

Tab 1	CS/SB 190 by JU, Brodeur; (Identical to CS/H 00095) Controlled Substances						
730750	A	S	RCS	CJ, Pizzo	Delete L.50 - 156:	02/08 11:43 AM	
Tab 2	SB 692 by Stewart (CO-INTRODUCERS) Harrell; (Similar to CS/H 00341) Sexual Offenses Definitions						
516686	D	S	RCS	CJ, Stewart	Delete everything after	02/08 11:43 AM	
Tab 3	CS/SB 1182 by BI, Broxson; (Similar to CS/H 00381) Breach of Bond Costs						
Tab 4	SB 1236 by Jones; (Similar to CS/H 01561) County and Municipal Detention Facilities						
Tab 5	CS/SB 1664 by JU, Perry (CO-INTRODUCERS) Boyd; (Similar to CS/H 01571) Unlawful Assemblies						
852166	A	S	WD	CJ, Taddeo	btw L.33 - 34:	02/08 11:43 AM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Pizzo, Chair
Senator Brandes, Vice Chair

MEETING DATE: Tuesday, February 8, 2022

TIME: 9:00—11:00 a.m.

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

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 190 Judiciary / Brodeur (Identical CS/H 95)	Controlled Substances; Revising the elements that constitute the capital offense of murder in the first degree; revising the elements that constitute the felony offense of murder in the third degree; prohibiting specified activities involving controlled substances within 1,000 feet of additional specified facilities; providing criminal penalties, etc. JU 11/30/2021 Not Considered JU 01/10/2022 Fav/CS CJ 02/08/2022 Fav/CS RC	Fav/CS Yeas 5 Nays 3
2	SB 692 Stewart (Similar H 341, Compare S 878)	Sexual Offenses Definitions; Creating and revising a definition relating to sexual abuse of a child; creating and revising definitions relating to obscene telephone communications and possession or promotion of certain images of child pornography, respectively; creating and revising definitions relating to sexual battery; creating and revising definitions relating to sexual performance by a child and obscenity definitions, respectively; creating and revising definitions relating to abuse of a dead human body, etc. CF 02/01/2022 Favorable CJ 02/08/2022 Fav/CS RC	Fav/CS Yeas 5 Nays 3
3	CS/SB 1182 Banking and Insurance / Broxson (Similar CS/H 381)	Breach of Bond Costs; Redefining the term "jurisdiction"; providing for the exoneration from liability of a surety on a bond under certain circumstances if the surety agrees in writing to pay the costs and expenses incurred in returning the defendant to the jurisdiction of the court; providing for calculation of costs and expenses, etc. BI 01/25/2022 Fav/CS CJ 02/08/2022 Favorable RC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 8, 2022, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1236 Jones (Identical H 1561)	County and Municipal Detention Facilities; Creating the Florida Model Jail Standards Commission to supersede a working group; specifying that each entity that operates a municipal or county detention facility shall adopt the Florida Model Jail Standards approved by the commission; requiring the jail standards to include criteria and standards for what actions result in serious violations and notable violations; specifying that the jail standards must require that each county detention facility and municipal detention facility be inspected, at a minimum, twice annually; providing financial penalties for persons in charge of detention facilities who refuse to allow inspections or who refuse to provide access to detention facilities, or for facilities found to be noncompliant with the jail standards during an annual inspection or any reinspection, etc. CA 01/25/2022 Favorable CJ 02/08/2022 Favorable RC	Favorable Yeas 9 Nays 0

5	CS/SB 1664 Judiciary / Perry	Unlawful Assemblies; Prohibiting a person or persons from picketing or protesting before or about the residence or dwelling of any person with specified intent; defining the term "dwelling"; providing criminal penalties, etc. JU 01/31/2022 Fav/CS CJ 02/08/2022 Favorable RC	Favorable Yeas 4 Nays 2
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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

Secretary of Corrections

6	Dixon, Ricky ()	Pleasure of Governor	Recommend Confirm Yeas 9 Nays 0
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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.)

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

BILL: CS/CS/SB 190

INTRODUCER: Criminal Justice Committee; Judiciary Committee; and Senator Brodeur

SUBJECT: Controlled Substances

DATE: February 8, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 190 addresses two recommendations of the Statewide Task Force on Opioid Abuse (Task Force) and creates an exception to the definition of “drug paraphernalia.”

The bill amends s. 782.04, F.S., which punishes an adult for first degree murder if the adult unlawfully distributes a listed controlled substance or a mixture containing the substance, when it is proven that the substance or mixture was the proximate cause of a user’s death. The bill adds methamphetamine to the list of scheduled controlled substances applicable to the offense and makes conforming changes. The addition of methamphetamine was a recommendation by the Task Force.

The bill also amends s. 893.13, F.S., to create an enhanced penalty for the sale of a controlled substance if the offense is committed within 1,000 feet of certain facilities that often provide health care and substance abuse treatment. Depending on the substance, the enhancement increases a third degree felony to a second degree felony, and increases a second degree felony to a first degree felony. This change was also recommended by the Task Force.

Finally, the bill amends s. 893.145, F.S., to exclude from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2022.

II. Present Situation:

On April 1, 2019, citing an increase in the number of opioid-caused deaths in Florida, Governor DeSantis created the Statewide Task Force on Opioid Abuse (Task Force).¹ The Governor directed the Task Force to develop a statewide strategy to identify best practices to combat the opioid epidemic through education, treatment, prevention, recovery, and law enforcement, and to compile a report containing legislative recommendations. Two specific recommendations made by the Task Force relating to law enforcement included:

- Adding methamphetamine as a controlled substance qualifying for prosecution as a first degree murder offense when its distribution proximately causes the user's death; and
- Enhancing criminal penalties for the sale of a controlled substance within 1,000 feet of substance abuse treatment facilities.²

The Task Force's report did not address the proximate cause requirement for the capital offense of the unlawful distribution of certain controlled substances resulting in the death of the user.

Murder by Unlawful Distribution of Certain Controlled Substances

Section 782.04(1)(a)3., F.S., provides that first degree murder includes unlawfully killing of a human being which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to be the *proximate cause* of the death of the user:

- A Schedule I controlled substance;³
- Cocaine;
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;
- Methadone;
- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil; or
- A controlled substance analog of any of the above-listed controlled substances.⁴

¹ Fla. Exec. Order No. 19-97 (April 1, 2019), available at <https://www.flgov.com/wp-content/uploads/2019/04/EO-19-97.pdf> (last visited on Feb. 3, 2022).

² Florida Statewide Task Force on Opioid Abuse, *Findings and Recommendation of the Statewide Task Force on Opioid Abuse*, 45 (April 1, 2020), available at <https://doseofrealityfl.com/pdfs/opioid-task-force-findings-recommendations-opioid-abuse.pdf> (last visited on Feb. 3, 2022).

³ See s. 893.03(1), F.S.

⁴ A "controlled substance analog" is defined in s. 893.0356(2)(a), F.S., as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- Is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and

First degree murder is a capital felony,⁵ punishable by death or life imprisonment.⁶

Third Degree Murder – Exclusion of Unlawful Distribution of Certain Controlled Substances

Section 782.04(4), F.S., provides that it is third degree murder, a second degree felony,⁷ when an unlawful killing of a human being, was perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate any felony other than any felony listed in subsection (4). This list of excluded felonies includes unlawful distribution by a person 18 years of age or older of any of the following substances when such substance is proven to be the *proximate cause* of the death of the user:

- A Schedule I controlled substance;
- Cocaine; or
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium.⁸

Florida Standard Jury Instructions for Murder by Unlawful Distribution of Certain Controlled Substances

The Florida Standard Jury instructions for murder by unlawful distribution of certain controlled substances defines *proximate cause* as conduct “that was the *primary* or moving cause of the death; the death would not have occurred but for the defendant’s conduct; and the death was a natural and reasonably anticipated consequence of the defendant’s conduct.”⁹ Because the instruction requires the substance be the *primary* cause of death, a prosecutor may encounter certain scenarios where he or she cannot prove a specific substance was the primary cause of death. A victim may, for example, have ingested lethal amounts of both cocaine and opium, each of which could have caused his or her death. Prosecutors have reported difficulty obtaining convictions in scenarios such as this, as it is virtually impossible to determine if something was the *primary* cause if there are multiple sufficient possibilities that were all equally lethal.¹⁰

Crimes with an Element of Causation

The Florida Supreme Court has identified “two distinct subelements” of causation for crimes that include an element of causation.¹¹

-
- Has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.

⁵ Section 782.04(1)(a)3., F.S.

⁶ Section 782.082, F.S.

⁷ 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.

⁸ Section 782.04(4)(l), F.S.

⁹ Fla. Std. Jury Instr. (Crim.) 7.3(a) (emphasis added by staff), available at <https://www-media.floridabar.org/uploads/2021/04/7.3aCrimJI.rtf> (last visited on Feb. 3, 2022); and *Aumuller v. State*, 944 So 2d 1137, 1141-1142 (Fla. 2d DCA 2006).

¹⁰ Office Memorandum to Bob Cortes from Daniel E. Faggard, Assistant State Attorney, Eighteenth Judicial Circuit, Re: Substantial Factor Test (Feb. 5, 2021) (on file with the Senate Committee on Criminal Justice).

¹¹ *Eversely v. State*, 748 So.2d 963, 966 (Fla. 1999). Courts consider “two basic questions in determining proximate cause: (1) whether the prohibited result of the defendant’s conduct is beyond the scope of any fair assessment of the danger created

As legal scholars have recognized, before a defendant can be convicted of a crime that includes an element of causation, the State must prove beyond a reasonable doubt that the defendant's conduct was (1) the "cause in fact" and (2) the "legal cause" (often called "proximate cause" of the relevant harm.¹²

Typically, to establish the "cause in fact" subelement, the State "must demonstrate that 'but for' the defendant's conduct, the harm would not have occurred."¹³ "A defendant can rebut this showing by demonstrating that the harm would have occurred in any event, regardless of the defendant's conduct."¹⁴ However, "[i]n those rare circumstances where 'two causes, each alone sufficient to bring about the harmful result, operate together to cause it,' the 'but for' test becomes impossible to prove"¹⁵ and "the State may prove the "'cause-in-fact' causation by demonstrating that the defendant's conduct was a 'substantial factor' in bringing about the harm."¹⁶

Controlled Substance Offenses Committed Within 1,000 Feet of Certain Places

Florida law prohibits a person from selling, manufacturing, or delivering, or possession with the intent to do the same, a controlled substance.¹⁷ The penalty for selling a controlled substance varies depending on several factors, including the type and amount of the substance sold and the location where the sale takes place. Generally, the sale, etc., of a controlled substance is punishable as either a second degree felony or third degree felony.¹⁸ However, these felony penalties are enhanced (by one felony degree) if the sale, etc., occurs within 1,000 feet of the real property of specified locations, including a:

- Child care facility;
- Public or private elementary, middle, or secondary school;
- State, county, or municipal park;
- Community center or publicly owned recreational facility;
- Public or private college, university, or other postsecondary institution;
- Physical place of worship at which a church or religious organization regularly conducts religious services;
- Convenience business;
- Public housing facility; or
- Assisted living facility.¹⁹

by the defendant's conduct and (2) whether it would be otherwise unjust, based on fairness and policy considerations, to hold the defendant criminally responsible for the prohibited result." *Id.* at 967 (citations omitted).

¹² *Id.* at 966-967 (citations omitted).

¹³ *Id.* at 967 (citations omitted).

¹⁴ *Id.* (citation omitted).

¹⁵ *Id.*, quoting 1 Wayne R. LaFare & Austin W. Scott, Jr., *Substantive Criminal Law* s. 3.12, at 394 (footnote and other citations omitted).

¹⁶ *Id.* (citations omitted).

¹⁷ Section 893.13, F.S.

¹⁸ Section 893.13(1), F.S. 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.

¹⁹ See s. 893.13(1)(c), (d), (e), (f), and (h), F.S.

III. Effect of Proposed Changes:

The bill addresses two recommendations of the Statewide Task Force on Opioid Abuse (Task Force) and creates an exception to the definition of “drug paraphernalia.”

Section 1 of the bill amends s. 782.04, F.S., which punishes an adult for first degree murder if the adult unlawfully distributes a listed controlled substance or a mixture containing the substance when it is proven that the substance or mixture was the proximate cause of a user’s death. The bill adds methamphetamine to the list of scheduled controlled substances applicable to the offense and makes conforming changes. The addition of methamphetamine was a recommendation by the Task Force.

Section 2 of the bill amends s. 893.13, F.S., to create an enhanced penalty for the sale of a controlled substance if the offense is committed within 1,000 feet of certain facilities that often provide health care and substance abuse treatment. This change was also recommended by the Task Force. The facilities covered include any:

- Mental health facility under ch. 394, F.S.;²⁰
- Health care facility licensed under ch. 395, F.S.,²¹ which provides substance abuse treatment;
- Licensed service provider as defined in s. 397.311, F.S.;²²
- Facility providing services that include clinical treatment, intervention, or prevention as described in s. 397.311(26), F.S.;²³
- Recovery residence as defined in s. 397.311, F.S.;²⁴ or
- Pain management clinic as defined in ss. 458.3265(1)(a)1.c. or s. 459.0137(1)(a)1.c., F.S.²⁵

Depending upon the controlled substance, the enhancement increases a third degree felony to a second degree felony, and increases a second degree felony to a first degree felony.²⁶

²⁰ Section 394.455(17), F.S., defines “facility” as any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have or who have been diagnosed as having a mental illness or substance abuse impairment. The term does not include a program or an entity licensed under ch. 400, F.S. (nursing homes and related facilities) or ch. 429 (assisted care communities).

²¹ Section 395.002(17), F.S., defines a “licensed facility” as a hospital or ambulatory surgical center licensed in accordance with ch. 395, F.S. (hospital licensing and regulation).

²² Section 397.311(25), F.S., defines a “licensed service provider” as a public agency under ch. 397, F.S. (substance abuse services), a private for-profit or not-for-profit agency under ch. 397, F.S., a physician or any other private practitioner licensed under ch. 397, F.S., or a hospital that offers substance abuse services through one or more licensed service components.

²³ Section 397.311(26), F.S., provides that licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services. Clinical treatment services include, but are not limited to, medication-assisted treatment for opioid use disorders.

²⁴ Section 397.311(38), F.S., defines “recovery residence” as a residential dwelling unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

²⁵ Section 458.3265(1)(a)1.c., F.S., defines a “pain-management clinic” as any publicly or privately owned facility: that advertises in any medium for any type of pain-management services; or where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain. Section 459.0137(1)(a)1.c., F.S., includes the same definition of “pain-management clinic.”

²⁶ Generally, a first degree felony is 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.

Section 3 of the bill amends s. 893.145, F.S., to exclude from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.

Section 4 of the bill provides that the bill takes effect October 1, 2022.

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 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 Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The EDR preliminarily estimates that the bill will have a “positive indeterminate” prison bed

impact (an unquantifiable increase in prison beds).²⁷ The EDR adds the following information relevant to its estimate:

Per [Department of Corrections], in FY 18-19, there was 1 new commitment under s. 782.04, F.S. relating to drugs, and no new commitments in FY 19-20 or FY 20-21. There were 2 new commitments for drug activity near an assisted living facility in FY 18-19 and no new commitments in FY 19-20. There was 1 new commitment in FY 20-21. Although this number is low, there are generally over 500 new commitments a year for selling drugs near a restricted place. Per Florida Department of Health, in CY 2019, there were 38,985 nonfatal overdoses and 5,352 fatal overdoses. Of the fatal overdoses, methamphetamine showed 896 where it was a contributing drug. Additionally, the drugs listed under s. 782.04(1), F.S. showed similar high numbers as contributing to fatal overdoses. It is not known how prison admissions will be impacted by this new language.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 782.04, 893.13 and 893.145.

IX. Additional Information:

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

CS/CS by Criminal Justice on February 8, 2022:

The committee substitute:

- Removes provisions of the bill that change the “proximate cause” element of first degree murder by unlawful distribution of a listed controlled substance; and
- Excludes from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.

CS by Judiciary on January 10, 2022:

The committee substitute:

- Reorganizes provisions of the bill to make it identical to HB 95 (2022).

²⁷ CS/SB 190 – *Controlled Substances (Identical CS/HB 95)*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

²⁸ *Id.*

- The committee substitute does not substantially change the bill and only differs in technical drafting choices.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2022	.	
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The Committee on Criminal Justice (Pizzo) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 50 - 156
and insert:
substances, when such substance or mixture is proven to be the
proximate cause of the death of the user:
a. A substance controlled under s. 893.03(1);
b. Cocaine, as described in s. 893.03(2)(a)4.;
c. Opium or any synthetic or natural salt, compound,
derivative, or preparation of opium;



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11 d. Methadone;
12 e. Alfentanil, as described in s. 893.03(2)(b)1.;
13 f. Carfentanil, as described in s. 893.03(2)(b)6.;
14 g. Fentanyl, as described in s. 893.03(2)(b)9.;
15 h. Sufentanil, as described in s. 893.03(2)(b)30.; ~~or~~
16 i. Methamphetamine, as described in s. 893.03(2)(c)5.; or
17 j. A controlled substance analog, as described in s.
18 893.0356, of any substance specified in sub-subparagraphs a.-i.
19 ~~sub-subparagraphs a.-h.,~~
20
21 is murder in the first degree and constitutes a capital felony,
22 punishable as provided in s. 775.082.
23 (4) The unlawful killing of a human being, when perpetrated
24 without any design to effect death, by a person engaged in the
25 perpetration of, or in the attempt to perpetrate, any felony
26 other than any:
27 (a) Trafficking offense prohibited by s. 893.135(1),
28 (b) Arson,
29 (c) Sexual battery,
30 (d) Robbery,
31 (e) Burglary,
32 (f) Kidnapping,
33 (g) Escape,
34 (h) Aggravated child abuse,
35 (i) Aggravated abuse of an elderly person or disabled
36 adult,
37 (j) Aircraft piracy,
38 (k) Unlawful throwing, placing, or discharging of a
39 destructive device or bomb,



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(1) Unlawful distribution of any substance listed in sub-
subparagraphs (1)(a)3.a.-j. controlled under s. 893.03(1),
cocaine as described in s. 893.03(2)(a)4., or opium or any
synthetic or natural salt, compound, derivative, or preparation
of opium by a person 18 years of age or older, when such
substance drug is proven to be the proximate cause of the death
of the user,

(m) Carjacking,

(n) Home-invasion robbery,

(o) Aggravated stalking,

(p) Murder of another human being,

(q) Aggravated fleeing or eluding with serious bodily
injury or death,

(r) Resisting an officer with violence to his or her
person, or

(s) Felony that is an act of terrorism or is in furtherance
of an act of terrorism, including a felony under s. 775.30, s.
775.32, s. 775.33, s. 775.34, or s. 775.35,

is murder in the third degree and constitutes a felony of the
second degree, punishable as provided in s. 775.082, s. 775.083,
or s. 775.084.

Section 2. Paragraph (h) of subsection (1) of section
893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(1)

(h) Except as authorized by this chapter, a person may not
sell, manufacture, or deliver, or possess with intent to sell,
manufacture, or deliver, a controlled substance in, on, or



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within 1,000 feet of the real property comprising a mental health facility, as that term is used in chapter 394; a health care facility licensed under chapter 395 which provides substance abuse treatment; a licensed service provider as defined in s. 397.311; a facility providing services that include clinical treatment, intervention, or prevention as described in s. 397.311(26); a recovery residence as defined in s. 397.311; an assisted living facility, ~~as defined that term is used~~ in chapter 429; or a pain management clinic as defined in s. 458.3265(1)(a)1.c. or s. 459.0137(1)(a)1.c. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

Section 3. Subsection (4) of section 893.145, Florida Statutes, is amended to read:

893.145 "Drug paraphernalia" defined.—The term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use



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in planting, propagating, cultivating, growing, harvesting,
manufacturing, compounding, converting, producing, processing,
preparing, testing, analyzing, packaging, repackaging, storing,
containing, concealing, transporting, injecting, ingesting,
inhaling, or otherwise introducing into the human body a
controlled substance in violation of this chapter or s. 877.111.
Drug paraphernalia is deemed to be contraband which shall be
subject to civil forfeiture. The term includes, but is not
limited to:

(4) Testing equipment used, intended for use, or designed
for use in identifying, or in analyzing the strength,
effectiveness, or purity of, controlled substances, excluding
narcotic drug testing products that are used to determine
whether a controlled substance contains fentanyl, as described
in s. 893.03(2)(b)9. or a controlled substance analog, as
described in s. 893.0356, of fentanyl.

==== D I R E C T O R Y C L A U S E A M E N D M E N T =====
And the directory clause is amended as follows:

Delete lines 15 - 16

and insert:

Section 1. Paragraph (a) of subsection (1) and subsection
(4) of section 782.04, Florida Statutes, are amended to

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

Delete lines 6 - 10

and insert:

offense of murder in the third degree; amending s.
893.13, F.S.; prohibiting specified activities
involving controlled substances within 1,000 feet of



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127 additional specified facilities; providing criminal
128 penalties; amending s. 893.145, F.S.; revising the
129 definition of "drug paraphernalia"; providing an

By the Committee on Judiciary; and Senator Brodeur

590-01911-22

2022190c1

A bill to be entitled

An act relating to controlled substances; amending s. 782.04, F.S.; revising the elements that constitute the capital offense of murder in the first degree; revising the elements that constitute the felony offense of murder in the third degree; defining the term "substantial factor"; amending s. 893.13, F.S.; prohibiting specified activities involving controlled substances within 1,000 feet of additional specified facilities; providing criminal penalties; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsections (4) and (5) of section 782.04, Florida Statutes, are amended to read:

782.04 Murder.—

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;
2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:
 - a. Trafficking offense prohibited by s. 893.135(1),
 - b. Arson,
 - c. Sexual battery,
 - d. Robbery,
 - e. Burglary,
 - f. Kidnapping,

Page 1 of 6

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

590-01911-22

2022190c1

- g. Escape,
- h. Aggravated child abuse,
- i. Aggravated abuse of an elderly person or disabled adult,
- j. Aircraft piracy,
- k. Unlawful throwing, placing, or discharging of a destructive device or bomb,
- l. Carjacking,
- m. Home-invasion robbery,
- n. Aggravated stalking,
- o. Murder of another human being,
- p. Resisting an officer with violence to his or her person,
- q. Aggravated fleeing or eluding with serious bodily injury or death,
- r. Felony that is an act of terrorism or is in furtherance of an act of terrorism, including a felony under s. 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35, or
- s. Human trafficking; or
3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to have caused, or is proven to have been a substantial factor in producing, ~~be the proximate cause of~~ the death of the user:
 - a. A substance controlled under s. 893.03(1);
 - b. Cocaine, as described in s. 893.03(2)(a)4.;
 - c. Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;
 - d. Methadone;
 - e. Alfentanil, as described in s. 893.03(2)(b)1.;

Page 2 of 6

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

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

61 h. Sufentanil, as described in s. 893.03(2)(b)30.; ~~or~~

62 i. Methamphetamine, as described in s. 893.03(2)(c)5.; or

63 j. A controlled substance analog, as described in s.

64 893.0356, of any substance specified in sub-subparagraphs a.-i.

65 ~~sub-subparagraphs a.-h.,~~

66

67 is murder in the first degree and constitutes a capital felony,

68 punishable as provided in s. 775.082.

69 (4) The unlawful killing of a human being, when perpetrated

70 without any design to effect death, by a person engaged in the

71 perpetration of, or in the attempt to perpetrate, any felony

72 other than any:

73 (a) Trafficking offense prohibited by s. 893.135(1),

74 (b) Arson,

75 (c) Sexual battery,

76 (d) Robbery,

77 (e) Burglary,

78 (f) Kidnapping,

79 (g) Escape,

80 (h) Aggravated child abuse,

81 (i) Aggravated abuse of an elderly person or disabled

82 adult,

83 (j) Aircraft piracy,

84 (k) Unlawful throwing, placing, or discharging of a

85 destructive device or bomb,

86 (l) Unlawful distribution of any substance listed in sub-

87 subparagraphs (1)(a)3.a.-j. controlled under s. 893.03(1),

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88 ~~cocaine as described in s. 893.03(2)(a)4., or opium or any~~

89 ~~synthetic or natural salt, compound, derivative, or preparation~~

90 ~~of opium~~ by a person 18 years of age or older, when such

91 substance ~~drug~~ is proven to have caused, or is proven to have

92 been a substantial factor in producing, ~~be the proximate cause~~

93 ~~of~~ the death of the user,

94 (m) Carjacking,

95 (n) Home-invasion robbery,

96 (o) Aggravated stalking,

97 (p) Murder of another human being,

98 (q) Aggravated fleeing or eluding with serious bodily

99 injury or death,

100 (r) Resisting an officer with violence to his or her

101 person, or

102 (s) Felony that is an act of terrorism or is in furtherance

103 of an act of terrorism, including a felony under s. 775.30, s.

104 775.32, s. 775.33, s. 775.34, or s. 775.35,

105

106 is murder in the third degree and constitutes a felony of the

107 second degree, punishable as provided in s. 775.082, s. 775.083,

108 or s. 775.084.

109 (5) As used in this section, the term:

110 (a) "Substantial factor" means that the use of the

111 substance or mixture alone is sufficient to cause death,

112 regardless of whether any other substance or mixture used is

113 also sufficient to cause death.

114 (b) "Terrorism" means an activity that:

115 1.a. ~~(a)1.~~ Involves a violent act or an act dangerous to

116 human life which is a violation of the criminal laws of this

Page 4 of 6

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2022190c1

state or of the United States; or

~~b.2.~~ Involves a violation of s. 815.06; and

~~2.(b)~~ Is intended to:

~~a.1.~~ Intimidate, injure, or coerce a civilian population;

~~b.2.~~ Influence the policy of a government by intimidation or coercion; or

~~c.3.~~ Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

Section 2. Paragraph (h) of subsection (1) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(1)

(h) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a mental health facility, as that term is used in chapter 394; a health care facility licensed under chapter 395 which provides substance abuse treatment; a licensed service provider as defined in s. 397.311; a facility providing services that include clinical treatment, intervention, or prevention as described in s. 397.311(26); a recovery residence as defined in s. 397.311; an assisted living facility, as defined ~~that term is used~~ in chapter 429; or a pain management clinic as defined in s. 458.3265(1)(a)1.c. or s. 459.0137(1)(a)1.c. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s.

893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.

Page 5 of 6

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

2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

Section 3. This act shall take effect October 1, 2022.

Page 6 of 6

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OFFICE OF THE STATE ATTORNEY

EIGHTEENTH JUDICIAL COURT OF FLORIDA
BREVARD AND SEMINOLE COUNTIES

PHIL ARCHER

STATE ATTORNEY

OFFICE MEMORANDUM

February 3, 2022

TO: Bob Cortes
FROM: Daniel E. Faggard
SUBJECT: HB325
MESSAGE: Re: Substantial Factor Test

As currently written HB325 reads in part, “3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to have caused, tended to cause, or contributed to the death of the user...”

I understand there is some hesitation to “extend” culpability to situations where the drug distributor played only a minor role. The goal of amending the current statute is not to “cast a wider net.” Rather, it is to assist our Medical Examiners in forming an opinion in overdose homicide cases.

“Proximate Cause” is not defined in Chapter 782. However, in Aumuller v. State, 944 So.2d 1137 (Fla. 2d DCA 2006) Florida’s Second District Court of Appeal quoted from the jury instruction used in the trial court and seemed to approve of the definition used. The Aumuller court stated, “The State is required to prove the heroin was the proximate cause of the death. This means you must find that the heroin was the primary or moving cause in producing the death, and without it, the death would not have happened.” Recently, Florida Standard Criminal Jury Instruction 7.3(a) was promulgated and similarly defines Proximate Cause as, “[T]he primary or moving cause of the death; the death would not have occurred but for the defendant’s conduct; and the death was a natural and reasonably anticipated consequence of the defendant’s conduct.”

The trouble with the current definition stems from the fact that nearly one hundred percent of drug users choose to use multiple controlled substances, and alcohol. As a result, when, for example, the Medical Examiner is reviewing the toxicology of a deceased individual indicating fentanyl, cocaine, alcohol, THC and Diluadid in their system, under the current definition of

Proximate Cause, before the doctor can opine the fentanyl is the Proximate Cause, they must they must determine that every other substance (cocaine, alcohol, THC and Dilaudid) could NOT have caused their death. This produces an absurd, and extremely common, result. For example, in the scenario above, suppose the decedent was prescribed Dilaudid and taking it normally. Additionally, picture them going to a party, and several hours before that party they use some cocaine. It does not kill them, but they have a short “high” and their body starts to metabolize that cocaine. Finally, imagine they go to the party and smoke a little THC, drink a little alcohol and then buy some fentanyl from a dealer at the party. They shoot up in the bathroom and immediately die from a massive fentanyl overdose. The medical examiner sees an enormous amount of fentanyl in the blood. The Medical Examiner’s opinion is that the level of fentanyl observed would clearly be fatal one hundred percent of the time. Of course they also see some cocaine, Dilaudid and alcohol, which when combined together, the Medical Examiner articulates could have caused the death as well. The result is the Medical Examiner, using the current definition, would say they cannot say what the “primary or moving cause” is, because they cannot determine “the death would not have occurred but for the” drug dealer selling the decedent the fentanyl. This is the case even though we know the decedent would have certainly died if they had only taken the fentanyl. This is an absurd result.

Now envision a different murder case where Defendant Alpha shoots Victim at the same time Defendant Bravo separately and independently shoots victim. The Medical Examiner determines that Defendant Alpha’s shot would have been fatal by itself. But the Medical Examiner also determines that Defendant Bravo’s shot would have been fatal by itself. If we were to apply the current overdose homicide definition of proximate cause to this situation, the result would be absurd again. Even though Defendant Alpha’s shot would have been fatal by itself, Defendant Alpha cannot be responsible for Victim’s murder because the statute and jury instruction require that “the death would not have occurred but for the defendant’s conduct.” The victim is still dead from Defendant Bravo’s shot.

Causation in Florida is typically “but for,” but there are instances where “two causes, each alone sufficient to bring about the harmful result, operate together to cause it.” Eversley v State, 748 So.2d 963 (Fla. 1999) making “but for” testing impossible (Such as the example above). In these circumstances, the State may prove “cause in fact” causation by demonstrating that the defendant’s conduct was a substantial factor in bringing about the harm. This is known as the “Substantial Factor Test.”

It is my recommendation that the current language in HB325 be amended incorporate the Substantial Factor Test, in lieu of the “tended to cause, or contributed to” language. Additionally, it would be prudent to define “Substantial Factor.” For example: “3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to have caused, or is proven to be a substantial factor in producing, the death of the user... As used in this section, ‘Substantial factor’ means the substance alone is sufficient to cause the death, whether or not any other substance or substances are also sufficient to cause the death.”

CS/SB 190 – Controlled Substances (Identical CS/HB 95)

This bill amends multiple statutes. First, it amends the Level 9, 1st degree felony under s. 782.04(1), F.S. for “the unlawful killing of a human being...when perpetrated from a premeditated design to effect the death of the person killed or any human being,” deleting that the unlawful killing of a human being can be defined as someone unlawfully distributing a controlled substance and that substance being the proximate cause of the death of the user. It is replaced with (new language in bold): “**proven to have caused, or is proven to have been a substantial factor in producing** the death of the user.” It also adds methamphetamine to the list of substances where this language would apply. Furthermore, it amends the Level 8, 1st degree felony under s. 782.04(4), F.S. for “the unlawful killing of a human being, when perpetrated without any design to effect death,” expanding the list of unlawfully distributed substances to match what is included under s. 782.04(1), F.S., which now includes methamphetamine, and also deleting that the unlawfully distributed substance must be the proximate cause of the death of the user. This is also replaced with (new language in bold): “**proven to have caused, or is proven to have been a substantial factor in producing** the death of the user.” It then defines substantial factor as “the use of the substance or mixture alone is sufficient to cause death, regardless of whether any other substance or mixture used is also sufficient to cause death.”

This bill also amends s. 893.13, F.S., adding the following (in bold) to the current unranked, 2nd degree felony (Level 4 by default) and unranked, 1st degree felony (Level 7 by default): “a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising **a mental health facility, as that term is used in chapter 394; a health care facility licensed under chapter 395 which provides substance abuse treatment; a licensed service provider as defined in s. 397.311, F.S.; a facility providing services that include clinical treatment, intervention, or prevention as described in s. 397.311(26), F.S.; a recovery residence as defined in s. 397.311, F.S.; an assisted living facility as defined in chapter 429; or a pain management clinic as defined in s. 458.3265(1)(a)1.c., F.S. or s. 459.0137(1)(a)1.c., F.S.**”

Per DOC, in FY 18-19, there was 1 new commitment under s. 782.04, F.S. relating to drugs, and no new commitments in FY 19-20 or FY 20-21. There were 2 new commitments for drug activity near an assisted living facility in FY 18-19 and no new commitments in FY 19-20. There was 1 new commitment in FY 20-21. Although this number is low, there are generally over 500 new commitments a year for selling drugs near a restricted place. Per Florida Department of Health, in CY 2019, there were 38,985 nonfatal overdoses and 5,352 fatal overdoses. Of the fatal overdoses,

methamphetamine showed 896 where it was a contributing drug. Additionally, the drugs listed under s. 782.04(1), F.S. showed similar high numbers as contributing to fatal overdoses. It is not known how prison admissions will be impacted by this new language.

EDR PROPOSED ESTIMATE: Positive Indeterminate

Requested by: Senate & House



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 12, 2022

I respectfully request that **Senate Bill 190**, relating to **Controlled Substances**, be placed on the:

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

A handwritten signature in black ink that reads "Jason Brodeur". The signature is fluid and cursive, with the first name "Jason" and last name "Brodeur" clearly legible.

Senator Jason Brodeur
Florida Senate, District 9

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/8/22

Meeting Date

Criminal Justice

Committee

190

Bill Number or Topic

730750

Amendment Barcode (if applicable)

Name Christie Arnold

Phone 850-339-0075

Address 201 West Park Avenue

Email carnold@flaccb.org

Street

Tallahassee

City

FL

State

32301

Zip

Speaking:

☐ For

☐ Against

☒ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing: FL
Conference of Catholic
Bishops

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

2/8/22

APPEARANCE RECORD

CS/SB 190

Meeting Date

CRIMINAL JUSTICE

Committee

Deliver both copies of this form to
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Bill Number or Topic

730750

Amendment Barcode (if applicable)

Name **Jorge Chamizo**

Phone **850-681-0024**

Address **108 S. Monroe Street**
Street

Email **jorge@flapartners.com**

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Fla Association of Criminal Defense Lawyers

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

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2/8/22

Meeting Date

Criminal Justice

Committee

190

Bill Number or Topic

730750

Amendment Barcode (if applicable)

Name

Nancy Daniels

Phone

850 488-6850

Address

103 N Gadsden St.

Email

ndaniels@flsda.org

Street

Tallahassee

FL

32301

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Public Defender
Association

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Meeting Date

2/8/22

Committee

Senate CJ

Deliver both copies of this form to
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Bill Number or Topic

SB 190

730750

Amendment Barcode (if applicable)

786 363-1104

Name

Neisha-Rose Hines

Phone

Address

4343 W. Flagler

Email

Street

Miami

State

FL

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

of amendment

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

ACLU FL

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. § 11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

2/8/22

Meeting Date

190

Bill Number or Topic

Senate Crim

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name

Neisha-Rose Hines

Phone

786-363-1104

Address

4343 W Flayler

Email

Street

Miami

City

State

Zip

Speaking:

☐ For

☐ Against

☐ Information

OR

Waive Speaking:

☐ In Support

☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

ACLU FL



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

2/8/22

Meeting Date

0190

Bill Number or Topic

Criminal Justice

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Manny Guarch

Phone

850-224-0820

Address

205 S. Adams St

Email

Street

Tallahassee FL 32301

City

State

Zip

Speaking:

☐ For

☐ Against

☐ Information

OR

Waive Speaking:

☒ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Seminole Sheriff's Office Deputy General Counsel

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Bill Number or Topic

Amendment Barcode (if applicable)

2/8/2022
Meeting Date
CJ
Committee

Name Donn Scott, Jr Phone 850-521-3042

Address P.O. Box 10788 Email donn.scottjr@spleater.org
Street

Tallahassee FL 32302
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Southern Poverty Law
Center Action Fund

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

February 8, 2022

APPEARANCE RECORD

190

Meeting Date

Bill Number or Topic

Criminal Justice

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **2215 Thomasville Road**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

Florida Smart Justice Alliance

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

2/8/21
Meeting Date

0190
Bill Number or Topic

Criminal Justice
Committee

Candice Ericks
Name

954-648-1204
Phone

205 S. Adams
Address

Candice@ericks
Email

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

Seminole Sheriff's Office

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

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

S-001 (08/10/2021)

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.)

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

BILL: CS/SB 692

INTRODUCER: Criminal Justice Committee and Senators Stewart and Harrell

SUBJECT: Sexual Offenses

DATE: February 9, 2022

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 692 amends ss. 365.161(1), 491.0112(4), 775.0847(1), 794.011(1), 794.05, 796.07(1), 800.04(1), 825.1025(1), 827.071, 847.001, 872.06(1), 944.35(3), and 951.27(2), F.S., relating to various sexual offenses, to replace the terms “vagina” or “vaginal” with “female genitals.” Additionally, this bill provides that “female genitals” means the labia majora, labia minora, clitoris, vulva, hymen, and vagina.

Section 794.011(3), F.S., provides it is a life felony for a person to commit sexual battery on a person 12 years of age or older, without that person’s consent, and in the process thereof use or threaten to use a deadly weapon, or use actual force likely to cause serious personal injury. This bill expands s. 794.011(3), F.S., to provide it is also a life felony if a person uses or *threatens to use* actual physical force likely to cause serious personal injury or *death*.

The bill amends s. 775.15, F.S., to expand the statute of limitations by one year for victims of sexual battery who were unaware that the sexual battery occurred due to the victim being mentally defective, mentally incapacitated, or physically helpless. Prosecution for such cases may be commenced within one year after the date the victim obtains actual knowledge of the offense or the date on which the offense is reported to law enforcement, whichever occurs first. This applies to any offense which is not otherwise barred from prosecution on or before October 1, 2022.

The bill creates s. 800.06, F.S., which provides for the new crime of lewd or lascivious molestation of a person 16 years of age or older. A person commits a third degree felony when he or she intentionally touches in a lewd or lascivious manner, and without consent, the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person 16 years of age or older, or forces such person to so touch the perpetrator.

The bill amends s. 90.404, F.S., to provide that substantial similarity is not required for admission of evidence of the defendant's commission of other crimes, wrongs, or acts involving a sexual offense, when the defendant is charged with a sexual offense and his or her identity is not at issue.

Additionally, the bill amends ss. 395.0197, 415.102, and 847.0141, F.S., to make conforming cross-reference changes to comply with the act.

This bill may have a positive indeterminate fiscal impact (unquantifiable positive prison bed impact). See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2022.

II. Present Situation:

The term “vagina” is used to describe prohibited sexual conduct in various sections of the Florida Statutes, but is not statutorily defined. Currently, the Florida District Courts of Appeals (DCA) have conflicting opinions on the definition of the term “vagina.” Specifically, the Second and Fourth DCAs have held that the vagina has a specific anatomical meaning, and that it is internal.¹ However, the Fifth DCA has held the term vagina includes the entire vulva area not just the internal passageway.²

Florida Statutes

Florida law currently contains a variety of statutes that prohibit acts relating to sexual battery, sexual conduct, obscenity, and sexual abuse. A summary of these laws follows.

Sexual Battery

Section 794.011, F.S., defines the crime of “sexual battery” to mean oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.³

¹ See *Richards v. State*, 738 So. 2d 415, 419 (Fla. 2nd DCA, 1999)(holding that the vagina should be defined as “the canal between the vulva and the uterus.”); *Firekey v. State*, 557 So. 2d 582 (Fla. 4th DCA, 1989)(holding that penetration of the labia does not constitute sexual battery).

² See *Palumbo v. State*, 52 So. 3d 834 (Fla. 5th DCA, 2011).

³ Section 794.011(1)(h), F.S.

Sexual battery is a capital felony⁴ or life felony⁵ when:

- A person 18 years of age or older commits a sexual battery on, or in an attempt to commit a sexual battery injures the sexual organs of, a person less than 12 years of age.⁶
- A person less than 18 years of age commits sexual battery on, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age.⁷
- A person commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury.⁸
- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age engages in any act, which constitutes sexual battery, with that person while the person is less than 12 years of age, or in an attempt to commit sexual battery injures the sexual organs of the person.⁹

Sexual battery is a first degree felony, punishable by a term of years not exceeding life,¹⁰ when:

- A person 18 years of age or older commits sexual battery on a person 12 years of age or older, but younger than 18 years of age without that person's consent, under specified circumstances.^{11, 12}
- A person commits sexual battery on a person 12 years of age or older without that person's consent, under specified circumstances, and that person was previously convicted of specified crimes.¹³

⁴ A capital felony is generally punishable by death or life imprisonment. Section 775.082, F.S. The courts have held that the death penalty may not be imposed for sex offenses. In Florida, the only crime for which the death penalty may be imposed is murder in the first degree. *See Rowe v. State*, 417 So. 2d 981, 982 (Fla. 1982). *See also Buford v. State*, 403 So. 2d 943, 951 (Fla. 1981) (holding that the Eighth Amendment prohibits death penalty for rape or sexual battery, even of a child).

⁵ A life felony is generally punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a fine not exceeding \$15,000. Sections 775.082 and 775.083, F.S.

⁶ Section 794.011(2)(a), F.S.

⁷ Section 794.011(2)(b), F.S.

⁸ Section 794.011(3), F.S.

⁹ Section 794.011(8)(c), F.S.

¹⁰ A first degree felony may be punishable by a term of years not exceeding life imprisonment when specifically provided by statute and a fine not exceeding \$10,000. Sections 775.082 and 775.083 F.S.

¹¹ Section 794.011(4)(a), F.S.

¹² Section 794.011(4)(e)1.-7., F.S., provides the following circumstances apply to certain crimes of sexual battery: the victim is physically helpless to resist; the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat; the offender coerces the victim to submit by threatening to retaliate against the victim or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future; the offender, without prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim; the victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact; the victim is physically incapacitated; the offender is in a specified profession or a person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

¹³ Section 794.011(4)(d), F.S. Specified crimes include: s. 787.01(2), F.S., relating to kidnapping, or s. 787.02(2), F.S., relating to false imprisonment, when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3., F.S., relating to kidnapping; s. 787.02(3)(a)2. or 3., F.S., relating to false imprisonment; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person; s. 847.0135(5), F.S., relating to computer pornography; or ch. 794, F.S., relating to sexual battery, except s. 794.011(10), F.S., which criminalizes false allegations against specified persons.

- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age engages in any act, which constitutes sexual battery, with that person while the person is 12 years of age or older but younger than 18 years of age.¹⁴

Sexual battery is a first degree felony, punishable by a term of imprisonment not exceeding 30 years,¹⁵ when:

- A person 18 years of age or older commits sexual battery on a person 18 years of age or older without that person's consent, under specified circumstances.^{16, 17}
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older without that person's consent, under specified circumstances.^{18, 19}
- A person 18 years of age or older commits sexual battery on a person 12 years of age or older but younger than 18 years of age, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.²⁰
- A person commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury and the person was previously convicted of specified crimes.²¹

Sexual battery is a second degree felony²² when:

- A person 18 years of age or older commits sexual battery on a person 18 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.²³
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.²⁴

¹⁴ Section 794.011(8)(b), F.S.

¹⁵ The maximum term of imprisonment for a first degree felony is generally 30 years imprisonment and a fine not exceeding \$10,000. Sections 775.082 and 775.083 F.S.

¹⁶ See note 12.

¹⁷ Section 794.011(4)(b), F.S.

¹⁸ See note 12.

¹⁹ Section 794.011(4)(c), F.S.

²⁰ Section 794.011(5)(a), F.S.

²¹ Section 794.011(5)(d), F.S. Specified crimes include: s. 787.01(2), F.S., relating to kidnapping, or s. 787.02(2), F.S., relating to false imprisonment, when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3. F.S., relating to kidnapping; s. 787.02(3)(a)2. or 3., F.S., relating to false imprisonment; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person; s. 847.0135(5), F.S., relating to computer pornography; or ch. 794, F.S., relating to sexual battery, except s. 794.011(10), F.S., which criminalizes false allegations against specified persons.

²² The maximum term of imprisonment for a second degree felony is 15 years imprisonment and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²³ Section 794.011(5)(b), F.S.

²⁴ Section 794.011(5)(c), F.S.

Sexual battery is a third degree felony²⁵ when:

- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age solicits that person to engage in any act which constitutes sexual battery.²⁶

Statutes of Limitations for Sexual Battery

Section 775.15, F.S., sets forth time limitations, also referred to as statutes of limitation, for the prosecution of crimes. Prosecution is barred if it is not commenced within the time limitations provided in this section. The time limitation for prosecuting a criminal case begins to run on the day after the offense is committed, unless otherwise stated. An offense is deemed to have been committed when either every element of the offense has occurred or, if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.²⁷

In part, s. 775.15, F.S., provides time limitations for initiating a criminal prosecution for a felony offense. The general provisions provide that there is:

- No time limitation for prosecuting a capital felony, a life felony, a felony resulting in death.²⁸
- A 4-year time limitation for prosecuting a first degree felony.²⁹
- A 3-year time limitation for prosecuting a second or third degree felony.³⁰

However, a number of exceptions to the time limitation provisions mentioned above exist. Many of these exceptions are specific to certain offenses or types of victims. These exceptions apply, in part, to violations of s. 794.011, F.S., relating to sexual battery. These exceptions include:

- No time limitation for prosecuting:
 - A first or second degree felony sexual battery when the victim is under 18 years of age and he or she reports the crime to law enforcement within 72 hours provided the offense was not barred from prosecution on or before December 31, 1984;³¹
 - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003;³²
 - Any felony sexual battery when the victim is younger than 16 years of age provided the offense was not barred from prosecution on or before July 1, 2010;³³
 - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours;³⁴ and

²⁵ The maximum term of imprisonment for a third degree felony is 5 years imprisonment and a fine not exceeding \$5,000. Sections 775.082 and 775.083 F.S.

²⁶ Section 794.011(8)(a), F.S.

²⁷ Section 775.15(3), F.S.

²⁸ Section 775.15(1), F.S.

²⁹ Section 775.15(2)(a), F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

³⁰ Section 775.15(2)(b), F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine and a third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

³¹ Section 775.15(13)(a), F.S.

³² Section 775.15(13)(b), F.S.

³³ Section 775.15(13)(c), F.S.

³⁴ Section 775.15(14)(a), F.S.

- Any sexual battery offense, when the victim is younger than 18 years of age when the offense was committed, and the offense was committed on or after July 1, 2020.³⁵
- There is an eight-year time limitation on prosecuting a first or second degree felony sexual battery when the victim is 16 years of age or older at the time of the offense provided the offense was not barred from prosecution on or before July 1, 2015, except for:
 - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours; or
 - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003.³⁶

In addition to the time periods prescribed in this section, the prosecution for specific enumerated offenses,³⁷ including sexual battery, and lewd or lascivious offenses, may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence collected at the time of the original investigation. The DNA sample for these prosecutions must be available for testing by the accused.³⁸ This exception applies to offenses that are not otherwise barred on or after July 1, 2006.^{39, 40}

Another exception provides that the applicable period of limitation does not begin to run until the victim of a sexual battery, lewd or lascivious offense, or other specified offense reaches the age of 18 years or the violation is reported to a law enforcement or governmental agency, whichever occurs first. This provision only applies to a victim who was younger than 18 years of age at the time of the offense.⁴¹

Unlawful Activity with Certain Minors

Florida law prohibits a person 24 years of age or older from engaging in sexual activity with a person who is 16 or 17 years of age, regardless of consent. Sexual activity means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.⁴²

³⁵ Section 775.15(20), F.S.

³⁶ Section 775.15(14)(b), F.S.

³⁷ Section 775.15(16)(a), F.S., applies these provisions to the following offenses: aggravated battery or any felony battery offense under ch. 784, F.S.; kidnapping offenses under s. 787.01, F.S., or false imprisonment offenses under s. 787.02, F.S.; sexual battery offenses under ch. 794, F.S.; lewd or lascivious offenses under s. 800.04, F.S., s. 825.1025, F.S., or s. 847.0135(5), F.S.; burglary offenses under s. 810.02, F.S.; robbery offenses under s. 812.13, F.S., s. 812.131, F.S., or s. 812.135, F.S.; carjacking offenses under s. 812.133, F.S.; or aggravated child abuse under s. 827.03, F.S.

³⁸ Section 775.15(16)(a), F.S.

³⁹ Section 775.15(16)(b), F.S.

⁴⁰ *Bryson v. State*, 42 So. 3d 852 (Fla. 1st DCA 2010) (holding that the appellants prosecution was not barred, and that s. 775.15(16), F.S., could be applied because appellant's case was not barred at the time that section was enacted).

⁴¹ Section 775.15(13)(a), F.S.

⁴² Section 794.05, F.S. Sexual activity under this section does not include an act done for a bona fide medical purpose. A violation of this section is a second degree felony.

Lewd and Lascivious Offenses

Florida Law contains various sections of law relating to lewd and lascivious offenses. This includes, in part, prohibitions on lewd and lascivious battery of an elderly or disabled person, and lewd and lascivious molestation of a person under the age of 16.

Lewd and Lascivious Battery on an Elderly or Disabled Person

A person commits a lewd and lascivious battery upon an elderly person or disabled person, when he or she encourages, forces, or entices an elderly person or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.⁴³

Sexual activity, as it relates to lewd and lascivious battery on an elderly or disabled person, means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.⁴⁴

Lewd or Lascivious Molestation on Persons Under the Age of 16

A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.⁴⁵

The terms “lewd” and “lascivious” are not defined in statute, but are commonly understood by the courts. The Supreme Court of Florida has found that these terms are in common use, and the plain meaning of the words gives notice as to what conduct is prohibited. The court further stated that the words lewd and lascivious “are synonyms and connote wicked, lustful, unchaste, licentious, or sensual design on the part of the perpetrator.”⁴⁶

An offender 18 years of age or older who commits lewd or lascivious molestation against a victim:

- Less than 12 years of age, commits a life felony.⁴⁷
- Twelve years of age or older but less than 16 years of age, commits a second degree felony.⁴⁸

⁴³ Section 825.1025(2), F.S. A lewd or lascivious battery on an elderly person or disabled person is a second degree felony.

⁴⁴ Section 825.1025(1), F.S. Sexual activity does not include an act done for a bona fide medical purpose.

⁴⁵ Section 800.04(5)(a), F.S.

⁴⁶ *Chesebrough v. State*, 255 So. 2d 675, 677 (Fla. 1971).

⁴⁷ Section 800.04(5)(b), F.S. A life felony is generally punishable by life imprisonment or by a term of imprisonment not exceeding 40 years. Section 775.082, F.S.

⁴⁸ Section 800.04(5)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

- Twelve years of age or older but less than 16 years of age and the person was previously convicted of specified offenses,⁴⁹ commits a first degree felony.⁵⁰

An offender less than 18 years of age who commits lewd or lascivious molestation against a victim:

- Less than 12 years of age, commits a second degree felony.⁵¹
- Twelve years of age or older but less than 16 years of age, commits a third degree felony.⁵²

The crime of lewd or lascivious molestation does not apply if a victim is 16 years of age or older. Under current law, a person who commits a lewd and lascivious molestation of a person 16 years of age or older may be charged with the first degree misdemeanor⁵³ crime of battery if the touching was against the will of the victim.

While certain types of intentional contact on a person under the age of 16 may be a felony lewd or lascivious molestation, the same contact on a person 16 years of age or older may be a misdemeanor simple battery. A person commits the first degree misdemeanor of battery when he or she:

- Actually and intentionally touches or strikes another person against the will of the other; or
- Intentionally causes bodily harm to another person.⁵⁴

The courts have consistently held that any intentional touching, no matter how slight, is sufficient to constitute a simple battery. The force used in the commission of a battery need not be sufficient to cause injury, and may be committed with nominal contact.⁵⁵

⁴⁹ Section 800.04(5)(e)1.-7., F.S., provides the following specified offenses: Kidnapping under s. 787.01(2) F.S., or False Imprisonment under s. 787.02(2), F.S., when the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed against the minor a sexual battery under ch. 794, F.S., or a lewd act under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; Kidnapping under s. 787.01(3)(a)2. or 3., F.S., and in the course of committing the kidnapping committed a sexual battery under ch. 794, F.S., or a lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct or lewd or lascivious exhibition under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; False Imprisonment under s. 787.02(3)(a)2. or 3., F.S., and in the course of committing the false imprisonment committed a sexual battery under ch. 794, F.S., or a lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct or lewd or lascivious exhibition under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; Sexual Battery under ch. 794, F.S., excluding s. 794.011(10), F.S.; Lewd or Lascivious offenses committed against or in the presence of an elderly or disabled person under s. 825.1025, F.S.; Computer Pornography Transmission under s. 847.0135(5), F.S.; or Lewd or Lascivious offenses under s. 800.04, F.S.

⁵⁰ Section 800.04(5)(e), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a terms of years not exceeding life imprisonment. Section 775.082, F.S.

⁵¹ Section 800.04(5)(c)1., F.S.

⁵² Section 800.04(5)(d), F.S. A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

⁵³ A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

⁵⁴ Section 784.03(1), F.S.

⁵⁵ *State v. Hearn*, 961 So. 2d 211, 218-19 (Fla. 2007).

Obscenity, Sexual Performance by a Child, Child Pornography

Obscenity

Chapter 847, F.S., governs obscenity, which includes in part, laws relating to: the prohibition of certain acts in connection with obscene, lewd, etc. materials; the regulation of harmful materials and the sale or distribution to minors; and computer pornography, prohibited computer usage, and traveling to meet minors.

For purposes of this chapter the term “obscene,” means the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interests;
- Depicts or describes, in a patently offensive way, sexual conduct; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.⁵⁶

Sexual Performance by a Child

Section 827.071, F.S., provides that it is a second degree felony to employ, authorize, or induce a child younger than 18 years of age to engage in a sexual performance,⁵⁷ or for a parent, legal guardian, or custodian of such child to consent to the participation by such child in a sexual performance.⁵⁸ It is also a second degree felony for any person to produce, direct, or promote any performance which includes sexual conduct by a child less than 18 years of age.⁵⁹

A person may not possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.⁶⁰

Additionally, it is a third degree felony for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.⁶¹

Possession or Promotion of Child Pornography

Section 775.0847, F.S., reclassifies violations of s. 827.071, F.S., relating to sexual performance by a child; s. 847.0135, F.S., relating to computer pornography, prohibited computer usage, and traveling to meet a minor; s. 847.0137, F.S., relating to transmission of pornography by

⁵⁶ Section 847.001(10), F.S. A mother’s breastfeeding of her baby is not under any circumstance “obscene.”

⁵⁷ Section 827.071(1)(i), F.S., defines “sexual performance” to mean any performance or part thereof which includes sexual conduct by a child less than 18 years of age. Additionally, s. 827.071(1)(c), F.S., defines “performance” to mean any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

⁵⁸ Section 827.071(2), F.S.

⁵⁹ Section 827.071(3), F.S.

⁶⁰ Section 827.071(4), F.S.

⁶¹ Section 827.071(5), F.S.

electronic device or equipment; and s. 847.0138, F.S., relating to transmission of material harmful to minors to a minor by electronic device or equipment, to the next higher degree if:

- The offender possesses 10 or more images of any form of child pornography⁶² regardless of content; and
- The content of at least one image contains one or more of the following:
 - A child who is younger than the age of 5.
 - Sadoomasochistic abuse⁶³ involving a child.
 - Sexual battery involving a child.
 - Sexual bestiality involving a child.
 - Any movie involving a child, regardless of length and whether the movie contains sound.⁶⁴

The following definitions apply to the above-described offenses:

- “Sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, “sexual battery” does not include an act done for a bona fide medical purpose.⁶⁵
- “Sexual bestiality” means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.⁶⁶
- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadoomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or if such person is female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstances constitute “sexual conduct.”⁶⁷

Prohibition of Certain Obscene Telephone Calls

A person commits a second degree misdemeanor⁶⁸ if he or she makes, or knowingly permits the use of a telephone or telephone facility under his or her control to make any obscene or indecent communication by means of a telephone, in person or through an electronic recording device, in exchange for payment.⁶⁹

For purposes of s. 365.161, F.S., “obscene” means the status of communication which:

- The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interests;

⁶² Section 775.0847(1)(b), F.S., defines “child pornography” to mean any image depicting a minor engaged in sexual conduct.

⁶³ Section 775.0847(1)(c), F.S., defines “sadoomasochistic abuse,” to mean flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

⁶⁴ Section 775.0847(2), F.S.

⁶⁵ Sections 775.0847(1)(d), 827.071(1)(f), and 847.001(14), F.S.

⁶⁶ Sections 775.0847(1)(e), 827.071(1)(g), and 847.001(15), F.S.

⁶⁷ Sections 775.0847(1)(f), 827.071(1)(h), and 847.001(16), F.S.

⁶⁸ A second degree misdemeanor is punishable by a term of imprisonment up to 60 days and a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

⁶⁹ Section 356.161(2), F.S.

- Describes, in a patently offensive way, deviate sexual intercourse, sadomasochistic abuse, sexual battery, bestiality, sexual conduct, or sexual excitement; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.

Additionally, s. 365.161, F.S., provides, in part, the following definitions:

- “Sexual battery,” means oral, anal, or vaginal penetration by, or union with, the sexual organ of the one and the mouth, anus, or vagina of the other.⁷⁰
- “Sexual bestiality,” means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.⁷¹

Abuse of a Dead Human Body

A person who mutilates, commits sexual abuse upon, or otherwise grossly abuses the dead human body commits a second degree felony. An act done for a bona fide medical purpose or any other lawful purpose does not violate this law.⁷²

For purposes of this section, “sexual abuse” means:

- Anal or vaginal penetration of a dead human body by the sexual organ of a person or by any other object;
- Contact or union of the penis, vagina, or anus of a person with the mouth, penis, vagina, or anus of a dead human body; or
- Contact or union of a person’s mouth with the penis, vagina, or anus of a dead human body.⁷³

Prostitution

Florida Law defines prostitution as the giving or receiving of the body for sexual activity for hire.⁷⁴ For purposes of prostitution, sexual activity means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation.⁷⁵

Section 796.07(2), F.S., prohibits various acts relating to prostitution, providing in part, that it is unlawful:

- For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.
- To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.
- To purchase the services of any person engaged in prostitution.

Sexual Misconduct by Certain Professionals

Certain professionals are prohibited from engaging in sexual activity with specified individuals. This prohibition extends to consensual sexual activity.

⁷⁰ Section 365.161(1)(d), F.S.

⁷¹ Section 365.161(1)(e), F.S.

⁷² Section 872.06(2), F.S.

⁷³ Section 872.06(1), F.S.

⁷⁴ This definition excludes sexual activity between spouses. Section 796.07(1)(a), F.S.

⁷⁵ Section 796.07(1)(d), F.S. Sexual activity does not include acts done for bona fide medical purposes.

Employees of the Department of Corrections (DOC) or a private correctional facility are prohibited from engaging in sexual misconduct with an inmate or an offender supervised by the DOC in the community. Such sexual misconduct is a third degree felony.⁷⁶

Additionally, it is a third degree felony for a psychotherapist to commit sexual misconduct with a client, or former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact. A second or subsequent violation is a second degree felony.⁷⁷

Sexual misconduct means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.⁷⁸

Blood Tests of Inmates

Section 951.27, F.S., provides that each county and municipal detention facility must have a written procedure to establish the conditions under which an inmate will be tested for infectious disease.⁷⁹

Except as otherwise provided, the results of such blood tests are confidential and exempt. One such exception to this exemption is that a victim, or the victim's parent or legal guardian, may request the results of any human immunodeficiency virus test performed on an inmate who has been arrested for a sexual offense involving oral, anal, or vaginal penetration by, or union with, the sexual organ of another.

Admission of Evidence

Similar fact evidence of other crimes, wrongs, or acts is not admissible when such evidence is relevant solely to prove bad character or propensity. However, such similar fact evidence is admissible when relevant to prove a material fact in issue, including, but not limited to:

- Proof of motive.
- Opportunity.
- Intent.
- Preparation.
- Plan.
- Knowledge.
- Identity.
- Absence of mistake or accident.⁸⁰

However, s. 90.404(2)(b), F.S., provides that in a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other

⁷⁶ Section 944.35, F.S. Sexual misconduct does not include acts done for bona fide medical purposes.

⁷⁷ Section 491.0112, F.S.

⁷⁸ See ss. 491.0112, and 944.35, F.S.

⁷⁹ Section 951.27(1), F.S.

⁸⁰ Section 90.404(2)(a), F.S.

crimes, wrongs, or acts of child molestation is admissible and may be considered for its bearing on any matter to which it is relevant. Similarly, s. 90.404(2)(c), F.S., provides that in a criminal case in which the defendant is charged with a sexual offense, evidence of the defendant's commission of other crimes, wrongs, or acts involving a sexual offense is admissible and may be considered for its bearing on any matter to which is relevant.

While the statutory construction of s. 90.404(2)(b), F.S., relating to child molestation, and s. 90.404(2)(c), F.S., relating to sexual offenses, is the same, the courts have interpreted these sections differently. Courts have applied s. 90.404(2)(c), F.S., to require "significant similarity between the collateral evidence and the charged crime, evidence so similar and specific that it resembles a clear pattern of conduct."⁸¹ In contrast, courts have held in regards to s. 90.404(2)(b), F.S., that "under the plain language of the rule, relevant collateral crime evidence is admissible to corroborate a victim's testimony 'regardless of whether the charged and collateral offenses occurred in the familial context or whether they share any similarity.'"⁸²

III. Effect of Proposed Changes:

This bill amends multiple statutes relating to various sexual offenses, to replace the terms "vagina" or "vaginal" with "female genitals." Additionally, this bill provides that "female genitals" means the labia majora, labia minora, clitoris, vulva, hymen, and vagina.

Specifically, the bill amends the following sections to replace the term "vagina" or "vaginal" with "female genitals":

- Section 365.161(1), F.S., which provides definitions relating to the prohibition of certain obscene telephone communications.
- Section 491.0112(4), F.S., which provides definitions relating to sexual misconduct by a psychotherapist.
- Section 775.0847(1), F.S., which provides definitions relating to the possession or promotion of certain images of child pornography.
- Section 794.011(1), F.S., which provides definitions relating to sexual battery.
- Section 794.05, F.S., which provides definitions relating to unlawful sexual activity with certain minors.
- Section 796.07(1), F.S., which provides definitions relating to the prohibition of prostitution.
- Section 800.04(1), F.S., which provides definitions relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
- Section 825.1025(1), F.S., which provides definitions relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.
- Section 827.071, F.S., which provides definitions relating to sexual performance by a child.
- Section 847.001, F.S., which provides definitions relating to obscenity.
- Section 872.06(1), F.S., which provides definitions relating to abuse of a dead human body.
- Section 944.35(3), F.S., which provides definitions relating to prohibited sexual misconduct.
- Section 951.27(2), F.S., relating to the blood test of inmates.

⁸¹ *Reyna v. State*, 302 So. 3d 1025, 1031 (Fla. 4th DCA 2020).

⁸² *Pridemore v. State*, 301 So. 3d 454, 459 (Fla. 4th DCA 2020)(quoting *McLean v. State*, 934 So. 2d 1248, 1259 (Fla. 2006).

Section 794.011(3), F.S., provides it is a life felony for a person to commit sexual battery on a person 12 years of age or older, without that person's consent, and in the process thereof use or threaten to use a deadly weapon, or use actual force likely to cause serious personal injury. This bill expands s. 794.011(3), F.S., to provide it is also a life felony if a person uses or *threatens to use* actual physical force likely to cause serious personal injury or *death*.

The bill amends s. 775.15, F.S., to expand the statute of limitations by one year for victims of sexual battery who were unaware that the sexual battery occurred due to the victim being mentally defective, mentally incapacitated, or physically helpless. Prosecution for such cases may be commenced within one year after the date the victim obtains actual knowledge of the offense or the date on which the offense is reported to law enforcement, whichever occurs first. This applies to any offense which is not otherwise barred from prosecution on or before October 1, 2022.

The bill creates s. 800.06, F.S., which provides for the new crime of lewd or lascivious molestation of a person 16 years of age or older. A person commits a third degree felony when he or she intentionally touches in a lewd or lascivious manner, and without consent, the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person 16 years of age or older, or forces such person to so touch the perpetrator.

The bill amends s. 90.404, F.S., to provide that substantial similarity is not required for admission of the defendant's commission of other crimes, wrongs, or acts involving a sexual offense, when the defendant is charged with a sexual offense and his or her identity is not at issue.

Additionally, the bill amends ss. 395.0197, 415.102, and 847.0141, F.S., to make conforming cross-reference changes to comply with the act.

This bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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) estimates that this bill has a positive indeterminate fiscal impact (unquantifiable positive prison bed impact). It is not known how many additional offenders could be charged under the expanded definition in the bill.⁸³

Additionally, the CJIC estimates that SB 878, which has been included by amendment in this bill, to have a positive indeterminate fiscal impact (unquantifiable positive prison bed impact). This bill amends multiple sex crime statutes, replacing “vagina” with “female genitals.” The bill further amends s. 794.011(3), F.S., to make it a life felony for a specified sexual battery when a perpetrator uses *or threatens to use* actual physical force likely to cause serious personal injury *or death*.⁸⁴

This bill also amends s. 775.15, F.S., to expand the statute of limitations by one year for certain victims of sexual battery.

Per DOC, in FY 18-19, there were 1,348 new commitments to prison under the statutes amended in this bill. In FY 19-20, there were 1,145 new commitments, and in FY 20-21, there were 857 new commitments. For s. 794.011(3), F.S., specifically, there were 47 new commitments in FY 18-19, 44 new commitments in FY 19-20, and 26 new commitments in FY 20-21. It is not known how many additional offenders could be charged under these expanded definitions. Furthermore, under s. 794.011, F.S., there were 504 new commitments in FY 18-19, 424 in FY 19-20, and 274 in FY 20-21, though it is not known what number of these involved “mentally defective, mentally incapacitated, or physically helpless” victims, nor is it known how many additional offenders would enter prison due to the new language under s. 775.15, F.S.⁸⁵

⁸³ See Criminal Justice Impact Conference, *Summary on SB 692, Sexual Offense Definition* (February 7, 2022)(on file with the committee on Criminal Justice).

⁸⁴ See Criminal Justice Impact Conference, *Summary on SB 878, Sexual Offenses* (February 7, 2022)(on file with the committee on Criminal Justice).

⁸⁵ *Id.*

Finally, this bill creates s. 800.06, F.S., adding an unranked, 3rd degree felony (Level 1 by default) for someone who “who intentionally touches in a lewd or lascivious manner, and without consent, the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person 16 years of age or older, or forces a person 16 years of age or older to so touch the perpetrator, commits lewd or lascivious molestation of a person 16 years of age or older.”

Per FDLE, in FY 18-19, there were 125 people arrested for the second degree misdemeanors of lewd and lascivious behavior (s. 798.02, F.S.) and unnatural and lascivious act (s. 800.02, F.S.). In FY 19-20, there were 63 people arrested, and in FY 20-21, there were 50 people arrested. It is not known how many of those arrested fit the definition of the conduct described under s. 800.06, F.S. It is possible that this conduct might currently fall under simple battery, a high volume misdemeanor offense that elevates to a Level 1, 3rd degree felony if a second or subsequent battery occurs after a prior conviction (168,345 arrests over the last three fiscal years). However, it cannot be determined where these offenses are currently captured, nor how many arrests occur for these acts in a given year.⁸⁶

In FY 18-19, the incarceration rate for a Level 1, 3rd degree felony was 9.5 percent, and in FY 19-20 the incarceration rate was 8.2 percent. In FY 20-21, the incarceration rate for a Level 1, 3rd degree felony was 8.1 percent.⁸⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 90.404, 365.161, 395.0197, 415.102, 491.0112, 775.0847, 775.15, 794.011, 794.05, 796.07, 800.04, 825.1025, 827.071, 847.001, 847.0141, 872.06, 944.35, and 951.27.

This bill creates section 800.06, 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 February 8, 2022:

This committee substitute:

⁸⁶ *Id.*

⁸⁷ *Id.*

- Amends multiple sections of law to reference the term “female genitals,” rather than the term “vagina.”
- Creates a new crime related to lewd or lascivious molestation of a person 16 years of age or older. Specifically, it is a third degree felony for a person to intentionally touch the breasts, genitals, genital area, or buttocks of a person 16 years of age or older, without that person’s consent, in a lewd or lascivious manner. Additionally, it is a third degree felony to force a person 16 years of age or older to so touch the perpetrator.
- Expands the statutes of limitations by one year for certain victims of sexual battery.
- Provides that substantial similarity is not required to admit evidence of other crimes, wrongs, or acts involving a sex offense, when the defendant is charged with a sex offense, and identity is not at issue.
- Provides that it is a life felony to commit a sexual battery on a person 12 years of age or older, without that person’s consent, and threatens to use force likely to cause serious personal injury or death.
- Removes revisions made to ch. 39, F.S.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2022	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (c) of subsection (2) of section
90.404, Florida Statutes, is amended to read:

90.404 Character evidence; when admissible.—

(2) OTHER CRIMES, WRONGS, OR ACTS.—

(c)1. In a criminal case in which the defendant is charged
with a sexual offense, evidence of the defendant's commission of



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other crimes, wrongs, or acts involving a sexual offense is admissible and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "sexual offense" means conduct proscribed by s. 787.025(2)(c), s. 787.06(3)(b), (d), (f), or (g), former s. 787.06(3)(h), s. 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03, former s. 796.035, s. 825.1025(2)(b), s. 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).

3. Substantial similarity is not required for admission of other crimes, wrongs, or acts when identity is not at issue.

Section 2. Paragraphs (d) and (e) of subsection (1) of section 365.161, Florida Statutes, are amended to read:

365.161 Prohibition of certain obscene telephone communications; penalty.—

(1) For purposes of this section, the term:

(d) "Sexual battery" means oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object.

(e) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals ~~vagina~~ of the other.

Section 3. Paragraph (c) of subsection (4) of section 491.0112, Florida Statutes, is amended to read:

491.0112 Sexual misconduct by a psychotherapist; penalties.—

(4) For the purposes of this section:

(c) "Sexual misconduct" means the oral, anal, or female



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40 genital ~~vaginal~~ penetration of another by, or contact with, the
41 sexual organ of another or the anal or female genital ~~vaginal~~
42 penetration of another by any object.

43 Section 4. Paragraphs (d) and (e) of subsection (1) of
44 section 775.0847, Florida Statutes, are amended to read:

45 775.0847 Possession or promotion of certain images of child
46 pornography; reclassification.—

47 (1) For purposes of this section:

48 (d) "Sexual battery" means oral, anal, or female genital
49 ~~vaginal~~ penetration by, or union with, the sexual organ of
50 another or the anal or female genital ~~vaginal~~ penetration of
51 another by any other object; however, sexual battery does not
52 include an act done for a bona fide medical purpose.

53 (e) "Sexual bestiality" means any sexual act, actual or
54 simulated, between a person and an animal involving the sex
55 organ of the one and the mouth, anus, or female genitals ~~vagina~~
56 of the other.

57
58 For purposes of sentencing under chapter 921 and determining
59 incentive gain-time eligibility under chapter 944, a felony
60 offense that is reclassified under this section is ranked one
61 level above the ranking under s. 921.0022 or s. 921.0023 of the
62 offense committed.

63 Section 5. Subsection (21) is added to section 775.15,
64 Florida Statutes, to read:

65 775.15 Time limitations; general time limitations;
66 exceptions.—

67 (21) In addition to the time periods prescribed in this
68 section, a prosecution for sexual battery in violation of s.



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794.011, where the victim was unaware of the sexual battery due to the victim being mentally defective, mentally incapacitated, or physically helpless, may be commenced within 1 year after the date on which the victim obtains actual knowledge of the offense or the date on which the offense is reported to law enforcement, whichever occurs first. Any dissemination of a recording of such offense before the victim obtains actual knowledge thereof or before its confiscation by a law enforcement agency does not affect any provision of this subsection. This subsection applies to any offense that is not otherwise barred from prosecution on or before October 1, 2022.

Section 6. Subsections (1), (3), and (8) of section 794.011, Florida Statutes, are amended to read:

794.011 Sexual battery.—

(1) As used in this chapter:

(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

(b) "Female genitals" means the labia majora, labia minora, clitoris, vulva, hymen, and vagina.

~~(c)-(b)~~ "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

~~(d)-(e)~~ "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.



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98 (e)~~(d)~~ "Offender" means a person accused of a sexual
99 offense in violation of a provision of this chapter.

100 (f)~~(e)~~ "Physically helpless" means unconscious, asleep, or
101 for any other reason physically unable to communicate
102 unwillingness to an act.

103 (h)~~(f)~~ "Retaliation" includes, but is not limited to,
104 threats of future physical punishment, kidnapping, false
105 imprisonment or forcible confinement, or extortion.

106 (i)~~(g)~~ "Serious personal injury" means great bodily harm or
107 pain, permanent disability, or permanent disfigurement.

108 (j)~~(h)~~ "Sexual battery" means oral, anal, or female genital
109 ~~vaginal~~ penetration by, or union with, the sexual organ of
110 another or the anal or female genital ~~vaginal~~ penetration of
111 another by any other object; however, sexual battery does not
112 include an act done for a bona fide medical purpose.

113 (k)~~(i)~~ "Victim" means a person who has been the object of a
114 sexual offense.

115 (g)~~(j)~~ "Physically incapacitated" means bodily impaired or
116 handicapped and substantially limited in ability to resist or
117 flee.

118 (3) A person who commits sexual battery upon a person 12
119 years of age or older, without that person's consent, and in the
120 process thereof:

121 (a) Uses or threatens to use a deadly weapon; or

122 (b) Uses or threatens to use actual physical force likely
123 to cause serious personal injury or death

124
125 commits a life felony, punishable as provided in s. 775.082, s.
126 775.083, s. 775.084, or s. 794.0115.



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(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery as defined in this section ~~under paragraph (1)(h)~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Engages in any act with that person while the person is 12 years of age or older but younger than 18 years of age which constitutes sexual battery as defined in this section ~~under paragraph (1)(h)~~ commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery as defined in this section ~~under paragraph (1)(h)~~, or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

Section 7. Subsection (1) of section 794.05, Florida Statutes, is amended to read:

794.05 Unlawful sexual activity with certain minors.—

(1) A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this section, "sexual activity" means oral, anal, or female genital ~~vaginal~~



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

Section 8. Paragraph (d) of subsection (1) of section 796.07, Florida Statutes, is amended to read:

796.07 Prohibiting prostitution and related acts.—

(1) As used in this section:

(d) "Sexual activity" means oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another; anal or female genital ~~vaginal~~ penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

Section 9. Paragraph (a) of subsection (1) of section 800.04, Florida Statutes, is amended to read:

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

(1) DEFINITIONS.—As used in this section:

(a) "Sexual activity" means the oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

Section 10. Section 800.06, Florida Statutes, is created to read:

800.06 Lewd or lascivious offenses committed upon persons 16 years of age or older.—

(1) A person who intentionally touches in a lewd or



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lascivious manner, and without consent, the breasts, genitals,
genital area, or buttocks, or the clothing covering them, of a
person 16 years of age or older, or forces a person 16 years of
age or older to so touch the perpetrator, commits lewd or
lascivious molestation of a person 16 years of age or older.

(2) A person who violates subsection (1) commits a felony
of the third degree, punishable as provided in s. 775.082, s.
775.083, or s. 775.084.

Section 11. Subsection (1) of section 825.1025, Florida
Statutes, is amended to read:

825.1025 Lewd or lascivious offenses committed upon or in
the presence of an elderly person or disabled person.—

(1) As used in this section, the term "sexual activity"
means the oral, anal, or female genital ~~vaginal~~ penetration by,
or union with, the sexual organ of another or the anal or female
genital ~~vaginal~~ penetration of another by any other object;
however, sexual activity does not include an act done for a bona
fide medical purpose.

Section 12. Paragraphs (f) and (g) of subsection (1) of
section 827.071, Florida Statutes, are amended to read:

827.071 Sexual performance by a child; penalties.—

(1) As used in this section, the following definitions
shall apply:

(f) "Sexual battery" means oral, anal, or female genital
~~vaginal~~ penetration by, or union with, the sexual organ of
another or the anal or female genital ~~vaginal~~ penetration of
another by any other object; however, "sexual battery" does not
include an act done for a bona fide medical purpose.

(g) "Sexual bestiality" means any sexual act between a



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person and an animal involving the sex organ of the one and the mouth, anus, or female genitals ~~vagina~~ of the other.

Section 13. Subsections (14) and (15) of section 847.001, Florida Statutes, are amended to read:

847.001 Definitions.—As used in this chapter, the term:

(14) "Sexual battery" means oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(15) "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals ~~vagina~~ of the other.

Section 14. Subsection (1) of section 872.06, Florida Statutes, is amended to read:

872.06 Abuse of a dead human body; penalty.—

(1) As used in this section, the term "sexual abuse" means:

(a) Anal or female genital ~~vaginal~~ penetration of a dead human body by the sexual organ of a person or by any other object;

(b) Contact or union of the penis, female genitals ~~vagina~~, or anus of a person with the mouth, penis, female genitals ~~vagina~~, or anus of a dead human body; or

(c) Contact or union of a person's mouth with the penis, female genitals ~~vagina~~, or anus of a dead human body.

Section 15. Paragraph (b) of subsection (3) of section 944.35, Florida Statutes, is amended to read:



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944.35 Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.—

(3)(b)1. As used in this paragraph, the term "sexual misconduct" means the oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty.

2. Any employee of the department or a private correctional facility as defined in s. 944.710 who engages in sexual misconduct with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The consent of the inmate or offender supervised by the department in the community to any act of sexual misconduct may not be raised as a defense to a prosecution under this paragraph.

4. This paragraph does not apply to any employee of the department or any employee of a private correctional facility who is legally married to an inmate or an offender supervised by the department in the community, nor does it apply to any employee who has no knowledge, and would have no reason to believe, that the person with whom the employee has engaged in sexual misconduct is an inmate or an offender under community supervision of the department.

Section 16. Subsection (2) of section 951.27, Florida Statutes, is amended to read:



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951.27 Blood tests of inmates.—

(2) Except as otherwise provided in this subsection, serologic blood test results obtained pursuant to subsection (1) are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such results may be provided to employees or officers of the sheriff or chief correctional officer who are responsible for the custody and care of the affected inmate and have a need to know such information, and as provided in ss. 775.0877 and 960.003. In addition, upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the results of any HIV test performed on an inmate ~~who has been~~ arrested for any sexual offense involving oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another, must ~~shall~~ be disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor. In such cases, the county or municipal detention facility shall furnish the test results to the Department of Health, which is responsible for disclosing the results to public health agencies as provided in s. 775.0877 and to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, as provided in s. 960.003(3).

Section 17. Subsection (10) of section 395.0197, Florida Statutes, is amended to read:

395.0197 Internal risk management program.—

(10) Any witness who witnessed or who possesses actual knowledge of the act that is the basis of an allegation of sexual abuse shall:



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(a) Notify the local police; and

(b) Notify the hospital risk manager and the administrator.

For purposes of this subsection, "sexual abuse" means acts of a sexual nature committed for the sexual gratification of anyone upon, or in the presence of, a vulnerable adult, without the vulnerable adult's informed consent, or a minor. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a vulnerable adult's or minor's sexual organs, or the use of the vulnerable adult or minor to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act which may reasonably be construed to be a normal caregiving action.

Section 18. Subsection (26) of section 415.102, Florida Statutes, is amended to read:

415.102 Definitions of terms used in ss. 415.101-415.113.—
As used in ss. 415.101-415.113, the term:

(26) "Sexual abuse" means acts of a sexual nature committed in the presence of a vulnerable adult without that person's informed consent. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a vulnerable adult's sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.



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Section 19. Subsection (1) of section 847.0141, Florida Statutes, is amended to read:

847.0141 Sexting; prohibited acts; penalties.—

(1) A minor commits the offense of sexting if he or she knowingly:

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, ~~as defined in s. 847.001(9)~~, and is harmful to minors, as those terms are defined in s. 847.001 ~~s. 847.001(6)~~.

(b) Possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity, ~~as defined in s. 847.001(9)~~, and is harmful to minors, as those terms are defined in s. 847.001 ~~s. 847.001(6)~~. A minor does not violate this paragraph if all of the following apply:

1. The minor did not solicit the photograph or video.

2. The minor took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official.

3. The minor did not transmit or distribute the photograph or video to a third party.

Section 20. This act shall take effect October 1, 2022.

===== 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



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An act relating to sexual offenses; amending s. 90.404, F.S.; providing that substantial similarity is not required for the admissibility of certain evidence in a criminal case in which the defendant is charged with a sexual offense; amending s. 365.161, F.S.; revising the definitions of the terms "sexual battery" and "sexual bestiality"; amending s. 491.0112, F.S.; revising the definition of the term "sexual misconduct"; amending s. 775.0847, F.S.; revising the definitions of the terms "sexual battery" and "sexual bestiality"; amending s. 775.15, F.S.; providing a time limitation for the prosecution of specified sexual battery offenses; providing applicability; amending s. 794.011, F.S.; defining the term "female genitals"; revising the definition of the term "sexual battery"; providing that a person who threatens to use actual physical force likely to cause serious bodily injury or death while committing specified sexual battery offenses commits a life felony; amending ss. 794.05, 796.07, and 800.04, F.S.; revising the definition of the term "sexual activity"; creating s. 800.06, F.S.; creating the offense of lewd or lascivious molestation of a person 16 years of age or older; providing criminal penalties; amending s. 825.1025, F.S.; revising the definition of the term "sexual activity"; amending ss. 827.071 and 847.001, F.S.; revising the definitions of the terms "sexual battery" and "sexual bestiality"; amending s. 872.06, F.S.; revising the definition of the term "sexual



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388 abuse"; amending s. 944.35, F.S.; revising the
389 definition of the term "sexual misconduct"; amending
390 s. 951.27, F.S.; requiring that HIV test results
391 performed on inmates arrested for sexual offenses
392 involving female genital penetration be disclosed
393 under certain circumstances; amending ss. 395.0197,
394 415.102, and 847.0141, F.S.; conforming cross-
395 references; providing an effective date.

By Senator Stewart

13-00876-22

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A bill to be entitled

An act relating to sexual offenses definitions; amending s. 39.01, F.S.; creating and revising a definition relating to sexual abuse of a child; amending ss. 365.161 and 775.0847, F.S.; creating and revising definitions relating to obscene telephone communications and possession or promotion of certain images of child pornography, respectively; amending s. 794.011, F.S.; creating and revising definitions relating to sexual battery; conforming provisions to changes made by the act; amending ss. 827.071 and 847.001, F.S.; creating and revising definitions relating to sexual performance by a child and obscenity definitions, respectively; amending s. 872.06, F.S.; creating and revising definitions relating to abuse of a dead human body; amending ss. 288.1254, 395.0197, 415.102, and 847.0141, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (77) of section 39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(77) "Sexual abuse of a child" for purposes of finding a child to be dependent means one or more of the following acts:

(a) Any penetration, however slight, of the genitals ~~vagina~~

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or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.

(d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:

1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or

2. Any act intended for a valid medical purpose.

(e) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(f) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, or the act of allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution;

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2. Engage in a sexual performance, as defined by chapter 827; or

3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g).

As used in this subsection, the term "genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

Section 2. Subsection (1) of section 365.161, Florida Statutes, is amended to read:

365.161 Prohibition of certain obscene telephone communications; penalty.—

(1) For purposes of this section, the term:

(c) (a) "Obscene" means that status of a communication which:

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

2. Describes, in a patently offensive way, deviate sexual intercourse, sadomasochistic abuse, sexual battery, bestiality, sexual conduct, or sexual excitement; and

3. Taken as a whole, lacks serious literary, artistic, political, or scientific value.

(a) (b) "Deviate sexual intercourse" means sexual conduct between persons consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(b) "Genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

(d) (e) "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered,

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bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(e) (d) "Sexual battery" means oral, anal, or genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or genital ~~vaginal~~ penetration of another by any other object.

(f) (e) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or genitals ~~vagina~~ of the other.

(g) (f) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; or any act or conduct which constitutes sexual battery.

(h) (g) "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

Section 3. Present paragraphs (c) through (f) of subsection (1) of section 775.0847, Florida Statutes, are redesignated as paragraphs (d) through (g), respectively, a new paragraph (c) is added to that subsection, and present paragraphs (d) and (e) of that subsection are amended, to read:

775.0847 Possession or promotion of certain images of child pornography; reclassification.—

(1) For purposes of this section:

(c) "Genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

(e) (d) "Sexual battery" means oral, anal, or genital ~~vaginal~~ penetration by, or union with, the sexual organ of

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

~~(f)(e)~~ "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or genitals ~~vagina~~ of the other.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this section is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 4. Subsections (1), (3), and (8) of section 794.011, Florida Statutes, are amended to read:

794.011 Sexual battery.—

(1) As used in this chapter:

(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

(b) "Genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

~~(c)(b)~~ "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

~~(d)(c)~~ "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance

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administered without his or her consent or due to any other act committed upon that person without his or her consent.

~~(e)(d)~~ "Offender" means a person accused of a sexual offense in violation of a provision of this chapter.

~~(f)(e)~~ "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

~~(h)(f)~~ "Retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

~~(i)(g)~~ "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

~~(j)(h)~~ "Sexual battery" means oral, anal, or genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or genital ~~vaginal~~ penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

~~(k)(i)~~ "Victim" means a person who has been the object of a sexual offense.

~~(g)(j)~~ "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof:

(a) Uses or threatens to use a deadly weapon; or

(b) Uses actual physical force likely to cause serious personal injury

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commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery as defined in this section ~~under paragraph (1)(h)~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Engages in any act with that person while the person is 12 years of age or older but younger than 18 years of age which constitutes sexual battery as defined in this section ~~under paragraph (1)(h)~~ commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery as defined in this section ~~under paragraph (1)(h)~~, or in an attempt to commit sexual battery injures the sexual organs of such person, commits a capital or life felony, punishable pursuant to subsection (2).

Section 5. Present paragraphs (b) through (j) of subsection (1) of section 827.071, Florida Statutes, are redesignated as paragraphs (c) through (k), respectively, a new paragraph (b) is added to that subsection, and present paragraphs (f), (g), and (j) of that subsection are amended, to read:

827.071 Sexual performance by a child; penalties.—

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(1) As used in this section, the following definitions shall apply:

(b) "Genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

~~(g)(f)~~ "Sexual battery" means oral, anal, or genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or genital ~~vaginal~~ penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

~~(h)(g)~~ "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or genitals ~~vagina~~ of the other.

~~(k)(j)~~ "Simulated" means the explicit depiction of conduct set forth in paragraph ~~(i)~~ ~~(h)~~ which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Section 6. Present subsections (6) through (20) of section 847.001, Florida Statutes, are redesignated as subsections (7) through (21), respectively, a new subsection (6) is added to that section, and present subsections (14), (15), and (19) of that section are amended, to read:

847.001 Definitions.—As used in this chapter, the term:

~~(6)~~ "Genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

~~(15)(14)~~ "Sexual battery" means oral, anal, or genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or genital ~~vaginal~~ penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

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233 ~~(16)(15)~~ "Sexual bestiality" means any sexual act, actual
 234 or simulated, between a person and an animal involving the sex
 235 organ of the one and the mouth, anus, or genitals ~~vagina~~ of the
 236 other.

237 ~~(20)(19)~~ "Simulated" means the explicit depiction of
 238 conduct described in subsection (17) ~~(16)~~ which creates the
 239 appearance of such conduct and which exhibits any uncovered
 240 portion of the breasts, genitals, or buttocks.

241 Section 7. Section 872.06, Florida Statutes, is amended to
 242 read:

243 872.06 Abuse of a dead human body; penalty.—

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

245 (a) "Genitals" includes the labia minora, labia majora,
 246 vulva, hymen, and vagina.

247 (b) "Sexual abuse" means:

248 1. ~~(a)~~ Anal or genital ~~vaginal~~ penetration of a dead human
 249 body by the sexual organ of a person or by any other object;

250 2. ~~(b)~~ Contact or union of the penis, genitals ~~vagina~~, or
 251 anus of a person with the mouth, penis, genitals ~~vagina~~, or anus
 252 of a dead human body; or

253 3. ~~(c)~~ Contact or union of a person's mouth with the penis,
 254 genitals ~~vagina~~, or anus of a dead human body.

255 (2) A person who mutilates, commits sexual abuse upon, or
 256 otherwise grossly abuses a dead human body commits a felony of
 257 the second degree, punishable as provided in s. 775.082, s.
 258 775.083, or s. 775.084. Any act done for a bona fide medical
 259 purpose or for any other lawful purpose does not under any
 260 circumstance constitute a violation of this section.

261 Section 8. Paragraph (j) of subsection (1) of section

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262 288.1254, Florida Statutes, is amended to read:

263 288.1254 Entertainment industry financial incentive
 264 program.—

265 (1) DEFINITIONS.—As used in this section, the term:

266 (j) "Qualified production" means a production in this state
 267 meeting the requirements of this section. The term does not
 268 include a production:

269 1. In which, for the first 2 years of the incentive
 270 program, less than 50 percent, and thereafter, less than 60
 271 percent, of the positions that make up its production cast and
 272 below-the-line production crew, or, in the case of digital media
 273 projects, less than 75 percent of such positions, are filled by
 274 legal residents of this state, whose residency is demonstrated
 275 by a valid Florida driver license or other state-issued
 276 identification confirming residency, or students enrolled full-
 277 time in a film-and-entertainment-related course of study at an
 278 institution of higher education in this state; or

279 2. That contains obscene content as defined in s.
 280 847.001(11) ~~s. 847.001(10)~~.

281 Section 9. Subsection (10) of section 395.0197, Florida
 282 Statutes, is amended to read:

283 395.0197 Internal risk management program.—

284 (10) Any witness who witnessed or who possesses actual
 285 knowledge of the act that is the basis of an allegation of
 286 sexual abuse shall:

287 (a) Notify the local police; and

288 (b) Notify the hospital risk manager and the administrator.

289

290 For purposes of this subsection, "sexual abuse" means acts of a

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sexual nature committed for the sexual gratification of anyone upon, or in the presence of, a vulnerable adult, without the vulnerable adult's informed consent, or a minor. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a vulnerable adult's or minor's sexual organs, or the use of the vulnerable adult or minor to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act which may reasonably be construed to be a normal caregiving action.

Section 10. Subsection (26) of section 415.102, Florida Statutes, is amended to read:

415.102 Definitions of terms used in ss. 415.101-415.113.—
As used in ss. 415.101-415.113, the term:

(26) "Sexual abuse" means acts of a sexual nature committed in the presence of a vulnerable adult without that person's informed consent. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a vulnerable adult's sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.

Section 11. Subsection (1) of section 847.0141, Florida Statutes, is amended to read:

847.0141 Sexting; prohibited acts; penalties.—

(1) A minor commits the offense of sexting if he or she

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knowingly:

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, ~~as defined in s. 847.001(9)~~, and is harmful to minors, as those terms are defined in s. 847.001 ~~s. 847.001(6)~~.

(b) Possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity, ~~as defined in s. 847.001(9)~~, and is harmful to minors, as those terms are defined in s. 847.001 ~~s. 847.001(6)~~. A minor does not violate this paragraph if all of the following apply:

1. The minor did not solicit the photograph or video.
2. The minor took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official.
3. The minor did not transmit or distribute the photograph or video to a third party.

Section 12. This act shall take effect October 1, 2022.

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The Florida Senate

Committee Agenda Request

To: Senator Jason Pizzo, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 2, 2022

I respectfully request that **Senate Bill #692**, relating to Sexual Offenses Definitions, be placed on the:

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

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/8/22

Meeting Date

CJ

Committee

692

Bill Number or Topic

516686

Amendment Barcode (If applicable)

Name

AARON WAYT
FL ISSN OF CIRM DEF LAWYERS

Phone

(407) 435-3194

Address

Street

Email

City

State

Zip

Speaking:

☐ For

☒ Against
AMENDMENT

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

February 8, 2022

Meeting Date

Criminal Justice

Committee

692

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **2215 Thomasville Road**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Smart Justice Alliance

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

SB 692 – Sexual Offenses Definitions (Similar HB 341)

This bill amends multiple sex crime statutes, defining genitals in each so that they include “the labia minora, labia majora, vulva, hymen, and vagina.” Only vagina is used under current language.

Per DOC, in FY 18-19, there were 700 new commitments to prison under the statutes amended in this bill. In FY 19-20, there were 602 new commitments, and in FY 20-21, there were 436 new commitments. It is not known how many additional offenders could be charged under this expanded definition.

EDR PROPOSED ESTIMATE: Positive Indeterminate

Requested by: House

SB 878 – Sexual Offenses

This bill amends multiple sex crime statutes, replacing “vagina” with “female genitals.” It also defines female genitals under Chapter 794 as “the labia majora, labia minora, clitoris, vulva, hymen, and vagina” in the amended s. 794.011, F.S. Further amending s. 794.011(3), F.S., this bill adds the following (new language in bold): “a person who commits sexual battery upon a person 12 years of age or older, without that person’s consent, and in the process thereof uses or threatens to use a deadly weapon or uses **or threatens to use** actual physical force likely to cause serious personal injury **or death** commits a life felony.”

This bill also amends s. 775.15, F.S., stating the following: “in addition to the time periods prescribed in this section, a prosecution for sexual battery in violation of s. 794.011, F.S., where the victim was unaware of the sexual assault due to the victim being mentally defective, mentally incapacitated, or physically helpless, may be commenced within 1 year after the date on which the victim obtains actual knowledge of the offense or the date on which the offense is reported to law enforcement, whichever occurs first. Any dissemination of a recording of such offense before the victim obtains actual knowledge thereof or before its confiscation by a law enforcement agency does not affect any provision of this subsection.”

Per DOC, in FY 18-19, there were 1,348 new commitments to prison under the statutes amended in this bill. In FY 19-20, there were 1,145 new commitments, and in FY 20-21, there were 857 new commitments. For s. 794.011(3), F.S. specifically, there were 47 new commitments in FY 18-19, 44 new commitments in FY 19-20, and 26 new commitments in FY 20-21. It is not known how many additional offenders could be charged under these expanded definitions. Furthermore, under s. 794.011, F.S., there were 504 new commitments in FY 18-19, 424 in FY 19-20, and 274 in FY 20-21, though it is not known what number of these involved “mentally defective, mentally incapacitated, or physically helpless” victims, nor is it known how many additional offenders would enter prison due to the new language under s. 775.15, F.S.

EDR PROPOSED ESTIMATE: **Positive Indeterminate**

Finally, this bill creates s. 800.06, F.S., adding an **unranked, 3rd felony (Level 1 by default)** for someone who “who intentionally touches in a lewd or lascivious manner, and without consent, the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person 16 years of age or older, or forces a person 16 years of age or older to so touch the perpetrator, commits lewd or lascivious molestation of a person 16 years of age or older.”

Per FDLE, in FY 18-19, there were 125 people arrested for the second degree misdemeanors of lewd and lascivious behavior (s. 798.02, F.S.) and unnatural and lascivious act (s. 800.02, F.S.). In FY 19-20, there were 63 people arrested, and in FY 20-21, there were 50 people arrested. It is not known how many of those arrested fit the

definition of the conduct described under s. 800.06, F.S. It is possible that this conduct might currently fall under simple battery, a high volume misdemeanor offense that elevates to a Level 1, 3rd degree felony if a second or subsequent battery occurs after a prior conviction (168,345 arrests over the last three fiscal years). However, it cannot be determined where these offenses are currently captured, nor how many arrests occur for these acts in a given year.

In FY 18-19, the incarceration rate for a Level 1, 3rd degree felony was 9.5%, and in FY 19-20 the incarceration rate was 8.2%. In FY 20-21, the incarceration rate for a Level 1, 3rd degree felony was 8.1%.

EDR PROPOSED ESTIMATE: Positive Indeterminate

EDR PROPOSED ESTIMATE FOR ENTIRE BILL: Positive Indeterminate

Requested by: Senate

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1182

INTRODUCER: Banking and Insurance Committee and Senator Broxson

SUBJECT: Breach of Bond Costs

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Siples</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1182 requires that a bail bond agent pay to return an incarcerated defendant to the county in which the defendant was released on bail, rather than any county within the same judicial circuit, in order to be released of liability on a criminal surety bail bond.

The bill also requires a bail bond agent to pay the costs and expenses of returning the defendant to the original court's jurisdiction, while the defendant is under the bail bond's fiduciary, rather than just the cost of transportation.

The bill specifies costs and expenses may not exceed the prorated salary of the officers or the contracted transportation company involved in transporting the defendant. The bill limits transportation expenses to mileage, vehicle expenses, meals, and, when necessary, overnight lodging for the officer or contracted transportation company and the defendant.

The bill may have a fiscal impact on both the private and government sectors. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Pretrial Release

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release with reasonable conditions. A judge is required to presume that nonmonetary conditions¹ are sufficient for any person to be granted pretrial release who is not charged with a dangerous crime.² Although a court has the authority to impose any number of pretrial release conditions, it must impose conditions of release that require the defendant to refrain from criminal activity and to refrain from contact with the victim.³ If a defendant violates the pretrial release conditions, he or she may be arrested and held to answer before the court having jurisdiction to try the defendant.⁴

Bail Bonds

The purpose of a bail determination in criminal proceedings is to ensure the appearance of the defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.⁵

Issuance of a Bail Bond

Bail is a common monetary condition of pretrial release that requires an arrestee to pay a set sum of money to the court to be released from jail.⁶ As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond executed by a bail bond agent licensed under ch. 648, F.S.⁷ Generally, to use the services of a bail bond agent, the defendant or someone on the defendant's behalf must pay a nonrefundable fee to the bail bond agent equal to 10 percent of the bond amount set by the court.⁸ This contract obligates the bail bond agent to ensure a defendant appears at all required court appearances.⁹

¹ Nonmonetary conditions include any condition that does not require the payment of a financial guarantee, such as releasing the arrestee on his or her recognizance, placement in a pretrial release program, or placing restrictions on the arrestee's travel, association, or place of abode. *See* Fla. R. Crim. P. 3.131.

² Pursuant to s. 907.041(3), F.S., the term "dangerous crimes" includes: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; and human trafficking.

³ Section 903.047, F.S.

⁴ Section. 903.0471.

⁵ Section 903.046(1), F.S.

⁶ Section 903.011, F.S.

⁷ Section 903.105, F.S.

⁸ *Id.* *See also* Florida Dept. of Financial Services, *Bail Bonds Overview*, available at <https://www.myfloridacfo.com/division/consumers/understandingcoverage/bailbondsoverview.htm> (last visited February 1, 2022).

⁹ Section 903.045, F.S.

Breach and Forfeiture of a Bail Bond

If a defendant fails to appear in court or violates any pretrial release conditions, he or she breaches the bond and a court generally must declare the bond and any money deposited to be forfeited.¹⁰ However, this forfeiture requirement does not apply, even if there is a breach of the bond, when the information, indictment, or affidavit in the criminal case was not filed within six months of arrest, or the clerk of the court failed to provide the agent with at least 72 hours' notice of the time and date of the required appearance for the defendant.¹¹ Within five days after forfeiture of a bond, the court must mail or electronically transmit a notice to the bail bond agent and the surety company.¹² The value of the forfeited bond must be paid by the bail bond agent within 60 days of the date the notice was mailed or transmitted.¹³

Exoneration of Liability

A bail bond agent is exonerated of any further liability on a bail bond if, prior to a breach of the bond, the bail bond agent agrees in writing to pay the transportation cost of returning a defendant who is incarcerated in another county jail or prison to the jurisdiction of the court.¹⁴ Surrendering a defendant prior to a breach of the bond eliminates the need for a bail bond agent to go through the bond forfeiture and discharge process, and absolves the bail bond agent of future liability on the bond.¹⁵

The term "transportation cost" is not defined in statute. However, the Second District Court of Appeal has interpreted the term to apply only to the costs incurred by the sheriff's office in actually transporting the defendant from the county of arrest to the county holding the arrest warrant.¹⁶ This includes the prorated salary of the officers involved in transporting the defendant and the actual expenses of transportation.¹⁷

The "jurisdiction" to which the bail bond agent must return the defendant under s. 903.21(3), F.S., is any county within the judicial circuit of the court which issued the bond.¹⁸ This means a bail bond agent is only required to pay the cost to return a defendant to the closest county from where the defendant is incarcerated which lies within the same judicial circuit as the court that

¹⁰ Section 903.26(2)(a), F.S.

¹¹ Section 903.26(1), F.S. The 72 hours' notice period excludes Saturdays, Sundays, and holidays.

¹² Section 903.26(2)(a), F.S.

¹³ *Id.*

¹⁴ Section 903.21(3), F.S.

¹⁵ Section 903.21(1) and (2), F.S.

¹⁶ *Easy Bail Bonds v. Polk County*, 784 So. 2d 1173, 1177 (Fla. 2d DCA 2001).

¹⁷ *Id.* In a footnote, the court states that it cannot envision all the expenses that a sheriff's office may incur, it notes that "these costs would include vehicle expenses, meals, and when necessary, overnight lodging for the transporting deputy and prisoner." The court further provides that the county may also claim as costs the prorated salary paid to any deputy who must cover the assignment of the deputy who had to leave the county to pick up the defendant. The court leaves unanswered whether the county can claim as costs the prorated salary of the law enforcement officer who appears at a hearing to justify the amount of the costs sought by the county.

¹⁸ Section 903.21(3), F.S.

issued the bond.¹⁹ Consequently, the county sheriff often bears the cost of transporting the defendant the remaining distance to the actual county which issued the bond.²⁰

For example, to be exonerated from liability on the bond, if a defendant is released on bail in Franklin County (Apalachicola) and is subsequently arrested and detained in Duval County (Jacksonville), the bail bond agent is only required to pay transportation costs to return the defendant to Jefferson County (Monticello), the nearest county to Jacksonville that is in the same judicial circuit as Franklin County. The Franklin County Sheriff's Office is then responsible for the costs associated with transporting the defendant the remaining 103 miles from Jefferson County to Franklin County.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 903.21, F.S., related to method of surrendering a defendant and the exoneration of a bail bond agent of liability on a bond, by revising the definition of “jurisdiction” to mean the county from which the defendant was released on bail, rather than any county in the same judicial circuit.

The bill also requires a bail bond agent to pay the costs and expenses incurred in returning the defendant to the county in which he or she was released on bail, in order to be exonerated from liability on a bond. Costs and expenses may not exceed the prorated salary of the officers or the contracted transportation company involved and the actual expenses incurred in transporting the defendant. Transportation expenses are limited to mileage, vehicle expenses, meals, and, when

¹⁹ Section 26.021, F.S., provides Florida's circuit courts are divided into 20 judicial circuits as follows:

- First Circuit - Escambia, Okaloosa, Santa Rosa, and Walton Counties.
- Second Circuit - Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla Counties.
- Third Circuit - Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties.
- Fourth Circuit - Clay, Duval, and Nassau Counties.
- Fifth Circuit - Citrus, Hernando, Lake, Marion, and Sumter Counties.
- Sixth Circuit - Pasco and Pinellas Counties.
- Seventh Circuit - Flagler, Putnam, St. Johns, and Volusia Counties.
- Eighth Circuit - Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties.
- Ninth Circuit - Orange and Osceola Counties.
- Tenth Circuit - Hardee, Highlands, and Polk Counties.
- Eleventh Circuit - Miami-Dade County.
- Twelfth Circuit - DeSoto, Manatee, and Sarasota Counties.
- Thirteenth Circuit - Hillsborough County.
- Fourteenth Circuit - Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties.
- Fifteenth Circuit - Palm Beach County.
- Sixteenth Circuit - Monroe County.
- Seventeenth Circuit - Broward County.
- Eighteenth Circuit - Brevard and Seminole Counties.
- Nineteenth Circuit - Indian River, Martin, Okeechobee, and St. Lucie Counties.
- Twentieth Circuit - Charlotte, Collier, Glades, Hendry, and Lee Counties.

²⁰ Florida Office of the State Courts Administrator, *HB 381 Bill Analysis*, November 9, 2021 (on file with the Senate Committee on Banking and Insurance).

²¹ Florida Department of Transportation, *FDOT Official Highway Mileage Viewer*, available at <https://fdotewp1.dot.state.fl.us/citytocitymileage/viewer.aspx> (last visited Feb. 2, 2022). Apalachicola was used as the starting location and Monticello was entered as the destination.

necessary, overnight lodging for the officer or contracted transportation company and the defendant. The bill provides that the bail bond agent is only responsible for the costs and expenses incurred for the transport of a defendant to whom he or she has a fiduciary duty.

Section 2 provides an effective date of July 1, 2022.

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:

Indeterminate. The bill may require a bail bond agent to transport a defendant a greater distance, thereby shifting the cost of transporting a defendant from the sheriff to the bail bond agent. Additionally, the bill may increase costs and expenses incurred by a bail bond agent related to meals, vehicle expenses, and overnight lodging for officers or contracted transportation companies involved in the transportation of a defendant.

C. Government Sector Impact:

Indeterminate. The bill may result in fewer hearings related to bond issues.²² The bill may also reduce expenditures incurred by sheriffs for transporting a defendant from a county within a judicial circuit to the county from which a defendant was released on bail.

²² Florida Office of the State Courts Administrator, *HB 381 Bill Analysis*, November 9, 2021 (on file with the Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 903.21 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 Banking and Insurance on January 25, 2022:

The committee substitute:

- Specifies the types of costs and expenses the bail bond agent agrees to pay in the course of transporting the defendant, to be:
 - Not more than the prorated salary of the officers or the contracted transportation company involved;
 - Mileage;
 - Vehicle expenses;
 - Meals;
 - Overnight lodging for the officer or contracted transportation company and the defendant, when necessary.
- Specifies the bail bond agent is responsible only for costs and expenses incurred during the transport of the defendant while the defendant is under the bail bond's fiduciary.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Broxson

597-02319-22

20221182c1

A bill to be entitled

An act relating to breach of bond costs; amending s. 903.21, F.S.; redefining the term "jurisdiction"; providing for the exoneration from liability of a surety on a bond under certain circumstances if the surety agrees in writing to pay the costs and expenses incurred in returning the defendant to the jurisdiction of the court; providing for calculation of costs and expenses; providing construction; providing an effective date.

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

Section 1. Subsection (3) of section 903.21, Florida Statutes, is amended to read:

903.21 Method of surrender; exoneration of obligors.—

(3) (a) As used in this subsection, the term "jurisdiction" means the county from which the defendant was released on bail.

(b) The surety shall be exonerated of liability on the bond if it is determined before ~~prior to~~ breach of the bond that the defendant is in any jail or prison and the surety agrees in writing to pay the costs and expenses incurred in ~~transportation cost of~~ returning the defendant to the jurisdiction of the court. Such costs and expenses incurred may not be more than the prorated salary of the officers or the contracted transportation company involved and the actual expenses of transporting each defendant. Such actual expenses of transportation shall only consist of mileage, vehicle expenses, meals, and, when necessary, overnight lodging for the officer or contracted

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

597-02319-22

20221182c1

transportation company and the defendant.

(c) A surety agent is responsible only for the costs and expenses incurred during transport of defendants who are under his or her fiduciary ~~For purposes of this subsection, "jurisdiction" means within the judicial circuit as prescribed by law.~~

Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Jason Pizzo, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 27, 2022

I respectfully request that **Senate Bill # 1182**, relating to Breach of Bond Costs, be placed on the:

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

A handwritten signature in dark ink, appearing to read "Doug Broxson", written in a cursive style.

Senator Doug Broxson
Florida Senate, District 1

February 8, 2022

Meeting Date

Criminal Justice

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1182

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **2215 Thomasville Road**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Smart Justice Alliance

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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.)

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

BILL: SB 1236

INTRODUCER: Senator Jones

SUBJECT: County and Municipal Detention Facilities

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples/Hunter	Ryon	CA	Favorable
2.	Siples	Jones	CJ	Favorable
3.			RC	

I. Summary:

SB 1236 establishes the Florida Model Jail Standards (FMJS) Commission to develop and maintain model standards for county and municipal detention facilities. The FMJS Commission is comprised of seven members appointed by the Florida Sheriffs Association (FSA) and the Florida Association of Counties.

The bill requires every sheriff, county, city, or other entity that operates a county or municipal detention facility to adopt, at a minimum, the approved FMJS, which address the construction, equipping, maintenance, and operation of county and municipal detention facilities, as well as the confinement and classification of prisoners.

Under the bill's provisions, each county or municipal detention facility must be inspected at least twice annually. One inspection is announced and the other inspection is unannounced. The announced inspection evaluates a facility's compliance with all the FMJS and the unannounced inspection is limited to a review for serious violations. The two inspections must be at least 120 days apart.

The bill prohibits a county or municipal detention facility from refusing to be inspected or refusing access to its facility. If the officer in charge of the facility so refuses, then his or her salary must be withheld and deposited in the facility's inmate welfare fund for each day the person refuses such inspection or access. The penalty applies regardless of whether the person is elected, appointed, or an employee of a county, city, or other political division of the state.

The bill provides if, upon inspection, a facility is noncompliant with the FMJS, it has 30 days to cure the noncompliance, if it is not a serious violation. If it is a serious violation, the facility has 24 days to cure the noncompliance. For notable, or non-serious violations, the facility will be re-inspected within 10 days after the 30-day correction period. If it is still noncompliant, the facility will have 15 days to cure the noncompliance and a second re-inspection will be conducted within

48 hours thereafter. For serious violations, the facility will be re-inspected within 48 hours after the serious violation was first observed. If a facility continues to be noncompliant on a notable violation after the first and second re-inspection or on a serious violation after the re-inspection, it will be subject to penalties.

The bill assigns the following penalties for noncompliance with the FMJS:

- If an annual inspection reveals that a detention facility is noncompliant with a notable violation and the noncompliance is not corrected within the initial 30-day correction period, the facility must pay the following amount into the facility's inmate welfare fund for each day that the facility is not in compliance with the FMJS:
 - \$500 per day of noncompliance for the 31st day through the 60th day;
 - \$1,000 per day of noncompliance for the 61st day through the 90th day; and
 - \$2,000 per day of noncompliance for the 91st day and all remaining days.
- If an annual inspection reveals that a detention facility is noncompliant with a serious violation and the noncompliance is not corrected within 24 hours after its discovery, the facility must pay \$2,000 per day that the FMJS Commission determines that the facility is noncompliant.

In addition to the above-listed penalties, if a second re-inspection for a notable violation or a serious violation reveals that the detention facility continues to be noncompliant, the facility must cease operation of the detention facility within 14 days and must contract with one or more other detention facilities to house its prisoners until the facility is determined to be in compliance with the FMJS. The 14-day time period commences upon:

- The expiration of the appeal process, as provided in the FMJS;
- The facility failing to file a timely appeal; or
- The conclusion of an appeal process that results in a finding that the detention facility is noncompliant with the FMJS.

If the detention facility consists of separate detention campuses, only the campus that is determined to be noncompliant must cease operations. The receiving facility must be in compliance with the FMJS and the noncompliant facility is responsible for the costs accrued by the receiving facility for housing its prisoners.

The bill revises the definitions of “county detention facility” and “municipal detention facility.”

The bill may have a fiscal impact on both the private and government sector. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2022.

II. Present Situation:

County and Municipal Detention Facilities

A county detention facility is any county jail, stockade, work camp, residential probation center, or any other place except a municipal detention facility used by a county or county officer for the

detention of persons charged with or convicted of either a felony or misdemeanor.¹ Sheriffs operate the majority of county detention facilities, with counties operating the remainder.² County detention facilities house inmates who have been arrested and are awaiting trial, as well as inmates who have been convicted and sentenced to less than one year of incarceration or awaiting transfer to the Department of Corrections (DOC).

The DOC reports that approximately 55,150 inmates were incarcerated in the state's county detention facilities during the month of October 2021.³

A municipal detention facility is a city jail, stockade, prison camp, or any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of a violation of municipal laws or ordinances.⁴

Florida Model Jail Standards

Prior to 1996, the Department of Corrections was responsible for the standards and inspection process for local jails.⁵ In 2006, the Legislature enacted legislation that established a five-person workgroup, consisting of three persons appointed by the Florida Sheriffs Association (FSA) and two persons appointed by the Florida Association of Counties, to develop model standards for county and municipal detention facilities.⁶ The model standards developed by the workgroup must address:

- The construction, equipping, maintenance, and operation of county and municipal detention facilities, including the:
 - Cleanliness and sanitation;
 - Number of prisoners who may be housed per specified unit of floor space;
 - Quality, quantity, and diversity of food served and the manner in which food is served;
 - Furnishing of medical attention and health and comfort items; and
 - Disciplinary treatment which may be meted out to prisoners.
- The confinement of prisoners by classification and providing, whenever possible, for classifications that separate males from females, juveniles from adults, felons from misdemeanants,⁷ and those awaiting trial from those convicted. Additionally, it should provide for the separation of special risk prisoners, such as the mentally ill, suicide risks,

¹ Section 951.23(1)(a), F.S.

² For example, the county commissions operate the county detention facilities in Escambia, Gulf, Jackson, Miami-Dade, Okaloosa, Orange, Osceola, and Volusia counties (see <https://myescambia.com/our-services/corrections/community-detention>; http://www.gulfcounty-fl.gov/county_government/detention_facility; <https://jacksoncountyfl.gov/services/correctional-facility/>; <https://www.miamidade.gov/global/corrections/home.page>; <http://www.co.okaloosa.fl.us/corrections/history>; http://www.ocfl.net/tabid/367/default.aspx#.X_MzJthKiUI; <https://www.osceola.org/agencies-departments/corrections/about/>; and <https://www.volusia.org/services/public-protection/corrections/>; respectively (all websites last visited January 20, 2022)).

³ Department of Corrections, *Florida County Detention Facilities Average Inmate Population*, November 2020, p. 2, available at <http://www.dc.state.fl.us/pub/jails/2021/jails-2021-10.pdf> (last visited January 20, 2022).

⁴ Section 951.23(1)(d), F.S.

⁵ Florida Sheriffs Association, *Florida Model Jail Standards: What is FMJS?*, available at <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited January 20, 2022).

⁶ Section 951.23(4)(a), F.S. See also s. 31, ch. 96-312, Laws of Fla.

⁷ However, non-dangerous felons may be housed with misdemeanants.

drug and alcohol addicts, sex deviants, and any other classification the local unit deems necessary.⁸

The Florida Model Jail Standards (FMJS) are minimum standards that county and municipal detention facilities in Florida must meet to ensure the constitutional rights of those incarcerated are upheld.⁹ The FMJS Committee, the group created to comply with s. 951.23, F.S., develops the FMJS and enforces the model standards it has adopted.¹⁰ The FSA provides support to the FMJS Committee, but is a separate entity. The FMJS Committee has six subcommittees, each with a distinct mission and objective:

- Quality Assurance and Improvement Subcommittee, which monitors and reviews the status of the FMJS program and its effectiveness;
- Standards Review Subcommittee, which maintains a professional manual consistent with the most current practices in the corrections industry for adult and youth detention facilities;
- Medical Subcommittee, which fosters the effectiveness of the medical care and health of individuals incarcerated in county detention facilities;
- Compliance Review Subcommittee, which objectively conducts reasonable reviews of facility inspection results and remains unbiased while reviewing facility grievances and presenting clear and concise evidence to the full FMJS Committee;
- Training Subcommittee, which establishes a training curriculum for the Jail Inspectors and Jail Medical Inspectors certification program;
- PREA Subcommittee, which establishes a set of minimum model jail standards as required by the Prison Rape Elimination Act of 2003 (PREA); and
- Technical Support Subcommittee, which responds to, reviews, and makes recommendations of issues that are directly related to corrections as directed by the full FMJS Committee.¹¹

Once the FMJS were adopted by the FSA and the Florida Association of Counties, they were filed with the Department of State.¹² The FMJS Committee performs a biannual review of all existing standards.¹³ Amendment or repeal of any provision of the FMJS is within the discretion of the FMJS Committee.¹⁴

The FMJS Committee provides notice of all its proceedings, as well as any adoption, amendment, or repeal of provisions of the FMJS, to all county and municipal detention facilities.¹⁵ Notice of any official FMJS Committee business is available, upon request, to the public.

⁸ *Supra* note 6.

⁹ *Supra* note 5.

¹⁰ *Id.*

¹¹ *Id.*

¹² Florida Sheriffs Association and Florida Association of Counties, *Florida Model Jail Standards*, pg. 10 (Eff. Apr. 1, 2021), available at https://www.flsheriffs.org/uploads/docs/FMJS_Manual_Eff_04_01_21.pdf (last visited January 20, 2022).

¹³ *Id.*, at pg. 74.

¹⁴ *Id.*, at pg. 10.

¹⁵ *Id.*, at pg. 74.

FMJS Certified Inspectors

FMJS Certified Jail Inspectors have successfully completed the FMJS Inspector Certification Course and are recognized by the FMJS Committee to conduct correctional operations inspections.¹⁶ To qualify as a FMJS Certified Jail Inspector, an individual must:

- Be actively employed or a retired certified correctional officer with five years' experience in the care, custody, and control of inmates or a civilian employee with eight years of experience in jail operations; and
- Have written endorsement(s) from the candidate's Sheriff. If the candidate is not employed by a Sheriff's office, written endorsement must be submitted by the Chief Executive Officer of the correctional facility with which the candidate is employed.¹⁷

Certified Jail Inspectors must be re-certified every four years and successfully pass the certification exam prior to a new certification being issued. Each FMJS Certified Jail Inspector must complete one jail inspection each year in order to maintain his or her certification. The FMJS Certified Jail Inspectors must report their inspection activity to the FMJS Committee Chair and the FSA each year for compliance.¹⁸

FMJS Certified Medical Inspectors have successfully completed the FMJS Medical Inspector Certification Course and are recognized by the FMJS Committee to conduct medical compliance inspections.¹⁹ To qualify as a FMJS Certified Medical Inspector, an individual must:

- Be a Florida-licensed physician, nurse, advanced practice registered nurse, physician assistant, emergency medical technician, or paramedic;
- Be actively employed or retired from active employment in a jail or prison setting for a minimum of three years; and
- Have written endorsement(s) from the candidate's Sheriff, and if services are contracted, an endorsement from the candidate's employing Chief Executive Officer. If the candidate is not employed by a Sheriff's office, written endorsement must be submitted by the Chief Executive Officer of the correctional facility with which the candidate is employed.²⁰

Certified Medical Inspectors must be re-certified every four years and to recertify, the Certified Medical Inspector must complete a classroom re-certification course and successfully pass the test, and successfully complete a refresher course every four years.²¹ Each FMJS Certified Medical Inspector must complete one medical inspection each year in order to maintain his or her certification. The FMJS Certified Medical Inspectors must report their inspection activity to the FMJS Committee Chair and the FSA each year for compliance.²²

Currently, there are 180 Certified Jail Inspectors and 54 Certified Medical Inspectors.²³

¹⁶ *Id.*, at pgs. 10-11.

¹⁷ *Id.*, at pg. 11.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*, at pgs. 11-12.

²¹ *Id.*, at pg. 12.

²² *Id.*, at pg. 11.

²³ Email from Matt Dunagan, Deputy Director of Operations, Florida Sheriffs Association (Jan. 21, 2022) (on file with the Senate Committee on Community Affairs).

Inspections

The officer-in-charge²⁴ of a facility must contract with or arrange for a FMJS Certified Inspector(s) to inspect all county and municipal jail facilities, at least annually.²⁵ The cost of the inspection is absorbed by the sheriff or the county, in the case of a county-operated jail.²⁶ The inspection is comprised of two components: correctional operations and medical compliance.²⁷

The FMJS Certified Jail or Medical Inspector must report his or her findings to the officer-in-charge, within 14 days of the inspection.²⁸ If the report indicates one or more violations, the officer-in-charge must develop a corrective action plan, which specifies the corrective action to be taken, the timetable for such corrective action, and the resources to be used. The officer-in-charge must forward a copy of the corrective action plan to the FMJS Chairperson within 30 days after receipt of the inspection report. The inspection report, responses, and other documents prepared by the FMJS inspector(s) or officer-in-charge are public records and subject to review under ch. 119, F.S.²⁹

If action is not taken to correct violations, a facility may be subject to s. 951.23(6), F.S. Under this provision, if a court finds that a county or municipal detention facility does not meet minimum standards, it may order all or some of the prisoners to be removed and confined to another facility within the same county or municipality or in some other county or municipality. In such cases, the costs of maintaining the removed prisoners is borne by the county or municipality from which the prisoners have been removed.³⁰

Violations

Under the FMJS, there are two categories of violations: serious violations and notable violations. A serious violation is a violation or condition that appears to pose a substantial and immediate danger to the life, health, or safety of one or more prisoner or employee.³¹

If a FMJS Certified Inspector observes a serious violation, he or she must immediately notify the officer-in charge of the violation and the duty to correct. The officer-in-charge must ensure corrective action be taken within 24 hours and must submit a report in response to the violation. A re-inspection must be completed within 48 hours of the time when the serious violation was first observed to determine whether it has been corrected. Examples of a serious violation include:

- Failure of the policy and procedure directives to contain emergency plans and tool, knife, and firearms control;
- Persons assigned to food service areas known to have or suspected of having communicable diseases, open wounds, sores, or respiratory infections;

²⁴ The “officer-in-charge” is the Sheriff, Chief Correctional Officer, or any correctional administrator appointed by a City or County Board of Commissioners.

²⁵ *Supra* note 12, at pg. 12. The annual inspection must be completed by December 31st each year.

²⁶ Email correspondence from Matt Dunagan, Deputy Executive Director of Operations, Florida Sheriffs Association, (Jan. 28, 2022) (on file with the Senate Committee on Criminal Justice).

²⁷ The units may not be self-inspected.

²⁸ *Supra* note 12, at pg. 14.

²⁹ *Id.*

³⁰ Section 951.23(6)(b), F.S.

³¹ *Id.*, at pgs. 8 and 14.

- Failure to provide a modified diet when ordered by the health authority, if such denial would be immediately detrimental to the health and wellbeing of prisoner(s);
- Failure to provide separate storage for poisons and hazardous chemicals away from food;
- Failure to establish agreement with one or more health providers to provide emergency services;
- Failure to maintain first aid supplies on premises;
- Failure to have at least one staff member on duty trained in the delivery of first aid care and CPR;
- Permitting firearms and ammunition in secure areas of the facility except in the case of an emergency, and approved by the officer-in-charge;
- Failure to meet fire, safety, and prevention standards by a state certified fire inspector as being life threatening; and
- Failure to comply with the FMJS provisions related to restrictive housing of pregnant prisoners, a secondary means of egress or fire exit from each housing area and floor where inmates are housed, and prohibition on prisoners from supervising, controlling, exerting, or assuming any authority over other prisoners.³²

A notable violation is any deficiency to the standards that is not a “serious violation.”³³

Inmate Commissary and Welfare Fund

Section 951.23(9), F.S., authorizes commissaries to be operated in detention facilities. If a commissary is established, an inmate welfare fund must also be established. Profits from the commissary must be used for overall inmate welfare, and an inmate welfare fund committee must recommend the expenditures that are to be made.³⁴ However, profits may also be used to pay for expenses related to such operation, including compensation for commissary employees and gratuities for prisoners who assist such employees.³⁵

III. Effect of Proposed Changes:

Revisions to Definitions

The bill revises the definition of “county detention facility” to include facilities operated by either a board of county commissioners, a sheriff, or another entity. Similarly, the bill revises the definition of “municipal detention facility” to include facilities operated by a city or other entity.

Model Jail Standards

The bill repeals the current five-person workgroup, and establishes the seven-member Florida Model Jail Standards Commission as the entity responsible for developing and maintaining model standards for county and municipal detention facilities. The FMJS Commission is to be comprised of:

³² *Id.*, at pgs. 15-16.

³³ *Id.*, at pgs. 7 and 16.

³⁴ Section 951.23(9)(d), F.S.

³⁵ Section 951.23(9)(c), F.S.

- Four persons appointed by the FSA, three of whom must be currently elected sheriffs and one must be a Florida-licensed physician with at least two years' experience in correctional health care; and
- Three persons appointed by the Florida Association of Counties, one of whom must be a currently elected county commissioner, one must be an experienced jail administrator of a Florida county jail operated by a county, and one must be a Florida-licensed psychiatrist with at least two years' experience in correctional psychiatry.

The bill requires every sheriff, county, city, or other entity that operates a county or municipal detention facility to adopt, at a minimum, the commission-approved FMJS, with respect to:

- The construction, equipping, maintenance, and operation of county and municipal detention facilities, including the:
 - Cleanliness and sanitation;
 - Number of prisoners who may be housed per specified unit of floor space;
 - Quality, quantity, and diversity of food served and the manner in which food is served;
 - Furnishing of medical attention and health and comfort items; and
 - Disciplinary treatment which may be meted out to prisoners;
- The confinement of prisoners by classification and providing, whenever possible, for classifications that separate males from females, juveniles from adults, and felons from misdemeanants.³⁶ Additionally, it should provide for the separation of special risk prisoners, such as the mentally ill, suicide risks, drug and alcohol addicts, sex deviants, and any other classification the local unit deems necessary. Special consideration must be given to the appropriate housing of pregnant women; and
- Additional standards relating to inspections, as discussed below.

The bill removes the criteria that those awaiting trial be separated from those who have been convicted.

Inspections

The bill establishes a system for municipal and county detention facilities to be inspected for compliance with the FMJS. The bill requires that the FMJS Commission create and identify criteria and standards for which noncompliance with those provisions result in either a serious or notable violation.

Under the bill, each county and municipal detention facility must be inspected biannually for compliance with the FMJS. One inspection must be announced, with advance notice of the date on which the inspection is to occur, and the other must be a limited, unannounced inspection, with no advanced notice. The announced annual inspection must examine compliance with all of the FMJS. The unannounced inspection is limited to a review for serious violations. The inspections must be at least 120 days apart.

The bill prohibits a facility from refusing to be inspected or refusing access to the facility by FMJS commission inspectors. If a person in charge of a facility refuses to allow inspection or provide access to the facility, then his or her salary must be withheld for each day he or she

³⁶ However, non-dangerous felons may be housed with misdemeanants.

refuses such inspection or access. The monies withheld must be deposited into the facility's inmate welfare fund. This penalty applies to any person refusing such inspection or access, regardless of whether the person is elected, appointed, or an employee of a county, city, or other political subdivision of the state.

If, during one of the inspections, a detention facility is found to be noncompliant with the FMJS, the facility must correct the noncompliance within 30 days. After the 30-day correction period or upon the facility notifying the FMJS Commission that it has corrected its noncompliance, whichever is earlier, the facility must be re-inspected within 10 days. If upon re-inspection, the facility continues to be noncompliant, the facility has 15 days to correct the noncompliance and have a second re-inspection within 48 hours thereafter. If the facility continues to be noncompliant after the first and second re-inspection, then it will be subject to the penalties discussed below.

The bill requires a serious violation to be corrected within 24 hours and a re-inspection must occur within 48 hours after the violation was first observed. A re-inspection may occur prior to the expiration of the 24-hour period if the facility notifies the FMJS Commission that it has cured the noncompliance. If upon re-inspection, the facility continues to be noncompliant, then it will be subject to the penalties discussed below.

Penalties for Noncompliance

The bill assigns the following penalties for noncompliance with the FMJS:

- If an annual inspection reveals that a detention facility is noncompliant with a notable violation and the noncompliance is corrected within the initial 30-day correction period, there is no penalty.
- If an annual inspection reveals that a detention facility is noncompliant with a notable violation and the noncompliance is not corrected within the initial 30-day correction period, the facility must pay the following amount into the facility's inmate welfare fund for each day that the facility is not in compliance with the FMJS:
 - \$500 per day of noncompliance for the 31st day through the 60th day;
 - \$1,000 per day of noncompliance for the 61st day through the 90th day; and
 - \$2,000 per day of noncompliance for the 91st day and all remaining days.
- If an annual inspection reveals that a detention facility is noncompliant with a serious violation and the noncompliance is corrected within 24 hours after its discovery, there is no penalty.
- If an annual inspection reveals that a detention facility is noncompliant with a serious violation and the noncompliance is not corrected within 24 hours after its discovery, the facility must pay \$2,000 per day that the FMJS Commission determines that the facility is noncompliant.

In addition to the above-listed penalties, if a second re-inspection for a notable violation or a serious violation reveals that the detention facility continues to be noncompliant, the facility must cease operation of the detention facility within 14 days and must contract with one or more other detention facilities to house its prisoners until the facility is determined to be in compliance with the FMJS. The 14-day time period commences upon:

- The expiration of the appeal process, as provided in the FMJS;

- The facility failing to file a timely appeal; or
- The conclusion of an appeal process that results in a finding that the detention facility is noncompliant with the FMJS.

If the detention facility consists of separate detention campuses, only the campus that is determined to be noncompliant must cease operations. The receiving facility must be in compliance with the FMJS and the noncompliant facility is responsible for the costs accrued by the receiving facility for housing its prisoners. The bill provides that the penalty for noncompliance during a second re-inspection for a notable violation or a serious violation may not be deemed to limit or prevent any other remedies or causes of action against a facility or an entity that operates a facility that may be brought under any other law, ordinance, or rule.

The bill provides the following definitions:

- “Commission” means the Florida Model Jail Standards Commission, as provided in s. 951.23(4)(a), F.S.
- “County detention facility” has the same meaning as in s. 951.23, F.S.
- “Jail standards” means the Florida Model Jail Standards, established by the commission, as set forth in s. 951.23(4)(a), F.S.
- “Municipal detention facility” has the same meaning as in s. 951.23, F.S.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. Under the bill, a county or municipality may need to expend funds to make improvements to a local detention facility in order to comply with the standards developed by the Florida Model Jail Standards Commission. Additionally, a county or municipality may be responsible for the cost of each inspection of a facility, which will occur biannually. Laws having an “insignificant fiscal impact” are exempt from the mandate requirements, which for Fiscal Year 2021-2022 is forecast at approximately \$2.3 million.^{37, 38, 39}

³⁷ FLA. CONST. art. VII, s. 18(d).

³⁸ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 7, 2022).

³⁹ Based on the Florida Demographic Estimating Conference’s March 3, 2021 population forecast for 2022 of 22,245,429. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 7, 2022).

If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The FMJS Commission may incur administrative and operational costs related to the inspection of county and municipal detention facilities and the enforcement of the FMJS. Individuals who refuse to comply with the bill's inspection or access requirements, will be subject to a loss of wages.

C. Government Sector Impact:

County or municipal detention facilities who are not in compliance with the FMJS may incur costs associated with complying with the standards. According to the FSA, the sheriff offices and county-operated jails will continue to bear the costs of the inspections.⁴⁰ Since the bill requires biannual inspections, rather than the annual inspections under the current FJMS, the costs to these entities will likely increase.

VI. Technical Deficiencies:

It is unclear how the penalties assessed under the bill will be enforced if a county or municipal entity refuses or is unable to pay the fines, or refuses to withhold the wages of an individual who refuses to allow inspection or access to the detention facility.

⁴⁰ *Supra* note 26.

VII. Related Issues:

Employers that fail to pay the earned wages of an employee in a timely manner may be subject to legal action under applicable state and federal wage laws.⁴¹ An employer who withholds an individual's wages may also be subject to a civil theft action.⁴²

VIII. Statutes Affected:

This bill substantially amends section 951.23 of the Florida Statutes.

This bill creates section 951.2302 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

⁴¹ See generally, pt. I, ch. 448, F.S., and Fair Labor Standards Act, 29 U.S.C. s. 201, et.al.

⁴² See s. 772.11, F.S.

By Senator Jones

35-00828-22

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1 A bill to be entitled
 2 An act relating to county and municipal detention
 3 facilities; amending s. 951.23, F.S.; revising the
 4 definitions of the terms "county detention facility"
 5 and "municipal detention facility"; creating the
 6 Florida Model Jail Standards Commission to supersede a
 7 working group; prescribing the commission's
 8 membership; specifying that each entity that operates
 9 a municipal or county detention facility shall adopt
 10 the Florida Model Jail Standards approved by the
 11 commission; specifying minimum commission standards;
 12 creating s. 951.2302, F.S.; defining terms; requiring
 13 the jail standards to include criteria and standards
 14 for what actions result in serious violations and
 15 notable violations; specifying that the jail standards
 16 must require that each county detention facility and
 17 municipal detention facility be inspected, at a
 18 minimum, twice annually; prohibiting any person in
 19 charge of a county detention facility or municipal
 20 detention facility from refusing to be inspected or
 21 refusing access to commission inspectors; providing
 22 annual inspection requirements; providing procedures
 23 and requirements for reinspections of detention
 24 facilities due to noncompliance; providing timeframes
 25 within which detention facilities must correct
 26 violations; providing financial penalties for persons
 27 in charge of detention facilities who refuse to allow
 28 inspections or who refuse to provide access to
 29 detention facilities, or for facilities found to be

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

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30 noncompliant with the jail standards during an annual
 31 inspection or any reinspection; requiring certain
 32 noncompliant detention facilities to cease operations
 33 and contract with other detention facilities for
 34 inmate housing under certain circumstances; requiring
 35 that the assessed financial penalties be deposited
 36 into the detention facility's inmate welfare fund;
 37 providing an effective date.
 38
 39 Be It Enacted by the Legislature of the State of Florida:
 40
 41 Section 1. Paragraphs (a) and (d) of subsection (1) and
 42 paragraph (a) of subsection (4) of section 951.23, Florida
 43 Statutes, are amended to read:
 44 951.23 County and municipal detention facilities;
 45 definitions; administration; standards and requirements.—
 46 (1) DEFINITIONS.—As used in this section, the term:
 47 (a) "County detention facility" means a county jail, a
 48 county stockade, a county work camp, a county residential
 49 probation center, and any other place except a municipal
 50 detention facility used by a county or county officer for the
 51 detention of persons charged with or convicted of ~~a either~~
 52 felony or a misdemeanor, regardless of whether such facility is
 53 operated by a board of county commissioners, a sheriff, or any
 54 other entity.
 55 (d) "Municipal detention facility" means a city jail, a
 56 city stockade, a city prison camp, and any other place except a
 57 county detention facility used by a municipality or municipal
 58 officer for the detention of persons charged with or convicted

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of violation of municipal laws or ordinances, regardless of whether such facility is operated by a city or any other entity.

(4) STANDARDS FOR SHERIFFS AND CHIEF CORRECTIONAL OFFICERS.—

(a) There ~~is shall be~~ established the Florida Model Jail Standards Commission, a seven-member commission ~~five member working group~~ consisting of four ~~three~~ persons appointed by the Florida Sheriffs Association, three of whom must be currently elected sheriffs and one of whom must be a Florida licensed physician with at least 2 years of experience in correctional health care, and ~~three~~ ~~two~~ persons appointed by the Florida Association of Counties, of whom one must be a currently elected county commissioner, one must be an experienced jail administrator of a Florida county jail operated by a county, and one must be a Florida licensed psychiatrist with at least 2 years of experience in correctional psychiatry, to develop and maintain minimum model standards for county and municipal detention facilities. Every sheriff, county, city, or other entity that operates a municipal detention facility or a county detention facility ~~By October 1, 1996, each sheriff and chief correctional officer~~ shall adopt, at a minimum, the Florida Model Jail Standards approved by the commission with reference to all of the following:

1.a. The construction, equipping, maintenance, and operation of county and municipal detention facilities.

b. The cleanliness and sanitation of county and municipal detention facilities; the number of county and municipal prisoners who may be housed therein per specified unit of floor space; the quality, quantity, and supply of bedding furnished to

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such prisoners; the quality, quantity, and diversity of food served to them and the manner in which it is served; the furnishing to them of medical attention and health and comfort items; and the disciplinary treatment which may be meted out to them.

Notwithstanding the provisions of the otherwise applicable building code, a reduced custody housing area may be occupied by inmates or may be used for sleeping purposes as allowed in subsection (7). The sheriff or chief correctional officer shall provide that a reduced custody housing area shall be governed by fire and life safety standards which do not interfere with the normal use of the facility and which affect a reasonable degree of compliance with rules of the State Fire Marshal for correctional facilities.

2. The confinement of prisoners by classification and providing, whenever possible, for classifications which separate males from females, juveniles from adults, and felons from misdemeanants, and ~~those awaiting trial from those convicted~~ ~~and~~, in addition, providing for the separation of special risk prisoners, such as the mentally ill, alcohol or narcotic addicts, sex deviates, suicide risks, and any other classification which the local unit may deem necessary for the safety of the prisoners and the operation of the facility pursuant to degree of risk and danger criteria. Nondangerous felons may be housed with misdemeanants. Special consideration must be given to the appropriate housing of pregnant women.

3. The additional jail standard requirements provided for under s. 951.2302.

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Section 2. Section 951.2302, Florida Statutes, is created to read:

951.2302 Inspection of county and municipal detention facilities; penalties for noncompliance with jail standards.—

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

(a) "Commission" means the Florida Model Jail Standards Commission as provided in s. 951.23(4)(a).

(b) "County detention facility" has the same meaning as in s. 951.23.

(c) "Jail standards" means the Florida Model Jail Standards established by the commission, as set forth in s. 951.23(4)(a).

(d) "Municipal detention facility" has the same meaning as in s. 951.23.

(2) VIOLATIONS CRITERIA.—The jail standards must create and identify criteria and standards for which noncompliance with those provisions results in a serious violation or a notable violation.

(3) TYPE AND FREQUENCY OF INSPECTIONS.—The jail standards must require that each county detention facility and municipal detention facility be inspected, at a minimum, twice annually, as outlined in this section, for compliance with the jail standards. Each inspection must occur at least 120 days apart. A county detention facility or municipal detention facility may not refuse to be inspected or refuse access to the facility by commission inspectors. If any person in charge of a county detention facility or municipal detention facility refuses to allow inspection of the facility or to provide access to the facility, he or she shall be subject to the penalties in paragraph (5)(f).

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(a) One of the annual inspections must be announced, with advance notice of the date on which the inspection will commence provided to the detention facility. The announced annual inspection must include an inspection of compliance with all jail standards.

(b) One of the annual inspections must be a limited, unannounced inspection, with no advance notice provided to the detention facility. The scope of the unannounced annual inspection must be limited to a review for serious violations.

(4) REINSPECTIONS.—

(a) If an announced or unannounced annual inspection finds a detention facility to be noncompliant with the jail standards for a notable violation, the facility must correct the noncompliance within 30 days and must be reinspected within 10 days after the 30-day correction period, or upon the facility notifying the commission that it has corrected its noncompliance, whichever is earlier. If upon reinspection the detention facility is still found to be noncompliant, the facility must correct the noncompliance within 15 days and must have a second reinspection within 48 hours thereafter. If the detention facility is found to be noncompliant during the second reinspection, the penalties and procedures set forth in paragraph (5)(e) shall apply. This paragraph does not prevent reinspection from occurring before the expiration of the timeframes stated in this paragraph if a detention facility notifies the commission that it has cured the noncompliance before the expiration of such timeframes.

(b) If an announced or unannounced annual inspection finds a detention facility to be noncompliant with the jail standards

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for a serious violation, the facility must correct the noncompliance within 24 hours and must be reinspected within 48 hours after the violation was first observed. This paragraph does not prevent reinspection from occurring before the expiration of the 24-hour period if a detention facility notifies the commission that it has cured the noncompliance before such time. If the detention facility is found to be noncompliant during the reinspection, the penalties and procedures set forth in paragraph (5)(e) shall apply.

(5) PENALTIES FOR NONCOMPLIANCE WITH JAIL STANDARDS.—The following penalties shall apply to any person in charge of a detention facility who refuses to allow an inspection or to provide access to a facility, or to a detention facility that is found to be noncompliant with the jail standards during an annual inspection or any reinspection:

(a) If an annual inspection reveals that a detention facility is noncompliant with the jail standards for a notable violation and the noncompliance is corrected within the initial 30-day correction period, there is no penalty.

(b) If an annual inspection reveals that a detention facility is noncompliant with the jail standards for a notable violation, and the noncompliance is not corrected within the initial 30-day correction period, the facility must pay into the facility's inmate welfare fund the following specified amounts per day that the facility is not in compliance until the noncompliance has been corrected:

1. The 31st day through the 60th day: \$500 per day of noncompliance.

2. The 61st day through the 90th day: \$1,000 per day of

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noncompliance.

3. The 91st day and all remaining days: \$2,000 per day of noncompliance.

(c) If an annual inspection reveals that a detention facility is noncompliant with the jail standards for a serious violation, but the noncompliance is corrected within 24 hours after its discovery, there is no penalty.

(d) If an annual inspection reveals that a detention facility is noncompliant with the jail standards for a serious violation and the noncompliance is not corrected within 24 hours after its discovery, the facility must pay into the facility's inmate welfare fund \$2,000 per day that the commission determines that the facility is noncompliant.

(e) In addition to the penalties set forth in paragraphs (b) and (d), if a second reinspection for a notable violation or a serious violation reveals that a detention facility is still noncompliant with the jail standards, the facility must cease its operations as a detention facility within 14 days and must contract with one or more other detention facilities to house the noncompliant facility's inmates until such time as the facility is determined to be in compliance with the jail standards. The receiving detention facility or facilities must be in compliance with the jail standards in order to house the noncompliant facility's inmates. However, if a detention facility consists of separate detention campuses, only the campus determined to be noncompliant with the jail standards must cease operations as stated in this paragraph. The 14-day time period shall commence upon the expiration of the appeal process specified in the jail standards, with the detention

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233 facility failing to file a timely appeal, or upon the conclusion
234 of the appeal process specified in the jail standards, resulting
235 in a finding that the detention facility is noncompliant with
236 the jail standards. The noncompliant detention facility is
237 responsible for the costs accrued by another detention facility
238 or facilities for housing the noncompliant facility's inmates.
239 This paragraph may not be deemed to limit or prevent any other
240 remedies or causes of action against a facility or an entity
241 that operates a facility which may be brought under any other
242 law, ordinance, or rule.

243 (f) If any person in charge of a county detention facility
244 or municipal detention facility refuses to allow inspection of
245 the facility or to provide access to the facility, such person's
246 salary must be withheld for each day he or she refuses such
247 inspection or access, and the amount withheld must be deposited
248 into the facility's inmate welfare fund. This paragraph applies
249 regardless of whether the person refusing to allow the
250 inspection or refusing access to the detention facility is
251 elected, appointed, or an employee of a county, a city, or any
252 other political subdivision of this state.

253 Section 3. This act shall take effect July 1, 2022.

From: Matt Dunagan
To: [Siples, Yolanda](#)
Cc: [\(Pinellas\) Sheriff Bob Gualtieri](#); [Allie McNair](#)
Subject: RE: Follow up on SB 1236
Date: Friday, January 28, 2022 4:12:44 PM

Yolanda,

It was good talking to you this morning. I have copied our Legislative Committee Chair Sheriff Bob Gualtieri to this email as well.

FMJS does not receive any state or specific local funding to conduct their meetings or inspections. These costs have been and will continue to be absorbed by sheriffs and county operated jails. In addition, while the bill does not have a specific enforcement mechanism for sheriffs or jail administrators to pay any fines into their inmate welfare trust funds, we believe sheriffs and jail administrators will pay the fines if levied by the FMJS Commission. If not, the FMJS Chair could seek a court order (writ of mandamus?) to ensure the fines are paid.

Matt Dunagan, Deputy Executive Director of Operations

(850) 877-2165 x. 5807 (office)

(850) 274-3599 (cell)

FLORIDA SHERIFFS ASSOCIATION | Protecting, Leading & Uniting Since 1893.

From: Siples, Yolanda <Siples.Yolanda@flsenate.gov>

Sent: Wednesday, January 26, 2022 11:22 AM

To: Matt Dunagan <mdunagan@flsheriffs.org>

Subject: Follow up on SB 1236

Good morning Mr. Dunagan,

Last week Lauren Jones and I spoke with you about SB 1236 and you were going to get some additional information regarding the bill. Specifically, issues dealing with funding and enforcement.

I was following up to see when we might expect a response.

Thank you,

Yolanda

Yolanda L. Siples
Criminal Justice Committee
Florida Senate
510 Knott Building
404 S. Monroe St.

Tallahassee, FL 32311

850-487-5197

Siples.yolanda@flsenate.gov

February 8, 2022

Meeting Date

Criminal Justice

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1236

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **2215 Thomasville Road**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Smart Justice Alliance

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. § 11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/8/22

Meeting Date

CS

Committee

1236

Bill Number or Topic

Amendment Barcode (if applicable)

Name

AARON WAYT

FL ASSN OF CRIM DEF LAWYERS

Phone

(407) 435-3194

Address

Street

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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

S-001 (08/10/2021)

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.)

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

BILL: CS/SB 1664

INTRODUCER: Judiciary Committee and Senators Perry and Boyd

SUBJECT: Unlawful Assemblies

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1664 addresses unlawful assemblies that specifically target residences to harass or disturb people inside their homes.

Specifically, the bill amends the unlawful assembly statute to expressly prohibit a person from picketing or protesting before or about another person's home in order to harass or disturb the person in his or her home. A person who engages in the prohibited conduct commits a second degree misdemeanor.

The bill may have a jail bed impact but this impact is indeterminate. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2022.

II. Present Situation:

***Frisby v. Shultz*: The First Amendment and Restrictions on Targeted Residential Picketing or Protesting**

The First Amendment of the U.S. Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to

assemble, and to petition the Government for a redress of grievances.”¹ The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.² “Despite the seemingly clear imperative of the text of the First Amendment, the Supreme Court has held that a content-neutral restriction of speech is constitutional if it ‘serves a significant government interest,’ ‘is narrowly tailored’ to achieving those ends, and leaves ample alternative avenues for speech.”³

The “principal inquiry in determining whether a restriction on speech is content-neutral is ‘whether the government has adopted a restriction on speech because of the message it conveys. The government’s purpose is the controlling consideration.’”⁴

“[T]he government may impose reasonable restrictions on the time, place and manner of protected speech[.]”⁵ “[T]he requirement of narrow tailoring is satisfied ‘so long as the ... regulation promotes a substantial governmental interest’”⁶ and “the means chosen are not substantially broader than necessary to achieve the government’s interest.”⁷

In *Frisby v. Schultz*,⁸ the U.S. Supreme Court upheld an ordinance enacted in Brookfield, Wisconsin. This ordinance banned targeted residential picketing. The precise language of the ordinance was described as follows: “It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the Town of Brookfield.”⁹ The Court stated that the appellees and others engaged in picketing “on a public street outside the Brookfield residence of a doctor who apparently performs abortions at two clinics in neighboring towns.”¹⁰ The Court described the picketing as:

generally orderly and peaceful; the town never had occasion to invoke any of its various ordinances prohibiting obstruction of the streets, loud and unnecessary noises, or disorderly conduct. Nonetheless, the picketing generated substantial controversy and numerous complaints.¹¹

In undertaking its analysis of the ordinance, the Court first identified the ordinance as impacting protected speech.¹² Next, the Court noted that in ascertaining “what limits, if any, may be placed on protected speech, we have often focused on the ‘place’ of that speech, considering the nature of the forum the speaker seeks to employ. Our cases have recognized that the standards by which

¹ Amend. I, U.S. Const.

² Amend. XIV, U.S. Const. *See also* Art. I, Fla. Const.

³ *Bell v. Winter Park, Fla.*, 745 F.3d 1318, 1322 (11th Cir. 2014) (footnotes omitted), citing *Frisby v. Schultz*, 487 U.S. 474, 484-485 (1988). The Eleventh Circuit court noted that this is an intermediate scrutiny test rather than the strict scrutiny test applied to content-based restrictions on speech. *Id.* at 1322, n. 7, citing and quoting *CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 180 (11th Cir. 2006).

⁴ *Id.* at 1333, n. 6, citing and quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (citation omitted).

⁵ *Ward, supra*, 491 U.S. at 791. “Even protected speech is not equally permissible in all places and at all times.” *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.* 473 U.S. 788, 799 (1985).

⁶ *Id.* at 799, citing and quoting *United State v. Albertini*, 472 U.S. 675, 689 (1985) (other citation omitted).

⁷ *Id.* at 800.

⁸ 487 U.S. 474 (1988).

⁹ *Id.* at 477 (citing appellate record).

¹⁰ *Id.* at 476.

¹¹ *Id.*

¹² *Id.* at 479.

limitations on speech must be evaluated ‘differ depending on the character of the property at issue.’”¹³ The Court determined that public streets and sidewalks were impacted by the ordinance, and that they were public fora and “must be judged against the stringent standards we have established for restrictions on speech in traditional public fora[.]”¹⁴ Those “standards” are provided in the content-neutral analysis previously described.

The Court accepted the lower federal court’s conclusion that the ordinance was content-neutral.¹⁵ While the next step in the analysis is typically to determine whether the regulation is narrowly tailored to serve a governmental interest, the court elected to first address whether the ordinance left open ample alternative channels of communication because this question was “easily answered.”¹⁶ The Court determined that the ordinance was “readily subject to a narrowing construction that avoids constitutional difficulties.” The ordinance only prohibited “focused picketing taking place solely in front of a particular residence[.]”¹⁷ The ordinance did not bar protestors from residential neighborhoods, including marching through those neighborhoods or walking a route in front of houses in those neighborhoods.¹⁸

The Court then inquired whether the ordinance served a significant government interest. The court relied on its precedent to answer the question affirmatively. This precedent identified “[t]he state’s interest in protecting the well-being, tranquility, and privacy of the home” as being “certainly of the highest order in a free and civilized society.”¹⁹ The Court also noted:

One important aspect of residential privacy is protection of the unwilling listener. Although in many locations, we expect individuals simply to avoid speech they do not want to hear, ... the home is different. “That we are often ‘captives’ outside the sanctuary of the home and subject to objectionable speech ... does not mean we must be captives everywhere.” *Rowan v. Post Office Dept.*, [397 U.S. 728, 738 (1970)]. Instead, a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions. Thus, we have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom....²⁰

Finally, the Court inquired whether the ordinance was narrowly tailored to serve the identified government interest. The Court stated that “[a] statute is narrowly tailored if it targets and eliminates no more than the exact source of the ‘evil’ it seeks to remedy.”²¹ Further, a complete ban “can be narrowly tailored, but only if each activity within the proscription’s scope is an appropriately targeted evil.”²² The Court found that the “type of focused picketing prohibited” by the ordinance was “fundamentally different from more generally directed means of

¹³ *Id.*, citing and quoting *Perry Education Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 44 (1983).

¹⁴ *Id.* at 480-481.

¹⁵ *Id.* at 482.

¹⁶ *Id.*

¹⁷ *Id.* at 482-483 (relying on representations from counsel at oral argument).

¹⁸ *Id.* at 483 (relying on representations from counsel at oral argument).

¹⁹ *Id.* at 484, citing and quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980).

²⁰ *Id.* at 484-485 (other citations omitted).

²¹ *Id.* at 485 (citation omitted).

²² *Id.*

communication that may not be completely banned in residential areas,” citing its decisions regarding handbilling and solicitation.²³ The Court further found:

... the picketing is narrowly directed at the household, not the public. The type of picketers banned by the Brookfield ordinance generally do not seek to disseminate a message to the general public, but to intrude upon the targeted resident, and to do so in an especially offensive way. Moreover, even if some such picketers have a broader communicative purpose, their activity nonetheless inherently and offensively intrudes on residential privacy....²⁴

The Court opined that the “First Amendment permits the government to prohibit offensive speech as intrusive when the ‘captive’ audience cannot avoid the objectionable speech.”²⁵ The Court concluded that the ordinance was narrowly tailored to addresses targeted picketing of residents who were essentially “captives” to this picketing.

The target of the focused picketing banned by the Brookfield ordinance is just such a “captive.” The resident is figuratively, and perhaps literally, trapped within the home, and because of the unique and subtle impact of such picketing is left with no ready means of avoiding the unwanted speech.... Thus, the “evil” of targeted residential picketing, “the very presence of an unwelcome visitor at the home,” [*Carey v. Brown*, 447 U.S. 455, 478 (1980) (Rehnquist, J., dissenting)], is “created by the medium of expression itself.” [*City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 810 (1984)]. Accordingly, the Brookfield ordinance’s complete ban of that particular medium of expression is narrowly tailored.²⁶

Unlawful Assembly, Breach of Peace, and Disorderly Conduct

Although protests, at face value, are legal, certain offenses may occur at or near a protest that are not protected under the First Amendment. For example, s. 870.02(1), F.S., provides that it is a second degree misdemeanor²⁷ for three or more persons meeting together to commit *a breach of the peace*²⁸ or any other unlawful act.

The Florida Supreme Court has held that the “basic common law elements apply” to s. 870.02, F.S., and has construed this statute “to prohibit (1) an assembly of three or more persons who, (2) having a common unlawful purpose, (3) assemble in such a manner as to give rational, firm, and courageous persons in the neighborhood of the assembly a well-grounded fear of a breach of the peace.”²⁹ The Court has further held that this statute does not infringe on free speech or assembly if the term “unlawful assembly” used in s. 870.02, F.S., meets the Court’s previously-described

²³ *Id.* at 486 (citations omitted).

²⁴ *Id.*

²⁵ *Id.* at 487 (citations omitted).

²⁶ *Id.* at 487-488 (other citation omitted).

²⁷ A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

²⁸ Emphasis provided by staff.

²⁹ *State v. Simpson*, 347 So.2d 414, 415 (Fla. 1977) (footnote omitted).

definition, the elements are “established by the circumstances of the incident,” and the “charging document ... articulate[s] the facts which establish each of those elements.”³⁰

Section 877.03, F.S., provides that it is a second degree misdemeanor to commit such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engage in brawling or fighting, or *engage in such conduct as to constitute a breach of the peace or disorderly conduct*.³¹

The unlawful assembly statute differs from the breach of peace or disorderly conduct statute by requiring that a person arrested for unlawful assembly be held in custody until he or she is brought before the court for admittance to bail in accordance with ch. 903, F.S.³²

Section 870.04, F.S., requires the following officers to go among persons who “unlawfully, riotously, or tumultuously assemble in any county, city or municipality” (or as near to them as may be done safely) and in the name of the state command these persons “immediately and peaceably to disperse”:

- The sheriff or the sheriff’s deputies;
- The mayor;
- Any commissioner, council member, alderman, or police officer of the city or municipality;
- Any officer or member of the Florida Highway Patrol;
- Any officer or agent of the Fish and Wildlife Conservation Commission or the Department of Environmental Protection;
- Any beverage enforcement agent;
- Any personnel or representatives of the Department of Law Enforcement or its successor; or
- Any other peace officer.

This requirement applies regardless of the number of assembled persons or whether they are armed or not.

Section 870.04, F.S., also provides that if the assembled persons, after receiving the command to disperse, do not immediately and peaceably disperse, the officers must command the assistance of “all such persons in seizing, arresting, and securing such persons in custody.”

³⁰ *Id.* at 416.

³¹ Emphasis provided by staff. The Florida Supreme Court has narrowed the application of the statute to avoid possible infringement on constitutionally-protected speech, limiting its application so it only applies “to words which ‘by their very utterance . . . inflict injury or tend to incite an immediate breach of the peace,’ *White v. State*, [330 So.2d 3, 7 (Fla.1976)]; *See Chaplinsky v. New Hampshire*, [315 U.S. 568, 572 (1942)]; or to words, known to be false, reporting some physical hazard in circumstances where such a report creates a clear and present danger of bodily harm to others.” *State v. Saunders*, 339 So.2d 641, 644 (Fla. 1976). The Court in *Saunders* construed s. 877.03, F.S., “so that no words except ‘fighting words’ or words like shouts of ‘fire’ in a crowded theatre fall within its proscription, in order to avoid the constitutional problem of overbreadth, and ‘the danger that a citizen will be punished as a criminal for exercising his right of free speech.’” *Id.* at 644, quoting *Spears v. State*, 337 So.2d 977, 980 (Fla. 1976).

³² Section 870.02(2), F.S.

Finally, s. 870.04, F.S., deems the following persons present at a riot or unlawful assembly to be one of the rioters or persons unlawfully assembled who may be prosecuted and punished accordingly:

- A person who is commanded to aid and assist in seizing and securing a rioter or person unlawfully assembled, or assist in suppressing a riot or unlawful assembly, but refuses or neglects to obey this command; or
- A person who is required by an officer to depart from a riot or unlawful assembly but refuses and neglects to do so.³³

Recent Targeted Protests at Private Residences

Protests, especially for highly-publicized issues, have sometimes targeted specific individual's homes. Both Senators Marco Rubio and Rick Scott have had protests outside their private residences.³⁴ There were protests outside the home of a public school board member in Brevard County, Florida, over "LGBTQ-affirming" school district policies.³⁵ In Windermere, Florida, groups stood outside of a home owned by Derek Chauvin who, at the time of the protest, had been charged but not convicted for the murder of George Floyd.³⁶ Outside of Florida, the mayors of Chicago and Portland have drawn protests to their private residences.^{37, 38}

III. Effect of Proposed Changes:

The bill creates a new criminal offense to picket or protest before or about the residence or dwelling of any person with the intent to harass or disturb that person in his or her home. The bill provides a definition of "dwelling" to include "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families." A person who violates this section commits a second degree misdemeanor and may be sentenced to up to 60 days in county jail and assessed a \$500 fine.

³³ In a case involving an earlier version of the statute, the Florida Supreme Court held that "[u]nder this statute the offense can only be committed when the unlawful assembly has been ordered to disperse by those officers of the law named in the statute. *Lezama v. State*, 110 Fla. 304307, 148 So. 304 (Fla. 1933).

³⁴ Jacob Ogles, *Protesters to convene on Marco Rubio's, Rick Scott's homes to demand challenge to Joe Biden win*, Florida Politics, Jan. 1, 2021, available at <https://floridapolitics.com/archives/405357-protesters-to-convene-on-marco-rubios-rick-scotts-homes-to-demand-challenge-to-joe-biden-win/> (last visited on Feb. 2, 2022); and Lautaro Grinspan, *Trump supporters gather in front of Marco Rubio's West Miami home. 'You work for us.'*, The Spokesman Review, Jan. 3 2021 (originally published in The Miami Herald), available at <https://www.spokesman.com/stories/2021/jan/03/trump-supporters-gather-in-front-of-marco-rubios-w/> (last visited on Feb. 2, 2022).

³⁵ Bailey Gallion, *Protesters' anti-LGBTQ sentiments met by messages of love outside BPS board member's home*, Florida Today, Apr. 9, 2021, available at <https://www.floridatoday.com/story/news/education/2021/04/09/protest-outside-brevard-school-board-member-home-spurs-message-love/7157736002/> (last visited on Feb. 2, 2022).

³⁶ *Protesters remain at Orlando-area home owned by officer connected to George Floyd's death*, May 30, 2020, Fox 35 (Orlando), available at <https://www.fox35orlando.com/news/protesters-remain-at-orlando-area-home-owned-by-officer-connected-to-george-floyds-death> (last visited on Feb. 2, 2022). However, Chauvin was not in the home when the protest occurred. *Id.*

³⁷ Madeline Holcombe, *Chicago protesters rally at mayor's house a day after clashes with police*, CNN, July 19, 2020, available at <https://www.cnn.com/2020/07/19/us/chicago-protest-lori-lightfoot/index.html> (last visited on Feb. 2, 2022).

³⁸ The Portland mayor actually planned to move out of his apartment due to the targeted protests at his home. Andrew Hay, *Portland mayor to leave home targeted by protestors*, Reuters, Sept. 2, 2020, available at <https://www.reuters.com/article/us-global-race-usa-protests-portland/portland-mayor-to-leave-home-targeted-by-protesters-idUSKBN25T32R> (last visited on Feb. 2, 2022).

Both the Brookfield ordinance on targeted residential picketing that was reviewed by the U.S. Supreme Court in *Frisby v. Shultz*³⁹ and the offense created by the bill focus on targeted picketing; specifically, they focus on picketing before or about the residence of any person.⁴⁰

However, there are also some differences between the Brookfield ordinance and the offense created by the bill. The Brookfield ordinance mentions “picketing”; the offense created by the bill mentions “picket or protest.” The Brookfield ordinance imposes a complete ban on targeted picketing before or about a residence or dwelling; the offense created by the bill only punishes “a picket or protest before or about the residence or dwelling of any person with the intent to harass or disturb that person in his or her home.”⁴¹ Also, unlike the Brookfield ordinance, the offense created by the bill defines what a dwelling is.

The bill also specifically states that the purpose of the new offense is to “serve the states significant interest in protecting the well-being, tranquility, and privacy of the home and protecting residents from the detrimental effect of targeted picketing.” As previously noted, the U.S. Supreme Court has identified “[t]he state’s interest in protecting the well-being, tranquility, and privacy of the home” as being “certainly of the highest order in a free and civilized society.”⁴²

The bill takes effect October 1, 2022.

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 Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

³⁹ See footnote 8, *supra*.

⁴⁰ See text of the Brookfield ordinance in the “Present Situation” section of this analysis, *supra*.

⁴¹ Neither “harass” nor “disturb” is defined. See “Other Constitutional Issues” section of this analysis, *infra*.

⁴² *Carey v. Brown*, 447 U.S. 455, 471 (1980).

E. Other Constitutional Issues

First Amendment

It is important to note that *Frisby v. Shultz*⁴³ involved a First Amendment facial challenge to the Brookfield ordinance. The U.S. Supreme Court's decision did not bar First Amendment challenges based on unconstitutional application of a law. For example, the Court speculated that the Brookfield ordinance may not apply if the resident used his or her home as a place of business or public meeting "since the ordinance's goal is the protection of residential privacy."⁴⁴

Additionally, not every court has reached the same conclusion as the U.S. Supreme Court in *Frisby* regarding a targeted residential picketing ordinance. For example, post-*Frisby*, the federal Sixth Circuit Court of Appeals (Sixth Circuit) found that a targeted residential picketing ordinance enacted in Upper Arlington, Ohio, was unconstitutionally overbroad.⁴⁵ This ordinance was identical to the Brookfield ordinance reviewed in *Frisby*.⁴⁶ Regarding the Brookfield ordinance and the *Frisby* holding on that ordinance, the Sixth Circuit opined:

The ordinance construed by the Court in *Frisby* was unconstitutionally overbroad as written but was saved by the extraordinary measure of accepting counsel's representation at oral argument before the Supreme Court as to how the ordinance would be enforced. Although there is precedent for this approach, four Justices were highly critical of saving the ordinance by this device. In his dissent, Justice Stevens offered a simple and practical alternative: [I]t is a simple matter for the town to amend its ordinance and to limit the ban to conduct that unreasonably interferes with the privacy of the home and does not serve a reasonable communicative purpose. [*Frisby v. Shultz*, 487 U.S. 474, 499 (1988)] (Stevens, J., dissenting).⁴⁷

The Sixth Circuit stated that, "[n]otwithstanding the procedure adopted in *Frisby*, we know of nothing that requires us to accept representations from the City's counsel" regarding enforcement of the ordinance.⁴⁸ The Sixth Circuit was unclear regarding those representations, and uncertain if counsel could bind either the legislative body of the City or its police department.⁴⁹ The Sixth Circuit also believed "the record demonstrate[d] that the City's idea of what constitutes an enforcement procedure that does not offend the Constitution" was in conflict with the Supreme Court's post-*Frisby* holding in *Madsen v. Women's Health Center*,⁵⁰ which the Sixth Circuit claimed "makes it clear that any linear

⁴³ See footnote 8, *supra*.

⁴⁴ *Id.* at 488.

⁴⁵ *Vittitow v. City of Upper Arlington*, 43 F.3d 1100 (6th Cir. 1995), cert. denied, 515 US 1121 (1995).

⁴⁶ *Id.* at 1106.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 114 S.Ct. 2516 (1994).

extension beyond the area ‘solely in front of a particular residence’ is at best suspect, if not prohibited outright.”⁵¹

Vagueness

Criminal laws may not include “such vague and broad language that a person of common intelligence must speculate about its meaning and be subjected to arrest and punishment if the guess is wrong.”⁵² A vague statute, “because of its imprecision, may also invite arbitrary and discriminatory enforcement.”⁵³

However, the fact that the Legislature may not have defined words or chosen the clearest or most precise language in a statute does not necessarily render a statute unconstitutionally vague.⁵⁴ “In the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term, and where a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense.”⁵⁵

The bill does not define “harass.” Some current offenses that use the term “harass” define it; others do not. For example, s. 784.048, F.S., which punishes stalking, defines “harass” as engaging in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.⁵⁶ In contrast, s. 365.16, F.S., which punishes harassing phone calls, does not define “harass.”

It does not appear that the term “disturb” is defined in Florida law. An example of its use (without definition) is s. 871.015, F.S., which punishes knowingly engaging in protest activities or knowingly causing protest activities to occur within 500 feet of the property line of a residence, cemetery, funeral home, house of worship, or other location during or within 1 hour before or 1 hour after the conducting of a funeral or burial at that place. “Protest activities” is defined in the statute as any action, including picketing, which is undertaken with the intent to interrupt or disturb a funeral or burial.⁵⁷

⁵¹ *Vittitow, supra*, 43 F.3d at 1105 (footnote omitted), quoting *Madsen, supra*, 114 S.Ct. at 2530.

⁵² *State v. Wershow*, 343 So.2d 605, 608 (Fla.1977). If a law is “indefinite and susceptible of differing constructions, the rule of lenity applies; the statute must be construed in the manner most favorable to the accused.” *State v. Del Castillo*, 890 So.2d 376, 398 (Fla. 3d DCA 2004). See s. 775.021(1), F.S. (codifying the rule of lenity).

⁵³ *Southeastern Fisheries Ass’n, Inc. v. Department of Natural Resources*, 453 So.2d 1351, 1353 (Fla. 1984).

⁵⁴ *State v. Barnes*, 686 So.2d 633, 637 (Fla. 2d DCA 1996), review denied, 695 So.2d 698 (Fla.1997), cert. denied, 522 U.S. 903 (1997). “[A] defendant who establishes only that the statute is vague in the sense that it requires a person to conform his or her conduct to an imprecise but comprehensible standard cannot prevail on a vagueness challenge.” *Id.*

⁵⁵ *State v. Hagan*, 387 So.2d 943, 945 (Fla.1980) (citations omitted). In *Barnes, supra*, the court determined that the undefined terms “high speed vehicle pursuit” and “high speed,” which appeared in a statute punishing unlawful flight from a law enforcement officer, were not impermissibly vague in all of their applications. The meaning of the term “high” could be ascertained from a dictionary definition and the meaning of the term “high speed pursuit” could be ascertained from a plain reading.

⁵⁶ Section 784.048(1)(a), F.S.

⁵⁷ Section s. 871.015(1)(c), F.S. (emphasis provided by staff).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a jail bed impact but this impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 870.02 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 Judiciary on January 31, 2022

The CS provides a definition for “dwelling” as used in the bill to include “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.”

B. Amendments:

None.



852166

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/08/2022	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 33 and 34
insert:

(3)(a) It is unlawful for a paramilitary group to
congregate in a public place. As used in this subsection, the
term "paramilitary group" means a semi-militarized force whose
organizational structure, tactics, training, subculture, or
function is similar to that of a professional military, but
which is not part of the Armed Forces of the United States.



852166

(b) A person who violates paragraph (a) commits a
misdemeanor of the second degree, punishable as provided in s.
775.082 or s. 775.083.

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

And the title is amended as follows:

Between lines 6 and 7

insert:

penalties; prohibiting paramilitary groups from
congregating in public places; defining the term
"paramilitary group"; providing criminal

By the Committee on Judiciary; and Senators Perry and Boyd

590-02522-22

20221664c1

A bill to be entitled

An act relating to unlawful assemblies; amending s. 870.02, F.S.; prohibiting a person or persons from picketing or protesting before or about the residence or dwelling of any person with specified intent; defining the term "dwelling"; providing criminal penalties; providing an effective date.

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

Section 1. Section 870.02, Florida Statutes, is amended to read:

870.02 Unlawful assemblies.—

(1) (a) If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(b) (2)~~ A person arrested for a violation of paragraph (a) this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

(2) (a) In an effort to serve the state's significant interest in protecting the well-being, tranquility, and privacy of the home and protecting residents from the detrimental effect of targeted picketing, it is unlawful for a person or persons to picket or protest before or about the residence or dwelling of any person with the intent to harass or disturb that person in his or her home. As used in this paragraph, the term "dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a

Page 1 of 2

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

590-02522-22

20221664c1

residence by one or more families.

(b) A person who violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect October 1, 2022.

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
Senate professional staff conducting the meeting

2/8/21

Meeting Date

Criminal Justice

Committee

1664

Bill Number or Topic

852166

Amendment Barcode (if applicable)

Name

Chris Carmody

Phone

407 843 8880

Address

301 E. Pine St. #1400

Email

chris.carmody@gray-robinson.com

Street

Orlando

FL

32801

City

State

Zip

Speaking:

☐ For



Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

Amendment

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

Orange County Sheriff's Office



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

February 8, 2022

Meeting Date

Criminal Justice

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1664

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **2215 Thomasville Road**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Smart Justice Alliance

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

2/8/22

Meeting Date

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1664

Bill Number or Topic

Committee

Name

Lijia Gong

Phone

Address

Street

Email

City

State

Zip

Amendment Barcode (if applicable)

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☒

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Local
Progress

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

02/08/2022

Meeting Date

Criminal Justice

Committee

SB 1664

Bill Number or Topic

Amendment Barcode (if applicable)

Name Francesca Menes

Phone (726) 340-1646

Address

Street

Plantation,

City

FL

State

33324

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Local Progress and
The Black Collective

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1664

Bill Number or Topic

Amendment Barcode (if applicable)

2/8/2022

Meeting Date

Criminal Justice

Committee

Name

Trisha Taro

Phone

909-720-0324

Address

Street

Email

ttaro@localprogress.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☒

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Local Progress

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

gan

2/8/2022

Meeting Date

CJ

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1664

Bill Number or Topic

Amendment Barcode (if applicable)

Name Donn Scott, Jr

Phone 850-521-3042

Address P.O. Box 10788

Email donn.scottjr@splcenter.org

Street

Tallahassee, FL

City

State

32302

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:
Southern Poverty Law
Center Action Fund

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

2-8-22

Meeting Date

1664

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Alissa Jean Schafer

Phone

954-734-3773

Address

11700 SW 1st St 201

Email

alissajanschafer@gmail.com

Street

Bonbrook Pines

State

FL

Zip

33025

City

Speaking:

☐

For



Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

2/8/22

Meeting Date

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1664

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Jack Porter

Phone

Address

300 S Adams St

Email

jack.porter@flgov.com

Street

TuH

City

FL

State

32301

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/09/22

Meeting Date

SB1664

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Sabrina Favellana

Phone 754 230 2721

Address 810 NE 27th Ave

Street

Email Sabrina.fave@gmail.com

Hallandale Beach FL

City

State

33584

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/8/22

Meeting Date

Senate CJ

Committee

SB 1664

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Nusha-Rose Hines

Phone

786-363-1104

Address

4343 W Flagler

Email

Street

Miami

City

FL

State

Zip

Speaking:

☐ For



Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

ACLU FL



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Meeting Date

2/21/22

Bill Number or Topic

SB1664

Committee

Criminal Justice

Amendment Barcode (if applicable)

Name

Gail Johnson

Phone

352-727-1473

Address

4040 NW 33rd Place

Email

Street

City

Gainesville

State

FL

Zip

32606

Speaking:

☐ For

☒ Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

02-08-22

Meeting Date

CT

Committee

1664

Bill Number or Topic

Amendment Barcode (if applicable)

Name

SHERIFF JOHN MINA

Phone

407-254-7000

Address

2500 W COLONIAL DR

Email

John.Mina@ocfl.net

Street

ORLANDO

City

FL

State

32802

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without compensation or sponsorship.



I am a registered lobbyist, representing:



I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



RON DeSANTIS
GOVERNOR

RECEIVED

2021 DEC -8 AM 10:19

DIVISION OF ELECTIONS
TALLAHASSEE, FL

November 29, 2021

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

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 20.315, Florida Statutes:

Mr. Ricky Dixon

7

as Secretary of the Florida Department of Corrections, succeeding Mark Inch, subject to confirmation by the Senate. This appointment is effective November 29, 2021, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to be "R. DeSantis".

Ron DeSantis
Governor

RD/kk

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

I, Laurel M. Lee, Secretary of State,
do hereby certify that

Ricky D. Dixon

is duly appointed

Secretary,

Department of Corrections

for a term beginning on the Twenty-Ninth day of November,
A.D., 2021, to serve at the pleasure of the Governor and is
subject to be confirmed by the Senate during the next regular
session of the Legislature.



Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Seventh day of January, A.D., 2022.

Laurel M. Lee

Secretary of State

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

2022 JAN -4 PM 4:36

STATE OF FLORIDA

County of Leon

CLERK OF SUPERIOR COURT
TALLAHASSEE, FL

HAND DELIVERED

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Florida Department of Corrections

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Ricky D Dixon
Signature

Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 4th day of January, 2022.

Stacey Hackney
Signature of Officer Administering Oath or of Notary Public

Stacey Hackney
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Identification

Type of Identification Produced ---



Stacey Hackney
Notary Public
State of Florida
Comm# HH085408
Expires 1/27/2025

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

501 South Calhoun Street

Street or Post Office Box

Tallahassee, FL 32399

City, State, Zip Code

Ricky D. Dixon

Print Name

Ricky D Dixon
Signature

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Ricky Dixon
Secretary of Corrections

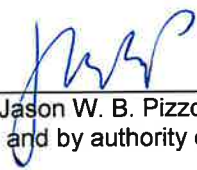
NOTICE OF HEARING

TO: Mr. Ricky Dixon

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, February 8, 2022, in the Toni Jennings Committee Room, 110 Senate Building, commencing at 9:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 3rd day of February, 2022

Committee on Criminal Justice



Senator Jason W. B. Pizzo
As Chair and by authority of the committee

cc: Members, Committee on Criminal Justice
Office of the Sergeant at Arms

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

Ricky Dixon

WITNESS'S NAME: Secretary of Corrections

ANSWER: I do

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Criminal Justice Committee

DATE: 02/08/22

The Florida Senate
**COMMITTEE RECOMMENDATION ON
EXECUTIVE APPOINTMENT**

COMMITTEE: Committee on Criminal Justice
MEETING DATE: Tuesday, February 8, 2022
TIME: 9:00—11:00 a.m.
PLACE: Toni Jennings Committee Room, 110 Senate Building

TO: The Honorable Wilton Simpson, President

FROM: The Committee on Criminal Justice

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Secretary of Corrections

Appointee: Dixon, Ricky

Term: 11/29/2021-Pleasure of Governor

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Governor.

Next Reference: Ethics and Elections

REPORTING INSTRUCTION: With Chair's approval, file 1 copy with Secretary of the Senate and 2 copies with the Committee on Ethics and Elections

Note: Electronic notification upon publication may serve as the filing.
02082022.1145

S-067 (06/28/21)

Page 1 of 1

CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 2/8/2022 9:02:40 AM

Ends: 2/8/2022 11:00:05 AM

Length: 01:57:26

9:02:40 AM Meeting called to order by Chair Pizzo
9:02:41 AM Roll call by CAA Sue Arnold
9:03:09 AM Quorum Present
9:03:14 AM Comments from Chair Pizzo
9:03:15 AM Introduction of Tab 3, CS/SB 1182 by Chair Pizzo
9:03:35 AM Explanation of CS/SB 1182, Breach of Bond Costs by Senator Broxson
9:04:24 AM Comments from Chair Pizzo
9:04:25 AM Barney Bishop, Florida Smart Justice Alliance waives in support
9:04:31 AM Closure waived
9:04:35 AM Roll call by CAA
9:04:40 AM CS/SB 1182 reported favorably
9:04:49 AM Comments from Senator Gainer
9:05:11 AM Introduction of Tab 4, SB 1236 by Chair Pizzo
9:05:18 AM Explanation of SB 1236 by Senator Jones
9:05:55 AM Comments from Chair Pizzo
9:06:05 AM Aaron Wayt, Florida Association of Criminal Defense Lawyers waives in support
9:06:08 AM Barney Bishop, Florida Smart Justice Alliance waives in support
9:06:17 AM Comments from Chair Pizzo
9:06:19 AM Closure waived
9:06:22 AM Roll call by CAA
9:06:26 AM SB 1236 reported favorably
9:06:36 AM Introduction of Tab 6, Confirmation Hearing for Appointment by Chair Pizzo
9:07:03 AM Comments from Ricky Dixon, Secretary, Florida Department of Corrections
9:10:37 AM Comments from Chair Pizzo
9:10:51 AM Question from Chair Pizzo
9:11:17 AM Response from Secretary Dixon
9:12:27 AM Follow-up question from Chair Pizzo
9:12:34 AM Response from Secretary Dixon
9:13:10 AM Comments from Chair Pizzo
9:13:24 AM Follow-up question from Chair Pizzo
9:13:30 AM Response from Secretary Dixon
9:13:45 AM Follow-up question from Chair Pizzo
9:13:52 AM Response from Secretary Dixon
9:14:45 AM Question from Senator Powell
9:14:51 AM Response from Secretary Dixon
9:16:32 AM Follow-up question from Senator Powell
9:16:40 AM Response from Secretary Dixon
9:17:27 AM Follow-up question from Senator Powell
9:17:35 AM Response from Secretary Dixon
9:18:04 AM Question from Senator Brandes
9:18:11 AM Response from Secretary Dixon
9:18:28 AM Follow-up question from Senator Brandes
9:18:33 AM Response from Secretary Dixon
9:19:06 AM Follow-up question from Senator Brandes
9:19:12 AM Response from Secretary Dixon
9:19:25 AM Follow-up question from Senator Brandes
9:19:50 AM Response from Secretary Dixon
9:20:01 AM Follow-up question from Senator Brandes
9:20:04 AM Response from Secretary Dixon
9:20:16 AM Follow-up question from Senator Brandes
9:20:20 AM Response from Secretary Dixon
9:20:31 AM Follow-up question from Senator Brandes

9:20:34 AM Response from Secretary Dixon
9:21:56 AM Follow-up question from Senator Brandes
9:21:58 AM Response from Secretary Dixon
9:23:11 AM Follow-up question from Senator Brandes
9:23:14 AM Response from Secretary Dixon
9:25:35 AM Follow-up question from Senator Brandes
9:25:37 AM Response from Secretary Dixon
9:26:08 AM Barney Bishop, Florida Smart Justice Alliance waives in support
9:26:16 AM James Baiardi, FL PBA State Correctional Officers Chapter waives in support
9:26:20 AM Comments from Chair Pizzo
9:28:23 AM Comments from Senator Powell
9:28:54 AM Response from Secretary Dixon
9:29:29 AM Comments from Senator Burgess
9:30:04 AM Comments from Chair Pizzo
9:30:18 AM Senator Baxley moves to recommend confirmation of Secretary Dixon
9:30:21 AM Roll call by CAA
9:30:26 AM Confirmation recommended favorably
9:30:40 AM Introduction of Tab 2, SB 692 by Chair Pizzo
9:30:52 AM Introduction of Amendment Barcode No. 516686 by Chair Pizzo
9:31:09 AM Explanation of Amendment by Senator Stewart
9:32:00 AM Comments from Chair Pizzo
9:33:04 AM Speaker Aaron Wayt, Florida Association of Criminal Defense Lawyers in opposition
9:33:58 AM Comments from Chair Pizzo
9:35:14 AM Response from Mr. Wayt
9:36:02 AM Follow-up question from Chair Pizzo
9:36:10 AM Response from Mr. Wayt
9:36:59 AM Senator Stewart in closure
9:37:14 AM Amendment adopted
9:37:20 AM Comments from Chair Pizzo
9:37:24 AM Question from Senator Brandes
9:37:29 AM Response from Senator Stewart
9:38:19 AM Comments from Chair Pizzo
9:38:29 AM Follow-up question from Senator Brandes
9:38:35 AM Response from Senator Stewart
9:39:18 AM Response from Chair Pizzo
9:40:05 AM Follow-up question from Senator Brandes
9:40:15 AM Response from Chair Pizzo
9:41:51 AM Comments from Senator Stewart
9:42:18 AM Comments from Senator Brandes
9:42:44 AM Comments from Senator Perry
9:43:19 AM Comments from Chair Pizzo
9:45:09 AM Barney Bishop, Florida Smart Justice Alliance waives in support
9:45:14 AM Comments from Chair Pizzo
9:45:20 AM Senator Brandes in debate
9:46:39 AM Question from Senator Taddeo
9:47:05 AM Comments from Senator Stewart
9:47:14 AM Comments from Chair Pizzo
9:47:21 AM Senator Perry in debate
9:48:11 AM Comments from Chair Pizzo
9:50:03 AM Comments from Senator Stewart
9:50:44 AM Closure waived
9:50:55 AM Roll call by CAA
9:51:01 AM CS/SB 692 reported favorably
9:51:25 AM Introduction of Tab 1, CS/SB 190, Controlled Substances by Chair Pizzo
9:51:36 AM Explanation of CS/SB 190 by Senator Brodeur
9:52:54 AM Chair passed to Vice-chair Brandes
9:53:01 AM Introduction of Amendment Barcode No. 730750 by Chair Brandes
9:53:06 AM Explanation of Amendment by Senator Pizzo
9:54:06 AM Comments from Chair Brandes
9:54:50 AM Speaker Christie Arnold, FL Conference of Catholic Bishops in opposition
9:55:40 AM Question from Senator Powell
9:55:46 AM Response from Ms. Arnold

9:56:07 AM Question from Senator Pizzo
9:56:19 AM Response from Ms. Arnold
9:57:25 AM Follow-up question from Senator Pizzo
9:57:32 AM Response from Ms. Arnold
9:57:42 AM Comments from Chair Brandes
9:57:49 AM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support
9:57:54 AM Nancy Daniels, Florida Public Defender Association waives in support
9:58:00 AM Neisha-Rose Hines, ACLU FL waives in support
9:58:10 AM Comments from Chair Brandes
9:58:15 AM Senator Pizzo in closure
9:58:41 AM Comments from Chair Brandes
9:58:47 AM Amendment adopted
9:58:49 AM Comments from Chair Brandes
9:58:54 AM Chair returned to Senator Pizzo
9:59:00 AM Question from Senator Brandes
9:59:25 AM Response from Senator Brodeur
10:00:36 AM Response from Chair Pizzo
10:03:32 AM Comments from Senator Brodeur
10:03:39 AM Comments from Senator Brandes
10:03:45 AM Comments from Chair Pizzo
10:04:10 AM Follow-up question from Senator Brandes
10:04:23 AM Response from Senator Brodeur
10:05:13 AM Follow-up question from Senator Brandes
10:05:19 AM Response from Senator Brodeur
10:05:43 AM Question from Senator Powell
10:06:25 AM Response from Senator Brodeur
10:08:29 AM Follow-up question from Senator Powell
10:09:30 AM Response from Senator Brodeur
10:09:56 AM Question from Senator Brandes
10:10:04 AM Response from Senator Brodeur
10:10:30 AM Candice Ericks, Seminole Sheriff Office waives in support
10:10:35 AM Barney Bishop, Florida Smart Justice Alliance waives in support
10:10:41 AM Donn Scott, Jr., Southern Poverty Law Center Action Fund waives in opposition
10:10:46 AM Manny Guarch, Deputy General Counsel, Seminole Sheriff's Office waives in support
10:10:55 AM Neisha-Rose Hines, ACLU FL waives in opposition
10:11:06 AM Senator Brandes in debate
10:13:28 AM Chair Pizzo in debate
10:16:43 AM Senator Brodeur in closure
10:16:50 AM Comments from Chair Pizzo
10:17:26 AM Response from Senator Brodeur
10:17:34 AM Roll call by CAA
10:18:01 AM CS/CS/SB 190 reported favorably
10:18:22 AM Introduction of Tab 5, CS/SB1664, Unlawful Assemblies by Chair Pizzo
10:18:35 AM Explanation of CS/SB 1664 by Senator Perry
10:19:11 AM Introduction of Amendment Barcode No. 852166 by Chair Pizzo
10:19:26 AM Explanation of Amendment by Senator Taddeo
10:19:35 AM Comments from Chair Pizzo
10:20:36 AM Question from Senator Brandes
10:20:42 AM Response from Senator Taddeo
10:21:02 AM Follow-up question from Senator Brandes
10:21:36 AM Response from Senator Taddeo
10:21:47 AM Follow-up question from Senator Brandes
10:21:53 AM Response from Senator Taddeo
10:22:02 AM Follow-up question from Senator Brandes
10:22:39 AM Response from Senator Taddeo
10:22:56 AM Follow-up question from Senator Brandes
10:22:59 AM Response from Senator Taddeo
10:23:44 AM Question from Senator Perry
10:23:52 AM Response from Senator Taddeo
10:24:07 AM Follow-up question from Senator Perry
10:24:29 AM Response from Senator Taddeo
10:25:16 AM Question from Senator Burgess

10:25:24 AM Response from Senator Taddeo
 10:25:51 AM Follow-up question from Senator Perry
 10:26:30 AM Response from Senator Taddeo
 10:27:19 AM Follow-up question from Senator Perry
 10:27:24 AM Response from Senator Taddeo
 10:28:26 AM Follow-up question from Senator Perry
 10:28:32 AM Response from Senator Taddeo
 10:28:47 AM Follow-up question from Senator Perry
 10:28:53 AM Response from Senator Taddeo
 10:29:32 AM Comments/Question from Chair Pizzo
 10:30:44 AM Response from Senator Taddeo
 10:32:20 AM Amendment withdrawn
 10:33:22 AM Comments from Chair Pizzo
 10:33:31 AM Question from Senator Brandes
 10:33:36 AM Response from Senator Perry
 10:33:56 AM Follow-up question from Senator Brandes
 10:34:03 AM Response from Senator Perry
 10:34:39 AM Follow-up question from Senator Brandes
 10:34:49 AM Response from Senator Perry
 10:36:10 AM Speaker Sheriff John Mina, Orlando, FL in support
 10:40:48 AM Question from Senator Powell
 10:40:54 AM Response from Sheriff Mina
 10:41:45 AM Barney Bishop, Florida Smart Justice Alliance waives in support
 10:41:57 AM Lijia Gong, Local Progress waives in opposition
 10:42:04 AM Francesca Menes, Local Progress and The Black Collective waives in opposition
 10:42:19 AM Trisa Taro, Local Progress waives in opposition
 10:42:21 AM Donn Scott, Jr., Southern Poverty Law Center Action Fund waives in opposition
 10:42:27 AM Speaker Alissa Jean Schafer in opposition
 10:43:35 AM Speaker Jack Porter, City Commissioner in opposition
 10:44:41 AM Speaker Gail Johnson in opposition
 10:46:35 AM Question from Chair Pizzo
 10:46:40 AM Response from Ms. Johnson
 10:47:36 AM Follow-up question from Chair Pizzo
 10:47:44 AM Response from Ms. Johnson
 10:48:03 AM Follow-up question from Chair Pizzo
 10:48:39 AM Response from Ms. Johnson
 10:49:15 AM Follow-up question from Chair Pizzo
 10:49:22 AM Response from Ms. Johnson
 10:50:13 AM Sabrina Javellan waives in opposition
 10:50:28 AM Speaker Neisha-Rose Hines, ACLU FL in opposition
 10:51:40 AM Question from Senator Perry
 10:52:40 AM Response from Ms. Hines
 10:52:51 AM Follow-up question from Senator Perry
 10:52:59 AM Response from Ms. Hines
 10:53:21 AM Follow-up question from Senator Perry
 10:53:29 AM Response from Ms. Hines
 10:54:30 AM Comments from Chair Pizzo
 10:55:38 AM Response from Ms. Hines
 10:56:17 AM Question from Senator Brandes
 10:56:22 AM Response from Ms. Hines
 10:56:46 AM Comments from Chair Pizzo
 10:56:54 AM Senator Brandes in debate
 10:57:34 AM Senator Taddeo in debate
 10:58:24 AM Chair Pizzo in debate
 10:58:59 AM Comments from Senator Perry
 10:59:05 AM Roll call by CAA
 10:59:10 AM CS/SB 1664 reported favorably
 10:59:26 AM Senator Perry moves to vote in the affirmative on Tab 6, Confirmation Hearing
 10:59:36 AM Senator Taddeo moves to vote in the affirmative on Tab 3, CS/SB 1182 and Tab 4, SB 1236
 10:59:41 AM Senator Brandes moves to give staff license to make technical and conforming changes to the Committee
 Substitutes
 10:59:49 AM Senator Perry moves to adjourn

10:59:54 AM Meeting adjourned