a major related to the  
 34 practice of mental health counseling which did not include all  
 35 the coursework required under sub-subparagraphs (b)1.a. and b.,  
 36 credit for the post-master's level clinical experience may not  
 37 commence until the applicant has completed a minimum of seven of  
 38 the courses required under sub-subparagraphs (b)1.a. and b., as  
 39 determined by the board, one of which must be a course in  
 40 psychopathology or abnormal psychology. A doctoral internship  
 41 may be applied toward the clinical experience requirement. ~~A~~  
 42 ~~licensed mental health professional must be on the premises when~~  
 43 ~~clinical services are provided by a registered intern in a~~  
 44 ~~private practice setting.~~  
 45 Section 2. Paragraph (a) of subsection (1) of section  
 46 916.115, Florida Statutes, is amended to read:  
 47 916.115 Appointment of experts.—  
 48 (1) The court shall appoint no more than three experts to  
 49 determine the mental condition of a defendant in a criminal  
 50 case, including competency to proceed, insanity, involuntary  
 51 placement, and treatment. The experts may evaluate the defendant  
 52 in jail or in another appropriate local facility or in a  
 53 facility of the Department of Corrections.  
 54 (a) To the extent possible, the appointed experts shall  
 55 have completed forensic evaluator training approved by the  
 56 department, and each shall be a psychiatrist or a physician  
 57 licensed under chapter 458 or chapter 459, a licensed  
 58 psychologist licensed under chapter 490, or a mental health

Page 2 of 3

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

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59 professional licensed under chapter 491 ~~physician~~.

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



THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/21

Meeting Date

818

Bill Number (if applicable)

Topic Mental Health Professionals

Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Governmental Consultant

Address 119 S. Monroe Street #202

Phone \_\_\_\_\_

Street

Tallahassee FL 32301

City

State

Zip

Email Corinne@rutledge-ecenia.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Mental Health Counselors 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)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3-30-21

Meeting Date

SB 818

Bill Number (if applicable)

Topic Mental Health Professionals

Amendment Barcode (if applicable)

Name Shane Messer

Job Title Government Affairs Director

Address 316 East Park

Phone 850-224-6048

Street

Tallahassee

FL

32301

Email shane@floridabha.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Council for Behavioral Healthcare

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Jason Pizzo, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 19, 2021

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I respectfully request that **Senate Bill #818**, relating to Mental Health Professionals, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Danny", is written over a horizontal line.

Senator Danny Burgess  
Florida Senate, District 20

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

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

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

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BILL: SB 1156

INTRODUCER: Senator Brandes

SUBJECT: Serious Mental Illness as Bar to Execution

DATE: March 29, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	<b>Favorable</b>
2.			JU	
3.			RC	

---

**I. Summary:**

SB 1156 provides that a court may not impose the death penalty upon a person who was seriously mentally ill at the time of the commission of the capital offense if he or she is convicted. The bill defines the term “serious mental illness” as any mental diagnosis, disability, or defect that significantly impairs a person’s capacity to do any of the following:

- Appreciate the nature, consequences, or wrongfulness of his or her conduct in the criminal offense;
- Exercise rational judgment in relation to the criminal offense; or
- Conform his or her conduct to the requirements of the law in connection with the criminal offense.

The bill provides the necessary procedures for the court to make a determination of serious mental illness as a bar to execution. The bill also specifies that the defendant must present clear and convincing evidence of serious mental illness at the time of the offense to prevail on the motion and preclude the imposition of the death penalty. If the defendant does prevail on the motion the state has the right to appeal such a ruling. The bill allows for retroactive application for defendants who have completed the state postconviction proceedings.

The bill may have a negative fiscal impact on the state courts. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

## II. Present Situation:

### Florida Death Penalty

The death penalty in Florida can be handed down in cases of 1st degree murder and capital drug trafficking felonies.<sup>1</sup> Cases in which the death penalty can be imposed are bifurcated proceedings. If a jury reaches a guilty verdict, a separate proceeding is then held to determine whether the defendant will be sentenced to death or life imprisonment without the possibility of parole. In making such a determination the jury is presented with aggravating and mitigating factors and then makes a sentencing recommendation to the court. For the jury to recommend a death sentence it must unanimously find at least one aggravating factor. The court then weighs any unanimously found aggravated factors and all of the mitigating factors and determines a sentence.<sup>2</sup> Some of the statutory mitigating factors a court can consider include, but are not limited to:

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The defendant acted under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- The age of the defendant at the time of the crime.<sup>3</sup>

### Florida Law, Mental Health in the Criminal Justice Context

Serious mental illness (SMI) is defined by the National Institute of Mental Health as a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities.<sup>4</sup> In 2019, there were an estimated 13.1 million adults aged 18 or older in the United States with SMI. This number represented 5.2 percent of all U.S. adults.<sup>5</sup>

In 2006, the American Bar Association (ABA), American Psychiatric Association, American Psychological Association, and National Alliance on Mental Illness endorsed the principle that a finding of serious mental illness should preclude the death penalty.<sup>6</sup>

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<sup>1</sup> See ss. 782.04 and 893.135, F.S.

<sup>2</sup> See s. 921.141, F.S.

<sup>3</sup> Section 921.142, F.S.

<sup>4</sup> National Institute of Mental Health, *Mental Illness*, January 2021, available at <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml> (last visited March 25, 2021).

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

<sup>6</sup> Richard J. Bonnie, *Mental Illness, Diminished Responsibility, and the Death Penalty: A New Frontier*, January 1, 2017, American Bar Association, available at [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/2016-17-vol-42/vol--42--no--2---the-death-penalty--how-far-have-we-come-/mental-illness--diminished-responsibility--and-the-death-penalty/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2016-17-vol-42/vol--42--no--2---the-death-penalty--how-far-have-we-come-/mental-illness--diminished-responsibility--and-the-death-penalty/) (last visited March 25, 2021).

***Incompetent to Proceed***

Under current law a defendant is deemed incompetent to proceed if he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or if the defendant lacks both a rational and factual understanding of the proceedings against him or her.<sup>7</sup>

If a defendant is suspected of being incompetent, the court, defense counsel, or the State may file a motion to have the defendant's cognitive state assessed.<sup>8</sup> If the motion is granted, court-appointed experts will evaluate the defendant's cognitive state and first determine whether the defendant has a mental illness and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed.<sup>9</sup>

The examining experts must consider and specifically include in a report to the court the defendant's capacity to:

- Appreciate the charges or allegations against the defendant;
- Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
- Understand the adversarial nature of the legal process;
- Disclose to counsel facts pertinent to the proceedings at issue;
- Manifest appropriate courtroom behavior; and
- Testify relevantly.<sup>10</sup>

If an expert finds a defendant incompetent to proceed they must include the following in the report:

- The mental illness causing incompetency;
- Explanation of each possible treatment option in the order of recommendation by the expert;
- Availability of acceptable treatment and whether treatment is available in the community;
- The likelihood the defendant will attain competency under the recommended treatment; and
- The probable duration of treatment to restore competency.<sup>11</sup>

The defendant's competency is then determined by the judge in a subsequent hearing.<sup>12</sup> If the defendant is found to be competent, the criminal proceeding resumes.<sup>13</sup> If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.<sup>14</sup> A defendant who, because of psychotropic medication, is able to understand the nature of the

---

<sup>7</sup> Section 916.12(1), F.S.

<sup>8</sup> Rule 3.210, Fla.R.Crim.P.

<sup>9</sup> Section 916.12(2), F.S.; "Not every manifestation of mental illness demonstrates incompetence to stand trial; rather, the evidence must indicate a present inability to assist counsel or understand the charges." *Thompson v. State*, 88 So. 3d 312, 319 (Fla. 4th DCA 2012) (citing *Card v. Singletary*, 981 F. 2d 481, 487–88 (11th Cir. 1992)). "The question is 'whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings.'" *Id.*, (citing Fla. R. Crim. P. 3.211(a)(1)).

<sup>10</sup> Section 916.12(3), F.S.

<sup>11</sup> Section 916.12(4), F.S.

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

<sup>13</sup> Rule 3.212, Fla.R.Crim.P.

<sup>14</sup> *Id.*; See also, s. 916.13, F.S.

proceedings and assist in the defendant's own defense shall not automatically be deemed incompetent to proceed simply because the defendant's satisfactory mental functioning is dependent upon such medication. In this context "psychotropic medication" means any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs.<sup>15</sup>

The court may dismiss the charges against a defendant who has been adjudicated incompetent to proceed due to mental illness at least 3 years after such determination unless the charge is one of the serious crimes listed in s. 916.145, F.S.<sup>16</sup> However, the charges against such a defendant must be dismissed if the defendant remains incompetent to proceed for 5 continuous, uninterrupted years; unless:

- The court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future; and
- Specifies the time within which the defendant is expected to become competent to proceed.<sup>17</sup>

The charges against any defendant found to be incompetent to proceed due to intellectual disability or autism must be dismissed without prejudice to the state if the defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed 2 years, unless:

- The court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future; and
- Specifies the time within which the defendant is expected to become competent to proceed.<sup>18</sup>

If a defendant is determined to be incompetent to proceed after being found guilty of an offense, but prior to sentencing, the court shall postpone the pronouncement of sentence.<sup>19</sup>

### **Not Guilty by Reason of Insanity**

All persons are presumed to be sane. In Florida it is an *affirmative defense* to a criminal prosecution that, at the time of the commission of the acts constituting the offense, the defendant was insane. The defendant has the burden of proving the defense of insanity by clear and

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<sup>15</sup> Section 916.12(5), F.S.

<sup>16</sup> The serious crimes that may not be dismissed by the court are: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, projecting, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; a forcible felony as defined in s. 776.08 and not listed elsewhere in this subsection; an offense where an element of the offense requires the possession, use, or discharge of a firearm; an attempt to commit an offense listed in this subsection; an offense allegedly committed by a defendant who has had a forcible or violent felony conviction within the 5 years immediately preceding the date of arrest for the nonviolent felony sought to be dismissed; an offense allegedly committed by a defendant who, after having been found incompetent and placed under court supervision in a community-based program, is formally charged by a state attorney or the Office of the Statewide Prosecutor with a new felony offense; or an offense for which there is an identifiable victim and such victim has not consented to the dismissal. Section 916.145(1)(a)-(u), F.S.

<sup>17</sup> Section 916.145(1), F.S.

<sup>18</sup> Section 916.303, F.S., *See also*, s. 916.14, F.S.

<sup>19</sup> Rule 3.214, Fla.R.Crim.P.

convincing evidence.<sup>20</sup> The determination of whether a defendant is not guilty by reason of insanity is determined in accordance with Rule 3.217, Florida Rules of Criminal Procedure.

Insanity is established when:

- The defendant had a mental infirmity, disease, or defect; and
- Because of this condition, the defendant:
  - Did not know what he or she was doing or its consequences; or
  - Although the defendant knew what he or she was doing and its consequences, the defendant did not know that what he or she was doing was wrong.<sup>21</sup>

A defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed pursuant to such finding if the defendant has a mental illness and, because of the illness, is manifestly dangerous to himself or herself or others.<sup>22</sup>

If insanity is not an issue in a trial and if no notice of intent to rely on the defense of insanity has been filed, the trial court can instruct the jury as follows: “Mental illness, an abnormal mental condition, or diminished mental capacity is not a defense to any crime in this case. Any such evidence may not be taken into consideration to show that the defendant lacked the specific intent or did not have the state of mind essential to proving that he or she committed the crime charged or any lesser crime.”<sup>23</sup>

### ***Intellectual Disability***

In 2002, the U.S. Supreme Court ruled that the Eighth Amendment of the U.S. Constitution prohibited the execution of a person with an intellectual disability.<sup>24</sup> The *Atkins* court left it to the states to decide how best to implement the court’s ruling.<sup>25</sup>

Section 921.137, F.S., provides Florida’s statutory scheme for determining whether a defendant is intellectually disabled. Specifically, intellectual disability is defined as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. Section 921.137(1), F.S., also defines the following terms:

<sup>20</sup> Clear and convincing evidence is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue. Fla. Std. Jury Instr. (Crim.) 3.6(a) (2009).

<sup>21</sup> Section 775.027, F.S.

<sup>22</sup> Section 916.15(2), F.S.

<sup>23</sup> Fla. Std. Jury Instr. (Crim.) 3.6(p) (2017); “[D]iminished capacity is not a viable defense in Florida.” *Evans v. State*, 946 So. 2d 1, 11 (Fla. 2006); *Lukehart v. State*, 70 So. 3d 503, 515 (Fla. 2011). Evidence of an abnormal mental condition not constituting legal insanity is inadmissible “for the purpose of proving either that the accused could not or did not entertain the specific intent or state of mind essential to proof of the offense, in order to determine whether the crime charged, or a lesser degree thereof, was in fact committed.” *Chestnut v. State*, 538 So. 2d 820 (Fla. 1989).

<sup>24</sup> “Construing and applying the Eighth Amendment in the light of our “evolving standards of decency,” we therefore conclude that such punishment is excessive and that the Constitution “places a substantive restriction on the State’s power to take the life” of a mentally retarded offender. *Atkins v. Virginia*, 536 U.S. 304, 321, (2002).

<sup>25</sup> *Atkins v. Virginia*, 536 U.S. 304, 317 (2002), quoting *Ford v. Wainwright*, 477 U.S. 399, 405 (1986).



- “Significantly subaverage general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities.<sup>26</sup>
- “Adaptive behavior” which means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.<sup>27, 28</sup>

The Florida Rules of Criminal Procedure establish the procedure for raising the defendant’s intellectual disability as a bar to execution in all first-degree murder cases where the state attorney has not waived the death penalty.<sup>29</sup> The rule requires that:

- The defendant file a motion raising intellectual disability as a bar to execution not later than 90 days prior to trial or at such time as ordered by the court;
- If the defendant has been tested the experts reports must be attached to the motion;
- The court will appoint an expert for the state attorney if requested;
- If the defendant has not been tested, evaluated, or examined by 1 or more experts, the motion shall state that fact and the court shall appoint 2 experts who shall promptly test, evaluate, or examine the defendant and shall submit a written report of any findings to the parties and the court;
- Attorneys for the state and defendant may be present at the examinations conducted by court-appointed experts;
- If the defendant refuses to be examined or fully cooperate with the court appointed experts or the state’s expert, the court may, in the court’s discretion:
  - Order the defense to allow the court-appointed experts to review all mental health reports, tests, and evaluations by the defendant’s expert;
  - Prohibit the defense experts from testifying concerning any tests, evaluations, or examinations of the defendant regarding the defendant’s intellectual disability; or
  - Order such relief as the court determines to be appropriate.
- The court will conduct an evidentiary hearing on the motion, enter a written order prohibiting the death penalty if the defendant is intellectually disabled and order the case to proceed without the death penalty as an issue;
- The state can appeal the order finding the defendant intellectually disabled; and
- A claim authorized under the rule is waived if not filed in accord with the time requirements for filing, unless good cause is shown for the failure to comply with the time requirements.<sup>30</sup>

<sup>26</sup> Rule 65G-4.011, F.A.C., provides that the Stanford-Binet Intelligence Scale and the Wechsler Intelligence Scale must be used in determining whether the defendant has an intellectual disability.

<sup>27</sup> Section 921.137(2), F.S.

<sup>28</sup> The U.S. Supreme Court found s. 921.137, F.S., unconstitutional as applied in *Hall v. Florida*, 572 U.S. 701, 721 (2014). The court found that the Florida Supreme Court “interpreted section 921.137 so narrowly that it precluded sentencing courts from considering substantial evidence that is accepted by the medical community to be probative of intellectual disability.” *Hall v. State*, 201 So.3d 628 (Fla. 2016). In response to the *Hall* decision the Florida Supreme found that “courts may continue to abide by section 921.137(1), but may not have a bright-line cutoff IQ test score because ‘[i]t is not sound to view a single factor as dispositive of a conjunctive and interrelated assessment.’” *Id.* (citing *Hall v. Florida*, 572 U.S. 701, 723 (2004)).

<sup>29</sup> Rule 3.203, Fla.R.Crim.P.

<sup>30</sup> *Id.*

### ***Other States***

Other state legislatures, including Kentucky,<sup>31</sup> and Missouri, have proposed bills to exempt capital defendants with severe mental illness from facing the death penalty.<sup>32</sup> The bill in Kentucky provides that defendants would be ineligible for the death penalty if they had a documented history of schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, or delusional disorder at the time of the offense.<sup>33</sup>

Missouri House Bill 278 would also eliminate a death sentence for a person who is found to have suffered from a serious mental illness at the time of the commission of the offense. The bill specifies that a defendant has a serious mental illness if there has been a diagnosis of:

- Schizophrenia;
- Schizoaffective disorder;
- Bipolar disorder, with psychotic features;
- Major depressive disorder, with psychotic features;
- Delusional disorders;
- Traumatic brain injury; or
- Posttraumatic stress disorder (PTSD).<sup>34</sup>

Ohio recently passed a new law which recognizes the following diagnoses as being a component of severe mental illness:

- Schizophrenia;
- Schizoaffective disorder;
- Bipolar disorder; or
- Delusional disorder.<sup>35</sup>

### **Constitutional and Statutory Savings Clauses**

Until recently, Article X, s. 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."<sup>36</sup>

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<sup>31</sup> Death Penalty Information Center News, *With Overwhelming Bipartisan Support, Kentucky House Passes Bill to Ban Death Penalty for Defendants with Serious Mental Illness*, March 3, 2021, available at <https://deathpenaltyinfo.org/news/with-overwhelming-bipartisan-support-kentucky-house-passes-bill-to-ban-death-penalty-for-defendants-with-serious-mental-illness> (last visited March 26, 2021).

<sup>32</sup> Mental Illness and the Death Penalty, The American Civil Liberties Union, May 5, 2009, available at [https://www.aclu.org/files/pdfs/capital/mental\\_illness\\_may2009.pdf](https://www.aclu.org/files/pdfs/capital/mental_illness_may2009.pdf) (last visited March 25, 2021).

<sup>33</sup> *Id.*

<sup>34</sup> Missouri House Bill 278, available at <https://house.mo.gov/billtracking/bills211/hlrbillspdf/0911H.01I.pdf> (last visited March 26, 2021).

<sup>35</sup> Death Penalty Information Center, *Ohio Bars Death Penalty for People with Severe Mental Illness*, January 11, 2021, available at <https://deathpenaltyinfo.org/news/ohio-passes-bill-to-bar-death-penalty-for-people-with-severe-mental-illness> (last visited March 26, 2021).

<sup>36</sup> Comment, *Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 129 (1972).

In 2018, Florida amended Article X, section 9 of the Florida Constitution, and that amendment included removing the prohibition on retroactive application of a repeal or amendment that affects punishment. Accordingly, the Legislature is no longer constitutionally prohibited from retroactively ameliorating punishments.

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.<sup>37</sup> 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 prospectively. The Legislature only has to “expressly provide” for this retroactive application.<sup>38</sup>

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

The bill prohibits the imposition of a death sentence upon a defendant who is guilty of committing a capital offense and who had a serious mental illness at the time of the offense. The bill also creates the necessary procedures for a court to make such a determination.

The bill defines the term “serious mental illness” as any mental diagnosis, disability, or defect that significantly impairs a person’s capacity to do any of the following:

- Appreciate the nature, consequences, or wrongfulness of his or her conduct in the criminal offense;
- Exercise rational judgment in relation to the criminal offense; or
- Conform his or her conduct to the requirements of the law in connection with the criminal offense.

For purposes of the bill, serious mental illness does not include, by itself, a disorder manifested primarily by repeated criminal conduct or attributable solely to the acute effects of alcohol or other drugs.

The procedures created in the bill are similar to those governing raising a defendant’s intellectual disability as a bar to execution in all first-degree murder cases where the state attorney has not waived the death penalty.<sup>39</sup>

The bill provides that the defendant who intends to raise serious mental illness as a bar to a death sentence must give notice of such intention in accordance with the rules of court governing notices of intent to offer expert testimony regarding mental health mitigation during the penalty phase of a capital trial.

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<sup>37</sup> Section 775.022(2), F.S.

<sup>38</sup> Section 775.022(3), F.S.

<sup>39</sup> See Rule 3.203, Fla.R.Crim.P.

Additionally, the defendant must file a motion with the court stating the defendant is seriously mentally ill and, if the defendant has been tested, evaluated, or examined by one or more experts, the motion must include the names and addresses of the experts. Copies of reports containing the opinions of any experts named in the motion must be attached to the motion. The motion must be filed no later than 90 days before trial or at such time as is ordered by the court. A claim is waived if the motion is not timely filed unless good cause is shown for the failure to comply.

If the defendant has not been tested, evaluated, or examined by one or more experts, the motion must state that fact and the court must appoint two experts who shall promptly test, evaluate, or examine the defendant and submit a written report of any findings to the parties and the court. If requested, the court must appoint an expert chosen by the state attorney to test, evaluate, or examine the defendant and submit a written report of any findings to the parties and the court.

Attorneys for the state and the defendant may be present at the examinations by the court-appointed experts. If the defendant refuses to be examined or to fully cooperate with the court-appointed experts or the state's expert, the court may:

- Order the defense to allow the court-appointed experts to review all mental health reports, tests, and evaluations by the defendant's expert;
- Prohibit the defense experts from testifying concerning any tests, evaluations, or examinations of the defendant regarding the defendant's serious mental illness; or
- Order such relief as the court determines to be appropriate.

The court must conduct an evidentiary hearing on the motion for a determination of serious mental illness as a bar to execution. The court must consider evidence presented by the experts who examined the defendant and all other evidence on the issue of whether the defendant is seriously mentally ill. If the court finds, by clear and convincing evidence, that the defendant is seriously mentally ill, it must enter an order prohibiting the imposition of the death penalty and setting forth the court's specific findings in support of the determination.

The court must stay the proceedings for 30 days from the date of rendition of the order prohibiting the death penalty or, if a motion for rehearing is filed, for 30 days following the rendition of the order denying rehearing, to allow the state the opportunity to appeal the order according to Rule 9.140(c), Florida Rules of Appellate Procedure.

If the court determines that the defendant has not established that he or she is seriously mentally ill, the court must enter an order setting forth the court's specific findings in support of that determination.

A defendant is not precluded from offering evidence that he or she had a serious mental illness at the time the capital offense was committed even though the diagnosis occurred at a subsequent time. Additionally, a defendant may present mitigating evidence of serious mental illness at the sentencing phase.

The bill also provides that statements made by a person in an evaluation or pretrial hearing may not be used against the defendant on the issue of guilt in any criminal action or proceeding.

The bill allows for retroactivity of the provisions in the bill. A person whose state postconviction claims have been completed is authorized to request leave to file a successive petition in state court. The request must be filed not later than July 1, 2022. If the postconviction court determines that the petitioner is an individual with a serious mental illness, it must vacate the petitioner's death sentence and impose a sentence of life imprisonment without parole. The court may grant any additional relief to which the person is entitled based on the merits.

The filing of a motion to establish serious mental illness as a bar to execution does not stay further proceedings in the absence of a separate order staying execution.

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 bill may have a negative fiscal impact on the state courts both at the trial and appellate levels because of the new procedures provided in the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 921.135 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

By Senator Brandes

24-01666-21

20211156\_\_

A bill to be entitled

An act relating to serious mental illness as bar to execution; creating s. 921.135, F.S.; defining the term "serious mental illness"; prohibiting the imposing of a sentence of death upon a defendant convicted of a capital felony if the defendant had a serious mental illness at the time of committing the offense; requiring a defendant to provide a certain notice if he or she intends to raise serious mental illness as a bar to a death sentence; requiring the defendant to file a written motion if he or she intends to raise serious mental illness as a bar to a death sentence; providing motion requirements; providing for the testing, evaluation, or examination of the defendant by experts; providing time limitations for the filing of the motion; requiring the circuit court to conduct an evidentiary hearing on the motion; providing court requirements; providing for waiver of the claim; requiring certain court orders if the court finds by clear and convincing evidence that the defendant had a serious mental illness at the time of the commission of the crime; authorizing the state to appeal such an order; providing requirements; providing that the time of diagnosis does not preclude the defendant from presenting evidence of a serious mental illness; prohibiting certain statements of the defendant from being used against him or her; providing construction; providing for postconviction proceedings; providing

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

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20211156\_\_

requirements; providing for stays of certain proceedings; providing an effective date.

WHEREAS, leading state and national mental health organizations, including the American Psychological Association, the American Psychiatric Association, and the National Alliance on Mental Illness, have called for a prohibition on imposition of the death penalty for persons with a serious mental illness at the time of the commission of the crime, and

WHEREAS, the American Bar Association recently endorsed the call for the end of the death penalty for persons with a serious mental illness, NOW, THEREFORE,

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

Section 1. Section 921.135, Florida Statutes, is created to read:

921.135 Imposition of death sentence upon defendant with serious mental illness prohibited.—

(1) DEFINITION.—As used in this section, the term "serious mental illness" means any mental diagnosis, disability, or defect that significantly impairs a person's capacity to do any of the following: appreciate the nature, consequences, or wrongfulness of his or her conduct in the criminal offense; exercise rational judgment in relation to the criminal offense; or conform his or her conduct to the requirements of the law in connection with the criminal offense. A disorder manifested primarily by repeated criminal conduct or attributable solely to the acute effects of alcohol or other drugs does not, by itself,

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59 constitute a serious mental illness for purposes of this  
 60 section. The condition or conditions defined in this section are  
 61 a bar to the imposition of the death penalty notwithstanding the  
 62 standard established in s. 775.027 for insanity and the criteria  
 63 specified in s. 916.12 for establishing competence to proceed.

64 (2) DEATH PENALTY PROHIBITED FOR DEFENDANT WITH SERIOUS  
 65 MENTAL ILLNESS AT TIME OF COMMISSION OF CRIMINAL OFFENSE.—A  
 66 sentence of death may not be imposed upon a defendant convicted  
 67 of a capital felony if it is determined in accordance with this  
 68 section that the defendant had a serious mental illness at the  
 69 time the criminal offense was committed.

70 (3) NOTICE REQUIRED.—A defendant charged with a capital  
 71 felony who intends to raise serious mental illness as a bar to a  
 72 death sentence must give notice of such intention in accordance  
 73 with the rules of court governing notices of intent to offer  
 74 expert testimony regarding mental health mitigation during the  
 75 penalty phase of a capital trial.

76 (4) MOTION FOR DETERMINATION OF SERIOUS MENTAL ILLNESS AS A  
 77 BAR TO EXECUTION; CONTENTS; PROCEDURES.—

78 (a) A defendant who intends to raise serious mental illness  
 79 as a bar to execution shall file a written motion to establish  
 80 serious mental illness as a bar to execution with the court.

81 (b) The motion must state that the defendant is seriously  
 82 mentally ill and, if the defendant has been tested, evaluated,  
 83 or examined by one or more experts, must include the names and  
 84 addresses of the experts. Copies of reports containing the  
 85 opinions of any experts named in the motion must be attached to  
 86 the motion. The court shall appoint an expert chosen by the  
 87 state attorney if the state attorney so requests and that expert

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88 shall promptly test, evaluate, or examine the defendant and  
 89 submit a written report of any findings to the parties and the  
 90 court.

91 (c) If the defendant has not been tested, evaluated, or  
 92 examined by one or more experts, the motion must state that fact  
 93 and the court must appoint two experts who shall promptly test,  
 94 evaluate, or examine the defendant and submit a written report  
 95 of any findings to the parties and the court.

96 (d) Attorneys for the state and the defendant may be  
 97 present at the examinations conducted by court-appointed  
 98 experts.

99 (e) If the defendant refuses to be examined or to fully  
 100 cooperate with the court-appointed experts or the state's  
 101 expert, the court may:

102 1. Order the defense to allow the court-appointed experts  
 103 to review all mental health reports, tests, and evaluations by  
 104 the defendant's expert;

105 2. Prohibit the defense experts from testifying concerning  
 106 any tests, evaluations, or examinations of the defendant  
 107 regarding the defendant's serious mental illness; or

108 3. Order such relief as the court determines to be  
 109 appropriate.

110 (5) TIME FOR FILING MOTION FOR DETERMINATION OF SERIOUS  
 111 MENTAL ILLNESS AS A BAR TO EXECUTION.—The motion for a  
 112 determination of serious mental illness as a bar to execution  
 113 must be filed no later than 90 days before trial or at such time  
 114 as is ordered by the court.

115 (6) HEARING ON MOTION TO DETERMINE SERIOUS MENTAL ILLNESS.—  
 116 The circuit court shall conduct an evidentiary hearing on the



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117 motion for a determination of serious mental illness. At the  
 118 hearing, the court shall consider the findings of the experts  
 119 and all other evidence on the issue of whether the defendant is  
 120 seriously mentally ill. If the court finds that the defendant is  
 121 seriously mentally ill, it shall enter a written order  
 122 prohibiting the imposition of the death penalty and setting  
 123 forth the court's specific findings in support of the  
 124 determination. The court shall stay the proceedings for 30 days  
 125 from the date of rendition of the order prohibiting the death  
 126 penalty or, if a motion for rehearing is filed, for 30 days  
 127 following the rendition of the order denying rehearing, to allow  
 128 the state the opportunity to appeal the order. If the court  
 129 determines that the defendant has not established that he or she  
 130 is seriously mentally ill, the court must enter a written order  
 131 setting forth the court's specific findings in support of that  
 132 determination.

133 (7) WAIVER.—A claim authorized under this section is waived  
 134 if it is not timely filed as specified in subsection (5), unless  
 135 good cause is shown for the failure to comply with that  
 136 subsection.

137 (8) FINDING OF SERIOUS MENTAL ILLNESS; ORDER TO PROCEED.—If  
 138 the court finds by clear and convincing evidence that the  
 139 defendant had a serious mental illness at the time he or she  
 140 committed the crime, the court must order the case to proceed  
 141 without the death penalty as an issue and must enter a written  
 142 order that sets forth with specificity the findings of support  
 143 for the determination.

144 (9) APPEAL.—The state may appeal a court order finding that  
 145 the defendant is seriously mentally ill, which stays further

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146 proceedings in the trial court until a decision on appeal is  
 147 rendered. Appeals must proceed according to Rule 9.140(c),  
 148 Florida Rules of Appellate Procedure.

149 (10) TIME OF DIAGNOSIS.—A diagnosis of the condition or  
 150 conditions after the date of commission of the crime with which  
 151 the person is charged does not preclude him or her from  
 152 presenting evidence that he or she had a serious mental illness  
 153 at the time he or she is alleged to have committed the offense.

154 (11) STATEMENTS OF DEFENDANT.—Any statement that a person  
 155 makes in an evaluation or pretrial hearing ordered pursuant to  
 156 this section may not be used against the defendant on the issue  
 157 of guilt in any criminal action or proceeding.

158 (12) MITIGATION EXCLUSION.—This section may not be  
 159 construed to preclude the defendant from presenting mitigating  
 160 evidence of serious mental illness at the sentencing phase of  
 161 the trial.

162 (13) EFFECT ON POSTCONVICTION PROCEEDINGS.—If a person to  
 163 whom this section applies has completed state postconviction  
 164 proceedings, the person may request permission to file a  
 165 successive petition for postconviction relief in accordance with  
 166 the Florida Rules of Criminal Procedure alleging that the  
 167 petitioner is an individual who had a serious mental illness at  
 168 the time he or she committed the offense. A request under this  
 169 subsection must be filed not later than July 1, 2022. If the  
 170 successive petition is authorized, the postconviction court must  
 171 proceed under the Florida rules of postconviction relief. If the  
 172 postconviction court determines that the petitioner is an  
 173 individual with a serious mental illness, it must vacate the  
 174 petitioner's death sentence and impose a sentence of life

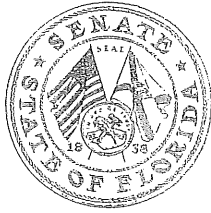
24-01666-21

20211156\_\_

175 imprisonment without parole. This subsection does not preclude  
176 the postconviction court from granting the person any additional  
177 relief to which the person may be entitled based on the merits  
178 of the person's additional postconviction claims.

179 (14) MOTION TO ESTABLISH SERIOUS MENTAL ILLNESS AS A BAR TO  
180 EXECUTION; STAY OF EXECUTION.—The filing of a motion to  
181 establish serious mental illness as a bar to execution does not  
182 stay further proceedings in the absence of a separate order  
183 staying execution.

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



**SENATOR JENNIFER BRADLEY**  
5th District

## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Community Affairs, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Education  
Ethics and Elections  
Judiciary

**SELECT COMMITTEE:**  
Select Committee on Pandemic  
Preparedness and Response

**JOINT COMMITTEES:**  
Joint Legislative Auditing Committee  
Joint Select Committee on Collective Bargaining

March 2, 2021

Senator Jason W.B. Pizzo, Chairman  
Senate Committee on Criminal Justice  
405 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 1566 be placed on the committee's agenda at your earliest convenience. This bill relates to tampering with or fabricating physical evidence.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Bradley". The signature is fluid and cursive, with the first name "Jennifer" and last name "Bradley" clearly legible.

Jennifer Bradley

cc: Lauren Jones, Staff Director  
Sue Arnold, Administrative Assistant

**REPLY TO:**

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

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

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

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

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

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

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BILL: SB 1346

INTRODUCER: Senator Brandes

SUBJECT: Felony Settlement Conferences

DATE: March 29, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	<b>Favorable</b>
2.	Erickson	Jones	CJ	<b>Favorable</b>
3.			RC	

---

## **I. Summary:**

SB 1346 allows a circuit court to establish procedures for felony settlement conferences to facilitate further negotiation of settlements between parties to a pending felony criminal case if such parties have previously failed to reach a negotiated disposition. The bill also sets forth requirements for the presiding judge of the settlement conference.

The bill takes effect July 1, 2021.

## **II. Present Situation:**

Alternative dispute resolution (ADR) is an alternative to judicial resolution of disputes. ADR generally describes the use of methods such as guided negotiation, mediation, or arbitration to help the parties resolve a dispute before trial.<sup>1</sup> According to the American Bar Association, “[d]ispute resolution processes have several advantages. For instance, many dispute resolution processes are cheaper and faster than the traditional legal process. Certain processes can provide the parties involved with greater participation in reaching a solution, as well as more control over the outcome of the dispute. In addition, dispute resolution processes are less formal and have more flexible rules than the trial court.”<sup>2</sup>

While formal ADR appears to be uncommon in Florida’s criminal courts, informal negotiation leading to a plea agreement or dismissal of the charges is prevalent. In the most recent year of

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<sup>1</sup> *Alternative Dispute Resolution*, Legal Information Institute, Cornell Law School, available at [https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution) (last visited March 23, 2021).

<sup>2</sup> *Dispute Resolution Processes*, American Bar Association, available at [https://www.americanbar.org/groups/dispute\\_resolution/resources/DisputeResolutionProcesses/](https://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses/) (last visited March 23, 2021).

reporting, 97.7 percent of Florida felony cases were resolved before trial by negotiated plea agreement or dismissal.<sup>3</sup>

According to information reported in a 2020 article, the Miami-Dade County circuit court sponsored a pilot criminal mediation project between the state attorney's office and the public defender's office. Four cases were resolved through this project.<sup>4</sup>

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

The bill creates s. 26.58, F.S., regarding felony settlement conferences, which authorizes a circuit court to establish procedures for felony settlement conferences to facilitate further negotiation of settlements between parties to a pending felony criminal case if such parties have previously failed to reach a negotiated disposition.

The bill requires that a settlement conference judge preside over the settlement conference to assist the parties in reaching a negotiated disposition over the pending matter. The settlement conference judge must be a retired judge or an attorney who had no involvement with the pending matter outside of the felony settlement conference process. The trial judge presiding over the pending matter may not preside over the felony settlement conference. A circuit court using felony settlement conferences may adopt any other necessary procedures to administer the new statute.

The bill takes effect July 1, 2021.

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

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

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the State Constitution.

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

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>3</sup> *FY 2019-20 Statistical Reference Guide* (Circuit Criminal Dispositions), p. 3-20, Office of the State Courts Administrator, available at <https://www.flcourts.org/content/download/720937/file/srg-ch-3-circuit-criminal-2019-20.pdf> (last visited March 23, 2021).

<sup>4</sup> *Miami-Dade Circuit Has Groundbreaking Pilot Project to Mediate Criminal Cases* (Nov. 19, 2020), Daily Business Review, available at [https://www.law.com/dailybusinessreview/2020/11/19/miami-dade-circuit-has-groundbreaking-pilot-project-to-mediate-criminal-cases/?slreturn=20210222132747#:~:text=Holt%2FCourtesy%20Photo\)-,Facing%20a%20daunting%20caseload%2C%20the%20criminal%20division%20of%20the%20Miami,that%20successfully%20resolved%20four%20cases](https://www.law.com/dailybusinessreview/2020/11/19/miami-dade-circuit-has-groundbreaking-pilot-project-to-mediate-criminal-cases/?slreturn=20210222132747#:~:text=Holt%2FCourtesy%20Photo)-,Facing%20a%20daunting%20caseload%2C%20the%20criminal%20division%20of%20the%20Miami,that%20successfully%20resolved%20four%20cases) (last visited March 23, 2021).

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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 26.58 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Brandes

24-01768-21

20211346\_\_

A bill to be entitled

An act relating to felony settlement conferences; creating s. 26.58, F.S.; authorizing circuit courts to establish settlement conferences in felony matters; specifying the purpose of settlement conferences; requiring settlement conferences to be presided over by a settlement conference judge; specifying requirements for settlement conference judges; prohibiting the trial judge presiding over the pending matter from presiding over the felony settlement conference; authorizing circuit courts using felony settlement conferences to adopt procedures; providing an effective date.

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

Section 1. Section 26.58, Florida Statutes, is created to read:

26.58 Felony settlement conferences.—A circuit court may establish procedures for felony settlement conferences to facilitate further negotiation of settlements between parties to a pending felony criminal case if such parties have previously failed to reach a negotiated disposition. Such conferences must be presided over by a settlement conference judge, who must assist the parties in reaching a negotiated disposition over the pending matter. A settlement conference judge must be a retired judge or an attorney who had no involvement with the pending matter outside of the felony settlement conference process. The trial judge presiding over the pending matter may not preside

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over the felony settlement conference. A circuit court using felony settlement conferences may adopt any other procedures to administer this section.

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

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Waive  
Support

WAIVE SUPPORT

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

3/30/21  
Meeting Date

SB1346  
Bill Number (if applicable)

Topic SB1346

Amendment Barcode (if applicable)

Name Delva Charlemagne

Job Title Nurse

Address 2813 NE 35<sup>th</sup> St.  
Street

Phone 352 426-1060

Ocala  
City

FL  
State

34479  
Zip

Email JesJedmd@hotmail.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 for this meeting.**



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/30/2021

Meeting Date

SB1346

Bill Number (if applicable)

Topic SB1346 Settlement Conference

Amendment Barcode (if applicable)

Name DIANA J. Bernard

Job Title Nurse

Address 12 Clear Pl

Street

Phone (352) 812-2978

Ocala FL 34472

City

State

Zip

Email diana.bernard.dbe@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.*

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

S-001 (10/14/14)

WAIVE SUPPORT  
THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

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

SB 1346

Bill Number (if applicable)

Topic SB 1346

Amendment Barcode (if applicable)

Name Michelle Rothwell

Job Title

Address 1400 GANDY Blvd #1416

Street

St. Petersburg FL

City

State

Zip

Phone

Email M.Rothwell@goffmc.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.

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**

3/30/21

*Meeting Date*

SB 1346

*Bill Number (if applicable)*

Topic Felony Settlement Conferences

*Amendment Barcode (if applicable)*

Name Jorge Chamizo

Job Title Attorney

Address 108 S. Monroe St.

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 Florida 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.**

S-001 (10/14/14)

WAIVE SUPPORT

THE FLORIDA SENATE

## APPEARANCE RECORD

3/30/21

Meeting Date

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

SB 1346

Bill Number (if applicable)

Topic SB 1346

Amendment Barcode (if applicable)

Name Anne Williams

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Phone 850-712-0100

Email AnneWilliamsRN@yahoo.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

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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)

3-30-21

Meeting Date

SB 1346

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Omayra Martin

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

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Zip

Email Omayramartin1987@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

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S-001 (10/14/14)

WAIVE SUPPORT

THE FLORIDA SENATE

## APPEARANCE RECORD

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

3/30/21

Meeting Date

SB 1346

Bill Number (if applicable)

Topic SB 1346

Amendment Barcode (if applicable)

Name Joel Charlemagne

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

Address 2313 NE 35th St Phone \_\_\_\_\_  
Street

Ocala FL 34482 Email \_\_\_\_\_  
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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)

3/30

Meeting Date

SB 1346

Bill Number (if applicable)

Topic SB 1346 Settlement Conference

Amendment Barcode (if applicable)

Name Christina Miholics

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

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FL

State

34698

Zip

Email cmiholics@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.*

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21  
Meeting Date

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

1346  
Bill Number (if applicable)

Topic Felony Settlement Conferences

Amendment Barcode (if applicable)

Name Carlos Martinez

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Public Defender, 11th Circuit

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

03/30/2021

Meeting Date

1346

Bill Number (if applicable)

Topic Felony Settlement Conferences - 2021

Amendment Barcode (if applicable)

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Zip

Phone (850)999-4655

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Office of Criminal Conflict & Civil Regional Counsel, 3rd Region

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Jason Pizzo ,Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 16, 2021

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I respectfully request that **Senate Bill # 1346**, relating to Felony Settlement Conferences, be placed on the:

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

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

Senator Jeff Brandes  
Florida Senate, District 24

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

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

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

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BILL: SB 1384

INTRODUCER: Senator Rodrigues

SUBJECT: Involuntary Civil Commitment of Sexually Violent Predators

DATE: March 29, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	<b>Pre-meeting</b>
2.			JU	
3.			AP	

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## **I. Summary:**

SB 1384 amends s. 394.9155, F.S., providing that the Florida Rules of Criminal Procedure apply when competency is at issue. If at any time during a proceeding a person is found to be mentally incompetent to proceed, the proceedings must cease until the person is determined competent. The court must enter an order setting a competency hearing if there are reasonable grounds to believe the respondent is incompetent. The court may order the defendant be examined by no more than three experts. Additionally, the bill provides the court with authority to commit the respondent for competency restoration upon certain findings.

The bill amends s. 394.918, F.S., providing that the court must biannually evaluate the competency of a person who has been found incompetent and has been committed as a sexually violent predator. If the person's competency has been restored, the court must proceed with the annual review settings in this section. If the person's competency has not been restored, competency treatment must continue at the commitment facility.

This bill is effective July 1, 2021.

## **II. Present Situation:**

### **Involuntary Civil Commitment for Sexually Violent Predators**

In 1998, the Legislature enacted the Jimmy Ryce Involuntary Civil Commitment of Sexually Violent Predators Act (Jimmy Ryce Act).<sup>1</sup> The Jimmy Ryce Act created a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat persons with mental illness).<sup>2</sup>

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<sup>1</sup> Chapter 394, part V, F.S.; Ch. 98-64, L.O.F.

<sup>2</sup> Section 394.910, F.S.

A sexually violent predator (SVP) is a person who has been convicted of a sexually violent offense and has a mental abnormality<sup>3</sup> or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.<sup>4</sup>

“Sexually violent offense,” is defined to mean:

- Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2., F.S.;
- Kidnapping or false imprisonment of a child under the age of 13 and, in the course of that offense, committing:
  - Sexual battery; or
  - Lewd, lascivious, or indecent assault or act upon or in the presence of the child;
- Sexual battery in violation of s. 794.011, F.S.;
- Lewd, lascivious, or indecent assault or act upon or in the presence of the child in violation of ss. 800.04 or 847.0135(5), F.S.;
- An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, F.S., of a sexually violent offense;
- Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense listed above or any federal conviction or conviction in another state for a felony offense that would be a sexually violent offense in Florida;
- Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated<sup>5</sup>; or
- A criminal offense in which the state attorney refers a person to the department for civil commitment proceedings pursuant to s. 394.9125, F.S.<sup>6</sup>

Under the Jimmy Ryce Act, the agency with jurisdiction over a person who has been convicted of a sexually violent offense and is nearing the end of his or her criminal sentence, must give written notice to the multidisciplinary team<sup>7</sup> established under the Department of Children and Families (DCF) and a copy of such notice to the state attorney.<sup>8</sup> The multidisciplinary team must assess and evaluate each person referred to the team. The assessment and evaluation must include a review of the person’s institutional history and treatment record, the person’s criminal background, and any other factor that is relevant to determine whether a person is a SVP.<sup>9</sup> Before recommending that a person meets the definition of a SVP, the person must be offered a personal interview with at least one person of the team who is a licensed psychiatrist or psychologist. If

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<sup>3</sup> Section 394.912(5), F.S., provides that “mental abnormality,” means a mental condition affecting a person’s emotional or volitional capacity which predisposes the person to commit sexually violent offenses.

<sup>4</sup> Section 394.912(10), F.S.

<sup>5</sup> Section 394.912(8), F.S., provides that “sexually motivated,” means that one of the purposes for which the defendant committed the crime was for sexual gratification.

<sup>6</sup> Section 394.912(9)(a)-(i), F.S.

<sup>7</sup> Section 394.913(3)(a) and (b), F.S., provides that the secretary of the DCF or his or her designee must establish a multidisciplinary team or teams. Each team must include, but need not be limited to, two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist who must each have experience in or relevant to the evaluation or treatment of persons with mental abnormalities.

<sup>8</sup> Section 394.913(1), F.S.

<sup>9</sup> Section 394.913(3)(d), F.S.

the person refuses to fully participate in the interview, the team must proceed with its recommendation without the interview.<sup>10</sup>

The multidisciplinary team must provide the state attorney a written assessment and recommendation as to whether the person meets the definition of a SVP at least 1 month before the person's scheduled release date from the Department of Corrections, the Department of Juvenile Justice, or the DCF. At least 24 hour notice must be provided if the person is being released from a county or municipal jail.<sup>11</sup>

Following receipt of DCF's recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the offender is a SVP.<sup>12</sup> If the judge determines probable cause exists to believe that the person is a SVP, the person is detained in a secure facility.<sup>13</sup> The court or jury must determine by clear and convincing evidence that an offender meets the definition of a sexually violent predator.<sup>14</sup> If such determination is made, upon the expiration of incarceration on all criminal sentences and dispositions of any detainers, the person must be committed to the custody of the DCF for control, care, treatment, and rehabilitation of criminal offenders. The person must remain in custody of the DCF until the person's mental abnormality or personality disorder has so changed that it is safe for the person to be out of custody.<sup>15</sup>

A person committed to the DCF under the Jimmy Ryce Act must have his or her mental condition examined at least once per year.<sup>16</sup> Additionally, the DCF must provide the person with annual written notice of the person's right to petition the court for release. The court must hold a limited hearing to determine whether there is probable cause to believe the person's condition has so changed that it is safe for the person to be out of custody and that the person will not engage in acts of sexual violence if released. The person has a right to be represented by counsel at the probable cause hearing.<sup>17</sup>

The court must set a trial if it determines that there is probable cause to believe it is safe for the person to be released.<sup>18</sup> At the trial, the person is entitled to be present and is entitled to the benefit of all constitutional protections afforded at the initial trial, except for the right to a jury. At the trial, the state must prove by clear and convincing evidence that the person's mental condition remains such that it is not safe for the person to be released, and if released, the person is likely to engage in acts of sexual violence.<sup>19</sup>

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<sup>10</sup> Section 394.913(3)(f), F.S.

<sup>11</sup> Section 349.913(3)(g), F.S.

<sup>12</sup> Section 394.914, F.S.

<sup>13</sup> Section 394.915(1), F.S.

<sup>14</sup> Section 394.917(1), F.S.

<sup>15</sup> Section 394.917(2), F.S.

<sup>16</sup> Section 394.917(1), F.S.

<sup>17</sup> Section 394.918(2), F.S.

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

<sup>19</sup> Section 394.918(4), F.S.

***Rules of Procedure and Evidence***

In all civil commitment proceedings for SVP's, the following apply:

- The Florida Rules of Civil Procedure apply unless otherwise specified.
- The Florida Rules of Evidence apply unless otherwise specified.
- The psychotherapist-patient privilege under s. 90.503, F.S., does not exist or apply for communications relevant to an issue in proceedings to involuntarily commit a person.
- The court may consider evidence of prior behavior by a person who is subject to proceedings if such evidence is relevant to prove that the person is a SVP.
- Hearsay evidence, including reports of a member of the multidisciplinary team or reports produced on behalf of the multidisciplinary team, is admissible in proceedings unless the court finds that such evidence is not reliable. However, in trial hearsay evidence may not be used as the sole basis for committing a person.
- Rules adopted under s. 394.930, F.S.,<sup>20</sup> must not constitute:
  - An evidentiary predicate for the admission of any physical evidence or testimony.
  - A basis for excluding or otherwise limiting the presentation of any physical evidence or testimony in judicial proceedings.
  - Elements of the cause of action that the state needs to allege or prove in judicial proceedings.
- If the person refuses to be interviewed by or fully cooperate with members of the multidisciplinary team or any state mental health expert, the court may, in its discretion:
  - Order the person to allow members of the multidisciplinary team and any state mental health experts to review all mental health reports, tests, and evaluations by the person's mental health expert or experts.
  - Prohibit the person's mental health experts from testifying concerning mental health tests, evaluations, or examinations of the person.<sup>21</sup>

The failure of any party to comply with these rules does not constitute a defense in any judicial proceeding.<sup>22</sup>

**Competency**

A defendant is incompetent to proceed for the purpose of a criminal proceeding if he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the

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<sup>20</sup> Section 394.930, F.S., provides that the DCF must adopt rules for: (1) Procedures that must be followed by members of the multidisciplinary team when assessing and evaluating persons; (2) Education and training requirements for members of the multidisciplinary teams and professionals who assess and evaluate; (3) The criteria that must exist in order for a multidisciplinary team to recommend to a state attorney that a petition should be filed to involuntarily commit a person; (4) The designation of secure facilities for SVP's who are subject to involuntary commitment; (5) The components of the basic treatment plan for all committed persons; and (6) The protocol to inform a person that he or she is being examined to determine whether he or she is a SVP.

<sup>21</sup> Section 394.9155(1)-(7), F.S.

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

proceedings against him or her.<sup>23</sup> A defendant may be found incompetent due to mental illness,<sup>24</sup> or intellectual disability, or autism.<sup>25</sup>

Section 394.9155, F.S., provides the Florida Rules of Civil Procedure (Civil Rules) apply in civil commitment proceedings for SVPs. However, the Civil Rules do not address circumstances in which the competency of the respondent in the civil commitment proceeding is in question. However, the Florida Rules of Criminal Procedure (Criminal Rules) require a person accused of a criminal offense or a violation of probation to be competent at each material stage<sup>26</sup> of a criminal proceeding.<sup>27</sup> If at any time the court has reasonable grounds to believe that a defendant is incompetent to proceed, court proceedings against the defendant must cease and the court must appoint no more than three experts to examine the defendant.<sup>28</sup>

In considering the issue of competence to proceed, the experts appointed by the court are required to consider and include in their report:

- The defendant's capacity to:
  - Appreciate the charges or allegations against him or her;
  - Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
  - Understand the adversary nature of the legal process;
  - Disclose to counsel facts pertinent to the proceedings at issue;
  - Manifest appropriate courtroom behavior;
  - Testify relevantly; and
  - Any other factors deemed relevant by the experts.<sup>29</sup>

<sup>23</sup> Sections 916.12(1), and 916.3012(1), F.S.

<sup>24</sup> See ch. 916, Part II.; Section 916.106(14), F.S., provides that "mental illness," means an impairment of the emotional processes that exercise conscious control of one's actions, or of the ability to perceive or understand reality, which impairment substantially interferes with the defendant's ability to meet the ordinary demands of living. For the purposes of this chapter, the term does not apply to defendants who have only an intellectual disability or autism or a defendant with traumatic brain injury or dementia who lacks a co-occurring mental illness, and does not include intoxication or conditions manifested only by antisocial behavior or substance abuse impairment.

<sup>25</sup> See ch. 916, Part III.; Section 393.063(5) and (24), F.S., provides that "autism" means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests; and "intellectual disability," means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. "Adaptive behavior," means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. "Significantly subaverage general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

<sup>26</sup> "A material stage of a criminal proceeding" includes the trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, violation of probation or violation of community control proceedings, sentencing, hearings on issues regarding a defendant's failure to comply with court orders or conditions, or other matters where the mental competence of the defendant is necessary for a just resolution of the issues being considered. Fla. R. Crim. P. 3.210.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Fla. R. Crim. P. 3.211.

If the court finds a defendant incompetent to proceed, or that the defendant's competence depends upon continued treatment for mental illness or intellectual disability, the court must consider issues relating to treatment necessary to restore or maintain the defendant's competence. The court may order the defendant:

- Receive community based treatment;
- Receive treatment administered at the custodial facility, or be transferred to another facility for treatment; or
- Be committed for treatment to restore competency if the court finds:
  - The defendant meets criteria for commitment as set forth by statute;
  - There is a substantial probability that the mental illness or intellectual disability causing the defendant's incompetence will respond to treatment and that the defendant will regain competency to proceed in the reasonably foreseeable future;
    - Treatment appropriate for restoration of the defendant's competence to proceed is available; and
    - No appropriate treatment alternative less restrictive than that involving commitment is available.<sup>30</sup>

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

This bill amends s. 394.9155, F.S., providing that the Florida Rules of Criminal Procedure apply when competency is at issue. If at any time during a proceeding a person is found to be mentally incompetent to proceed, the proceedings must cease until the person is determined competent.

Upon its own motion, the motion of counsel for the respondent, or the state, the court must enter an order setting a competency hearing if there are reasonable grounds to believe the respondent is incompetent. The court may order the defendant be examined by no more than three experts. Additionally, the bill provides the court with authority to commit the respondent for competency restoration upon certain findings. Attorneys for the state and respondent may be present at the examination.

If the court finds the respondent is incompetent to proceed, or is competent but that competency depends on continuation of appropriate treatment for mental illness or intellectual disability, the court must order the person into treatment at an appropriate secure facility to have his or her competency restored or to maintain competency.

The facility must admit the person for treatment. Within 6 months of admission, the facility must file a report with the court that addresses the person's competency and that considers the factors in Rule 3.211, Florida Rules of Criminal Procedure. The clerk must provide copies of the report to all parties. If at any time during the initial 6 month period or any period of extended time ordered:

- The administrator of the facility determines that the respondent no longer meets criteria for commitment for incompetency or has become competent to proceed, the facility must file a report with the court.
- Counsel for the respondent has reasonable grounds to believe that the respondent is competent to proceed or no longer meets the criteria for continued treatment, counsel may

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<sup>30</sup> Fla. R. Crim. P. 3.212.



move for a hearing on the issue of competency. The motion must contain a certificate of counsel certifying that the motion is made in good faith and on reasonable grounds that the respondent is competent to proceed or no longer meets criteria for commitment for incompetency.

If the court has reasonable grounds to believe that the respondent is competent, the court must order the facility to file a report addressing competency and set a hearing. The court must hold a hearing within 30 days after a report is filed by a facility. If the court finds the respondent:

- Incompetent, and meets criteria for continued treatment, the court must ordered continued treatment.
- Competent, the court must enter an order stating such finding and proceed with a hearing or trial.

The bill amends s. 394.918, F.S., providing that the court must biannually evaluate the competency of a person who has been found incompetent and has been committed as a sexually violent predator. If the person's competency has been restored, the court must proceed with the annual review settings in this section. If the person's competency has not been restored, competency treatment must continue at the commitment facility.

This 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:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.9155 and 394.918.

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

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

None.

**B. Amendments:**

None.

By Senator Rodrigues

27-01272-21

20211384\_\_

1 A bill to be entitled  
 2 An act relating to involuntary civil commitment of  
 3 sexually violent predators; amending s. 394.9155,  
 4 F.S.; specifying that the Florida Rules of Criminal  
 5 Procedure apply to certain proceedings relating to  
 6 competency; requiring proceedings to cease when a  
 7 person is found to be mentally incompetent to proceed;  
 8 providing requirements for determining competency;  
 9 requiring a secure facility to admit a person found  
 10 mentally incompetent; requiring the facility to file  
 11 specified reports with the court under certain  
 12 circumstances; authorizing counsel to move for a  
 13 hearing on the issue of the respondent's competence;  
 14 providing requirements relating to such hearing;  
 15 requiring a court to hold a hearing within a specified  
 16 timeframe after a facility files a report; providing  
 17 requirements relating to such hearing; requiring a  
 18 court to enter a specified order and proceed  
 19 expeditiously with a hearing or trial upon determining  
 20 that the respondent is competent to proceed; amending  
 21 s. 394.918, F.S.; requiring a court to conduct  
 22 biannual evaluations for competency for certain  
 23 persons; providing requirements relating to the  
 24 outcome of such evaluations; providing an effective  
 25 date.

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

29 Section 1. Subsection (8) is added to section 394.9155,

Page 1 of 5

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

27-01272-21

20211384\_\_

30 Florida Statutes, to read:

31 394.9155 Rules of procedure and evidence.—In all civil  
 32 commitment proceedings for sexually violent predators under this  
 33 part, the following shall apply:

34 (8) The Florida Rules of Criminal Procedure apply when  
 35 competency is at issue unless otherwise specified in this part.

36 (a) If at any time during a proceeding a person is found to  
 37 be mentally incompetent to proceed, the proceedings must cease  
 38 until the person is determined to be mentally competent.

39 (b) If the court on its own motion, or on the motion of  
 40 counsel for the respondent or for the state, has reasonable  
 41 grounds to believe that the respondent is not mentally competent  
 42 to proceed, the court must immediately enter an order setting a  
 43 time for a hearing to determine the respondent's mental  
 44 condition and may order the respondent to be examined by no more  
 45 than three experts before the hearing date. Attorneys for the  
 46 state and the respondent may be present at any examination  
 47 ordered by the court.

48 (c) If the court finds the respondent is incompetent to  
 49 proceed during a hearing or before trial, or if the court finds  
 50 that the respondent is competent to proceed but that the  
 51 person's competence depends on continuation of appropriate  
 52 treatment for mental illness or intellectual disability, the  
 53 court must order the person into treatment at an appropriate  
 54 secure facility to have his or her competency restored or to  
 55 maintain his or her competence to proceed, as applicable.

56 1. The facility shall admit the person for treatment. No  
 57 later than 6 months after the date of admission, the facility  
 58 shall file with the court a report that addresses the issue of

Page 2 of 5

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

27-01272-21 20211384

the person's competency and that considers the factors in Rule 3.211, Florida Rules of Criminal Procedure. The clerk of the court shall provide copies of the report to all parties.

a. If, at any time during the initial 6-month period or any period of extended time ordered pursuant to this section, the administrator of the facility determines that the respondent no longer meets the criteria for commitment for incompetency or has become competent to proceed, the facility must file a report with the court stating such determination and the clerk of the court shall provide copies of the report to all parties.

b. If, at any time during the initial 6-month period or any period of extended treatment ordered pursuant to this section, counsel for the respondent has reasonable grounds to believe that the respondent is competent to proceed or no longer meets the criteria for continued treatment, counsel may move for a hearing on the issue of the respondent's competence. The motion must contain a certificate of counsel certifying that the motion is made in good faith and on reasonable grounds that the respondent is competent to proceed or no longer meets criteria for commitment for incompetency. Such certification must contain a recital of the specific observations and, to the extent ethically permissible, any conversations with the respondent that formed the basis for the motion.

c. If, upon consideration of a motion filed by counsel for the respondent or the prosecuting attorney and any information offered the court in support thereof, the court has reasonable grounds to believe that the respondent is competent to proceed, the court must order the facility to file a report addressing such issues and must order a hearing to be held on the issues.

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The clerk of the court shall provide copies of such report to all parties.

2. The court must hold a hearing within 30 days after a report is filed by a facility pursuant to sub-subparagraph 1.a. or 1.c. If, after the hearing, the court determines that the respondent is still incompetent to proceed and that the respondent meets the criteria for continued treatment, the court must order continued treatment and the facility must file a second report pursuant to subparagraph 1.

3. If the court determines that the respondent is competent to proceed at any time after his or her commitment and a hearing, the court must enter an order stating such finding and must proceed expeditiously with a hearing or trial.

The failure of any party to comply with such rules shall not constitute a defense in any judicial proceedings under this part.

Section 2. Subsection (5) is added to section 394.918, Florida Statutes, to read:

394.918 Examinations; notice; court hearings for release of committed persons; burden of proof.—

(5) The court shall biannually evaluate the competency of a person committed under this part who has been found incompetent. If the court finds that the person's competency has been restored, the court must proceed with the annual review proceedings as set forth in this section. If the court finds that the person's competency has not been restored, treatment for competency must continue at the commitment facility pursuant to s. 394.9155.

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20211384\_\_

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

Waive  
Support

WAIVE SUPPORT

THE FLORIDA SENATE

# APPEARANCE RECORD

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

3/30/21  
Meeting Date

SB1346  
Bill Number (if applicable)

Topic SB1346

Amendment Barcode (if applicable)

Name Delva Charlemagne

Job Title Nurse

Address 2813 NE 35<sup>th</sup> St.  
Street

Phone 352 426-1060

Ocala  
City

FL  
State

34479  
Zip

Email JesJedmd@hotmail.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 for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/30/2021

Meeting Date

SB1346

Bill Number (if applicable)

Topic SB1346 Settlement Conference

Amendment Barcode (if applicable)

Name DIANA J. Bernard

Job Title Nurse

Address 12 Clear Pl

Street

Phone (352) 812-2978

Ocala FL 34472

City

State

Zip

Email diana.bernard.dbe@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.*

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

S-001 (10/14/14)

WAIVE SUPPORT  
THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

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

SB 1346

Bill Number (if applicable)

Topic SB 1346

Amendment Barcode (if applicable)

Name Michelle Rothwell

Job Title

Address 1400 GANDY Blvd #1416

Street

St. Petersburg FL

City

State

Zip

Phone

Email M.Rothwell@goffmc.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)



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

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/30/21

*Meeting Date*

SB 1346

*Bill Number (if applicable)*

Topic Felony Settlement Conferences

*Amendment Barcode (if applicable)*

Name Jorge Chamizo

Job Title Attorney

Address 108 S. Monroe St.

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 Florida 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.**

S-001 (10/14/14)

# WAIVE SUPPORT

THE FLORIDA SENATE

## APPEARANCE RECORD

3/30/21

Meeting Date

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

SB 1346

Bill Number (if applicable)

Topic SB 1346

Amendment Barcode (if applicable)

Name Anne Williams

Job Title RN BSN

Address 4835 Andrade

Street

Pensacola, FL

City

State

32504

Zip

Phone 850-712-0100

Email AnneWilliamsRN@yahoo.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)

3-30-21

Meeting Date

SB 1346

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Omayra Martin

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

Address 417A Blackbird Way

Street

Phone 407-747-4444

Kissimmee

City

FL

State

34759

Zip

Email Omayramartin1987@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

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S-001 (10/14/14)

WAIVE SUPPORT

THE FLORIDA SENATE

## APPEARANCE RECORD

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

3/30/21

Meeting Date

SB 1346

Bill Number (if applicable)

Topic SB 1346

Amendment Barcode (if applicable)

Name Joel Charlemagne

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

Address 2313 NE 35th St Phone \_\_\_\_\_  
Street

Ocala FL 34482 Email \_\_\_\_\_  
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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)

3/30

Meeting Date

SB 1346

Bill Number (if applicable)

Topic SB 1346 Settlement Conference

Amendment Barcode (if applicable)

Name Christina Miholics

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

Address 2261 Curlew Ave Apt C

Street

Phone 727 808 9015

Dunedin

City

FL

State

34698

Zip

Email cmiholics@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

3/30/21  
Meeting Date

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

1346  
Bill Number (if applicable)

Topic Felony Settlement Conferences

Amendment Barcode (if applicable)

Name Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th St

Phone 305-545-1900

Miami FL 33145  
City State Zip

Email cmartinez@pdmiami.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Public Defender, 11th Circuit

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

03/30/2021

Meeting Date

1346

Bill Number (if applicable)

Topic Felony Settlement Conferences - 2021

Amendment Barcode (if applicable)

Name Andrew Kalel

Job Title Legislative Affairs Director

Address 227 N Bronough

Street

Tallahassee

City

Florida

State

33563

Zip

Phone (850)999-4655

Email andrew.kalel@regionalcounsels.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Office of Criminal Conflict & Civil Regional Counsel, 3rd Region

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Jason Pizzo ,Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 16, 2021

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I respectfully request that **Senate Bill # 1346**, relating to Felony Settlement Conferences, be placed on the:

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

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

Senator Jeff Brandes  
Florida Senate, District 24



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

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

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

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BILL: CS/SB 1566

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Tampering With or Fabricating Physical Evidence

DATE: March 30, 2021

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1566 creates a tiered system of tampering with or fabricating evidence offenses, in addition to the current third degree felonies in s. 918.13(1), F.S.

In s. 918.13(2)(b)1., F.S., the bill creates a second degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a violent felony offense described in s. 775.084(1)(b)1., F.S.

In s. 918.13(2)(b)2., F.S., the bill creates a first degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a capital offense, or an offense involving the death of a person.

The bill makes a violation of s. 918.13(1)(b), F.S., a Level 3 offense in the Offense Severity Ranking Chart (OSRC).

This bill will likely have a “positive indeterminate” fiscal impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

## **II. Present Situation:**

### **Tampering With or Fabricating Physical Evidence**

Section 918.13, F.S., prohibits a person, knowing that a criminal trial or proceeding, or an investigation by a prosecuting authority, law enforcement agency, grand jury, or legislative committee is pending or about to be instituted, from:

- Altering, destroying, concealing, or removing any record, document, or thing with the purpose to impair its verity or availability in the proceeding or investigation, or
- Making, presenting, or using any record, document, or thing, knowing it to be false.

A person convicted of tampering with or fabricating physical evidence commits a third degree felony.<sup>1</sup> Under current law, the criminal penalty does not vary based on the severity of the underlying crime that is being investigated or prosecuted, so a person convicted of tampering with evidence in a murder investigation is subject to the same penalty as a person that tampers with evidence in a case involving misdemeanor marijuana possession.

A person may only be convicted of tampering with evidence in circumstances where the person has the specific intent to destroy or conceal evidence to such an extent that it is unavailable for trial or investigation.<sup>2</sup>

### **Serious Felony Offenses**

#### ***Capital Offenses***

A capital felony is the most serious classification of felony offenses. A capital felony is a crime that is punishable by either death or life imprisonment without the possibility of parole.<sup>3</sup>

#### ***Violent Felony Offenses***

Section 775.084(1)(b)1., F.S., contains a list of criminal offenses that provide for enhanced criminal penalties for a defendant who is classified as a habitual violent felony offender. This list is frequently referred to by the shorthand “violent felony offenses.” This list contains the following offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or a disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;

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<sup>1</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> *E.I. v. State*, 25 So.3d 626 (Fla. 2d DCA 2009).

<sup>3</sup> Section 775.082(1)(a), F.S. First degree murder and certain drug trafficking offenses are capital offenses. *See* ss. 782.04(2)(a) and 893.135, F.S.

- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; and
- Aggravated stalking.

### Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.<sup>4</sup>

If an offense is unranked, the Criminal Punishment Code specifies a default level on the OSRC depending on the felony degree of the offense. The criminal offense of altering, destroying, or concealing physical evidence is ranked as a Level 3 offense on the OSRC.<sup>5</sup> The criminal offense of making, presenting, or using physical evidence while knowing it is false is not ranked on the OSRC and defaults to a Level 1 offense.<sup>6</sup>

### III. Effect of Proposed Changes:

The bill amends s. 918.13, F.S., by adding two new felony offenses building upon the current offense of tampering with or fabricating evidence. The new offenses provide that:

- If a person commits tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation that relates to a violent felony offense described in s. 775.084(1)(b)1., F.S.,<sup>7</sup> he or she commits a second degree felony.<sup>8</sup>
- A person commits a first degree felony<sup>9</sup> if he or she commits tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation relating to a capital felony, or an offense that results in the death of a person.

By making these amendments to s. 918.13, F.S., the bill creates a tiered system of offenses that are applicable in increasingly serious circumstances. Both of these new offenses are unranked in the OSRC. An unranked second degree felony is a Level 4 and an unranked first degree felony is a Level 7 offense.<sup>10</sup> The bill ranks, the previously unranked, third degree felony offense of

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<sup>4</sup> Section 921.0022(3)(c), F.S.

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

<sup>6</sup> Section 921.0023, F.S.

<sup>7</sup> See the list of violent felony offenses in Section II, Present Situation.

<sup>8</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> A first degree felony is punishable by imprisonment up to 30 years and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>10</sup> Section 921.0023(2)-(3), F.S.

making, presenting, or using any record, document, or other thing, knowing it to be false, as a Level 3 offense in the OSRC.<sup>11</sup>

The bill is effective October 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, Section 18 of the State Constitution.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference (CJIC) has not yet considered SB 1566. However, the CJIC considered CS/HB 777 on March 8, 2021, which was similar to SB 1566 because they both created a new second degree and first degree felony. The CJIC determined that the House bill would have a positive indeterminate impact on the

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<sup>11</sup> Section 921.0022(3)(c), F.S.

Department of Corrections. A positive indeterminate fiscal impact means that CS/HB 777 will have an unquantifiable positive prison bed impact.<sup>12</sup>

On March 30, 2021, the Criminal Justice Committee amended SB 1566 making it identical to CS/HB 777 by making a violation of s. 918.13(1)(a), F.S., a Level 3 offense on the OSRC. This means that CS/SB 1566 and CS/HB 777 should have an identical positive indeterminate impact on the Department of Corrections. A positive indeterminate fiscal impact means that CS/HB 777 will have an unquantifiable positive prison bed impact.<sup>13</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 918.13 and 921.0022.

**IX. Additional Information:**

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

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

**CS by Criminal Justice on March 30, 2021:**

The committee substitute:

- Confirms the Senate bill to the House bill making stylistic and organizational changes; and
- Ranks the third degree felony offense in s. 918.13(1)(b), F.S., as a Level 3 offense in the Offense Severity Ranking Chart.

**B. Amendments:**

None.

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

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<sup>12</sup> Economic and Demographic Research, Criminal Justice Impact Conference, (March 8, 2021), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB777.pdf>, (last visited March 23, 2021).

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



522212

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 918.13, Florida Statutes, is amended to  
read:

918.13 Tampering with or fabricating physical evidence.—

(1) It is unlawful for any ~~No~~ person, knowing that a  
criminal trial or proceeding or an investigation by a duly  
constituted prosecuting authority, law enforcement agency, grand



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jury, or legislative committee of this state is pending or is about to be instituted, ~~to shall~~:

(a) Alter, destroy, conceal, or remove any record, document, or other item ~~thing~~ with the purpose to impair its verity or availability in such proceeding or investigation; or

(b) Make, present, or use any record, document, or other item ~~thing~~, knowing it to be false.

(2) (a) Except as provided in paragraph (b), a ~~Any~~ person who violates subsection (1) commits ~~any provision of this section shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)1. Except as provided in subparagraph 2., a person who violates subsection (1) relating to a criminal trial or proceeding or an investigation that relates to a violent felony offense described in s. 775.084(1)(b)1., commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A person who violates subsection (1) relating to a criminal trial or proceeding or an investigation that relates to a capital felony, or a criminal offense that results in the death of a person, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraph (c) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3



522212

Florida Statute	Felony Degree	Description
119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3) (b) - (d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
319.33 (4)	3rd	With intent to defraud,





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possess, sell, etc., a blank,  
forged, or unlawfully obtained  
title or registration.

327.35(2)(b) 3rd Felony BUI.

328.05(2) 3rd Possess, sell, or counterfeit  
fictitious, stolen, or  
fraudulent titles or bills of  
sale of vessels.

328.07(4) 3rd Manufacture, exchange, or  
possess vessel with counterfeit  
or wrong ID number.

376.302(5) 3rd Fraud related to reimbursement  
for cleanup expenses under the  
Inland Protection Trust Fund.

379.2431 3rd Taking, disturbing, mutilating,  
(1)(e)5. destroying, causing to be  
destroyed, transferring,  
selling, offering to sell,  
molesting, or harassing marine  
turtles, marine turtle eggs, or  
marine turtle nests in  
violation of the Marine Turtle  
Protection Act.



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379.2431                      3rd      Possessing any marine turtle  
(1) (e) 6.                      species or hatchling, or parts  
   thereof, or the nest of any  
   marine turtle species described  
   in the Marine Turtle Protection  
   Act.

379.2431                      3rd      Soliciting to commit or  
(1) (e) 7.                      conspiring to commit a  
   violation of the Marine Turtle  
   Protection Act.

400.9935 (4) (a)              3rd      Operating a clinic, or offering  
or (b)                              services requiring licensure,  
   without a license.

400.9935 (4) (e)              3rd      Filing a false license  
   application or other required  
   information or failing to  
   report information.

440.1051 (3)                  3rd      False report of workers'  
   compensation fraud or  
   retaliation for making such a  
   report.

501.001 (2) (b)              2nd      Tamper with a consumer product  
   or the container using  
   materially false/misleading



522212

information.

624.401(4)(a) 3rd Transacting insurance without a  
certificate of authority.

624.401(4)(b)1. 3rd Transacting insurance without a  
certificate of authority;  
premium collected less than  
\$20,000.

626.902(1)(a) & 3rd Representing an unauthorized  
(b) insurer.

697.08 3rd Equity skimming.

790.15(3) 3rd Person directs another to  
discharge firearm from a  
vehicle.

806.10(1) 3rd Maliciously injure, destroy, or  
interfere with vehicles or  
equipment used in firefighting.

806.10(2) 3rd Interferes with or assaults  
firefighter in performance of  
duty.

810.09(2)(c) 3rd Trespass on property other than  
structure or conveyance armed



522212

with firearm or dangerous  
weapon.

812.014 (2) (c) 2. 3rd Grand theft; \$5,000 or more but  
less than \$10,000.

812.0145 (2) (c) 3rd Theft from person 65 years of  
age or older; \$300 or more but  
less than \$10,000.

812.015 (8) (b) 3rd Retail theft with intent to  
sell; conspires with others.

815.04 (5) (b) 2nd Computer offense devised to  
defraud or obtain property.

817.034 (4) (a) 3. 3rd Engages in scheme to defraud  
(Florida Communications Fraud  
Act), property valued at less  
than \$20,000.

817.233 3rd Burning to defraud insurer.

817.234 3rd Unlawful solicitation of  
(8) (b) & (c) persons involved in motor  
vehicle accidents.

817.234 (11) (a) 3rd Insurance fraud; property value  
less than \$20,000.



522212

75	817.236	3rd	Filing a false motor vehicle insurance application.
76	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
77	817.413(2)	3rd	Sale of used goods of \$1,000 or more as new.
78	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
79	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
80	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
81	843.19	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.
82			



522212

860.15(3) 3rd Overcharging for repairs and  
parts.

870.01(2) 3rd Riot; inciting or encouraging.

893.13(1)(a)2. 3rd Sell, manufacture, or deliver  
cannabis (or other s.  
893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)6.,  
(2)(c)7., (2)(c)8., (2)(c)9.,  
(2)(c)10., (3), or (4) drugs).

893.13(1)(d)2. 2nd Sell, manufacture, or deliver  
s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)6.,  
(2)(c)7., (2)(c)8., (2)(c)9.,  
(2)(c)10., (3), or (4) drugs  
within 1,000 feet of  
university.

893.13(1)(f)2. 2nd Sell, manufacture, or deliver  
s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)6.,  
(2)(c)7., (2)(c)8., (2)(c)9.,  
(2)(c)10., (3), or (4) drugs  
within 1,000 feet of public  
housing facility.

893.13(4)(c) 3rd Use or hire of minor; deliver



522212

88

to minor other controlled  
substances.

893.13(6)(a)

3rd

Possession of any controlled  
substance other than felony  
possession of cannabis.

89

893.13(7)(a)8.

3rd

Withhold information from  
practitioner regarding previous  
receipt of or prescription for  
a controlled substance.

90

893.13(7)(a)9.

3rd

Obtain or attempt to obtain  
controlled substance by fraud,  
forgery, misrepresentation,  
etc.

91

893.13(7)(a)10.

3rd

Affix false or forged label to  
package of controlled  
substance.

92

893.13(7)(a)11.

3rd

Furnish false or fraudulent  
material information on any  
document or record required by  
chapter 893.

93

893.13(8)(a)1.

3rd

Knowingly assist a patient,  
other person, or owner of an  
animal in obtaining a



522212

controlled substance through  
deceptive, untrue, or  
fraudulent representations in  
or related to the  
practitioner's practice.

94

893.13(8)(a)2.           3rd   Employ a trick or scheme in the  
practitioner's practice to  
assist a patient, other person,  
or owner of an animal in  
obtaining a controlled  
substance.

95

893.13(8)(a)3.           3rd   Knowingly write a prescription  
for a controlled substance for  
a fictitious person.

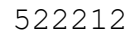
96

893.13(8)(a)4.           3rd   Write a prescription for a  
controlled substance for a  
patient, other person, or an  
animal if the sole purpose of  
writing the prescription is a  
monetary benefit for the  
practitioner.

97

918.13                   3rd   Tampering with or fabricating  
(1)(a) & (b)           physical evidence ~~Alter,~~  
~~destroy, or conceal~~  
~~investigation evidence.~~





By Senator Bradley

5-01389-21

20211566\_\_

A bill to be entitled

An act relating to tampering with or fabricating physical evidence; amending s. 918.13, F.S.; providing enhanced criminal penalties for tampering with or fabricating physical evidence in certain criminal proceedings and investigations; providing an effective date.

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

Section 1. Section 918.13, Florida Statutes, is amended to read:

918.13 Tampering with or fabricating physical evidence.—

(1) A ~~Ne~~ person, knowing that a criminal trial or proceeding or an investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury, or legislative committee of this state is pending or is about to be instituted, may not ~~shall~~:

(a) Alter, destroy, conceal, or remove any record, document, or thing with the purpose to impair its verity or availability in such proceeding or investigation; or

(b) Make, present, or use any record, document, or thing, knowing it to be false.

(2) (a) Except as provided in paragraphs (b) and (c), a ~~Any~~ person who violates any provision of this section ~~commits shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Except as provided in paragraph (c), a person who violates any provision of this section relating to a criminal

Page 1 of 2

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

5-01389-21

20211566\_\_

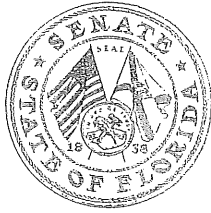
trial or proceeding or an investigation involving a violent felony offense described in s. 775.084(1)(b)1. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who violates any provision of this section relating to a criminal trial or proceeding or an investigation involving a capital offense, or an offense involving the death of a person, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

Page 2 of 2

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



**SENATOR JENNIFER BRADLEY**  
5th District

## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Community Affairs, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Education  
Ethics and Elections  
Judiciary

**SELECT COMMITTEE:**  
Select Committee on Pandemic  
Preparedness and Response

**JOINT COMMITTEES:**  
Joint Legislative Auditing Committee  
Joint Select Committee on Collective Bargaining

March 2, 2021

Senator Jason W.B. Pizzo, Chairman  
Senate Committee on Criminal Justice  
405 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 1566 be placed on the committee's agenda at your earliest convenience. This bill relates to tampering with or fabricating physical evidence.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Bradley".

Jennifer Bradley

cc: Lauren Jones, Staff Director  
Sue Arnold, Administrative Assistant

**REPLY TO:**

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

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

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

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

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

---

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

---

BILL: SB 1810

INTRODUCER: Senator Powell

SUBJECT: Care for Retired Law Enforcement Dogs

DATE: March 29, 2021

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

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

---

## **I. Summary:**

SB 1810 creates the Care for Retired Law Enforcement Dogs Program. The program will provide reimbursement for up to \$1,500 of annual veterinary costs associated with caring for a retired law enforcement dog by the former handler or adopter who incurs the costs.

The bill provides legislative findings and definitions. The bill requires valid documentation of the dog's retirement from the law enforcement agency the dog served and a valid paid invoice from the veterinarian for veterinary care for reimbursement of costs to occur.

The program will be administered and managed by a not-for-profit corporation in a contractual arrangement with the Florida Department of Law Enforcement (FDLE) after a competitive grant award process.

The bill includes an appropriation of \$300,000 in recurring General Revenue Funds for the purpose of implementing and administering the program.

The bill is effective July 1, 2021.

## **II. Present Situation:**

Law enforcement dogs have become an integral part of many law enforcement efforts statewide, including suspect apprehension through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations.<sup>1</sup> Law enforcement dogs cannot work forever and are faced with natural aging conditions and may have sustained injuries in the line of duty.

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<sup>1</sup> Hillsborough County Sheriff's Office, *K-9 Unit*, available at <http://www.hcso.tampa.fl.us/A-Z-Directory/K/K9-Unit.aspx> (last visited March 23, 2021); Pasco County Sheriff's Office, *K-9 Association*, available at <https://www.pascosheriffcharities.org/k-9-association/k-9-meet-the-teams/> (last visited March 23, 2021); Gainesville Police

When it is time for a law enforcement dog to retire, the dog typically lives with their law enforcement officer partner. Tarpon Springs Police Department K-9 officer, Dobies, retired on his birthday, after 7 years of service.<sup>2</sup> In 2017, two dogs who had both served the Flagler County Sheriff's Office for 8 years retired from duty in apprehending suspects and sniffing for narcotics, with a combined 190 deployments.<sup>3</sup> All three of the dogs were to stay at home with their handlers as pets.<sup>4</sup> However, retired law enforcement dogs can experience costly medical expenses that the owner is unable to handle.<sup>5</sup>

### III. Effect of Proposed Changes:

The bill creates the Care for Retired Law Enforcement Dogs Program (program) within the FDLE. The program is created within the FDLE to provide a stable funding source for veterinary care for retired law enforcement dogs.

The program will provide up to \$1,500 annually to any former handler or adopter of a retired law enforcement dog for reimbursement of veterinary care for the dog if the agency from which the dog retired provides verification of the dog's service. The former handler or adopter must submit a valid invoice from a veterinarian for care provided in Florida and proof of payment for reimbursement to occur. The former handler or adopter may not accumulate unused funds for the current year for use in a future year. When the annual funding for the program is depleted, reimbursements must be discontinued for the remainder of the year.

"Retired law enforcement dog" is defined as a dog who has been in the service of or employed by a law enforcement agency in this state for the principle purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders. The retired law enforcement dog must have received certification in obedience and apprehension work from a certifying organization, such as the National Police Canine Association, Inc.<sup>6</sup>

The bill defines "law enforcement agency" as a state or local public agency that has primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

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Department, *Patrol Support Bureau, K-9*, available at <http://www.gainesvillepd.org/About-GPD/Operations-Bureau/Patrol-Support-Bureau/K-9> (last visited March 23, 2021).

<sup>2</sup> Fox 35 Orlando, *Florida K-9 retires on his birthday, officers pay tribute with heartwarming final sign-off*, January 17, 2020, available at <https://fox35orlando.com/107363/sheriffs-awards-2017/> (last visited March 23, 2021).

<sup>3</sup> FlaglerLive.com, *Retirement of Two K-9s, Repo and Reno, Highlights Sheriff's Award Ceremony*, April 26, 2017, available at <https://flaglerlive.com/107363/sheriffs-awards-2017/> (last visited March 23, 2021).

<sup>4</sup> *Supra* note 2 and 3.

<sup>5</sup> South Florida Fund for Retired Law Enforcement K-9's, *Who We Help, The Fund*, available at <https://soflretiredk9fund.com/about/who-we-help/> (last visited March 23, 2021).

<sup>6</sup> National Police Canine Association, available at <http://www.npca.net/> (last visited March 23, 2021). The National Police Canine Association is one of many such organizations in the country, including The Florida Law Enforcement Canine Association (FLECA) dedicated to the training and certification of Florida's Law Enforcement Canine Teams. Florida Law Enforcement Canine Association, FLECA, available at <http://www.fleca9.com/> (last visited March 23, 2021).

The bill adopts the term “veterinarian” from s. 474.202(11), F.S., which defines “veterinarian” as a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under the authority of ch. 474, F.S.<sup>7</sup> The bill also defines “veterinary care” as the practice of veterinary medicine as defined in s. 474.202(13), F.S. “Veterinary medicine” includes, with respect to animals, surgery, acupuncture, obstetrics, dentistry, physical therapy, radiology, theriogenology, and other branches or specialties of veterinary medicine.<sup>8</sup> The bill specifies that the term also includes:

- Annual wellness examinations;
- Vaccinations;
- Internal and external parasite prevention treatments;
- Testing and treatment of illnesses and diseases;
- Medications;
- Emergency care and surgeries; and
- Care provided in specialties of veterinary medicine such as veterinary oncology, euthanasia, and cremation services.

The FDLE is directed to contract with a not-for-profit corporation, organized under ch. 617, F.S., to administer and manage the program.<sup>9</sup> The corporation will be selected through a competitive grant award process and must:

- Be dedicated to the protection or care of retired law enforcement dogs.
- Hold tax-exempt status under the Internal Revenue code as an s. 501(c)(3) organization.<sup>10</sup>
- Have held tax-exempt status for at least five years.
- Agree to be subject to review and audit at the discretion of the Auditor General to ensure accurate accounting and disbursement of state funds.
- Demonstrate the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs in complying with the bill.

The bill specifies the not-for-profit corporation is the disbursing authority for the funds appropriated by the Legislature to the FDLE for the program. The FDLE must pay the not-for-profit corporation up to ten percent of appropriated funds for administrative expenses, including salaries and benefits.

The bill contains legislative findings related to the value of law enforcement dogs to the residents of Florida.

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<sup>7</sup> Section 474.202(9), F.S., defines “practice of veterinary medicine” to mean diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

<sup>8</sup> Section 474.202(13), F.S.

<sup>9</sup> Section 617.01401(5), F.S., defines “corporation not for profit” as a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under ch. 617, F.S.

<sup>10</sup> See 26 U.S.C. s. 501(c)(3).

The bill includes an appropriation of \$300,000 for FY 2021-2022 in recurring funds from the General Revenue Fund to the FDLE for the purpose of implementing and administering the program.

The FDLE is given rulemaking authority to implement the provisions in the bill.

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 bill includes an appropriation of \$300,000 for FY 2021-2022 in recurring funds from the General Revenue Fund to the FDLE for the purpose of implementing and administering the program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 943.69 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

---



By Senator Powell

30-00829-21

20211810\_\_

1 A bill to be entitled  
 2 An act relating to care for retired law enforcement  
 3 dogs; creating s. 943.69, F.S.; providing a short  
 4 title; providing legislative findings; defining terms;  
 5 creating the Care for Retired Law Enforcement Dogs  
 6 Program within the Department of Law Enforcement;  
 7 requiring the department to contract with a nonprofit  
 8 corporation to administer and manage the program;  
 9 specifying requirements for the nonprofit corporation;  
 10 specifying requirements for the disbursement of funds  
 11 for the veterinary care of eligible retired law  
 12 enforcement dogs; placing an annual cap on the amount  
 13 of funds available for the care of an eligible retired  
 14 law enforcement dog; prohibiting a former handler or  
 15 an adopter from accumulating unused funds from a  
 16 current year for use in a future year; prohibiting a  
 17 former handler or an adopter from receiving  
 18 reimbursement if funds are depleted for the year for  
 19 which the reimbursement is sought; requiring the  
 20 department to pay to the nonprofit corporation, and  
 21 authorizing the nonprofit corporation to use, up to a  
 22 certain percentage of appropriated funds for  
 23 administrative expenses; requiring the department to  
 24 adopt rules; providing an appropriation; providing an  
 25 effective date.  
 26  
 27 Be It Enacted by the Legislature of the State of Florida:  
 28  
 29 Section 1. Section 943.69, Florida Statutes, is created to

Page 1 of 5

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

30-00829-21

20211810\_\_

30 read:  
 31 943.69 Care for Retired Law Enforcement Dogs Program.—  
 32 (1) SHORT TITLE.—This section may be cited as the “Care for  
 33 Retired Law Enforcement Dogs Program Act.”  
 34 (2) LEGISLATIVE FINDINGS.—The Legislature finds that:  
 35 (a) Law enforcement dogs are an integral part of many law  
 36 enforcement efforts statewide, including the apprehension of  
 37 suspects through tracking and searching, evidence location, drug  
 38 and bomb detection, and search and rescue operations;  
 39 (b) Law enforcement agencies agree that the use of law  
 40 enforcement dogs is an extremely cost-effective means of crime  
 41 control and that these dogs possess skills and abilities that  
 42 frequently exceed those of existing technology;  
 43 (c) The service of law enforcement dogs is often dangerous  
 44 and can expose them to injury at a rate higher than that of  
 45 nonservice dogs; and  
 46 (d) Law enforcement dogs provide significant contributions  
 47 to the residents of this state.  
 48 (3) DEFINITIONS.—As used in this section, the term:  
 49 (a) “Law enforcement agency” means a lawfully established  
 50 state or local public agency having primary responsibility for  
 51 the prevention and detection of crime or the enforcement of  
 52 penal, traffic, highway, regulatory, game, immigration, postal,  
 53 customs, or controlled substance laws.  
 54 (b) “Retired law enforcement dog” means a dog that was  
 55 previously in the service of or employed by a law enforcement  
 56 agency in this state for the principal purpose of aiding in the  
 57 detection of criminal activity, enforcement of laws, or  
 58 apprehension of offenders and that received certification in

Page 2 of 5

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

30-00829-21 20211810\_\_

obedience and apprehension work from a certifying organization, such as the National Police Canine Association, Inc., or other certifying organization.

(c) "Veterinarian" has the same meaning as in s. 474.202.

(d) "Veterinary care" means the practice, by a veterinarian, of veterinary medicine as defined in s. 474.202. The term includes annual wellness examinations, vaccinations, internal and external parasite prevention treatments, testing and treatment of illnesses and diseases, medications, emergency care and surgeries, veterinary oncology or other specialty care, euthanasia, and cremation.

(4) ESTABLISHMENT OF PROGRAM.—The Care for Retired Law Enforcement Dogs Program is created within the department to provide a stable funding source for the veterinary care these dogs receive.

(5) ADMINISTRATION.—The department shall contract with a nonprofit corporation organized under chapter 617 to administer and manage the Care for Retired Law Enforcement Dogs Program. Notwithstanding chapter 287, the department shall select the nonprofit corporation through a competitive grant award process. The nonprofit corporation must meet all of the following criteria:

(a) Be dedicated to the protection or care of retired law enforcement dogs.

(b) Be exempt from taxation under s. 501(a) of the Internal Revenue Code as an organization described in s. 501(c)(3) of that code.

(c) Have maintained such tax-exempt status for at least 5 years.

30-00829-21 20211810\_\_

(d) Agree to be subject to review and audit at the discretion of the Auditor General in order to ensure accurate accounting and disbursement of state funds.

(e) Demonstrate the ability to effectively and efficiently disseminate information and to assist former handlers and adopters of retired law enforcement dogs in complying with this section.

(6) FUNDING.—

(a) The nonprofit corporation shall be the disbursing authority for funds the Legislature appropriates to the department for the Care for Retired Law Enforcement Dogs Program. These funds must be disbursed to the former handler or the adopter of a retired law enforcement dog upon receipt of:

1. Valid documentation from the law enforcement agency from which the dog retired which verifies that the dog was in the service of or employed by that agency; and

2. A valid invoice from a veterinarian for veterinary care provided in this state to a retired law enforcement dog and documentation establishing payment of the invoice by the former handler or the adopter of the retired law enforcement dog.

(b) Annual disbursements to a former handler or an adopter to reimburse him or her for the cost of the retired law enforcement dog's veterinary care may not exceed \$1,500 per dog. A former handler or an adopter of a retired law enforcement dog may not accumulate unused funds from a current year for use in a future year.

(c) A former handler or an adopter of a retired law enforcement dog who seeks reimbursement for veterinary care may not receive reimbursement if funds appropriated for the Care for

30-00829-21

20211810

Retired Law Enforcement Dogs Program are depleted in the year  
for which the reimbursement is sought.

(7) ADMINISTRATIVE EXPENSES.—The department shall pay to  
the nonprofit corporation, and the nonprofit corporation may  
use, up to 10 percent of appropriated funds for its  
administrative expenses, including salaries and benefits.

(8) RULEMAKING.—The department shall adopt rules pursuant  
to ss. 120.536(1) and 120.54 to implement this section.

Section 2. For the 2021-2022 fiscal year, and each fiscal  
year thereafter, the sum of \$300,000 in recurring funds is  
appropriated from the General Revenue Fund to the Department of  
Law Enforcement for the purpose of implementing and  
administering the Care for Retired Law Enforcement Dogs Program.

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/30/21

Meeting Date

1810

Bill Number (if applicable)

Topic Retired Law Enforcement Dogs

Amendment Barcode (if applicable)

Name Kate Macfall

Job Title stat dir

Address 1204 Walter Dr.  
Street

Phone 850 508 1001

Tallahassee FL 32312  
City State Zip

Email kmacfall@hsos.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

## Committee Agenda Request

**To:** Senator Jason Pizzo, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 11, 2021

---

I respectfully request that **Senate Bill #1810**, relating to Care for Retired Law Enforcement Dogs, 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

**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 1854

INTRODUCER: Children, families, and Elder Affairs and Senator Farmer

SUBJECT: Defendants with a Traumatic Brain Injury

DATE: March 29, 2021

REVISED: 03/30/21

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	<b>Fav/CS</b>
2.	Siples	Jones	CJ	<b>Favorable</b>
3.			AP	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1854 modifies the definition of “intellectual disability” for the purpose of declaring criminal defendants deemed incompetent to proceed to include certain individuals with a traumatic brain injury (TBI). The bill provides a definition for TBI in the specific context of individuals with intellectual disabilities.

The bill also requires the Agency for Persons with Disabilities (APD) to assist individuals deemed incompetent to proceed due to a TBI with applying for the long-term care managed care program under ch. 409, F.S., if the criminal charges against such an individual have been dismissed.

The bill may have an indeterminate negative fiscal impact on the APD due to a potential increase in the number of individuals committed to state-operated, in-patient commitment facilities, and due to the provision that requires the APD to assist individuals with applying to the long-term care managed care program. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

## II. Present Situation:

### Traumatic Brain Injury

A TBI is caused by a bump, blow, or jolt to the head or a penetrating head injury that disrupts the normal function of the brain.<sup>1</sup> TBIs vary in terms of severity; mild TBIs may cause headaches, fatigue, lethargy, dizziness, and lightheadedness,<sup>2</sup> while more serious TBIs can result in the same signs and symptoms as mild TBIs, as well as repeated nausea or vomiting, a persistent or worsening headache, seizures, numbness or weakness in the hands or feet, and loss of coordination.<sup>3</sup> Regardless of the severity of the TBI, it can have adverse effects on all aspects of social functioning, including employment, social relationships, independent living, functional status, and leisure activities.<sup>4</sup>

### *TBI and the Criminal Justice System*

Approximately 25-87 percent of incarcerated inmates reported sustaining at least one TBI, compared to 8 percent of the general population.<sup>5</sup> This discrepancy between populations may suggest that individuals with TBIs are more susceptible to socially unacceptable behaviors, leading to an increase in the frequency of criminal behavior among such individuals.<sup>6</sup> Research suggests that because individuals with frontal lobe injury are shown to have difficulty altering future behavior based on past consequences, sentencing that emphasizes punishment will be less successful than sentencing that involves teaching alternative coping strategies.<sup>7</sup>

### Criminal Liability and Mental Health or Intellectual Disability

Chapter 916, F.S., governs the state forensic system, a network of state facilities and community services for persons with mental health issues involved with the criminal justice system. The forensic system serves defendants deemed incompetent to proceed or not guilty by reason of insanity.

If a defendant is suspected of being incompetent, the court, defense counsel, or the State may file a motion to have the defendant's cognitive state assessed.<sup>8</sup> If the motion is granted, court-appointed experts will evaluate the defendant's cognitive state.<sup>9</sup> The defendant's competency is then determined by the judge in a subsequent hearing.<sup>10</sup> If the defendant is found to be

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<sup>1</sup> The Centers for Disease Control and Prevention, *Basic Information about Traumatic Brain Injury and Concussion*, March 6, 2019, available at <http://www.cdc.gov/traumaticbraininjury/basics.html> (last visited March 25, 2021).

<sup>2</sup> Erin Bagalman, *Traumatic Brain Injury Among Veterans*, Congressional Research Service, January 4, 2013, p. 3, available at [http://www.ncsl.org/documents/statefed/health/TBI\\_Vets2013.pdf](http://www.ncsl.org/documents/statefed/health/TBI_Vets2013.pdf) (last visited March 25, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Maria E. St. Pierre, Rick Parente, *Not Guilty By Reason of Brain Injury: Perception of Guilty and Sentencing*, *Applied Psychology in Criminal Justice*, 2018, p. 1, available at [http://dev.cjcenter.org/files/apcj/St%20Pierre%20-%20Not%20Guilty.pdf\\_1532553960.pdf](http://dev.cjcenter.org/files/apcj/St%20Pierre%20-%20Not%20Guilty.pdf_1532553960.pdf) (last visited March 25, 2021).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at p. 2.

<sup>8</sup> Rule 3.210, Fla.R.Crim.Pro.

<sup>9</sup> Section 916.12, F.S.

<sup>10</sup> Rule 3.210, Fla.R.Crim.Pro.

competent, the criminal proceeding resumes.<sup>11</sup> If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.<sup>12</sup> A criminal defendant may be deemed incompetent to proceed based on mental health<sup>13</sup> or intellectual disability or autism.<sup>14</sup>

### *Incompetent to Proceed Due to Intellectual Disability*

A criminal defendant may be deemed incompetent to proceed if:

- The defendant's suspected mental condition is intellectual disability or autism;<sup>15</sup> **and**
- The defendant does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding; **or**
- The defendant has no rational, as well as factual, understanding of the proceedings against the defendant.<sup>16</sup>

Section 916.106(13), F.S., defines "intellectual disability" to have the same meaning as in s. 393.063, F.S., which defines the term to mean significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely.<sup>17</sup>

Further, s. 393.063, F.S., defines the following terms:

- "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community;<sup>18</sup> and
- "Significantly subaverage general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.<sup>19</sup>

Experts in intellectual disability or autism appointed pursuant to s. 916.301, F.S., are required to consider whether the defendant meets the definition of intellectual disability or autism and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed as described above.<sup>20</sup>

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<sup>11</sup> Rule 3.212, Fla.R.Crim.Pro.

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

<sup>13</sup> This process is addressed in ss. 916.111-916.185, F.S.

<sup>14</sup> This process is addressed in ss. 916.301-916.304, F.S.

<sup>15</sup> Section 916.106(2), F.S., defines "autism" to have the same meaning as in s. 393.063, F.S., which is a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

<sup>16</sup> Section 916.3012(1), F.S.

<sup>17</sup> See s. 393.063(24), F.S. Additionally, s. 393.063(24), F.S., provides that, for purposes of the application of the criminal laws and procedural rules, to matters relating to pretrial, trial, sentencing, and any matters relating to the imposition and execution of the death penalty, the terms "intellectual disability" or "intellectually disabled" are interchangeable with and have the same meaning as the terms "mental retardation" or "retardation" and "mentally retarded" as defined before July 1, 2013.

<sup>18</sup> Section 393.063(24)(a), F.S.

<sup>19</sup> Section 393.063(24)(b), F.S.

<sup>20</sup> Section 916.3012(2), F.S.



When determining competency to proceed, an expert must consider any relevant factor including, at a minimum, the below listed factors and include in the report the defendant's capacity to:

- Appreciate the charges or allegations against the defendant;
- Appreciate the range and nature of possible penalties;
- Understand the adversarial nature of the legal process;
- Disclose to counsel facts pertinent to the proceedings;
- Manifest appropriate courtroom behavior; and
- Testify relevantly.<sup>21</sup>

If an expert finds a defendant incompetent to proceed, he or she must include the following in the report:

- The intellectual disability or autism causing incompetency;
- The training appropriate for the intellectual disability or autism of the defendant and an explanation of each of the possible training alternatives in order of choices;
- Availability of acceptable training and whether such training is available in the community; and
- The likelihood the defendant will attain competency under the recommended training and the probable duration of the training to restore competency, and the probability that the defendant will attain competence to proceed in the foreseeable future.<sup>22</sup>

If appropriate, the court will involuntarily commit these individuals to the APD for competency training.<sup>23</sup> Individuals who present a public safety risk will receive forensic services in secure settings; in other circumstances, the court may order the conditional release of a defendant found incompetent to proceed due to intellectual disability or autism based on an approved plan for providing community-based training.<sup>24</sup>

Within six months after a defendant is involuntarily admitted to a facility, the administrator of the facility must file a report with the court to determine whether the defendant should remain in the custody of the APD or at any time a defendant regains competency or no longer meets the requirements for commitment.<sup>25</sup> If a defendant remains incompetent after two years despite the APD competency training, and there is reason to believe that he or she will not gain competency in the foreseeable future, the charges against the defendant must be dismissed without prejudice.<sup>26</sup>

### ***Forensic Facilities for Individuals with Intellectual or Developmental Disabilities***

The APD operates the Developmental Disabilities Defendant Program (DDDP), a 146 bed, co-ed, secure facility, located on the grounds of the Florida State Hospital in Chattahoochee,

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<sup>21</sup> Section 916.3012(3), F.S.

<sup>22</sup> Section 916.3012(4), F.S.

<sup>23</sup> Section 916.302, F.S.

<sup>24</sup> Sections 916.302(1)(c) and 916.304(1), F.S.

<sup>25</sup> Section 916.302(2)(a), F.S.

<sup>26</sup> Section 916.303(1), F.S. When a case is dismissed without prejudice, the state may refile charges if the defendant gains competency in the future.

Florida.<sup>27</sup> The DDDP is for individuals charged with a felony crime and found to be incompetent to proceed to trial based on a developmental or intellectual disability.<sup>28</sup> Residents in the DDDP have been placed there by a court order to receive competency training and other services in accordance with their needs. This residential setting is not voluntary. During Fiscal Year 2018-19, the average daily population to whom the DDDP provided services was 145 individuals.<sup>29</sup>

The mission and purpose of the DDDP is to “help the individuals acquire needed skills and supports to become competent to stand trial.”<sup>30</sup> The DDDP utilizes a progressive level (levels 1-4) and point system to assess and track the progress of residents.<sup>31</sup> Residents advance through the levels based on the absence of socially inappropriate behavior and earn points for desired behaviors.<sup>32</sup>

### **Statewide Medicaid Managed Care Long-Term Care Program**

The Statewide Medicaid Managed Care Long-Term Care program (SMMC LTC) is a Medicaid waiver program which provides both home and community based services (HCBS) and nursing facility services. HCBS may be provided in a setting such as a recipient’s home, an assisted living facility, or an adult family care home.<sup>33</sup>

The purpose of the SMMC LTC program is to provide services to eligible individuals age 18 or older who need long-term services and supports, including individuals over the age of 18 with a diagnosis of cystic fibrosis, AIDS, or a traumatic brain or spinal cord injury.<sup>34</sup> The SMMC LTC program is designed to delay or prevent institutionalization and allow enrollees to maintain stable health while receiving services at home and in the community.<sup>35</sup> Individuals in the program may also be served in a nursing facility setting.<sup>36</sup>

Individuals with traumatic brain injuries or spinal cord injuries desiring to receive services under the SMMC LTC program must meet the following criteria:

- Be age 65 or older and eligible for Medicaid; or
- Be age 18 or older and eligible for Medicaid due to a disability; and

<sup>27</sup> See Office of Program Policy Analysis and Governmental Accountability, *Agency for Persons with Disabilities*, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5060> (last visited March 25, 2021).

<sup>28</sup> *Id.*

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

<sup>30</sup> The APD, *Little known facts about APD’s Developmental Disabilities Defendant Program (DDDP)*, available at <https://apdcare.wordpress.com/tag/dddp/> (last visited March 25, 2021) (hereinafter cited as “DDDP Little Known Facts”).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Agency for Health Care Administration, *Facts About the 2017 Florida Medicaid Waiver Consolidation*, available at [https://ahca.myflorida.com/medicaid/Policy\\_and\\_Quality/Policy/federal\\_authorities/federal\\_waivers/docs/2017\\_Waiver\\_Consolidation\\_Overview\\_FINAL\\_092817.pdf](https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/2017_Waiver_Consolidation_Overview_FINAL_092817.pdf) (last visited March 25, 2021).

<sup>34</sup> Agency for Health Care Administration, *Florida Medicaid’s Covered Services and Waivers*, available at [https://ahca.myflorida.com/medicaid/policy\\_and\\_quality/policy/federal\\_authorities/federal\\_waivers/LTC.shtml](https://ahca.myflorida.com/medicaid/policy_and_quality/policy/federal_authorities/federal_waivers/LTC.shtml) (last visited March 25, 2021).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

- Be determined by the Comprehensive Assessment and Review for Long-Term Care Services to be at nursing home level of care or hospital level of care for persons with cystic fibrosis.<sup>37</sup>

### III. Effect of Proposed Changes:

The bill expands the category of defendants that may be evaluated and determined to be incompetent to proceed based on an intellectual disability by amending the definition of “intellectual disability” in s. 916.106, F.S. The bill removes the cross-reference of s. 393.063, F.S., found in the current definition, incorporates the entire substance of the cross-referenced term, and expands the definition to include certain traumatic brain injuries.

Specifically, the bill modifies the definition of “intellectual disability” to mean “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18, or significantly deficient adaptive functioning resulting from a traumatic brain injury, which can reasonably be expected to continue indefinitely.”

For the purposes of the modified definition of “intellectual disability,” the bill defines several additional terms as follows:

- “Adaptive behavior” means “the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community;”
- “Significantly deficient in adaptive functioning” means “the extreme limitation of one, or marked limitation of two, of the following areas of mental functioning:
  - Understanding, remembering, or applying information;
  - Interacting with others;
  - Concentrating, persisting, or maintaining pace; or
  - Adapting or managing oneself;”
- “Significantly subaverage general intellectual functioning” means “performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency;” and
- “Traumatic brain injury” means “a disruption in the normal function of the brain which can be caused by a bump, blow, or jolt to the head or a penetrating head injury.”

Therefore, any criminal defendant who meets the expanded definition of intellectual disability described above and who is found by experts and the court to be incompetent to proceed may be committed to the APD, retained, and provided competency restoration training. This will include defendants who have traumatic brain injuries that result in significant deficiencies in adaptive functioning who would not currently be eligible to receive treatment or have his or her charges dismissed as a result of incompetency in accordance with ch. 916, F.S.

The bill also requires the APD to assist intellectually disabled defendants with a TBI to apply for the long-term care managed care program under ch. 409, F.S., once the criminal charges against such a defendant have been dismissed.

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<sup>37</sup> The AHCA, *Who Can Receive Long-Term Care Services*, available at [https://ahca.myflorida.com/Medicaid/statewide\\_mc/ltc\\_who.shtml](https://ahca.myflorida.com/Medicaid/statewide_mc/ltc_who.shtml) (last visited March 25, 2021).

The bill is effective 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, Section 18 of the Florida Constitution.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill may have a negative fiscal impact on the APD and state-operated inpatient commitment treatment facilities who will be required to accept defendants deemed incompetent to proceed due to a TBI. The number of defendants and the cost to inpatient facilities are both unknown. Therefore, the fiscal impact of the bill on these facilities is indeterminate.

The bill may have a further negative fiscal impact to the APD as it may incur costs related to assisting individuals apply to the long-term care managed care program. The fiscal impact of this requirement is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends sections 916.106 and 916.303 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 March 23, 2021:**

The Committee Substitute:

- Modifies the definition of “intellectual disability” for the purpose of declaring criminal defendants deemed incompetent to proceed to include certain individuals with a TBI;
- Provides a definition for TBI in the specific context of individuals with intellectual disabilities; and
- Requires the Agency for Persons with Disabilities to assist individuals deemed incompetent to proceed due to a TBI with applying for the long-term care managed care program under ch. 409, F.S., if the criminal charges against such an individual have been dismissed.

**B. Amendments:**

None.

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

586-03267-21

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A bill to be entitled

An act relating to defendants with a traumatic brain injury; amending s. 916.106, F.S.; redefining the term "intellectual disability" as it relates to defendants who have been found to be incompetent to proceed by adding the terms "significantly deficient in adaptive functioning" and "traumatic brain injury"; amending s. 916.303, F.S.; requiring the Agency for Persons with Disabilities to assist certain defendants found incompetent to proceed with application to the long-term care managed care program; providing an effective date.

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

Section 1. Subsection (13) of section 916.106, Florida Statutes, is amended to read:

916.106 Definitions.—For the purposes of this chapter, the term:

(13) "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18, or significantly deficient in adaptive functioning resulting from a traumatic brain injury, which can reasonably be expected to continue indefinitely. For the purposes of this definition, the term:

(a) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her

586-03267-21

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age, cultural group, and community.

(b) "Significantly deficient in adaptive functioning" means the extreme limitation of one, or marked limitation of two, of the following areas of mental functioning:

1. Understanding, remembering, or applying information;

2. Interacting with others;

3. Concentrating, persisting, or maintaining pace; or

4. Adapting or managing oneself.

(c) "Significantly subaverage general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

(d) "Traumatic brain injury" means a disruption in the normal function of the brain which can be caused by a bump, blow, or jolt to the head or a penetrating head injury ~~has the same meaning as in s. 393.063.~~

Section 2. Subsection (4) is added to section 916.303, Florida Statutes, to read:

916.303 Determination of incompetency; dismissal of charges.—

(4) If the charges are dismissed and the defendant has been found incompetent to proceed due to an intellectual disability caused by a traumatic brain injury, the agency must assist the defendant with application to the long-term care managed care program described in ss. 409.978-409.985.

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

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

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

3/30/21  
Meeting Date

1854  
Bill Number (if applicable)

Topic Traumatic Brain Injuries

Amendment Barcode (if applicable)

Name Carlos Martinez

Job Title Public Defender 11th Circuit

Address 1320 NW 14th St

Phone 305-545-1900

Miami FL 33145  
City State Zip

Email cmartinez@pdmiami.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Jason Pizzo, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 23, 2021

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I respectfully request that **Senate Bill #1854**, relating to Defendants with Traumatic Brain Injury, be placed on the:

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

A handwritten signature in black ink, reading "Gary M. Farmer, Jr.", written over a horizontal line.

Senator Gary M. Farmer, Jr.  
Florida Senate, District 34



# CourtSmart Tag Report

**Room:** SB 110

**Case No.:**

**Type:**

**Caption:** Senate Criminal Justice Committee

**Judge:**

**Started:** 3/30/2021 9:02:17 AM

**Ends:** 3/30/2021 11:12:52 AM

**Length:** 02:10:36

9:02:16 AM Meeting called to order by Chair Pizzo  
9:02:18 AM Roll call by CAA Sue Arnold  
9:02:26 AM Quorum present  
9:02:35 AM Comments from Chair Pizzo  
9:02:43 AM SB 552 by Senator Thurston and SB 1384 by Senator Rodriguez are temporary postponed  
9:03:28 AM Introduction of Tab 1, SB 328 by Chair Pizzo  
9:03:37 AM Explanation of SB 328, Sentencing by Senator Rouson  
9:04:54 AM Introduction of Amendment Barcode 968060 by Chair Pizzo  
9:04:59 AM Explanation of Amendment by Senator Rouson  
9:05:08 AM Comments from Chair Pizzo  
9:05:23 AM Speaker Michelle Rothwell in support  
9:06:57 AM Speaker Christina Miholics in support  
9:08:03 AM Speaker Omayra Martin in support  
9:09:57 AM Comments from Chair Pizzo  
9:10:07 AM Closure waived  
9:10:11 AM Amendment adopted  
9:10:16 AM Question from Senator Gainer  
9:10:24 AM Response from Senator Rouson  
9:11:21 AM Carlos Martinez, Florida Public Defender Association waives in support  
9:11:27 AM Anne Williams waives in support  
9:11:31 AM Carrie Boyd, SPLC Action Fund waives in support  
9:11:36 AM Ida Eskamani, Florida Rising waives in support  
9:11:40 AM Pamela Burch Fort, ACLU of Florida waives in support  
9:11:42 AM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support  
9:11:46 AM Speaker Diana Bernard in support  
9:13:34 AM Speaker Joel Charlemagne in support  
9:15:52 AM Speaker Delva Charlemagne waives in support  
9:19:24 AM Comments from Chair Pizzo  
9:19:33 AM Senator Brandes in debate  
9:21:06 AM Chair Pizzo in debate  
9:21:51 AM Roll call by CAA  
9:21:56 AM CS/SB 328 reported favorably  
9:22:26 AM Introduction of Tab 11, SB 1566 by Chair Pizzo  
9:22:42 AM Introduction of Amendment Barcode 522212 by Chair Pizzo  
9:22:54 AM Explanation of Amendment by Senator Bradley  
9:24:10 AM Comments from Chair Pizzo  
9:24:29 AM Closure waived  
9:24:31 AM Amendment adopted  
9:24:36 AM Comments from Chair Pizzo  
9:24:48 AM Closure waived  
9:24:52 AM Roll call by CAA  
9:24:58 AM CS/SB 1566 reported favorably  
9:25:21 AM Introduction of Tab 2, SB 410 by Chair Pizzo  
9:25:38 AM Explanation of SB 410, Materials Harmful to Minors by Senator Rodriguez  
9:25:59 AM Introduction of PCS Barcode 943370 by Chair Pizzo  
9:26:07 AM Explanation of PCS by Senator Rodriguez  
9:26:48 AM Comments from Chair Pizzo  
9:26:56 AM Introduction of Amendment Barcode 856276 by Chair Pizzo  
9:27:07 AM Explanation of Amendment by Senator Brandes  
9:28:26 AM Question from Chair Pizzo  
9:28:39 AM Response from Senator Brandes  
9:28:56 AM John Harris Maurer, Equality Florida waives in support

9:29:01 AM	Speaker Doug Bell, The AIDS Institute & The Florida Chapter of the American Academy of Pediatrics in support
9:29:58 AM	Comments from Chair Pizzo
9:30:02 AM	Senator Baxley in debate
9:32:21 AM	Chair Pizzo in debate
9:34:25 AM	Response from Senator Rodriguez
9:35:04 AM	Senator Brandes in closure on Amendment
9:35:42 AM	Comments from Chair Pizzo
9:35:47 AM	Amendment adopted
9:35:51 AM	Comments from Chair Pizzo
9:36:02 AM	Laura Hernandez, Florida Alliance and Planned Parenthood Affiliates waives in opposition
9:36:12 AM	Patrice Randolph waives in opposition
9:36:17 AM	Speaker Emily Richeson waives in opposition
9:36:47 AM	Speaker Kaitlyn Lilly waives in opposition
9:37:53 AM	Comments from Chair Pizzo
9:38:08 AM	Rhamira Corbett
9:38:22 AM	Hannah Fulk
9:38:51 AM	Chloe Ilaus
9:39:07 AM	Madeline Riley
9:39:24 AM	Speaker Julie Vayne in support
9:41:17 AM	Ida Eskamani, Florida Rising waives in opposition
9:41:23 AM	Chloe Ilaus
9:41:32 AM	Hannah Fulk
9:41:41 AM	Madelyn Riley
9:41:44 AM	Abigail O'Laughlin
9:41:47 AM	Kaitlyn Lilly
9:41:50 AM	Chloe Ilaus
9:41:54 AM	Laura Hernandez, Florida Alliance of Planned Parenthood Affiliates waives in opposition
9:42:00 AM	Patrice Randolph waives in opposition
9:42:04 AM	Lauren Brenzel waives in opposition
9:42:07 AM	Rhamira Corbett
9:42:10 AM	Emily Richardson
9:42:12 AM	Speaker Abigail O'Laughlin
9:42:41 AM	Speaker Pam McAloon in support
9:44:09 AM	Comments from Chair Pizzo
9:44:20 AM	Question from Senator Taddeo
9:44:36 AM	Response from Senator Rodriguez
9:44:46 AM	Response from Senator Brandes
9:46:06 AM	Follow-up question from Senator Taddeo
9:46:13 AM	Response from Senator Rodriguez
9:47:12 AM	Question from Senator Gainer
9:47:21 AM	Response from Senator Rodriguez
9:48:04 AM	Response from Senator Brandes
9:48:35 AM	Follow-up question from Senator Gainer
9:48:41 AM	Response from Senator Brandes
9:49:14 AM	Response from Chair Pizzo
9:50:03 AM	Question from Senator Baxley
9:50:10 AM	Response from Chair Pizzo
9:50:34 AM	Senator Boyd in debate
9:51:35 AM	Senator Baxley in debate
9:54:31 AM	Question from Chair Pizzo
9:54:35 AM	Response from Senator Baxley
9:57:13 AM	Senator Taddeo in debate
10:01:11 AM	Senate Brandes in debate
10:02:21 AM	Chair Pizzo in debate
10:04:33 AM	Senator Rodriguez in closure
10:04:46 AM	Roll call by CAA
10:05:25 AM	CS/SB 410 reported favorably
10:05:48 AM	Introduction of Tab 7, SB 818 by Chair Pizzo
10:06:16 AM	Explanation of SB 818, Mental Health Professionals by Senator Burgess
10:07:12 AM	Introduction of Amendment Barcode 526946 by Chair Pizzo
10:07:17 AM	Explanation of Amendment by Senator Burgess

10:07:38 AM Comments from Chair Pizzo  
10:07:53 AM Closure waived  
10:07:57 AM Amendment adopted  
10:08:00 AM Comments from Chair Pizzo  
10:08:04 AM Question from Senator Taddeo  
10:08:17 AM Response from Senator Burgess  
10:08:47 AM Follow-up question from Senator Taddeo  
10:08:54 AM Response from Senator Burgess  
10:09:54 AM Question from Chair Pizzo  
10:09:58 AM Response from Senator Burgess  
10:10:08 AM Corinne Mixon, Florida Mental Health Counselors Association waives in support  
10:10:13 AM Shane Messer, Florida Council for Behavioral Healthcare waives in support  
10:10:24 AM Comments from Chair Pizzo  
10:10:31 AM Senator Baxley in debate  
10:14:04 AM Senator Burgess in closure  
10:14:13 AM Roll call by CAA  
10:14:54 AM CS/SB 818 reported favorably  
10:15:07 AM Introduction of Tab 3, CS/SB 468 by Chair Pizzo  
10:15:28 AM Explanation of CS/SB 468, Expunction of Criminal History Records Relating to Certain Cannabis Offenses by Senator Bracy  
10:15:53 AM Comments from Chair Pizzo  
10:16:00 AM Carrie Boyd, SPLC Action Fund waives in support  
10:16:04 AM Carlos Martinez, Florida Public Defender Association waives in support  
10:16:11 AM Ida Eskamani, Florida Rising waives in support  
10:16:15 AM Pamela Burch Fort, ACLU of FL and NAACP Florida State Conferences waives in support  
10:16:16 AM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support  
10:16:21 AM Speaker Mary Adams, Florida CANN in support  
10:18:26 AM Speaker Josephine Connella-Krehl, Florida Cannabis Action Network in support  
10:20:22 AM Comments from Chair Pizzo  
10:20:36 AM Speaker Melissa Villar, NORML Tallahassee in support  
10:23:35 AM Comments from Chair Pizzo  
10:23:43 AM Senator Bracy in closure  
10:23:50 AM Roll call by CAA  
10:23:55 AM CS/SB 468 reported favorably  
10:24:26 AM Introduction of Tab 4, CS/SB 470 by Chair Pizzo  
10:24:31 AM Explanation of CS/SB 470, Public Records/Expunged Criminal History Records by Senator Bracy  
10:24:36 AM Carlos Martinez, Florida Public Defender Association waives in support  
10:24:41 AM Ida Eskamani, Florida Rising waives in support  
10:24:47 AM Comments from Chair Pizzo  
10:24:52 AM Closure waived  
10:24:54 AM Roll call by CAA  
10:24:58 AM CS/SB 470 reported favorably  
10:25:12 AM Introduction of Tab 6, SB 718 by Chair Pizzo  
10:25:19 AM Explanation of SB 718, Gay and Transgender Panic Legal Defenses by Senator Book  
10:27:03 AM Introduction of Amendment Barcode 662326 by Chair Pizzo  
10:27:08 AM Explanation of Amendment by Senator Book  
10:27:34 AM Comments from Chair Pizzo  
10:27:51 AM Closure waived  
10:27:56 AM Amendment adopted  
10:28:00 AM Question from Senator Brandes  
10:28:08 AM Response from Senator Book  
10:28:35 AM Follow-up question from Senator Brandes  
10:28:41 AM Response from Senator Book  
10:29:15 AM Follow-up question from Senator Brandes  
10:29:24 AM Response from Senator Book  
10:29:36 AM Response from Staff Director Lauren Jones  
10:30:59 AM Follow-up question from Senator Brandes  
10:31:07 AM Response from Mrs. Jones  
10:31:56 AM Follow-up question from Senator Brandes  
10:32:07 AM Response from Mrs. Jones  
10:33:07 AM Follow-up question from Senator Brandes  
10:33:14 AM Response from Mrs. Jones

10:33:47 AM Follow-up question from Senator Brandes  
10:33:54 AM Response from Mrs. Jones  
10:34:29 AM Follow-up question from Senator Brandes  
10:34:36 AM Response from Senator Book  
10:35:47 AM Question from Senator Boyd  
10:35:55 AM Response from Mrs. Jones  
10:36:38 AM Comments from Chair Pizzo  
10:38:16 AM Ida Eskamani, Florida Rising waives in support  
10:38:21 AM Chloe Ilaus waives in support  
10:38:21 AM Annie Filkowski, The Florida Alliance of Planned Parenthood Affiliates waives in support  
10:38:26 AM Madeline Riley waives in support  
10:38:28 AM Hanna Fulk waives in support  
10:38:30 AM Barbara DeVane, FL NOW waives in support  
10:38:34 AM Karen Woodall, FL Center for Fiscal & Economic Policy waives in support  
10:38:36 AM Abigail O'Laughlin waives in support  
10:38:40 AM Kaitlyn Lilly waives in support  
10:38:43 AM Carrie Boyd, SPLC Action Fund waives in support  
10:38:46 AM Patrice Randolph waives in support  
10:38:50 AM Lauren Brenzel waives in support  
10:38:54 AM Rhamira Corbett waives in support  
10:38:56 AM Emily Richeson waives in support  
10:38:59 AM Speaker Jon Harris Maurer, Equality Florida in support  
10:40:26 AM Question from Chair Pizzo  
10:40:31 AM Response from Mr. Maurer  
10:41:26 AM Follow-up question from Chair Pizzo  
10:41:33 AM Response from Mr. Maurer  
10:42:21 AM Comments from Chair Pizzo  
10:42:29 AM Senator Perry in debate  
10:43:27 AM Senator Brandes in debate  
10:43:36 AM Senator Baxley in debate  
10:45:50 AM Senator Gainer in debate  
10:46:16 AM Senator Boyd in debate  
10:47:05 AM Senator Taddeo in debate  
10:48:03 AM Chair Pizzo in debate  
10:49:38 AM Closure waived  
10:49:45 AM Roll call by CAA  
10:49:51 AM CS/SB 718 reported favorably  
10:50:04 AM Introduction of Tab 13, CS/SB 1854 by Chair Pizzo  
10:50:29 AM Explanation of CS/SB 1854, Defendants with a Traumatic Brain Injury by Senator Farmer  
10:50:51 AM Comments from Chair Pizzo  
10:51:00 AM Carlos Martinez, Florida Public Defender Association waives in support  
10:51:13 AM Comments from Chair  
10:51:16 AM Senator Farmer in closure  
10:51:21 AM Roll call by CAA  
10:51:34 AM CS/SB 1854 reported favorably  
10:51:49 AM Introduction of Tab 8, SB 1156  
10:52:04 AM Explanation of SB 1156, Serious Mental Illness as Bar to Execution by Senator Brandes  
10:52:45 AM Comments from Chair Pizzo  
10:52:51 AM Ida Eskamani, Florida Rising waives in support  
10:52:53 AM Carrie Boyd, SPLC Action fund waives in support  
10:52:58 AM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support  
10:52:59 AM Pamela Burch Fort, ACLU of Florida waives in support  
10:53:00 AM Ingrid Delgado, Florida Conference of Catholic Bishops waives in support  
10:53:07 AM Speaker Allison Miller, Office of the Public Defender for the Sixth Judicial Circuit of Florida in support  
10:56:14 AM Speaker Adam Roberts, Florida Mental Health Advocacy Coalition in support  
10:57:10 AM Comments from Chair Pizzo  
10:57:25 AM Closure waived  
10:57:27 AM Roll call by CAA  
10:57:33 AM SB 1156 reported favorably  
10:57:46 AM Introduction of Tab 9, SB 1346 by Chair Pizzo  
10:57:57 AM Explanation of SB 1346, Felony Settlement Conferences by Senator Brandes  
10:58:58 AM Comments from Chair Pizzo

**10:59:02 AM** Question from Senator Baxley  
**10:59:10 AM** Response from Senator Brandes  
**11:00:25 AM** Delva Charlemagne waives in support  
**11:00:27 AM** Diana Bernard waives in support  
**11:00:29 AM** Michelle Rothwell waives in support  
**11:00:32 AM** Christina Miholics waives in opposition  
**11:00:41 AM** Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support  
**11:00:44 AM** Anne Williams waives in support  
**11:00:48 AM** Omayra Martin waives in support  
**11:00:52 AM** Joel Charlemagne waives in support  
**11:01:07 AM** Speaker Carlos Martinez, Public Defender, 11th Circuit in support  
**11:01:30 AM** Comments from Chair Pizzo  
**11:01:36 AM** Speaker Carolos Martinez, Public Defender, 11th Circuit  
**11:01:58 AM** Question from Chair Pizzo  
**11:02:08 AM** Response from Mr. Martinez  
**11:03:04 AM** Follow-up question from Chair Pizzo  
**11:03:10 AM** Response from Mr. Martinez  
**11:03:48 AM** Follow-up question from Chair Pizzo  
**11:03:54 AM** Response from Mr. Martinez  
**11:04:11 AM** Follow-up question from Chair Pizzo  
**11:04:16 AM** Response from Mr. Martinez  
**11:05:35 AM** Follow-up question from Chair Pizzo  
**11:05:41 AM** Response from Mr. Martinez  
**11:06:30 AM** Comments from Chair Pizzo  
**11:06:43 AM** Closure waived  
**11:07:19 AM** Roll call by CAA  
**11:07:25 AM** SB 1156 reported favorably  
**11:07:31 AM** Introduction of Tab 12, SB 1810 by Chair Pizzo  
**11:07:49 AM** Explanation of SB 1810, Care for Retired Law Enforcement Dogs by Senator Powell  
**11:09:06 AM** Comments from Chair Pizzo  
**11:09:11 AM** Question from Senator Boyd  
**11:09:18 AM** Response from Senator Powell  
**11:10:03 AM** Kate McFall waives in support  
**11:10:24 AM** Comments from Chair Pizzo  
**11:10:36 AM** Senator Powell in closure  
**11:10:40 AM** Roll call by CAA  
**11:10:47 AM** SB 1810 reported favorably  
**11:11:06 AM** Senator Brandes moves to give staff license to make technical and conforming changes to the Committee Substitutes. Without objection, show that adopted  
**11:11:23 AM** Comments from Chair Pizzo regarding thanking staff for their work  
**11:12:34 AM** Senator Perry moves to adjourn  
**11:12:43 AM** Meeting adjourned