

Tab 1	CS/SB 160 by CJ, Book ; (Identical to H 01107) Prohibited Acts in Connection with Obscene or Lewd Materials					
Tab 2	SB 746 by Wright ; (Identical to H 00635) Public Records/Judicial Assistants					
Tab 3	CS/SB 204 by CJ, Brandes (CO-INTRODUCERS) Perry ; (Similar to H 01029) Detention Facilities					
Tab 4	SB 530 by Brandes (CO-INTRODUCERS) Stewart ; (Similar to H 00595) Alcohol or Drug Overdose Prosecutions					
Tab 5	SM 804 by Torres (CO-INTRODUCERS) Rodriguez, Taddeo, Powell, Bracy, Gibson, Cruz, Thurston, Book, Farmer, Braynon ; (Similar to CS/H 00205) Humanitarian Assistance/Government of Venezuela					
567004	D	S	RCS	JU, Simmons	Delete everything after	03/04 05:53 PM
Tab 6	SB 980 by Harrell ; (Identical to H 00845) Public Records/Petition for Certain Protective Injunctions					
Tab 7	SB 910 by Gainer ; Court-ordered Treatment Programs					
Tab 8	SB 256 by Baxley ; (Identical to H 00535) Child Protection Teams					
162110	A	S	RCS	JU, Baxley	Delete L.57:	03/04 05:53 PM
Tab 9	SB 656 by Baxley ; Background Screening					
673990	D	S	RCS	JU, Baxley	Delete everything after	03/04 05:53 PM
Tab 10	SJR 690 by Rodriguez ; (Compare to H 00053) Single Subject Limitation for Taxation and Budget Reform Commission					
Tab 11	SB 780 by Simmons ; (Similar to H 00795) Office of the Judges of Compensation Claims					
Tab 12	SB 968 by Simmons ; (Identical to H 00571) Court Reporter Registry					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Simmons, Chair
Senator Rodriguez, Vice Chair

MEETING DATE: Monday, March 4, 2019
TIME: 3:30—5:30 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Simmons, Chair; Senator Rodriguez, Vice Chair; Senators Baxley, Gibson, Hutson, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 160 Criminal Justice / Book (Identical H 1107)	Prohibited Acts in Connection with Obscene or Lewd Materials; Prohibiting a person from knowingly selling, lending, giving away, distributing, transmitting, showing, or transmuting; offering to commit such actions; having in his or her possession, custody, or control with the intent to commit such actions; or advertising in any manner an obscene, child-like sex doll; providing criminal penalties, etc. CJ 02/11/2019 Fav/CS JU 03/04/2019 Favorable RC	Favorable Yeas 6 Nays 0
2	SB 746 Wright (Identical H 635)	Public Records/Judicial Assistants; Providing an exemption from public records requirements for certain identifying and location information of current and former judicial assistants and their spouses and children; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 03/04/2019 Favorable GO RC	Favorable Yeas 6 Nays 0
3	CS/SB 204 Criminal Justice / Brandes (Similar H 1029)	Detention Facilities; Requiring that a custodial interrogation at a place of detention be electronically recorded in its entirety in connection with certain offenses; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a place other than a place of detention to prepare a specified report; prohibiting introduction into or possession of any cellular telephone or other portable communication device on the grounds of any county detention facility, etc. CJ 02/04/2019 CJ 02/11/2019 Fav/CS JU 03/04/2019 Favorable RC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, March 4, 2019, 3:30—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 530 Brandes (Similar H 595, Compare S 1334)	Alcohol or Drug Overdose Prosecutions; Prohibiting the arrest, charge, prosecution, or penalization under specified provisions of a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol-related overdose; prohibiting the arrest, charge, prosecution, or penalization under specified provisions of a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, a drug-related overdose, etc. CJ 02/19/2019 Favorable JU 03/04/2019 Favorable RC	Favorable Yeas 6 Nays 0
5	SM 804 Torres (Similar CS/HM 205)	Humanitarian Assistance/Government of Venezuela; Requesting Congress to urge the regime of President Nicolás Maduro to allow the delivery of humanitarian assistance, to continue and intensify financial sanctions against the regime of President Nicolás Maduro and the Government of Venezuela, and to instruct appropriate federal agencies to hold the regime of President Nicolás Maduro and officials of the Government of Venezuela accountable for violations of law and abuses of internationally recognized human rights, etc. JU 03/04/2019 Fav/CS RC	Fav/CS Yeas 6 Nays 0
6	SB 980 Harrell (Identical H 845)	Public Records/Petition for Certain Protective Injunctions; Providing an exemption from public records requirements for all information contained in a petition for certain protective injunctions, and any related affidavit, notice of hearing, and temporary injunction, until the respondent has been personally served; providing a statement of public necessity, etc. JU 03/04/2019 Favorable GO RC	Favorable Yeas 6 Nays 0
7	SB 910 Gainer	Court-ordered Treatment Programs; Providing that veterans who were discharged or released under any condition, individuals who are current or former United States Department of Defense contractors, and individuals who are current or former military members of a foreign allied country are eligible in a certain Military Veterans and Servicemembers Court Program, etc. JU 03/04/2019 Favorable ACJ AP	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, March 4, 2019, 3:30—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 256 Baxley (Identical H 535)	Child Protection Teams; Revising the definition of the term "officer, employee, or agent," as it applies to immunity from personal liability in certain actions, to include any member of a child protection team established by the Department of Health in certain circumstances, etc. CF 02/04/2019 Favorable JU 02/19/2019 Not Considered JU 03/04/2019 Fav/CS RC	Fav/CS Yeas 6 Nays 0
9	SB 656 Baxley (Linked S 1764)	Background Screening; Requiring that certain standards and procedures for foreign language court interpreters and mediators, respectively, include level 2 background screenings, etc. JU 03/04/2019 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0
10	SJR 690 Rodriguez (Compare HJR 53)	Single Subject Limitation for Taxation and Budget Reform Commission; Proposing an amendment to the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Taxation and Budget Reform Commission be limited to a single subject, etc. JU 03/04/2019 Favorable EE RC	Favorable Yeas 6 Nays 0
11	SB 780 Simmons (Similar H 795)	Office of the Judges of Compensation Claims; Specifying the salaries of full-time judges of compensation claims and the Deputy Chief Judge; requiring that salaries be paid out of the Workers' Compensation Administration Trust Fund, etc. JU 03/04/2019 Favorable AEG AP	Favorable Yeas 6 Nays 0
12	SB 968 Simmons (Identical H 571)	Court Reporter Registry; Requiring the Supreme Court to create and administer a court reporter registry; requiring court reporters to register with the Supreme Court by a specified date, etc. JU 03/04/2019 Favorable ACJ AP	Favorable Yeas 6 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 160

INTRODUCER: Criminal Justice Committee and Senator Book

SUBJECT: Prohibited Acts in Connection with Obscene or Lewd Materials

DATE: March 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.	Tulloch	Cibula	JU	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 160 prohibits a person from knowingly doing any of the following with an obscene, child-like sex doll:

- Selling, lending, giving away, distributing, transmitting, showing, or transmuting;
- Offering to sell, lend, give away, distribute, transmit, show, or transmute;
- Having in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or
- Advertising in any manner.

The bill provides that a person who violates this provision commits a first degree misdemeanor, while a second or subsequent violation is a third degree felony.

The bill also prohibits a person from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise. A violation of this provision is punishable as a second degree misdemeanor and a subsequent violation is punishable as a first degree misdemeanor.

Additionally, multiple sections of law are reenacted by the bill to incorporate changes made by the bill.

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. To the extent that the felony and misdemeanor created in the bill results in persons being convicted,

the bill may result in a positive indeterminate fiscal impact on prisons and/or jails (i.e. an increase in prison and/or jail beds).

The bill is effective October 1, 2019.

II. Present Situation:

Obscenity and the Law

The First Amendment of the U.S. Constitution states that, “Congress shall make no law . . . abridging the freedom of speech”¹ This language prohibits the government from having the ability to constrain the speech of citizens.²

However, there are some exceptions to this outright prohibition. The Supreme Court has ruled over time that some forms of speech are not protected by the First Amendment. Among the types of unprotected speech are child pornography,³ “fighting words,” and obscenity.⁴

Case Law Prohibiting the Use of Obscenity

There have been numerous cases that have made it to the United States Supreme Court regarding the issue of obscenity. In 1957, the Court decided *Roth v. U.S.*, a case in which the defendant was challenging the constitutionality of a federal obscenity statute⁵ that prohibited the mailing of “obscene, lewd, lascivious, indecent, filthy, or vile” materials.⁶ The Court was faced with the pointed question of whether obscenity was protected speech.⁷ In its analysis, the Court considered the state laws in effect at the time the U.S. Constitution was ratified in 1792, and noted that most of these states provided criminal punishments for using certain types of speech, such as libel and obscenity. The Court concluded that, “In light of this history, it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance.”⁸

The Court further explained that “[a]ll ideas having even the slightest redeeming social importance” have the full protection of the First Amendment’s guaranties.⁹ Obscenity, however, was not an “essential part of any exposition of ideas” and was of “such slight social value” that

¹ U.S. CONST. amend. I.

² Kathleen Ann Ruane, *Freedom of Speech and Press: Exceptions to the First Amendment*, Congressional Research Service, summary page, (September 8, 2014), available at <https://fas.org/sgp/crs/misc/95-815.pdf> (last visited Feb. 28, 2019).

³ “Child pornography” means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical or other means, of sexually explicit conduct, where (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct. See 18 U.S.C.A. s. 2256(8).

⁴ See n. 2, *supra*.

⁵ 18 U.S.C.A s. 1461.

⁶ *Roth v. U.S.*, 354 U.S. 476, 479 (1957).

⁷ *Id.* at 481.

⁸ *Id.* at 482-83.

⁹ *Id.* at 484.

any benefit derived from its use was “clearly outweighed by the social interest in order and morality.”¹⁰ As a result, the Court held that obscenity was not constitutionally protected speech.¹¹

Though the Court had clearly declined to extend protection to obscenity, the more difficult question over time came in defining it. In *Roth*, the Court classified obscene material as that which “deals with sex in a manner appealing to *prurient* interest,” and defined prurient as “having a tendency to excite lustful thoughts.”¹² Similar difficulties arose a few years later for the Court in *Jacobellis v. Ohio*, where a man’s conviction for possession and exhibition of a film portraying a single explicit sexual scene hinged on whether the French film at issue was in fact obscene.¹³ The Court held that the film was not obscene;¹⁴ and it was in Justice Stewart’s concurrence that he famously demonstrated the difficulty of explaining obscenity, stating it is “indefinable” but “I know it when I see it.”¹⁵

It wasn’t until the Court’s decision in *Miller v. California* that clarity in defining obscenity was established with the creation of what is now commonly referred to as the *Miller* Test.¹⁶ The three-prong *Miller* Test requires the trier of fact to consider the following factors to determine if something is obscene:

- (1) Whether “the average person, applying contemporary community standards” would find that the work, taken as a whole, appeals to the prurient interest;
- (2) Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- (3) Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.¹⁷

Obscenity Involving Minors

Federal law prohibits obscenity involving minors, and those who violate the law often face harsher penalties than if the offense involved adults only.¹⁸ The law prohibits any individual from knowingly transferring or attempting to transfer obscene material using any means to a minor under 16 years of age.¹⁹ It is also prohibited for any person to knowingly produce, distribute, receive, or possess with intent to transfer or distribute material that appears to depict minors engaged in sexually explicit conduct and is deemed obscene.²⁰

The threshold for determining whether material involving minors is obscene is slightly lower than the *Miller* Test. Material involving minors can be considered obscene if:

- It depicts a minor engaging in sexually explicit conduct;

¹⁰ *Id.* at 485 (quoting *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 571-72 (1942)(internal citations omitted).

¹¹ *Id.* at 485.

¹² *Id.* at 487 and n. 20.

¹³ *Jacobellis v. Ohio*, 378 U.S. 184, 185-87, 193 (1964).

¹⁴ *Id.* at 193.

¹⁵ *Id.* at 197.

¹⁶ *Miller v. California*, 413 U.S. 15, 24 (1973).

¹⁷ *Id.* (citations omitted).

¹⁸ The United States Department of Justice, *Citizen’s Guide to U.S. Federal Law on Obscenity*, available at <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-obscenity> (last visited Feb. 28, 2019).

¹⁹ 18 U.S.C.A. s. 1470 (1998).

²⁰ 18 U.S.C.A. s. 1466A. (2003).

- It depicts an image that is, or appears to be a minor engaged in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse; and
- The image lacks serious literary, artistic, political, or scientific value.²¹

The Court tends to grant greater protections to minors, routinely upholding state statutes that penalize those who possess or disseminate obscene material relating to minors. In *New York v. Ferber*, the defendant was convicted for distributing material that depicted a sexual performance by a minor under the age of 16 in violation of a state law that prohibited persons from knowingly promoting material that depicted such a performance.²² In *Ferber*, the Court held that the statute at issue did not violate the First Amendment, explaining that the states have a compelling interest, and thus are granted more leeway, in regulating pornographic depictions of children.²³ The Court reasoned that such material bears so heavily on the welfare of children engaged in its production that a balance of compelling interests is struck and, therefore, these materials are not afforded the protections of the First Amendment.²⁴

Florida Obscenity Laws

In *Miller*, the Court explained that state laws that regulate obscene material must be carefully limited as written or construed in order to adequately protect the values of the First Amendment.²⁵ Current Florida law defines “obscene” to mean the status of material which:

- (1) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- (2) Depicts or describes, in a patently offensive way, sexual conduct;²⁶ and
- (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value.²⁷

Under this state’s obscenity statute, the possession, custody, or control of obscene material²⁸ by any person who knowingly sells, lends, gives away, distributes, transmits, shows, transmutes, offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show,

²¹ *Id.* See also *New York v. Ferber*, 458 U.S. 747, 764 (1982).

²² *New York v. Ferber*, 458 U.S. 747, 749 (1982).

²³ *Ferber*, 458 U.S. at 756.

²⁴ *Id.* at 747-48, 756-62.

²⁵ *Miller*, 413 U.S. 15, 24-25.

²⁶ “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic 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 a 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 circumstance constitute “sexual conduct.” Section 847.001(16), F.S.

²⁷ Section 847.001(10), F.S.

²⁸ The following materials are listed as examples of an obscene material: Any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose. Section 847.011(1)(a), F.S.

transmute, or advertise in any manner commits a first degree misdemeanor.²⁹ A subsequent violation is punishable as a third degree felony.³⁰

Additionally, the possession, custody, or control of obscene material by any person who does not have the intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise commits a second degree misdemeanor.³¹ A subsequent violation is punishable as a first degree misdemeanor.³²

The courts have consistently held that the obscenity statute is not overbroad; and that, in light of the fact that obscenity is not protected by the First and Fourteenth Amendments, obscenity is subject to limited regulation pursuant to the police power left to the states.³³

If a violation of the obscenity statute is based on the distribution or offer to distribute material that depicts a minor engaged in any act or conduct that is harmful to minors, such a violation is a third degree felony.³⁴ The penalty applies regardless of a person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent. Additionally, none of these circumstances may be raised as a defense in a prosecution.³⁵

Sex Dolls

The sex toy industry is now a \$15 billion industry, with projections that it will surpass \$50 billion by 2020.³⁶ A main component in today's industry are sex dolls – a type of sex toy that is shaped and sized to resemble a human sexual partner.³⁷ Such dolls are engineered to warm to the human touch,³⁸ customizable to include accessories, and equipped with settings to change facial expressions.³⁹

²⁹ Section 847.011(1)(a), F.S. A first degree misdemeanor is punishable by a state prison term not exceeding 1 year, a fine not exceeding \$1,000, or both. Sections 775.082 and 775.083, F.S.

³⁰ *Id.* A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082 and 775.083, F.S.

³¹ Section 847.011(2), F.S. A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, a fine not exceeding \$500, or both. Sections 775.082 and 775.083, F.S.

³² *Id.*

³³ *Johnson v. State*, 351 So. 2d 10, 11 (Fla. 1977).

³⁴ Section 847.011(1)(c), F.S.

³⁵ Section 847.011(1)(d), F.S.

³⁶ Janet Burns, *How the 'Niche' Sex Toy Market Grew Into an Unstoppable \$15B Industry*, Forbes (July 15, 2016), available at <https://www.forbes.com/sites/janetwburns/2016/07/15/adult-expo-founders-talk-15b-sex-toy-industry-after-20-years-in-the-fray/#49bad9be5bb9> (last visited Feb. 28, 2019).

³⁷ Ally Donnelly, *Child Sex Dolls: Why Aren't They Illegal?*, NECN, (July 23, 2018), available at <https://www.necn.com/news/new-england/Child-Sex-Dolls-Why-Arent-They-Illegal-488937711.html> (last visited Feb. 28, 2019).

³⁸ Alice B. Lloyd, *Congressman: Child Sex Dolls Are Coming – And We're Not Ready*, The Weekly Standard (March 15, 2018), available at <https://www.weeklystandard.com/alice-b-lloyd/congressman-child-sex-dolls-are-coming-mdash-and-were-not-ready> (last visited Feb. 28, 2019).

³⁹ Alanna Vagianos, *House Passes Bill Banning Sex Dolls That Look Like Children*, Huffington Post (June 15, 2018), available at https://www.huffingtonpost.com/entry/house-passes-bill-banning-sex-dolls-that-look-like-children_us_5b23c2f7e4b07cb1712dcc7d (last visited Feb. 28, 2019).

Sex dolls that resemble children are made overseas and imported into the U.S., where they are becoming increasingly prevalent.⁴⁰ Child-like sex dolls are robots that are made to look lifelike with prepubescent features and are engineered to warm to the human touch.⁴¹ Such dolls are manufactured in China, Hong Kong, or Japan, and are shipped to the U.S. labeled as clothing mannequins or models in order to avoid detection.⁴² A few U.S.-based internet retailers offer these dolls for sale; however, in April 2018, Amazon announced that it will no longer sell child-like sex dolls.⁴³

Banning Child-like Sex Dolls Outside of the U.S.

There is a growing trend toward banning both the importation and possession of child-like sex dolls. In July 2017, a judge in the United Kingdom ruled that a child-like sex doll that a man was attempting to import was obscene, which led to his conviction for being in violation of a law banning the importation of obscene items. The judge explained that, “any right-thinking person” would consider the doll obscene.⁴⁴

In Canada, there were at least 42 child-like sex dolls seized by Canadian border officials between January 2016 and August 2018. The dolls were seized and labeled as illegal child pornography. Despite there being no tangible scientific evidence to show child-like sex dolls lead to acts against children, a lawyer for the Canadian Centre for Child Protection explained that acting out a sexual fantasy on a realistic doll could lead someone to prey on a real child.⁴⁵

Federal Laws Banning Child-like Sex Dolls

While there is no current ban in the U.S. on importation or private possession of child-like sex dolls, there is a federal law banning the importation of obscene matters. The law makes it a crime to bring into the U.S., or any place subject to the jurisdiction of the U.S., “any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion picture film, paper, letter, writing, print, or other matter of indecent character.”⁴⁶ A first-time offender of this provision shall be fined or imprisoned to a maximum term of 5 years, or both. A subsequent offense shall be subject to a fine or imprisonment of a maximum term of 10 years, or both.⁴⁷

However, in 2018, legislation was passed in the House of Representatives that prohibited the importation of child-like sex dolls, robots, or mannequins.⁴⁸ The Curbing Realistic Exploitative Electronic Pedophilic Robots Act of 2017 (CREEPER Act) would have been the first law preventing the selling and distributing of child-like sex dolls and robots in the U.S.⁴⁹ Regulation of interstate commerce is within congressional power, which is why the CREEPER Act aims to

⁴⁰ See n. 38, *supra*.

⁴¹ *Id.*

⁴² See n. 39, *supra*.

⁴³ *Id.*

⁴⁴ BBC, *Child sex doll an obscene item, judge rules*, (July 31, 2017), available at <https://www.bbc.com/news/uk-40776622> (last visited Feb. 28, 2019).

⁴⁵ Rita Celli and Kathleen Harris, *Dozens of child sex dolls seized by Canadian border agents*, CBC News, (December 12, 2018), available at <https://www.cbc.ca/news/politics/cbsa-border-child-sex-dolls-1.4941213> (last visited Feb. 28, 2019).

⁴⁶ 18 U.S.C.A. s. 1462 (1996).

⁴⁷ *Id.*

⁴⁸ H.R. 4655, 115th Congress 2d Session (2017).

⁴⁹ See n. 39, *supra*.

stop the selling and distributing of these dolls in the U.S., rather than the possession of them. Critics of the legislation claimed that it did not go far enough, in part because the law did not criminalize possession of the dolls.⁵⁰ A similar law in the U.K. prohibits importation of the dolls, but does not prohibit possession.⁵¹

The legislative findings of the CREEPER Act expressed concern that the dolls make rape easier by teaching the rapist how to subdue the victim and overcome resistance.⁵² With this, some have expressed concern that the life-like nature of the dolls can serve as a stepping stone toward committing an actual rape by permitting those unsure about their desires to test them out on the dolls. Others have suggested that these child-like sex dolls can normalize a pedophile's behaviors and potentially shift society's norms to make pedophilia more socially acceptable.⁵³

While possession and distribution of child pornography is criminalized in the U.S., both courts and experts alike have maintained that possession of a child-like sex doll is not considered to be child pornography. In Kentucky, a county judge dropped child pornography charges against a man who was arrested after police tracked a package from China to the man's home that contained two child-like sex dolls. The judge dismissed the case because there was no actual child involved.⁵⁴ In July 2018, police officers went to a man's home in Shirley, Massachusetts, after being notified by eBay that he had purchased a child-like sex doll. This purchase, coupled with a previous eBay purchase of "a doll with the height and weight of an average 8-year-old girl" prompted police to get a search warrant for the man's home. During the search, officers found the doll, which he was not charged for having, and child pornography, which lead to his arrest.⁵⁵

III. Effect of Proposed Changes:

The bill prohibits a person from knowingly doing any of the following with an obscene, child-like sex doll:

- Selling, lending, giving away, distributing, transmitting, showing, or transmuting;
- Offering to sell, lend, give away, distribute, transmit, show, or transmute;
- Having in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or
- Advertising in any manner.

The bill provides that a person who violates this provision commits a first degree misdemeanor and a second or subsequent violation is a third degree felony.

⁵⁰ See n. 37, *supra*.

⁵¹ Dr. Marie-Helen Maras and Dr. Lauren R. Shapiro, *Child Sex Dolls and Robots: More Than Just an Uncanny Valley*, Journal of Internet Law, pg. 14 (December 2017), available at https://www.researchgate.net/publication/321137227_Child_Sex_Dolls_and_Robots_More_Than_Just_an_Uncanny_Valley (last visited Feb. 28, 2019).

⁵² H.R. 4655, 115th Congress 2d Session (2017).

⁵³ John F. Banzhaf, *House Bans Child Sex Dolls – As Legal Expert Suggested*, ValueWalk, (June 13, 2018), available at <https://www.valuewalk.com/2018/06/house-bans-child-sex-dolls/> (last visited Feb. 28, 2019).

⁵⁴ WKRC, *Kenton County man who police say bought child sex dolls no longer facing charges*, (October 4, 2018), available at <https://local12.com/news/local/kenton-county-man-who-police-say-bought-child-sex-dolls-no-longer-facing-charges> (last visited Feb. 28, 2019).

⁵⁵ See n. 37, *supra*.

The bill also prohibits a person from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise. A violation of this provision is punishable as a second degree misdemeanor and a subsequent violation is punishable as a first degree misdemeanor.

The bill reenacts ss. 772.102, 847.02, 847.03, 847.09, 895.02, 921.0022, 933.02, 933.03, and 943.325, F.S., for the purpose of incorporating the amendments made by the bill to s. 847.011, F.S., by reference to that statute.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The First Amendment of the U.S. Constitution prevents the government from creating laws that restrict the speech of citizens. The bill makes it a crime to knowingly possess or intend to sell or lend, among other things, an obscene child-like sex doll. To the extent that this prohibition restricts a person's right to free speech, the bill may implicate the First Amendment. However, such a provision would likely be upheld as the courts have routinely refused to extend protection to obscene speech involving minors.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. To the extent that the felony and misdemeanor created in the bill results in persons being convicted for a felony or misdemeanor, the bill may result in a positive indeterminate fiscal impact on prisons and/or jails (i.e. an increase in prison and/or jail beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 847.011 of the Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 772.102, 847.02, 847.03, 847.09, 895.02, 921.0022, 933.02, 933.03, and 943.325.

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

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

CS by Criminal Justice on February 11, 2019:

The Committee Substitute provides that it is a second degree misdemeanor for a person to knowingly have possession, custody, or control of an obscene, child-like sex doll, with a subsequent violation being punishable as a first degree misdemeanor.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Book

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A bill to be entitled

An act relating to prohibited acts in connection with obscene or lewd materials; amending s. 847.011, F.S.; prohibiting a person from knowingly selling, lending, giving away, distributing, transmitting, showing, or transmuting; offering to commit such actions; having in his or her possession, custody, or control with the intent to commit such actions; or advertising in any manner an obscene, child-like sex doll; providing criminal penalties; prohibiting a person from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll without the intent to commit certain actions; providing criminal penalties; reenacting ss. 772.102(1)(a), 847.02, 847.03, 847.09(2), 895.02(8)(a), 921.0022(3)(f), 933.02, 933.03, and 943.325(2)(g), F.S., relating to the definition of the term "criminal activity," the confiscation of obscene material, an officer seizing obscene material, legislative intent, the definition of the term "racketeering activity," level 6 of the offense severity ranking chart, grounds for the issuance of a search warrant, destruction of obscene prints and literature, and the definition of the term "qualifying offender," respectively, to incorporate the amendment made to s. 847.011, F.S., in references thereto; providing an effective date.

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

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Section 1. Present subsections (5) through (10) of section 847.011, Florida Statutes, are redesignated as subsections (6) through (11), respectively, and a new subsection (5) is added to that section, to read:

847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.-

(5) (a) A person may not knowingly sell, lend, give away, distribute, transmit, show, or transmute; offer to sell, lend, give away, distribute, transmit, show, or transmute; have in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or advertise in any manner an obscene, child-like sex doll. A person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who is convicted of violating paragraph (a) a second or subsequent time commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who knowingly has in his or her possession, custody, or control an obscene, child-like sex doll without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it is not necessary to allege or prove the absence of such intent.

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Section 2. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 772.102, Florida Statutes, is reenacted to read:

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

(1) "Criminal activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by indictment or information under the following provisions:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 414.39, relating to public assistance fraud.

3. Section 440.105 or s. 440.106, relating to workers' compensation.

4. Part IV of chapter 501, relating to telemarketing.

5. Chapter 517, relating to securities transactions.

6. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

7. Chapter 550, relating to jai alai frontons.

8. Chapter 552, relating to the manufacture, distribution, and use of explosives.

9. Chapter 562, relating to beverage law enforcement.

10. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

11. Chapter 687, relating to interest and usurious

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practices.

12. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

13. Chapter 782, relating to homicide.

14. Chapter 784, relating to assault and battery.

15. Chapter 787, relating to kidnapping or human trafficking.

16. Chapter 790, relating to weapons and firearms.

17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

18. Chapter 806, relating to arson.

19. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.

20. Chapter 812, relating to theft, robbery, and related crimes.

21. Chapter 815, relating to computer-related crimes.

22. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

23. Section 827.071, relating to commercial sexual exploitation of children.

24. Chapter 831, relating to forgery and counterfeiting.

25. Chapter 832, relating to issuance of worthless checks and drafts.

26. Section 836.05, relating to extortion.

27. Chapter 837, relating to perjury.

28. Chapter 838, relating to bribery and misuse of public office.

29. Chapter 843, relating to obstruction of justice.

30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or

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s. 847.07, relating to obscene literature and profanity.

31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

32. Chapter 893, relating to drug abuse prevention and control.

33. Section 914.22 or s. 914.23, relating to witnesses, victims, or informants.

34. Section 918.12 or s. 918.13, relating to tampering with jurors and evidence.

Section 3. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, section 847.02, Florida Statutes, is reenacted to read:

847.02 Confiscation of obscene material.—Whenever anyone is convicted under s. 847.011, the court in awarding sentence shall make an order confiscating said obscene material and authorize the sheriff of the county in which the material is held to destroy the same. The sheriff shall file with the court a certificate of his or her compliance.

Section 4. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, section 847.03, Florida Statutes, is reenacted to read:

847.03 Officer to seize obscene material.—Whenever any officer arrests any person charged with any offense under s. 847.011, the officer shall seize said obscene material and take the same into his or her custody to await the sentence of the court upon the trial of the offender.

Section 5. For the purpose of incorporating the amendment

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made by this act to section 847.011, Florida Statutes, in a reference thereto, subsection (2) of section 847.09, Florida Statutes, is reenacted to read:

847.09 Legislative intent.—

(2) Nothing in ss. 847.07-847.09 shall be construed to repeal or in any way supersede the provisions of s. 847.011, s. 847.012, or s. 847.013.

Section 6. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, paragraph (a) of subsection (8) of section 895.02, Florida Statutes, is reenacted to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(8) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or s. 440.106, relating to workers'

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175 compensation.

176 7. Section 443.071(4), relating to creation of a fictitious
177 employer scheme to commit reemployment assistance fraud.

178 8. Section 465.0161, relating to distribution of medicinal
179 drugs without a permit as an Internet pharmacy.

180 9. Section 499.0051, relating to crimes involving
181 contraband, adulterated, or misbranded drugs.

182 10. Part IV of chapter 501, relating to telemarketing.

183 11. Chapter 517, relating to sale of securities and
184 investor protection.

185 12. Section 550.235 or s. 550.3551, relating to dogracing
186 and horseracing.

187 13. Chapter 550, relating to jai alai frontons.

188 14. Section 551.109, relating to slot machine gaming.

189 15. Chapter 552, relating to the manufacture, distribution,
190 and use of explosives.

191 16. Chapter 560, relating to money transmitters, if the
192 violation is punishable as a felony.

193 17. Chapter 562, relating to beverage law enforcement.

194 18. Section 624.401, relating to transacting insurance
195 without a certificate of authority, s. 624.437(4)(c)1., relating
196 to operating an unauthorized multiple-employer welfare
197 arrangement, or s. 626.902(1)(b), relating to representing or
198 aiding an unauthorized insurer.

199 19. Section 655.50, relating to reports of currency
200 transactions, when such violation is punishable as a felony.

201 20. Chapter 687, relating to interest and usurious
202 practices.

203 21. Section 721.08, s. 721.09, or s. 721.13, relating to

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204 real estate timeshare plans.

205 22. Section 775.13(5)(b), relating to registration of
206 persons found to have committed any offense for the purpose of
207 benefiting, promoting, or furthering the interests of a criminal
208 gang.

209 23. Section 777.03, relating to commission of crimes by
210 accessories after the fact.

211 24. Chapter 782, relating to homicide.

212 25. Chapter 784, relating to assault and battery.

213 26. Chapter 787, relating to kidnapping or human
214 trafficking.

215 27. Chapter 790, relating to weapons and firearms.

216 28. Chapter 794, relating to sexual battery, but only if
217 such crime was committed with the intent to benefit, promote, or
218 further the interests of a criminal gang, or for the purpose of
219 increasing a criminal gang member's own standing or position
220 within a criminal gang.

221 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
222 796.05, or s. 796.07, relating to prostitution.

223 30. Chapter 806, relating to arson and criminal mischief.

224 31. Chapter 810, relating to burglary and trespass.

225 32. Chapter 812, relating to theft, robbery, and related
226 crimes.

227 33. Chapter 815, relating to computer-related crimes.

228 34. Chapter 817, relating to fraudulent practices, false
229 pretenses, fraud generally, credit card crimes, and patient
230 brokering.

231 35. Chapter 825, relating to abuse, neglect, or
232 exploitation of an elderly person or disabled adult.

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233 36. Section 827.071, relating to commercial sexual
 234 exploitation of children.

235 37. Section 828.122, relating to fighting or baiting
 236 animals.

237 38. Chapter 831, relating to forgery and counterfeiting.

238 39. Chapter 832, relating to issuance of worthless checks
 239 and drafts.

240 40. Section 836.05, relating to extortion.

241 41. Chapter 837, relating to perjury.

242 42. Chapter 838, relating to bribery and misuse of public
 243 office.

244 43. Chapter 843, relating to obstruction of justice.

245 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
 246 s. 847.07, relating to obscene literature and profanity.

247 45. Chapter 849, relating to gambling, lottery, gambling or
 248 gaming devices, slot machines, or any of the provisions within
 249 that chapter.

250 46. Chapter 874, relating to criminal gangs.

251 47. Chapter 893, relating to drug abuse prevention and
 252 control.

253 48. Chapter 896, relating to offenses related to financial
 254 transactions.

255 49. Sections 914.22 and 914.23, relating to tampering with
 256 or harassing a witness, victim, or informant, and retaliation
 257 against a witness, victim, or informant.

258 50. Sections 918.12 and 918.13, relating to tampering with
 259 jurors and evidence.

260 Section 7. For the purpose of incorporating the amendment
 261 made by this act to section 847.011, Florida Statutes, in a

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262 reference thereto, paragraph (f) of subsection (3) of section
 263 921.0022, Florida Statutes, is reenacted to read:

264 921.0022 Criminal Punishment Code; offense severity ranking
 265 chart.—

266 (3) OFFENSE SEVERITY RANKING CHART

267 (f) LEVEL 6

268

Florida Statute	Felony Degree	Description
269 316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
270 316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
271 400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
272 499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
273 499.0051(3)	2nd	Knowing purchase or

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			receipt of prescription drug from unauthorized person.
274	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
275	775.0875(1)	3rd	Taking firearm from law enforcement officer.
276	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
277	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
278	784.041	3rd	Felony battery; domestic battery by strangulation.
279	784.048(3)	3rd	Aggravated stalking; credible threat.
280	784.048(5)	3rd	Aggravated stalking of person under 16.
281	784.07(2)(c)	2nd	Aggravated assault on

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			law enforcement officer.
282	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
283	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
284	784.081(2)	2nd	Aggravated assault on specified official or employee.
285	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
286	784.083(2)	2nd	Aggravated assault on code inspector.
287	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
288	790.115(2)(d)	2nd	Discharging firearm or

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			weapon on school property.
289	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
290	790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
291	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
292	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
293	794.05(1)	2nd	Unlawful sexual activity with specified minor.
294			

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	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
295	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
296	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
297	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
298	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
299	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
300			

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301	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
302	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
303	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
304	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
305	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
306	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
307	825.102(1)	3rd	Abuse of an elderly person or disabled adult.

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308	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
309	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
310	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
311	827.03(2)(c)	3rd	Abuse of a child.
312	827.03(2)(d)	3rd	Neglect of a child.
313	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
314	836.05	2nd	Threats; extortion.
	836.10	2nd	Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.

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315 843.12 3rd Aids or assists person
to escape.

316 847.011 3rd Distributing, offering
to distribute, or
possessing with intent
to distribute obscene
materials depicting
minors.

317 847.012 3rd Knowingly using a minor
in the production of
materials harmful to
minors.

318 847.0135(2) 3rd Facilitates sexual
conduct of or with a
minor or the visual
depiction of such
conduct.

319 914.23 2nd Retaliation against a
witness, victim, or
informant, with bodily
injury.

320 944.35(3) (a) 2. 3rd Committing malicious
battery upon or

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inflicting cruel or
inhuman treatment on an
inmate or offender on
community supervision,
resulting in great
bodily harm.

321 944.40 2nd Escapes.

322 944.46 3rd Harboring, concealing,
aiding escaped
prisoners.

323 944.47(1) (a) 5. 2nd Introduction of
contraband (firearm,
weapon, or explosive)
into correctional
facility.

324 951.22(1) 3rd Intoxicating drug,
firearm, or weapon
introduced into county
facility.

325

326 Section 8. For the purpose of incorporating the amendment

327 made by this act to section 847.011, Florida Statutes, in a

328 reference thereto, section 933.02, Florida Statutes, is

329 reenacted to read:

330 933.02 Grounds for issuance of search warrant.—Upon proper

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affidavits being made, a search warrant may be issued under the provisions of this chapter upon any of the following grounds:

(1) When the property shall have been stolen or embezzled in violation of law;

(2) When any property shall have been used:

(a) As a means to commit any crime;

(b) In connection with gambling, gambling implements and appliances; or

(c) In violation of s. 847.011 or other laws in reference to obscene prints and literature;

(3) When any property constitutes evidence relevant to proving that a felony has been committed;

(4) When any property is being held or possessed:

(a) In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;

(b) In violation of the fish and game laws;

(c) In violation of the laws relative to food and drug; or

(d) In violation of the laws relative to citrus disease pursuant to s. 581.184; or

(5) When the laws in relation to cruelty to animals, as provided in chapter 828, have been or are violated in any particular building or place.

This section also applies to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.

Section 9. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, section 933.03, Florida Statutes, is

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reenacted to read:

933.03 Destruction of obscene prints and literature.—All obscene prints and literature, or other things mentioned in s. 847.011 found by an officer in executing a search warrant, or produced or brought into court, shall be safely kept so long as is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the case is brought.

Section 10. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, paragraph (g) of subsection (2) of section 943.325, Florida Statutes, is reenacted to read:

943.325 DNA database.—

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

(g) "Qualifying offender" means any person, including juveniles and adults, who is:

1.a. Committed to a county jail;

b. Committed to or under the supervision of the Department of Corrections, including persons incarcerated in a private correctional institution operated under contract pursuant to s. 944.105;

c. Committed to or under the supervision of the Department of Juvenile Justice;

d. Transferred to this state under the Interstate Compact on Juveniles, part XIII of chapter 985; or

e. Accepted under Article IV of the Interstate Corrections Compact, part III of chapter 941; and who is:

2.a. Convicted of any felony offense or attempted felony offense in this state or of a similar offense in another

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389 jurisdiction;

390 b. Convicted of a misdemeanor violation of s. 784.048, s.
391 810.14, s. 847.011, s. 847.013, s. 847.0135, or s. 877.26, or an
392 offense that was found, pursuant to s. 874.04, to have been
393 committed for the purpose of benefiting, promoting, or
394 furthering the interests of a criminal gang as defined in s.
395 874.03; or

396 c. Arrested for any felony offense or attempted felony
397 offense in this state.

398 Section 11. This act shall take effect October 1, 2019.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Children, Families, and Elder Affairs, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human
Services
Health Policy
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR LAUREN BOOK
32nd District

March 1, 2019

Chair David Simmons
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Simmons:

I respectfully request that **SB 160—Prohibited Acts in Connection with Obscene or Lewd Materials** be placed on the agenda for the next Committee on Judiciary meeting.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book
Senate District 32

Cc: Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant

REPLY TO:

- ☐ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
- ☐ 202 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/04/19

Meeting Date

SB160

Bill Number (if applicable)

Topic SB160

Amendment Barcode (if applicable)

Name Don Delano

Job Title UCF Applied Sociology Graduate Student/Researcher

Address P.O. Box 4172

Phone 321-541-0496

Street

Winter Park

FL

32793

City

State

Zip

Email don.delano@knights.ucf.edu

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.4.19*Meeting Date*160*Bill Number (if applicable)*Topic Prohibited Acts in Connection Obscene or Lewd Materials*Amendment Barcode (if applicable)*Name Barney Bishop IIIJob Title President & CEOAddress 2215 Thomasville RoadPhone 850.510.9922*Street*TallahasseeFL32308Email barney@barneybishop.com*City**State**Zip*Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Smart Justice AllianceAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/2019

Meeting Date

160

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☒ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 746

INTRODUCER: Senator Wright

SUBJECT: Public Records/Judicial Assistants

DATE: March 5, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Tulloch	Cibula	JU	Favorable
2. _____	_____	GO	_____
3. _____	_____	RC	_____

I. Summary:

SB 746 makes the following information for current or former judicial assistants to justices and judges exempt from the disclosure requirements of the public records laws:

- The judicial assistant's address, date of birth, and telephone number.
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the judicial assistant's spouse and children.
- The names and locations of schools and day care facilities attended by the judicial assistant's children.

The effective date of the bill is July 1, 2019.

II. Present Situation:

Public Records Law

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

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

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

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

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

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

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

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ An exemption serves an identifiable purpose if it meets one of the following statutory purposes, the Legislature finds that the purpose of the exemption outweighs open government policy, *and* the purpose cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹²

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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

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

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² Section 119.15(6)(b)1., F.S.

- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹³ or
- It protects trade or business secrets.

Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill enacting an exemption may not contain other substantive provisions¹⁴ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁵

When creating or expanding a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'¹⁶ Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.¹⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁸ with specified exceptions.¹⁹ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²⁰ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.²¹

¹³ Section 119.15(6)(b)2., F.S.

¹⁴ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁵ FLA. CONST., art. I, s. 24(c).

¹⁶ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁷ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁸ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁹ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(b), F.S. In examining an exemption, the Review Act asks the Legislature to carefully question the purpose and necessity of reenacting the exemption, and specifically requires that the Legislature consider the following questions:

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

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.²²

(1) Social Security Numbers

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.²³ An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.²⁴

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.²⁵ This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.²⁶

(2) Medical Information

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current and former employees.²⁷

(3) Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.²⁸

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., make exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses and their children. The employing agency as well as the employee may assert the right to the exemption

²² Section 119.071(4)(a) and (b), F.S.

²³ Section 119.071(4)(a)1., F.S.

²⁴ Section 119.071(4)(a)1., F.S.

²⁵ Section 119.071(5)(a)5., F.S.

²⁶ Section 119.071(5)(a)5.f. and g., F.S.

²⁷ Section 119.071(4)(b)1., F.S.

²⁸ Section 119.071(4)(b)2., F.S.

by submitting a written request to each agency which holds the employee's information.²⁹ Additionally, all of these exemptions have retroactive application.³⁰

Justices and Judges

In Florida, the justices of the Supreme Court and the judges in Florida's five District Courts of Appeal, 20 Circuit Courts, and 67 County Courts adjudicate all legal matters and oversee the legal profession.³¹ Additionally, all judges and justices preside over matters that may be emotionally charged, from a trial, appeal, or other type of review of a criminal proceeding to dependency and other domestic or family law matters.³²

In 1991, the Legislature enacted a public records exemption for current justices and judges and their families.³³ Because public necessity statements were not required for public records exemptions prior to the adoption of Article I, section 24, Florida Constitution, there is no public necessity statement explaining why the exemption was created.

In 2012, the Legislature expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members.³⁴ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual. In addition, the Legislature expanded the exemption to include former justices and judges as well as their families. The public necessity statement for this expansion indicated that justices and judges as well as their family members can be targets of revenge and that risk continues after justices and judges complete their public service.³⁵

In 2017, the Legislature expanded this exemption to also exempt from disclosure the names of the justices' or judges' spouses and children.³⁶

Judicial Assistants

Judicial assistants are assigned to justices or judges to provide administrative, secretarial and clerical support and to complete tasks of high responsibility. At the trial court level in particular, the judicial assistant is generally responsible to: maintain the judge's professional and personal calendar; coordinate with attorneys to schedule hearings and trials; prepare orders, notices, and other correspondence; and prepare financial disclosures and travel vouchers. Most significantly, trial court level judicial assistants interact "with attorneys and litigants and their family members to resolve problems such as scheduling conflicts or other case-related issues."³⁷

²⁹ Section 119.071(4)(d)3., F.S.

³⁰ Section 119.071(4)(d)3., F.S.

³¹ FLA CONST. art V. *See also* Florida Courts, <http://www.flcourts.org/florida-courts> (last visited Feb. 24, 2019).

³² FLA CONST. art V., ss. 3.(b), 4.(b), 5.(b), 6.(b) (setting out the jurisdiction of the supreme court, district courts of appeal, circuit courts, and county courts, respectively); ss. 26.012, 34.01, F.S. (setting out the jurisdiction of the circuit and county courts, respectively).

³³ Ch. 91-149, Laws of Fla.

³⁴ Ch. 2012-149, Laws of Fla.

³⁵ Ch. 2012-149, Laws of Fla.

³⁶ Ch. 2017-66, Laws of Fla.

³⁷ Florida State Courts System Class Specification, Class Title: Judicial Assistant – Circuit Court, *Examples of Work Performed*, available at <https://www.flcourts.org/content/download/217825/1972896/Judicial-Assistant-Circuit-Court-508.pdf>.

Based on this type of interaction, several trial court judicial assistants have reported that attorneys, litigants, or a litigant's family members have held the judicial assistant responsible for an adverse decision made by the judge. These judicial assistants reported instances of a litigant or litigant's family members showing up at the judicial assistant's home, contacting the judicial assistant on his or her personal cell phone, making threats against the judicial assistant, or naming the judicial assistant in a civil law suit.³⁸

III. Effect of Proposed Changes:

Section 1 of the bill expands the public records exemption applicable to judges and justices in s. 119.071(4)(d)2.e., F.S. to include the justices' and judges' judicial assistants. If passed, the following information for current or former judicial assistants will become exempt:

- The judicial assistant's address, date of birth, and telephone number.
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the judicial assistant's spouse and children.
- The names and locations of schools and day care facilities attended by the judicial assistant's children.

Additionally, the bill extends the automatic repeal date for s. 119.071(4)(d)2.e., F.S., from October 2, 2022 to October 2, 2024.

Section 2 sets out the public necessity statement for expanding the foregoing exemption to judicial assistants. The public necessity statement provides that, because judicial assistants and their family members are at risk as targets of revenge or fraud by disgruntled litigants who know the judicial assistants' names, the personal information of former and current judicial assistants and their family members should be exempt from public disclosure.

Section 3 provides that the effective date of the bill is July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because the bill expands a public records exemption, pursuant to Article I, section 24(c) of the Florida Constitution, a two-thirds majority vote in each chamber is required to pass the bill into law.

C. Trust Funds Restrictions:

None.

³⁸ See Judicial Assistants Association of Florida, *JA Threats* (2019) (on file with Senate Judiciary Committee).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Wright

14-01023-19

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for certain identifying and
 5 location information of current and former judicial
 6 assistants and their spouses and children; providing
 7 for future legislative review and repeal of the
 8 exemption; providing a statement of public necessity;
 9 providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Paragraph (d) of subsection (4) of section
 14 119.071, Florida Statutes, is amended to read:
 15 119.071 General exemptions from inspection or copying of
 16 public records.—
 17 (4) AGENCY PERSONNEL INFORMATION.—
 18 (d)1. For purposes of this paragraph, the term "telephone
 19 numbers" includes home telephone numbers, personal cellular
 20 telephone numbers, personal pager telephone numbers, and
 21 telephone numbers associated with personal communications
 22 devices.
 23 2.a. The home addresses, telephone numbers, dates of birth,
 24 and photographs of active or former sworn or civilian law
 25 enforcement personnel, including correctional and correctional
 26 probation officers, personnel of the Department of Children and
 27 Families whose duties include the investigation of abuse,
 28 neglect, exploitation, fraud, theft, or other criminal
 29 activities, personnel of the Department of Health whose duties

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30 are to support the investigation of child abuse or neglect, and
 31 personnel of the Department of Revenue or local governments
 32 whose responsibilities include revenue collection and
 33 enforcement or child support enforcement; the names, home
 34 addresses, telephone numbers, photographs, dates of birth, and
 35 places of employment of the spouses and children of such
 36 personnel; and the names and locations of schools and day care
 37 facilities attended by the children of such personnel are exempt
 38 from s. 119.07(1) and s. 24(a), Art. I of the State
 39 Constitution. This sub-subparagraph is subject to the Open
 40 Government Sunset Review Act in accordance with s. 119.15 and
 41 shall stand repealed on October 2, 2022, unless reviewed and
 42 saved from repeal through reenactment by the Legislature.
 43 b. The home addresses, telephone numbers, dates of birth,
 44 and photographs of current or former nonsworn investigative
 45 personnel of the Department of Financial Services whose duties
 46 include the investigation of fraud, theft, workers' compensation
 47 coverage requirements and compliance, other related criminal
 48 activities, or state regulatory requirement violations; the
 49 names, home addresses, telephone numbers, dates of birth, and
 50 places of employment of the spouses and children of such
 51 personnel; and the names and locations of schools and day care
 52 facilities attended by the children of such personnel are exempt
 53 from s. 119.07(1) and s. 24(a), Art. I of the State
 54 Constitution. This sub-subparagraph is subject to the Open
 55 Government Sunset Review Act in accordance with s. 119.15 and
 56 shall stand repealed on October 2, 2021, unless reviewed and
 57 saved from repeal through reenactment by the Legislature.
 58 c. The home addresses, telephone numbers, dates of birth,

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and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, ~~and~~

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county court judges, and judicial assistants; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices, ~~and~~ judges, and judicial assistants; and the names and locations of schools and day care facilities attended by the children of current or former justices, ~~and~~ judges, and judicial assistants are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024 ~~2022~~, unless reviewed and saved from repeal through reenactment by the Legislature.

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

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers,

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117 dates of birth, and places of employment of the spouses and
 118 children of general magistrates, special magistrates, judges of
 119 compensation claims, administrative law judges of the Division
 120 of Administrative Hearings, and child support enforcement
 121 hearing officers; and the names and locations of schools and day
 122 care facilities attended by the children of general magistrates,
 123 special magistrates, judges of compensation claims,
 124 administrative law judges of the Division of Administrative
 125 Hearings, and child support enforcement hearing officers are
 126 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 127 Constitution. This sub-subparagraph is subject to the Open
 128 Government Sunset Review Act in accordance with s. 119.15 and
 129 shall stand repealed on October 2, 2022, unless reviewed and
 130 saved from repeal through reenactment by the Legislature.

131 h. The home addresses, telephone numbers, dates of birth,
 132 and photographs of current or former human resource, labor
 133 relations, or employee relations directors, assistant directors,
 134 managers, or assistant managers of any local government agency
 135 or water management district whose duties include hiring and
 136 firing employees, labor contract negotiation, administration, or
 137 other personnel-related duties; the names, home addresses,
 138 telephone numbers, dates of birth, and places of employment of
 139 the spouses and children of such personnel; and the names and
 140 locations of schools and day care facilities attended by the
 141 children of such personnel are exempt from s. 119.07(1) and s.
 142 24(a), Art. I of the State Constitution.

143 i. The home addresses, telephone numbers, dates of birth,
 144 and photographs of current or former code enforcement officers;
 145 the names, home addresses, telephone numbers, dates of birth,

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146 and places of employment of the spouses and children of such
 147 personnel; and the names and locations of schools and day care
 148 facilities attended by the children of such personnel are exempt
 149 from s. 119.07(1) and s. 24(a), Art. I of the State
 150 Constitution.

151 j. The home addresses, telephone numbers, places of
 152 employment, dates of birth, and photographs of current or former
 153 guardians ad litem, as defined in s. 39.820; the names, home
 154 addresses, telephone numbers, dates of birth, and places of
 155 employment of the spouses and children of such persons; and the
 156 names and locations of schools and day care facilities attended
 157 by the children of such persons are exempt from s. 119.07(1) and
 158 s. 24(a), Art. I of the State Constitution. This sub-
 159 subparagraph is subject to the Open Government Sunset Review Act
 160 in accordance with s. 119.15 and shall stand repealed on October
 161 2, 2022, unless reviewed and saved from repeal through
 162 reenactment by the Legislature.

163 k. The home addresses, telephone numbers, dates of birth,
 164 and photographs of current or former juvenile probation
 165 officers, juvenile probation supervisors, detention
 166 superintendents, assistant detention superintendents, juvenile
 167 justice detention officers I and II, juvenile justice detention
 168 officer supervisors, juvenile justice residential officers,
 169 juvenile justice residential officer supervisors I and II,
 170 juvenile justice counselors, juvenile justice counselor
 171 supervisors, human services counselor administrators, senior
 172 human services counselor administrators, rehabilitation
 173 therapists, and social services counselors of the Department of
 174 Juvenile Justice; the names, home addresses, telephone numbers,

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 175 dates of birth, and places of employment of spouses and children
 176 of such personnel; and the names and locations of schools and
 177 day care facilities attended by the children of such personnel
 178 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 179 Constitution.

180 1. The home addresses, telephone numbers, dates of birth,
 181 and photographs of current or former public defenders, assistant
 182 public defenders, criminal conflict and civil regional counsel,
 183 and assistant criminal conflict and civil regional counsel; the
 184 names, home addresses, telephone numbers, dates of birth, and
 185 places of employment of the spouses and children of current or
 186 former public defenders, assistant public defenders, criminal
 187 conflict and civil regional counsel, and assistant criminal
 188 conflict and civil regional counsel; and the names and locations
 189 of schools and day care facilities attended by the children of
 190 current or former public defenders, assistant public defenders,
 191 criminal conflict and civil regional counsel, and assistant
 192 criminal conflict and civil regional counsel are exempt from s.
 193 119.07(1) and s. 24(a), Art. I of the State Constitution.

194 m. The home addresses, telephone numbers, dates of birth,
 195 and photographs of current or former investigators or inspectors
 196 of the Department of Business and Professional Regulation; the
 197 names, home addresses, telephone numbers, dates of birth, and
 198 places of employment of the spouses and children of such current
 199 or former investigators and inspectors; and the names and
 200 locations of schools and day care facilities attended by the
 201 children of such current or former investigators and inspectors
 202 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 203 Constitution. This sub-subparagraph is subject to the Open

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 204 Government Sunset Review Act in accordance with s. 119.15 and
 205 shall stand repealed on October 2, 2022, unless reviewed and
 206 saved from repeal through reenactment by the Legislature.

207 n. The home addresses, telephone numbers, and dates of
 208 birth of county tax collectors; the names, home addresses,
 209 telephone numbers, dates of birth, and places of employment of
 210 the spouses and children of such tax collectors; and the names
 211 and locations of schools and day care facilities attended by the
 212 children of such tax collectors are exempt from s. 119.07(1) and
 213 s. 24(a), Art. I of the State Constitution. This sub-
 214 subparagraph is subject to the Open Government Sunset Review Act
 215 in accordance with s. 119.15 and shall stand repealed on October
 216 2, 2022, unless reviewed and saved from repeal through
 217 reenactment by the Legislature.

218 o. The home addresses, telephone numbers, dates of birth,
 219 and photographs of current or former personnel of the Department
 220 of Health whose duties include, or result in, the determination
 221 or adjudication of eligibility for social security disability
 222 benefits, the investigation or prosecution of complaints filed
 223 against health care practitioners, or the inspection of health
 224 care practitioners or health care facilities licensed by the
 225 Department of Health; the names, home addresses, telephone
 226 numbers, dates of birth, and places of employment of the spouses
 227 and children of such personnel; and the names and locations of
 228 schools and day care facilities attended by the children of such
 229 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 230 the State Constitution. This sub-subparagraph is subject to the
 231 Open Government Sunset Review Act in accordance with s. 119.15
 232 and shall stand repealed on October 2, 2019, unless reviewed and

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233 saved from repeal through reenactment by the Legislature.

234 p. The home addresses, telephone numbers, dates of birth,
 235 and photographs of current or former impaired practitioner
 236 consultants who are retained by an agency or current or former
 237 employees of an impaired practitioner consultant whose duties
 238 result in a determination of a person's skill and safety to
 239 practice a licensed profession; the names, home addresses,
 240 telephone numbers, dates of birth, and places of employment of
 241 the spouses and children of such consultants or their employees;
 242 and the names and locations of schools and day care facilities
 243 attended by the children of such consultants or employees are
 244 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 245 Constitution. This sub-subparagraph is subject to the Open
 246 Government Sunset Review Act in accordance with s. 119.15 and
 247 shall stand repealed on October 2, 2020, unless reviewed and
 248 saved from repeal through reenactment by the Legislature.

249 q. The home addresses, telephone numbers, dates of birth,
 250 and photographs of current or former emergency medical
 251 technicians or paramedics certified under chapter 401; the
 252 names, home addresses, telephone numbers, dates of birth, and
 253 places of employment of the spouses and children of such
 254 emergency medical technicians or paramedics; and the names and
 255 locations of schools and day care facilities attended by the
 256 children of such emergency medical technicians or paramedics are
 257 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 258 Constitution. This sub-subparagraph is subject to the Open
 259 Government Sunset Review Act in accordance with s. 119.15 and
 260 shall stand repealed on October 2, 2021, unless reviewed and
 261 saved from repeal through reenactment by the Legislature.

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

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262 r. The home addresses, telephone numbers, dates of birth,
 263 and photographs of current or former personnel employed in an
 264 agency's office of inspector general or internal audit
 265 department whose duties include auditing or investigating waste,
 266 fraud, abuse, theft, exploitation, or other activities that
 267 could lead to criminal prosecution or administrative discipline;
 268 the names, home addresses, telephone numbers, dates of birth,
 269 and places of employment of spouses and children of such
 270 personnel; and the names and locations of schools and day care
 271 facilities attended by the children of such personnel are exempt
 272 from s. 119.07(1) and s. 24(a), Art. I of the State
 273 Constitution. This sub-subparagraph is subject to the Open
 274 Government Sunset Review Act in accordance with s. 119.15 and
 275 shall stand repealed on October 2, 2021, unless reviewed and
 276 saved from repeal through reenactment by the Legislature.

277 s. The home addresses, telephone numbers, dates of birth,
 278 and photographs of current or former directors, managers,
 279 supervisors, nurses, and clinical employees of an addiction
 280 treatment facility; the home addresses, telephone numbers,
 281 photographs, dates of birth, and places of employment of the
 282 spouses and children of such personnel; and the names and
 283 locations of schools and day care facilities attended by the
 284 children of such personnel are exempt from s. 119.07(1) and s.
 285 24(a), Art. I of the State Constitution. For purposes of this
 286 sub-subparagraph, the term "addiction treatment facility" means
 287 a county government, or agency thereof, that is licensed
 288 pursuant to s. 397.401 and provides substance abuse prevention,
 289 intervention, or clinical treatment, including any licensed
 290 service component described in s. 397.311(26). This sub-

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subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1) and fulfills the screening requirement of s. 39.3035(2), and the members of a child protection team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

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

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written request for maintenance of the exemption to the custodial agency.

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

Section 2. The Legislature finds that it is a public necessity that the home addresses, dates of birth, and telephone numbers of current or former judicial assistants; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such judicial assistants; and the names and locations of schools and day care facilities attended by the children of such judicial assistants be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Such identifying and location information can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial harm to the individual. In the course of assisting in making rulings, entering judgments, imposing sentences, or reviewing cases, judicial assistants frequently do not create good will with litigants, the accused, the convicted, and their associates and families, thus making the judicial assistants, and their spouses and children, targets for acts of revenge. This risk continues after judicial assistants complete their public service. Disgruntled individuals may wait to commit an act of revenge until the employment of a judicial assistant ends. If such identifying and location information were released, the safety of current or former judicial assistants and their spouses and children could

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349 be seriously jeopardized. For these reasons, the Legislature
350 finds that it is a public necessity that such information be
351 made exempt from public records requirements.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT

14th District

February 15, 2019

The Honorable David Simmons
404, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 746 -- Public Records/Judicial Assistants

Dear Chairman Simmons:

Senate Bill 746, relating to Public Records/Judicial Assistants has been referred to the Judiciary Committee. I am requesting your consideration on placing SB 746 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

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

Tom A. Wright, District 14

cc: Tom Cibula, Staff Director of the Judiciary Committee
Joyce Butler, Administrative Assistant of the Judiciary Committee

REPLY TO:

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

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 746

Bill Number (if applicable)

Topic Public Records Exemption - Judicial Assts

Amendment Barcode (if applicable)

Name Alison B. Dudley

Job Title President

Address P.O. Box 428

Street

Phone 850/559-1139

Tall.

City

FL

State

32302

Zip

Email alisdudley@dudleyand

associates.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Judicial Assistants Association of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

Note by NKT: Prepared by the lobbyist, Alison Dudley of A.B. Dudley and Associates, 850-559-1139; alisondudley@dudleyandassociates.com; representing Judicial Assistants Association of FL; received from Senator Wright's office 2.15.19

CIRCUIT	THREAT
6 TH CIRCUIT - CLEARWATER - JJ	<p>My Judge served as a referee in a case with the Florida bar. During the 2nd day of hearings where she was going to disbar the attorney, he brought a loaded 45 gun with extra magazines through security. He was stopped and apprehended however, for the year leading up to the hearing, I had contact with him as he was pro se. My name is on all of the letterhead and business cards for my Judge.</p> <p>In addition to speaking to the defendants, I speak to victims as we are on our 5th year of domestic violence criminal court so I am the one that is blamed for ruined families. Sadly, growing up in this area, I have seen multiple arrests of people from high school and a former neighborhood. It just exposes us too much now.</p>
2 nd DCA-JO	<p>I had to prepare an order once that prevented an individual from pulling money from his account. That individual showed up and also called several times threatening me. We had to get the HCSO involved and his picture had to be put up in the courthouse with the hopes that he would not get through to my office. Being a Judicial Assistant can be just as threatening at times. We are the gateway to our Judges</p>
1 ST CIRCUIT - PENSACOLA-KA	<p>I have defendant's families friend me and send me messages on Facebook all the time. It really freaks me out. But I know that is just all part of being on social media.</p> <p>It has always worried me that all anyone has to do is a google search of my Judge's name and it pulls up my name also. Then all they have to do is pull up my name on property records, etc. to pull up my home address, etc. or type my name in on "anywho" to pull up my address and phone number. It's really scary.</p> <p>My Judge sentences murderers, drug addicts and thieves, if they get mad enough and can't find out the judge's information, they just might come after the JA.</p>
18 TH CIRCUIT - VIERA-NA	<p>When I was married to my ex-husband. He is a deputy at the jail, in many instances the inmates were so smart that they would figure out in their orders, or paperwork that my last name was the same as his. Somehow they knew I was married to him and who I worked for. Couple of years ago, an inmate told my ex, "when I come out I will go to your house because I know where you live and rape your wife Nina Aponte and make you watch it." Even if it was just talk...these inmates receive paperwork with our names on there, they can easily find where we live.</p>
6 TH CIRCUIT - CLEARWATER - AF	<p>As my name is a little unusual, it would be very easy to find me, if one knew how to look. I have been a JA since 1997 and recall at least once that I had to call deputies to patrol my neighborhood when I was frightened by a criminal defendant. I usually refuse to give my</p>

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1 ST CIRCUIT - DEFUNIAK SPRINGS-DA	<p>I have been working for Judge Wells for 15 years and throughout those years I have had numerous defendants contact me via my home phone, cell phone and even show up at my house to try and get me to persuade the Judge to rule differently for them. The one incident that really stood out for me is the following:</p> <p>A defendant, a habitual offender was looking at 11month 29 days jail sentence. A few days before he was to be sentenced he showed up at my house very drunk. Only myself and young daughter were there. I told her to stay inside. I managed to keep him on my front porch and he insisted that I could make the Judge change his sentence. I tried to explain that was not possible and to keep him from getting any more upset. He was belligerent, refusing to leave and not wanting to listen to anything I said. I was very afraid. Thankfully, my sister just happened to drive up to my house shortly after he had gotten there. He immediately left. The next day, we learned that he had committed suicide by blowing his head off with a shotgun. I have never really gotten over this, it could have so easily been another scenario. One where he decided that he would take my life and possibly my daughter's life and his own.</p>
17 th CIRCUIT- PLANTATION - PG	<p>I was the victim of numerous threats from a Defendant in a Tenant Eviction case. The Defendant eventually went to jail because of his threats and I as well as my Judge had to testify. It was a nightmare on top of being extremely scary for myself and my family. He left messages on the answering machine at the office and threatened to kill me, and my family. The case is documented in the 17th Circuit.</p>
17 th CIRCUIT- FT. LAUDERDALE - AQ	<p>My Judge was threatened and the man threatening him also threatened me. (The man harassed many judges in the Broward courthouse and now is in jail pending trial.) It has turned into a criminal case. I had to sit for a depo and will be called to testify in trial.</p> <p>You can read more about the case in the article below.</p> <p>https://www.miamiherald.com/news/local/community/broward/article162469033.html</p>
17 th CIRCUIT-FT. LAUDERDALE - WM	<p>A few years ago, I had 3 young people showed up to my home harassing me and saying I had stolen their car. I immediately called the police. It turned out there was a fatality DUI that happened up the block from me and the driver was a defendant before my judge. I was contacted several times by BSO and eventually I was advised the individuals found me on line and were family of the defendant</p>
20 TH CIRCUIT - FORT MYERS - LT	<p>We have a case pending in Lee County where the Defendant (Randall Thomas Rosado, 16CF275) has 15 pending charges for the following:</p> <ul style="list-style-type: none"> -Obstructing Justice Influence/Intimidate/Hinder Leo Duties -Fraud Simulate Legal Process Fraudulent Actions

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	over the weekends. The judge hearing the case entered an order preventing the litigant entry into the court house. She was still able to enter the court house, walk into my office and right up to my desk and threaten me. She was detained by police and then arrested for battery on a law enforcement officer. I was afraid of her because she projected all of her feelings that she had about the judge on to me because she had better access to me. I was fearful that she would look up property records and find my home.
2 ND DCA - CA	I had a situation about a year ago, when an attorney (Steven Fox) in Sarasota harassed me to the point the Judge I was working with at the time, told me to stop answering the phone. He was mad because he promised his client something, but his motion was denied by the judge. He was upset that he couldn't get the judge, so he decided to come after me. He was crying and screaming every time he called. He would call from three different phone numbers to get me to answer him. The last time I spoke to him, he threatened to look up my personal information, and file a lawsuit against me.
9 TH CIRCUIT - ORLANDO -JH	<p>I have had an experience with a Respondent in a Domestic case that my Judge and I have had. This Respondent would call and fill our voicemail with loud music nightly. He started leaving messages giving detailed information about the Judge's personal life. Enough detail that it showed us that he was doing his research. His calls to me in the office would become more and more aggressive. He was trespassed from the building and was only allowed to be here when he would have a court date. He became so well known here in our large courthouse that when any deputy would see him, though he was here for court, the deputies would call me to let me know so that I would stay in my office unless I absolutely had to go out. The Sheriff's Office did an investigation into the harassment that became a daily issue for my Judge and I. His picture was posted in our office.</p> <p>This Respondent knew my name but did not know me by sight. I walked around the courthouse with my hand over my name badge so that when he was here he would not know who I was.</p> <p>The Sheriff's Office was able to gather enough evidence to hand over to the State Attorney who did charge him with harassment of a public official. The case went to a jury trial and the Judge and I had to testify. This was the first time this Respondent had seen me and it was extremely uncomfortable to know that he now knows what I look like. The jury found him guilty as charged and he was given a jail sentence.</p> <p>These are the types of people that concern me and with the information age what it is today, I fear for my personal information to be public</p>
9 TH CIRCUIT - ORLANDO - LH	I was sitting at my desk one morning when I received this text attached. It was very early and I was probably the only person in the building. I had no idea who this was from and

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	<p>When I worked for Judge Cohen we had a defendant that was charged with attempted murder, stalking, etc. Throughout the pendency of the case he threatened the judge and staff constantly. He went to victims houses and watched them prior to trial. Eventually he was tried, while representing himself, and sent to prison. He continued to send letters to the Court with threats while in prison. Upon release from prison several years later, he was transported back from DOC and told to report directly to probation a block away from where he was released. They had deputies watching him and instead of reporting to probation, he walked towards the courthouse. We were put on lock down until they detained him and a VOP warrant was issued and signed for failure to report. He was put back in prison for VOP. I had his mug shot on the bulletin board for years so others would know he was a problem if he should return for any reason.</p> <p>Recently, Judge Munyon had a RICO case where MBI would come to the office weekly and give reports and have the Judge sign warrants, phone orders, etc. This went on for several months. During the investigation it was determined that the defendants were threatening witnesses and dismembering people involved in the case. The investigators would warn the judge and she was concerned that her signature was on all these documents but felt a little safer since her personal information was private. It didn't make me feel the same as my information is public record and could be obtained by anyone in attempt to get to her.</p>
12 th CIRCUIT - JH	I've never had an issue that I can recall off the top of my head, but I know of someone that was contacted from an inmate in custody on her home phone since her name was on a document. I've always felt this is an issue. There are other people that are afforded privacy due to their job – probation officers, JPO's, etc – and I think if it's looked from that angle, it may be better understood where we are coming from.
12 th CIRCUIT - MM	Over the past 9 years I have received threatening phone calls from a man named Patrick Guinan and have been threatened and cussed at approximately 10 other times by pro se litigants and their family members. He has left numerous voice messages threatening the Judge and me.
12 th CIRCUIT - PL	
5 th CIRCUIT – TAVARES-SM	Several years ago, my judge and I were notified by the Sheriff's department that one of the defendants had made threats against us and were actually following both of us to our homes.
2 nd CIRCUIT – TALLAHASSEE-KP	I originally worked as the JA for Judge George Reynolds before being hired to work as the JA for Judge Frank Allman. In 2015/16 Judge Reynolds presided over a case involving Florida's bears and how they should be managed. It involved the Florida Wildlife Commission

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 Judiciary

BILL: CS/SB 204

INTRODUCER: Criminal Justice Committee and Senators Brandes and Perry

SUBJECT: Detention Facilities

DATE: March 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.	Stallard	Cibula	JU	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 204 requires a law enforcement officer to electronically record the entirety of a custodial interrogation if it:

- Takes place at a place of detention; and
- Relates to a covered offense.

A place of detention is defined to mean a police station, sheriff's office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual.

The covered offenses specified by the bill include arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, the unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, aggravated stalking, home-invasion robbery, and carjacking.

Other provisions of the bill:

- Define terms;
- Provide exceptions to the recording requirement;

- Require a court to consider an officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a statement;
- Require a law enforcement officer to write a report explaining why he or she did not record the custodial interrogation;
- Require a law enforcement officer to write a report explaining why a custodial interrogation was conducted at a place *other than a place of detention*;
- Allow a defendant to request and receive a cautionary jury instruction when a non-recorded statement from a custodial interrogation is admitted into evidence;
- Make a law enforcement agency immune from civil liability for a violation of the requirement to record an interrogation if the agency enforces rules that are reasonably designed to insure compliance with the requirement;
- Specify that the bill does not create a cause of action against a law enforcement officer;
- Add cellular telephones and portable communications devices to the list of articles that are considered contraband at a county detention facility; and
- Reduce the penalty for smuggling or possessing less serious types of contraband articles on the grounds of a county detention facility.

The bill is effective January 1, 2020.

II. Present Situation:

Constitutional Protections and Court Decisions Interpreting and Applying Those Protections

The Fifth Amendment of the United States Constitution states that “No person . . . shall be compelled in any criminal case to be a witness against himself.”¹ Likewise, the Florida Constitution extends the same protection.² The voluntariness of a defendant's statement and the admissibility of the statement against him or her in court is a creature of both case law and statutory law in Florida.

Custodial Interrogation

Whether a person is in custody and under interrogation is the threshold question that determines the need for a law enforcement officer to advise the person of his or her *Miranda* rights.³ In *Traylor v. State*, the Supreme Court of Florida found that “[T]o ensure the voluntariness of confessions, the Self-Incrimination Clause of Article I, Section 9, Florida Constitution, requires that prior to custodial interrogation in Florida suspects must be told that they have a right to remain silent, that anything they say will be used against them in court”⁴

¹ U.S. CONST. amend. V.

² “No person shall be . . . compelled in any criminal matter to be a witness against himself.” FLA. CONST. article I, s. 9.

³ In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.

⁴ 596 So. 2d 957, 965-966 (Fla. 1992).

The test to determine if a person is in custody for the purposes of one's *Miranda* rights is whether "a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest."⁵

An interrogation occurs "when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response."⁶

Waiver of the Right to Remain Silent

A person subjected to a custodial interrogation is entitled to the protections of *Miranda*.⁷ The warning must include the right to remain silent as well as the explanation that anything a person says can be used against them in court. The warning includes both parts because it is important for a person to be aware of his or her right and the consequences of waving such a right.⁸

Admissibility of a Defendant's Statement as Evidence

The admissibility of a defendant's statement is a mixed question of fact and law decided by the court during a pretrial hearing or during the trial outside the presence of the jury.⁹ For a defendant's statement to become evidence in a criminal case, the judge must first determine whether the statement was freely and voluntarily given to a law enforcement officer during the custodial interrogation of the defendant. The court looks to the totality of the circumstances of the statement to determine if it was voluntarily given.¹⁰

The court can consider testimony from the defendant and any law enforcement officers involved, their reports, and any additional evidence such as audio or video recordings of the custodial interrogation.

As discussed above, the courts use a "reasonable person" standard in making the determination of whether the defendant was in custody at the time he or she made a statement.¹¹ The court considers, given the totality of the circumstances, whether a reasonable person in the defendant's position would have believed he or she was free to terminate the encounter with law enforcement and, therefore, was not in custody.¹² Among the circumstances or factors the courts have considered are:

- The manner in which the police summon the suspect for questioning;
- The purpose, place, and manner of the interrogation;
- The extent to which the suspect is confronted with evidence of his or her guilt; and
- Whether the suspect is informed that he or she is free to leave the place of questioning.¹³

⁵ *Id.* at 966 at n. 16.

⁶ *Id.* at 966 at n. 17.

⁷ *See Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

⁸ *Sliney v. State*, 699 So. 2d 662, 669 (Fla. 1997), *cert. denied*, 522 U.S. 1129 (1998).

⁹ *Nickels v. State*, 90 Fla. 659, 668 (1925).

¹⁰ *Supra* n. 8 at 667.

¹¹ *Supra* n. 5.

¹² *Voorhees v. State*, 699 So. 2d 602, 608 (Fla. 1997).

¹³ *Ramirez v. State*, 739 So. 2d 568, 574 (Fla. 1999).

The court will also determine whether the defendant was made aware of his or her *Miranda* rights and whether he or she knowingly, voluntarily, and intelligently elected to waive those rights and give a statement.¹⁴

Even if the court deems the statement admissible and the jury hears the evidence, defense counsel will be able to cross-examine any witnesses who testify and have knowledge of the circumstances surrounding the defendant's statement. Additionally, counsel may argue to the jury in closing argument that the statement was coerced in some way by a law enforcement officer.

Interrogation Recording in Florida

Law enforcement agencies in Florida are not currently required to record the custodial interrogation of a crime suspect, either by audio, video, or a combination of means. Fifty-seven agencies in Florida voluntarily record custodial interrogations, at least to some extent.¹⁵

Other States

Currently twenty-three states and the District of Columbia record custodial interrogations statewide.¹⁶ These states have statutes, court rules, or court cases that require law enforcement officers to make the recordings or allow the court to consider the failure to record a statement in determining the admissibility of a statement.¹⁷

Contraband at County Detention Facilities

It is a third degree felony to “introduce” or possess “contraband” at a county detention facility.^{18, 19}

¹⁴ *Supra* n. 8 at 668.

¹⁵ *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 36-37, August 2016, National Association of Criminal Defense Lawyers, <https://www.nacdl.org/electronicrecordingproject> (last viewed February 25, 2019). *See also Electronic Recording of Suspect Interrogations*, Interim Report 2004-123, Florida Senate Committee on Criminal Justice, http://archive.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-123cj.pdf (last viewed February 25, 2019).

¹⁶ *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 7-8, August 2016, National Association of Criminal Defense Lawyers, <https://www.nacdl.org/electronicrecordingproject> (last viewed February 25, 2019).

¹⁷ *See Stephan v. State*, 711 P.2d 1156 (AK 1985); Ark. R. Crim. P. Rule 4.7 (2012); Cal Pen Code s. 859.5 (2016) and Cal Wel & Inst Code s. 626.8 (2014); C.R.S. 16-3-601 (2016); CT Gen. Stat. s. 54-1a (2011); D.C. Code s. 5-116.01 (2005); Hawaii was verified by the four departments that govern law enforcement in the state; 705 ILCS 405/5-401.5 (2016), 725 ILCS 5/103-2.1 (2017); Ind. R. Evid. 617 (2014); 25 M.R.S. s. 2803-B(1)(K) (2015); Md. CRIMINAL PROCEDURE Code Ann. ss. 2-401 – 2-402 (2008); MCLS ss. 763.7 – 763.9 (2013); *State v. Scales*, 518 N.W.2d 587 (MN 1994); MO Rev. Stat. s. 590.700 (2017); MT Code Ann. ss. 46-4-406 – 46-4-411 (2009); NE Rev. Stat. Ann. ss. 29-4501 – 29-4508 (2008); NJ Court Rules, R. 3:17 (2006); N.M. Stat. Ann. s. 29-1-16 (2006); N.C. Gen. Stat. s. 15A-211 (2011); OR Rev. Stat. s. 133.400 (2009); RIPAC, Accreditation Standards Manual, ch. 8, s. 8.10 (Rev. 2015); Utah R. Evid. Rule 616 (2016); 13 V.S.A. s. 5585 (2015); *State v. Jerrell C.J.*, 699 N.W.2d 110 (WI 2005); Wis. Stat. ss. 968.073 and 972.115 (2005); *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, August, 2016, National Association of Criminal Defense Lawyers, available at <https://www.nacdl.org/electronicrecordingproject> (last viewed February 25, 2019).

¹⁸ Section 951.22, F.S.

¹⁹ A person who commits a third degree felony may be imprisoned for up to 5 years and fined up to \$5,000. Sections 775.082 and 775.083, F.S.

Section 951.22, F.S., lists the items that constitute contraband if they are introduced or possessed *without authorization* at these facilities. These items include written or recorded communications, currency and coins, food and clothing, tobacco products, intoxicating beverages, various drugs and controlled substances, firearms and dangerous weapons, and items that may aid escape attempts.²⁰

III. Effect of Proposed Changes:

Custodial Interrogations

The bill creates a statutory requirement, and exceptions to the requirement, that a law enforcement officer conducting a custodial interrogation must record the interrogation in its entirety.

The bill provides definitions for terms used in the bill. These are:

- “Custodial interrogation” which means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency;
- “Electronic recording” which means an audio recording or an audio and video recording that accurately records a custodial interrogation;
- “Covered offense” which lists the following criminal offenses:
 - Arson.
 - Sexual battery.
 - Robbery.
 - Kidnapping.
 - Aggravated child abuse.
 - Aggravated abuse of an elderly person or disabled adult.
 - Aggravated assault with a deadly weapon.
 - Murder.
 - Manslaughter.
 - Aggravated manslaughter of an elderly person or disabled adult.
 - Aggravated manslaughter of a child.
 - The unlawful throwing, placing, or discharging of a destructive device or bomb.
 - Armed burglary.
 - Aggravated battery.
 - Aggravated stalking.
 - Home-invasion robbery.
 - Carjacking.
- “Place of detention” which means a police station, sheriff’s office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual; and

²⁰ Section 951.22, F.S.

- “Statement” which means a communication that is oral, written, electronic, nonverbal, or in sign language.

The bill requires a custodial interrogation related to a covered offense that is conducted at a place of detention be electronically recorded in its entirety. The recording must include:

- The giving of a required warning;
- The advisement of rights; and
- The waiver of rights by the individual being questioned.

If the custodial interrogation at the place of detention is not recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for not recording it.

If a law enforcement officer conducts a custodial interrogation somewhere other than a place of detention, the officer must prepare a written report as soon as practicable. The report must explain the circumstances of the interrogation in that place. The report must also summarize the custodial interrogation process and the individual’s statements at that place.

The general recording requirement does not apply if:

- There is an unforeseen equipment malfunction that prevents recording the custodial interrogation in its entirety;
- A suspect refuses to participate in a custodial interrogation if his or her statements are electronically recorded;
- An equipment operator error occurs which prevents the recording of the custodial interrogation in its entirety;
- The statement is made spontaneously and not in response to a custodial interrogation question;
- A statement is made during the processing of the arrest of a suspect;
- The custodial interrogation occurs when the law enforcement officer participating in the interrogation does not have any knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;
- The law enforcement officer conducting the custodial interrogation reasonably believes that electronic recording would jeopardize the safety of the officer, individual being interrogated, or others; or
- The custodial interrogation is conducted outside of the state.

If an interrogation is not recorded and no exception applies, a court must consider “the circumstances of an interrogation” in its analysis of whether to admit into evidence a statement made at the interrogation.

If the court decides to admit the statement, the defendant may require the court to give a cautionary jury instruction regarding the officer’s failure to comply with the recording requirement.

Finally, if a law enforcement agency “has enforced rules” that are adopted pursuant to the bill and that are reasonably designed to comply with the bill’s requirements, the agency is not subject

to civil liability for damages arising from a violation of the bill's requirements. The bill does not create a cause of action against a law enforcement officer.

Contraband Articles at County Detention Facilities

Currently, a person who introduces or possesses any article of contraband at a county detention facility commits a third degree felony. In relation to some of the less dangerous items, the bill reduces the penalty to a first degree misdemeanor. These items include written or recorded communications, currency and coins, food and clothing, tobacco products, and intoxicating beverages.²¹

The bill retains the third degree felony status for various drugs and controlled substances, firearms and dangerous weapons, and items that may aid escape attempts. The bill also adds cellular phones and portable communication devices to the list of contraband items, and makes it a third degree felony for a person to introduce or possess them at a county detention facility.

Effective Date

The bill is effective January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

It is possible that the requirements of the bill related to electronic recording could result in local fund expenditures for equipment, maintenance, and operation. However, because any such local funding resulting from the requirements of the bill will directly relate to the defense and prosecution of criminal offenses, under article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

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.

²¹ A first degree misdemeanor is punishable by up to 1 year in the county detention facility and a fine not to exceed \$1,000. Sections 775.082 and 775.083, F.S.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although local law enforcement agencies may incur costs related to the electronic recording requirement in the bill, that cost is indeterminate.

In a preliminary estimate of the prison bed impact of the bill, the Office of Economic and Demographic Research determined that the impact of the bill is indeterminate.²²

The Florida Department of Law Enforcement anticipates no fiscal impact to the department resulting from the provisions of the bill relating to custodial interrogations.²³

The Florida Department of Corrections states that the bill does not have a direct fiscal impact on the department.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 951.22 and 921.0022.

This bill creates section 900.06 of the Florida Statutes.

²² E-mail from the Office of Economic and Demographic Research (January 25, 2019) (on file with the Senate Committee on Criminal Justice).

²³ Florida Department of Law Enforcement, *2019 Legislative Bill Analysis, SB 204* (December 21, 2018; revised January 28, 2019) (on file with the Senate Committee on Criminal Justice).

²⁴ Florida Department of Corrections, *Memorandum, SB 204* (January 31, 2019) (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:

The committee substitute adds “county detention facility” to list of locations defining the term “place of detention.”

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Brandes

591-02315-19

2019204c1

A bill to be entitled

An act relating to detention facilities; creating s. 900.06, F.S.; defining terms and specifying covered offenses; requiring that a custodial interrogation at a place of detention be electronically recorded in its entirety in connection with certain offenses; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a place other than a place of detention to prepare a specified report; providing exceptions to the electronic recording requirement; requiring a court to consider a law enforcement officer's failure to comply with the electronic recording requirements in determining the admissibility of a statement, unless an exception applies; requiring a court, upon the request of a defendant, to give cautionary instructions to a jury under certain circumstances; providing immunity from civil liability to law enforcement agencies that enforce certain rules; providing that no cause of action is created against a law enforcement officer; amending s. 951.22, F.S.; prohibiting introduction into or possession of any cellular telephone or other portable communication device on the grounds of any county detention facility; defining the term "portable communication device"; providing criminal penalties; amending s. 921.0022, F.S.; conforming a cross-reference; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Section 900.06, Florida Statutes, is created to read:

900.06 Recording of custodial interrogations for certain offenses.—

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

(a) "Custodial interrogation" means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency.

(b) "Electronic recording" means an audio recording or an audio and video recording that accurately records a custodial interrogation.

(c) "Covered offense" includes:

1. Arson.

2. Sexual battery.

3. Robbery.

4. Kidnapping.

5. Aggravated child abuse.

6. Aggravated abuse of an elderly person or disabled adult.

7. Aggravated assault with a deadly weapon.

8. Murder.

9. Manslaughter.

10. Aggravated manslaughter of an elderly person or disabled adult.

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59 11. Aggravated manslaughter of a child.
 60 12. The unlawful throwing, placing, or discharging of a
 61 destructive device or bomb.
 62 13. Armed burglary.
 63 14. Aggravated battery.
 64 15. Aggravated stalking.
 65 16. Home-invasion robbery.
 66 17. Carjacking.
 67 (d) "Place of detention" means a police station, sheriff's
 68 office, correctional facility, prisoner holding facility, county
 69 detention facility, or other governmental facility where an
 70 individual may be held in connection with a criminal charge that
 71 has been or may be filed against the individual.
 72 (e) "Statement" means a communication that is oral,
 73 written, electronic, nonverbal, or in sign language.
 74 (2)(a) A custodial interrogation at a place of detention,
 75 including the giving of a required warning, the advisement of
 76 the rights of the individual being questioned, and the waiver of
 77 any rights by the individual, must be electronically recorded in
 78 its entirety if the interrogation is related to a covered
 79 offense.
 80 (b) If a law enforcement officer conducts a custodial
 81 interrogation at a place of detention without electronically
 82 recording the interrogation, the officer must prepare a written
 83 report explaining the reason why he or she did not record the
 84 interrogation.
 85 (c) As soon as practicable, a law enforcement officer who
 86 conducts a custodial interrogation at a place other than a place
 87 of detention shall prepare a written report explaining the

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88 circumstances of the interrogation at that place and summarizing
 89 the custodial interrogation process and the individual's
 90 statements made at that place.
 91 (d) Paragraph (a) does not apply:
 92 1. If an unforeseen equipment malfunction prevents
 93 recording the custodial interrogation in its entirety;
 94 2. If a suspect refuses to participate in a custodial
 95 interrogation if his or her statements are to be electronically
 96 recorded;
 97 3. If an equipment operator error prevents recording the
 98 custodial interrogation in its entirety;
 99 4. If the statement is made spontaneously and not in
 100 response to a custodial interrogation question;
 101 5. If the statement is made during the processing of the
 102 arrest of a suspect;
 103 6. If the custodial interrogation occurs when the law
 104 enforcement officer participating in the interrogation does not
 105 have any knowledge of facts and circumstances that would lead an
 106 officer to reasonably believe that the individual being
 107 interrogated may have committed a covered offense;
 108 7. If the law enforcement officer conducting the custodial
 109 interrogation reasonably believes that making an electronic
 110 recording would jeopardize the safety of the officer, the
 111 individual being interrogated, or others; or
 112 8. If the custodial interrogation is conducted outside of
 113 this state.
 114 (3) Unless a court finds that one or more of the
 115 circumstances specified in paragraph (2)(d) apply, the court
 116 must consider the circumstances of an interrogation conducted by

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a law enforcement officer in which he or she did not electronically record all or part of a custodial interrogation in determining whether a statement made during the interrogation is admissible. If the court admits into evidence a statement made during a custodial interrogation that was not electronically recorded as required under paragraph (2)(a), the court must, upon request of the defendant, give cautionary instructions to the jury regarding the law enforcement officer's failure to comply with that requirement.

(4) A law enforcement agency in this state which has enforced rules adopted pursuant to this section which are reasonably designed to ensure compliance with the requirements of this section is not subject to civil liability for damages arising from a violation of this section. This section does not create a cause of action against a law enforcement officer.

Section 2. Section 951.22, Florida Statutes, is amended to read:

951.22 County detention facilities; contraband articles.—

(1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles, which are ~~hereby declared to be~~ contraband:

(a) ~~for the purposes of this act, to wit:~~ Any written or recorded communication.†

(b) Any currency or coin.†

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(c) Any article of food or clothing.†

(d) Any tobacco products as defined in s. 210.25(12).†

(e) Any cigarette as defined in s. 210.01(1).†

(f) Any cigar.†

(g) Any intoxicating beverage or beverage that ~~which~~ causes or may cause an intoxicating effect.†

(h) Any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s.

893.02(4).†

(i) Any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon.† ~~and~~

(j) Any instrumentality of any nature which ~~that~~ may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.

(k) Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of a county detention facility without prior authorization or consent from the sheriff or officer in charge of such detention facility. As used in this paragraph, the term "portable communication device" means any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet, or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, handheld radios, cellular telephones, Blackberry-type devices, personal digital assistants, laptop computers, or any components of these devices which are intended to be used to assemble such

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175 devices. The term also includes any new technology that is
 176 developed for similar purposes. The term does not include any
 177 device that has communication capabilities which has been
 178 approved or issued by the sheriff or officer in charge for
 179 investigative or institutional security purposes or for
 180 conducting other official business.

181 (2) A person who ~~whoever~~ violates paragraph (1)(a),
 182 paragraph (1)(b), paragraph (1)(c), paragraph (1)(d), paragraph
 183 (1)(e), paragraph (1)(f), or paragraph (1)(g) commits a
 184 misdemeanor of the first degree, punishable as provided in s.
 185 775.082 or s. 775.083. A person who violates paragraph (1)(h),
 186 paragraph (1)(i), paragraph (1)(j), or paragraph (1)(k) commits
 187 subsection (1) shall be guilty of a felony of the third degree,
 188 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

189 Section 3. Paragraph (f) of subsection (3) of section
 190 921.0022, Florida Statutes, is amended to read:

191 921.0022 Criminal Punishment Code; offense severity ranking
 192 chart.—

193 (3) OFFENSE SEVERITY RANKING CHART

194 (f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent

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conviction.

198 400.9935(4)(c) 2nd Operating a clinic, or offering
 services requiring licensure,
 199 without a license.

499.0051(2) 2nd Knowing forgery of transaction
 history, transaction
 information, or transaction
 statement.

200 499.0051(3) 2nd Knowing purchase or receipt of
 prescription drug from
 unauthorized person.

201 499.0051(4) 2nd Knowing sale or transfer of
 prescription drug to
 unauthorized person.

202 775.0875(1) 3rd Taking firearm from law
 enforcement officer.

203 784.021(1)(a) 3rd Aggravated assault; deadly
 weapon without intent to kill.

204 784.021(1)(b) 3rd Aggravated assault; intent to
 commit felony.

205 784.041 3rd Felony battery; domestic

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			battery by strangulation.
206	784.048 (3)	3rd	Aggravated stalking; credible threat.
207	784.048 (5)	3rd	Aggravated stalking of person under 16.
208	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
209	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
210	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
211	784.081 (2)	2nd	Aggravated assault on specified official or employee.
212	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
213	784.083 (2)	2nd	Aggravated assault on code inspector.
214	787.02 (2)	3rd	False imprisonment; restraining

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			with purpose other than those in s. 787.01.
215	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
216	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
217	790.164 (1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
218	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
219	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
220	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
221			

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222	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
223	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
224	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
225	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
226	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
227	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
228	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
	812.015(9)(a)	2nd	Retail theft; property stolen

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229			\$300 or more; second or subsequent conviction.
230	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
231	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
232	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
233	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
234	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
235	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
236	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is

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valued at less than \$10,000.

237

827.03(2)(c) 3rd Abuse of a child.

238

827.03(2)(d) 3rd Neglect of a child.

239

827.071(2) & (3) 2nd Use or induce a child in a sexual performance, or promote or direct such performance.

240

836.05 2nd Threats; extortion.

241

836.10 2nd Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.

242

843.12 3rd Aids or assists person to escape.

243

847.011 3rd Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

244

847.012 3rd Knowingly using a minor in the production of materials harmful to minors.

245

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847.0135(2) 3rd Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

246

914.23 2nd Retaliation against a witness, victim, or informant, with bodily injury.

247

944.35(3)(a)2. 3rd Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.

248

944.40 2nd Escapes.

249

944.46 3rd Harboring, concealing, aiding escaped prisoners.

250

944.47(1)(a)5. 2nd Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

251

951.22 3rd Introduction of contraband into
(1)(h)-(k) county detention facility
~~951.22(1)~~ ~~Intoxicating drug, firearm, or~~
~~weapon introduced into county~~
~~facility.~~

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252

253

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 11, 2019

I respectfully request that **Senate Bill #204**, relating to **Detention Facilities**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", is written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 204

Bill Number (if applicable)

Topic Detention Facilities

Amendment Barcode (if applicable)

Name Demetrius Minor

Job Title Director of Coalitions

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19
Meeting Date

204
Bill Number (if applicable)

Topic DETENTION FACILITIES

Amendment Barcode (if applicable)

Name RJ MYERS

Job Title LOBBYIST

Address 113 E COLLEGE AVE, 300
Street

Phone (450) 933-0883

TALLAHASSEE FL 32301
City State Zip

Email RJ@SUBKEYCONSULTING.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL PUBLIC DEFENDERS ASSOC.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

SB204

Bill Number (if applicable)

Topic Detention Facilities

Amendment Barcode (if applicable)

Name Dr. Adina Thompson

Job Title Intake Coordinator, Innocence Project of Florida

Address 1100 East Park Avenue

Phone 850-561-6767

Street

Tallahassee

FL

32301

City

State

Zip

Email AThompson@FloridaInnocence.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Innocence Project of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

204

Bill Number (if applicable)

Topic County Detention Facilities

Amendment Barcode (if applicable)

Name MARK JEFFRIES

Job Title _____

Address 201 S. Rosalind Ave

Phone 407-836-5909

ORlando FL 32801
City State Zip

Email mark.jeffries@ocfl.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Orange County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 204

Bill Number (if applicable)

Topic Detention Facilities

Amendment Barcode (if applicable)

Name Tonnette GrahamJob Title Associate Director of Public PolicyAddress 100 S Monroe Street

Street

Phone 850.922.4300Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

Florida Assoc. of Counties

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-4-19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

204

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

City

State

Zip

Email JMM2@MIAMIDADE.GOV

Speaking: ☒ For ☐ Against ☐ Information

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

Judiciary

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 204

Bill Number (if applicable)

Topic Custodial Interrogation

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 W. Flagler St., Suite 400

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019

Meeting Date

Topic _____

Bill Number 204
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019

Meeting Date

CS/SB 204

Bill Number (if applicable)

Topic Detention Facilities

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

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Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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3.4.19

Meeting Date

204

Bill Number (if applicable)

Topic Detention Facilities

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 530

INTRODUCER: Senators Brandes and Stewart

SUBJECT: Alcohol or Drug Overdose Prosecutions

DATE: March 1, 2019

REVISED: 3/05/19

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Favorable
2. Stallard	Cibula	JU	Favorable
3.		RC	

I. Summary:

SB 530 expands the current law's grant of immunity for a person who seeks medical assistance to counteract a drug overdose. The bill creates a similar grant of immunity for a person who seeks help for an alcohol overdose by an underage drinker.

Under current law, a person acting in good faith who seeks medical assistance for his or her drug overdose, or the drug overdose of another person, may not be charged, prosecuted, or penalized for possession of a controlled substance. However, the immunity only applies if the evidence of the crime was obtained as a result of the person's seeking help.

Under the bill, the immunity related to drug overdoses is expanded to:

- Shield a person from arrest, and not just charges, prosecution, or penalties;
- Shield a person from several crimes beyond drug possession, including drug trafficking, and possession of a controlled substance with intent to sell it;
- Shield a person who is seeking medical help for another from arrest or prosecution for first-degree murder caused by giving another person a controlled substance; and
- No longer require a person seeking help for himself or herself to actually be experiencing an overdose as long as the person has a good faith belief that he or she is overdosing.

In addition to expanding immunity relating to drug offenses, the bill grants similar immunity to persons who seek medical assistance due to alcohol overdoses by underage drinkers. The immunity applies to a person who gives alcohol to a person younger than 21 years of age and in good faith seeks medical assistance for the underage person. The immunity also applies to an underage person if he or she seeks medical assistance when having a good faith belief that he or she is experiencing an alcohol overdose. However, one notable difference between the grants of immunity is that the immunity relating to alcohol-overdoses does not shield a person from penalties for a violation of a condition of probation, parole, or pretrial release. Another

difference is that the immunity granted to a person who provides alcohol to an underage person applies only if the person remains at the scene and cooperates with authorities.

The bill may increase costs to individuals, insurance companies, and the state.

II. Present Situation:

Overview

The Legislature enacted Florida's "911 Good Samaritan Act" in 2012 to encourage people to seek medical assistance for persons having a drug overdose.¹ The act, which is codified in s. 893.21, F.S., provides that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance under ch. 893, F.S.²

However, the immunity only applies if the evidence for the crime was obtained as a result of the person's seeking medical assistance.³ Moreover, the act specifies that it does not provide a basis for the suppression of evidence in other prosecutions.⁴

The act provides similar immunity for a person who seeks necessary medical assistance for his or her own overdose.⁵

"Good Samaritan" Laws Regarding Drug Overdoses

In addition to the 911 Good Samaritan Act, s. 381.887, F.S., grants civil immunity to a person who administers a drug such as naloxone hydrochloride, which blocks the effects of opioids. Most other states have similar immunity laws, and these laws have been studied by the National Conference of State Legislatures (NCSL).

According to the NCSL, drug overdose rates continue to rise and these deaths are increasingly caused by opioids and opiates. The NCSL notes that "[o]pioid overdoses can be reversed with the timely administration of a medication called naloxone[,] an FDA-approved drug that "can be administered in a number of ways that make it possible for a lay person to use."⁶

According to the NCSL, "[o]ften family and friends are in the best position to administer this lifesaving drug to their loved ones who overdose. Access to naloxone, however, was relatively limited until legislatures provided specific statutory protections for nonmedical professionals to possess and administer naloxone without a prescription."⁷ Many legislatures have enacted a law

¹ Ch. 2012-36, L.O.F.

² Section 893.21(1), F.S.

³ *Id.*

⁴ Section 893.21(3), F.S.

⁵ Section 893.21(2), F.S.

⁶ *Drug Overdose Immunity and Good Samaritan Laws* (June 5, 2017), National Conference of State Legislatures, available at <http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx> (last visited on Feb. 27, 2019).

⁷ *Id.*

allowing naloxone administration, and this law is often coupled with a law providing limited immunity from criminal prosecution for providing such medical assistance.

According to NCSL, 40 states and the District of Columbia have Good Samaritan laws. This state's Good Samaritan law lacks one component that is common in other states' Good Samaritan laws: a prohibition on the arrest of a person covered by the immunity.⁸

Data on Drug-Overdose Deaths in Florida

A recent report by the Florida Medical Examiners Commission (FMEC) cited statistics that 104,519 deaths occurred in Florida during the first 6 months of 2017.⁹ Of the cases seen by medical examiners, toxicology results determined that ethanol (ethyl alcohol) and/or various controlled substances were present at the time of death in 6,110 cases.¹⁰

Some of the general statewide trends¹¹ noted by the FMEC in its report when comparing statewide trends for the first half of 2017 (January to June) to the first half of 2016 include:

- Total drug-related deaths increased by 11.0 percent (604 more);
- 3,353 individuals (8.0 percent more) died with one or more prescription drugs in their system;¹²
- 1,712 individuals (4.0 percent or more) died with at least one prescription drug in their system that was identified as the cause of death;¹³
- The seven most frequently occurring drugs found in decedents were ethyl alcohol (2,594), benzodiazepines (2,506, including 912 alprazolam occurrences), cocaine (1,584), cannabinoids (1,124), morphine (1,032), fentanyl analogs (875), and fentanyl (825);¹⁴ and
- The drugs that caused the most deaths were cocaine (1,029), fentanyl analogs (840), morphine (679), fentanyl (667), benzodiazepines (658, including 376 alprazolam deaths), heroin (509), ethyl alcohol (490), oxycodone (306), and methamphetamine (213).¹⁵

III. Effect of Proposed Changes:

The bill expands the statutory grant of immunity from charges, prosecution, or penalties for possession of a controlled substance which could otherwise result from the person's seeking medical help for his or her own overdose or for the overdose of another person.

⁸ See *Id.* and s. 893.21, F.S.

⁹ *Drugs Identified in Deceased Persons by Florida Medical Examiners – 2017 Interim Report* (April 2018), p. 1, Florida Medical Examiners Commission, Florida Department of Law Enforcement, available at <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2017-Interim-Drug-Report.aspx> (last visited on Feb. 27, 2019).

¹⁰ *Id.*

¹¹ *Id.* at p. ii.

¹² The drugs were identified as both the cause of death and present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. *Id.*

¹³ These drugs may have been mixed with other prescription drugs, illicit drugs, and/or alcohol. *Id.*

¹⁴ Since heroin is rapidly metabolized to morphine, this may lead to a substantial over-reporting of morphine-related deaths as well as significant under-reporting of heroin-related deaths. *Id.*

¹⁵ Fentanyl analogs (96.0 percent), heroin (93.0 percent), fentanyl (81.0 percent), morphine (66.0 percent), cocaine (65.0 percent), and methamphetamine (51.0 percent) were listed as causing death in more than 50.0 percent of the deaths in which these drugs were found. *Id.*

Under the bill, this grant of immunity is expanded to:

- Shield a person from arrest, and not just charges, prosecution, or penalties;
- Shield a person from several crimes beyond drug possession, including drug trafficking, and possession of a controlled substance with intent to sell it;
- Shield a person who is seeking medical help for another from arrest or prosecution for first-degree murder of the type that is caused by giving another person a controlled substance (with or without the intent to kill the person); and
- No longer require a person seeking help for himself or herself to actually be experiencing an overdose as long as the person has a good faith belief that he or she is overdosing.

In addition to expanding the statutory grant of immunity relating to drug overdoses, the bill creates a new grant of immunity statute related to alcohol overdoses. Under the new statute, a person who gives alcohol to an underage person and then seeks medical assistance, in good faith, for the underage person's apparent overdose may not be arrested, charged, prosecuted, or penalized for:

- Providing alcohol to a minor;
- Permitting a minor to consume alcohol on his or her premises;
- Misrepresenting his or her age in order to purchase alcohol; or
- Possessing alcohol as a minor.

However, for the immunity to apply, the person must remain at the scene and cooperate with the medical personnel and law enforcement officers who come to the scene. Moreover, the immunity applies only if the evidence for a crime was obtained as a result of the person's seeking medical help.

The bill provides a similar immunity provision for an underage person who seeks necessary medical assistance for his or her own overdose. However, this grant of immunity applies only to the crime of underage possession of alcohol.

A key difference between the alcohol-overdose statute and the drug-overdose statute is that the alcohol-overdose statute does not provide immunity from violations of probation, parole, or pretrial release. Another notable difference is that the alcohol-overdose statute requires a person who seeks help for another person's overdose to remain at the scene and cooperate with authorities.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the bill encourages people to seek medical assistance for drug and alcohol overdoses, the bill will increase medical costs. These additional costs will likely be borne by the person receiving treatment, insurers, health care providers, and the state.

C. Government Sector Impact:

To the extent that the bill encourages people to seek medical assistance for drug and alcohol overdoses, the bill will increase medical costs. These additional costs will likely be borne by the person receiving treatment, insurers, health care providers, and the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Most of the changes proposed by the bill are features of the overdose immunity laws of at least one other state,¹⁶ and the inclusion of arrests in s. 893.21, F.S., was a recommendation of Florida's Statewide Drug Policy Advisory Council in 2016.¹⁷ However, Senate Criminal Justice Committee staff was unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to

¹⁶ Provided are a few examples: Georgia law (Ga. Code Ann. s. 16-13-5) includes arrests; Colorado law (Colo. Rev. Stat. s. 18-1-711) includes alcohol overdose; New York law (N.Y. Penal Law s. 220.78) provides immunity for possession of alcohol by a person under 21 years of age; Mississippi law (Miss. Code Ann. s. 41-29-149.1) provides immunity for drug paraphernalia offenses; and Tennessee law (Tenn. Code Ann. s. 63-1-156) provides immunity for pretrial, probation, or parole violations.

¹⁷ *Statewide Drug Policy Advisory Council – 2016 Annual Report* (December 1, 2016), p. 15, Florida Department of Health, available at <http://www.floridahealth.gov/provider-and-partner-resources/dpac/DPAC-Annual-Report-2016-FINAL.pdf> (last visited on Feb. 11, 2019).

s. 782.04(1)(a)3., F.S., which punishes first degree murder involving unlawful distribution of a specified controlled substance. In fact, at least one state, Illinois, specifically states in its overdose immunity law that the law is not intended to prevent arrest or prosecution for drug-induced homicide.¹⁸ As indicated by the NCSL, overdose immunity laws “generally provide immunity from arrest, charge or prosecution for certain controlled substance possession and paraphernalia offenses[.]”¹⁹

While the bill does not nullify s. 782.04(1)(a)3., F.S., the bill appears to effectively bar arrest or prosecution of a person who distributed a controlled substance to a user that was the proximate cause of the user’s death but who also provided medical assistance to the user (albeit the user still died) in accordance with s. 893.21, F.S., as amended by the bill.

Staff was also unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to s. 893.135, F.S., which punishes drug trafficking.²⁰

VIII. Statutes Affected:

This bill substantially amends section 893.21 of the Florida Statutes.

This bill creates section 562.112 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.

¹⁸ 720 Ill. Comp. Stat. Ann. 570/414.

¹⁹ *Drug Overdose Immunity and Good Samaritan Laws* (June 5, 2017), National Conference of State Legislatures, available at <http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx> (last visited on Feb 11, 2019).

²⁰ The act of “trafficking” can include possession, purchase, sale, manufacture, delivery, or importation. *See generally* s. 893.135, F.S.

By Senator Brandes

24-00741A-19

2019530__

1 A bill to be entitled
 2 An act relating to alcohol or drug overdose
 3 prosecutions; creating s. 562.112, F.S.; prohibiting
 4 the arrest, charge, prosecution, or penalization under
 5 specified provisions of a person acting in good faith
 6 who seeks medical assistance for an individual
 7 experiencing, or believed to be experiencing, an
 8 alcohol-related overdose; providing requirements for
 9 that person; prohibiting the arrest, charge,
 10 prosecution, or penalization under specified
 11 provisions of a person who experiences, or has a good
 12 faith belief that he or she is experiencing, an
 13 alcohol-related overdose; prohibiting the protection
 14 from arrest, charge, prosecution, or penalization for
 15 certain offenses from being grounds for suppression of
 16 evidence in other criminal prosecutions; amending s.
 17 893.21, F.S.; prohibiting the arrest, charge,
 18 prosecution, or penalization under specified
 19 provisions of a person acting in good faith who seeks
 20 medical assistance for an individual experiencing, or
 21 believed to be experiencing, a drug-related overdose;
 22 prohibiting the arrest, charge, prosecution, or
 23 penalization under specified provisions of a person
 24 who experiences, or has a good faith belief that he or
 25 she is experiencing, a drug-related overdose;
 26 prohibiting a person from being penalized for a
 27 violation of a condition of certain programs if that
 28 person in good faith seeks medical assistance for
 29 himself or herself or an individual experiencing, or

Page 1 of 4

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

24-00741A-19

2019530__

30 believed to be experiencing, a drug-related overdose;
 31 prohibiting the protection from arrest, charge,
 32 prosecution, or penalization for certain offenses from
 33 being grounds for suppression of evidence in other
 34 criminal prosecutions; providing an effective date.
 35
 36 Be It Enacted by the Legislature of the State of Florida:
 37
 38 Section 1. Section 562.112, Florida Statutes, is created to
 39 read:
 40 562.112 Alcohol-related overdoses; medical assistance;
 41 immunity from arrest, charge, prosecution, and penalization.—
 42 (1) A person who gives alcohol to an individual under 21
 43 years of age and who, acting in good faith, seeks medical
 44 assistance for the individual experiencing, or believed to be
 45 experiencing, an alcohol-related overdose may not be arrested,
 46 charged, prosecuted, or penalized for a violation of s. 562.11
 47 or s. 562.111 if the evidence for such offense was obtained as a
 48 result of the person's seeking medical assistance. The person
 49 must remain at the scene until emergency medical services
 50 personnel arrive and must cooperate with the emergency medical
 51 services personnel and law enforcement officers at the scene.
 52 (2) A person who experiences, or has a good faith belief
 53 that he or she is experiencing, an alcohol-related overdose and
 54 is in need of medical assistance may not be arrested, charged,
 55 prosecuted, or penalized for a violation of s. 562.111 if the
 56 evidence for such offense was obtained as a result of the
 57 person's seeking medical assistance.
 58 (3) Protection under this section from arrest, charge,

Page 2 of 4

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24-00741A-19

2019530

59 prosecution, or penalization for an offense listed in this
 60 section may not be grounds for suppression of evidence in other
 61 criminal prosecutions.

62 Section 2. Section 893.21, Florida Statutes, is amended to
 63 read:

64 893.21 Drug-related overdoses; medical assistance; immunity
 65 from arrest, charge, prosecution, and penalization.—

66 (1) A person acting in good faith who seeks medical
 67 assistance for an individual experiencing, or believed to be
 68 experiencing, a drug-related overdose may not be arrested,
 69 charged, prosecuted, or penalized ~~pursuant to this chapter~~ for a
 70 violation of s. 782.04(1)(a)3., s. 893.13, s. 893.135, or s.
 71 893.147 ~~possession of a controlled substance~~ if the evidence for
 72 such offense ~~possession of a controlled substance~~ was obtained
 73 as a result of the person's seeking medical assistance.

74 (2) A person who experiences, or has a good faith belief
 75 that he or she is experiencing, a drug-related overdose and is
 76 in need of medical assistance may not be arrested, charged,
 77 prosecuted, or penalized ~~pursuant to this chapter~~ for a
 78 violation of s. 893.13, s. 893.135, or s. 893.147 ~~possession of~~
 79 ~~a controlled substance~~ if the evidence for such offense
 80 ~~possession of a controlled substance~~ was obtained as a result of
 81 the person's seeking the overdose and the need for medical
 82 assistance.

83 (3) A person who experiences, or has a good faith belief
 84 that he or she is experiencing, a drug-related overdose and
 85 receives medical assistance, or a person acting in good faith
 86 who seeks medical assistance for an individual experiencing, or
 87 believed to be experiencing, a drug-related overdose, may not be

24-00741A-19

2019530

88 penalized for a violation of a condition of pretrial release,
 89 probation, or parole if the evidence for such violation was
 90 obtained as a result of the person's seeking medical assistance.

91 ~~(4)(3)~~ Protection under ~~in~~ this section from arrest,
 92 charge, prosecution, or penalization for an offense listed in
 93 this section ~~possession offenses under this chapter~~ may not be
 94 grounds for suppression of evidence in other criminal
 95 prosecutions.

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 19, 2019

I respectfully request that **Senate Bill #530**, relating to **Alcohol or Drug Overdose Prosecutions**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-4-19

Meeting Date

SB 530

Bill Number (if applicable)

Topic Alcohol + Drug Overdoses

Amendment Barcode (if applicable)

Name MARK FONTAINE

Job Title DIRECTOR

Address 2868 Mahan Drive
Street

Phone 850-878-2196

Tallahassee FL 32308
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA Alcohol + Drug Abuse Association

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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APPEARANCE RECORD

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3.4.19

Meeting Date

530

Bill Number (if applicable)

Topic Alcohol or Drug Overdose Prosecutions

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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APPEARANCE RECORD

3-4-19

Meeting Date

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530

Bill Number (if applicable)

Topic Prosecutions

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933

Street

Gainesville, FL 32614

City

State

Zip

Phone 352.682.2542

Email gnewburn@famm.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FAMM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

Tuesday

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 530

Bill Number (if applicable)

Topic Drug Overdose

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 W. Flagler St., Suite 400

Phone 786-363-4436

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Miami

FL

33134

City

State

Zip

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

05/04/19

Meeting Date

530

Bill Number (if applicable)

Topic Medical Amnesty

Amendment Barcode (if applicable)

Name Evan Steinberg

Job Title

Address 700 North Woodward Avenue

Street

Phone 954 756 0348

Tallahassee

City

FL

State

32307

Zip

Email e1s16@my.fsu.edu

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Student Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

530

Bill Number (if applicable)

Topic ALCOHOL OR DRUG OVERLAP PROSECUTIONS

Amendment Barcode (if applicable)

Name L J MUEERS

Job Title LOBBYIST

Address 113 E LOWELL AVE, 300

Street

Phone 856/933-0883

TAMU

City

FL

State

32301

Zip

Email L J MUEERS@SUSSEXCONSULTING.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL PUBLIC DEFENDERS ASSOC.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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3/4/2019

Meeting Date

Topic _____

Bill Number 530
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
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Phone 727-897-9291

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City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019

Meeting Date

SB 530

Bill Number (if applicable)

Topic Alcohol and Drug Overdoes Prosecutions

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

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State

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SM 804

INTRODUCER: Judiciary Committee and Senator Torres and others

SUBJECT: Humanitarian Assistance/Government of Venezuela

DATE: March 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	Fav/CS
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SM 804 is a memorial recognizing the humanitarian aid crisis in Venezuela and the violations of its citizens' rights at the hands of the now illegitimate Venezuelan "President," Nicolás Maduro, and the other parts of the Venezuelan government under his regime. The memorial is addressed to the Congress of the United States, and makes three requests:

- (1) That Congress urge Maduro to allow delivery of humanitarian aid, in particular food and medicine;
- (2) That Congress not only maintain the current financial sanctions but intensify financial sanctions against Maduro and the Venezuelan government; and
- (3) That Congress instruct all federal agencies to hold Maduro and officials of the Venezuelan government responsible for violations and abuses of internationally recognized human rights.

II. Present Situation:

Formally, the government of Venezuela is "a multiparty, constitutional republic[.]"¹ However, for over a decade, beginning with the election of Hugo Chávez in 1998² to his successor, Nicolás Maduro, political power in Venezuela has been "concentrated in a single party with an increasingly authoritarian executive exercising significant control over the legislative, judicial,

¹ U.S. Department of State, Bureau of Democracy, Human Rights and Labor. *Venezuela 2016 Human Rights Report, Executive Summary*, p. 1, <https://www.state.gov/documents/organization/265834.pdf> (last visited March 1, 2019).

² See BBC News, *Venezuela profile – Timeline* (Feb. 25, 2019), <http://www.bbc.com/news/world-latin-america-19652436>. After two unsuccessful coup attempts in 1992, in 1998, military Lieutenant Colonel Hugo Chávez was elected president of Venezuela "amid disenchantment with established parties." *Id.*

citizen, and electoral branches of government.”³ The election of Hugo Chávez launched the “Bolivarian Revolution,”⁴ which brought Venezuela a new constitution as well as “socialist and populist economic and social policies funded by high oil prices, and increasingly vocal anti-US foreign policy.”⁵

From 2001 until his death in 2013, Chávez expanded the government’s role in the Venezuelan economy by expropriating major enterprises, particularly petroleum, and discouraging private investment through strict currency exchange and price controls.⁶ “As oil prices rose during the 2000s and early 2010s, the Chávez government used oil revenues, as well as foreign borrowing, to spend generously on domestic social programs[,]” but “did not create a stabilization fund.”⁷ “When oil prices crashed by nearly 50% in 2014,” the government under Chávez’s successor, Nicolás Maduro, “was ill-equipped to soften the blow to the Venezuelan economy.”⁸

Following Chavez’s death in April of 2013, his hand-picked successor, Nicolás Maduro of the United Socialist Party of Venezuela (PSUV) was “elected” president.⁹ Because of the extremely narrow 1.5 percent margin of victory and “allegations of pre- and postelection fraud including government interference, the use of state resources by the ruling party, and voter manipulation[,]”¹⁰ Maduro’s election results were challenged by the opposition.¹¹ However, by the end of 2013, Maduro was given emergency powers by the National Assembly for a year to deal with Venezuela’s 50 percent inflation rate, which Maduro used to limit profit margins. This decision was also met with opposition protests.¹²

February and March 2014 Opposition Protests and Violence

Since the 2013 election, Maduro has attempted to “consolidate his authority” and suppress the opposition.¹³ According to the Congressional Research Service, in 2014, Maduro’s security forces and allied civilian groups “violently suppressed protests and restricted freedom of speech

³ See n. 1, *supra*.

⁴ Named for Venezuelan hero, Simón Bolívar.

⁵ See n. 2, *supra*.

⁶ *Id.* For example, in 2001, Chavez used an enabling act to pass 49 laws aimed at redistributing land and wealth. *Id.* In 2005, he signed a decree to eliminate large estates, which ranchers viewed as an attack on private property. In 2007, he announced that “key energy and telecommunications companies will be nationalised under [an] 18-month enabling act approved by parliament.” *Id.* Also that year, the Venezuelan government expropriated operations by two US oil companies after they refused to hand over majority control. *Id.* In 2010, Chavez devalued the Venezuelan currency, the bolivar, “by 17% against the US dollar for ‘priority’ imports and by 50% for items considered non-essential, to boost revenue from oil exports after [the] economy shrank 5.8% in [the] last quarter of 2009.” *Id.* In 2010, parliament granted Chavez special powers to deal with devastating floods, prompting opposition fears of greater authoritarianism.” *Id.* In 2012, to battle inflation, the Venezuelan government extended price controls on basic goods, and “President Chavez threatens to expropriate companies that do not comply with the price controls.” *Id.*

⁷ Congressional Research Service Report, *Venezuela: Background and U.S. Policy*, May 10, 2017, p. 10, https://www.everycrsreport.com/files/20170510_R44841_fa3ec514ed07bb711220465fb833d0432061f98a.pdf.

⁸ *Id.*

⁹ *Id.* at 1.

¹⁰ Bureau of Democracy, Human Rights, and Labor, United States Department of State, Country Reports on Human Rights Practices for 2015, Venezuela 2015 Human Rights Report, <https://www.state.gov/documents/organization/253261.pdf>.

¹¹ *Id.*

¹² See n. 1. *supra*.

¹³ See n. 7. *supra* p. 1.

and assembly.”¹⁴ An international non-government watch group, Human Rights Watch, documented “45 cases from Caracas and three states, involving more than 150 victims, in which security forces . . . abused the rights of protesters and other people in the vicinity of demonstrations.”¹⁵

December 2014 U.S. Response

Based on reports of Human Rights Watch and others, in December 2014, the U.S. Congress passed the “Venezuela Defense of Human Rights and Civil Society Act” (Act) authorizing the President to “impose targeted sanctions on persons responsible for violations of human rights of antigovernment protesters in Venezuela.”¹⁶ The Act’s findings indicate that, as of September

¹⁴ *Id.*

¹⁵ *Id.* Human Rights Watch, *Venezuela: Unarmed Protestors Beaten, Shot: Prosecutors, Judges Complicit in Rights Violations* (May. 5, 2014), <https://www.hrw.org/news/2014/05/05/venezuela-unarmed-protestors-beaten-shot> (last visited March 1, 2019). Based on reports of the Human Rights Watch and other, in December 2014, the U.S. Congress passed the “Venezuela Defense of Human Rights and Civil Society Act,” noting that,

As of September 1, 2014, 41 people had been killed, approximately 3,000 had been arrested unjustly, and more than 150 remained in prison and faced criminal charges as a result of antigovernment demonstrations throughout Venezuela. . . . Opposition leader Leopoldo Lopez was arrested on February 18, 2014, in relation to the protests and was unjustly charged with criminal incitement, conspiracy, arson, and property damage. . . . Since his arrest, Lopez has been held in solitary confinement and has been denied 58 out of 60 of his proposed witnesses at his ongoing trial. . . . As of September 1, 2014, not a single member of the public security forces of the Government of Venezuela had been held accountable for acts of violence perpetrated against antigovernment protesters.

PUBLIC LAW 113–278 (Dec. 18, 2014), <https://www.congress.gov/113/plaws/publ278/PLAW-113publ278.pdf> (last visited March 1, 2019). See also Irene Caselli, BBC News, *What lies behind the protests in Venezuela?* (March 27, 2014), <http://www.bbc.com/news/world-latin-america-26335287> (last visited March 1, 2019). See also n. 1, *supra*. In most of the cases documented by Human Rights Watch,

[A]buse victims were arbitrarily arrested and held for up [to] 48 hours or longer – frequently in military installations. There they were subjected to further abuse, including brutal beatings and, in several cases, electric shocks or burns.

Detainees with serious injuries – such as wounds from rubber bullets and broken bones from beatings – were denied or delayed access to medical attention, exacerbating their suffering, despite their repeated requests to see a doctor. In several cases, national guardsmen and police also subjected detainees to severe psychological abuse, including threatening them with death and rape.

In at least 10 cases documented, Human Rights Watch believes that the abusive tactics employed by security forces constituted torture.

The fact that the abuses were carried out repeatedly, by multiple security forces, in multiple locations across three states and the capital – including in controlled environments such as military installations and other state institutions, and over the six-week period Human Rights Watch reviewed – supports the conclusion that the abuses were part of a systematic practice, Human Rights Watch said.

Nearly all of the 150 victims were denied basic due process rights. Many were held incommunicado and denied access to lawyers until minutes before their judicial hearings, which were often scheduled in the middle of the night without any plausible justification. Prosecutors and judges routinely turned a blind eye to evidence suggesting that detainees had been abused in detention, including obvious signs of physical abuse.

The scope of these and other due process violations in multiple jurisdictions across several states highlights the failure of the judicial body to fulfill its role as a safeguard against abuse of state power, Human Rights Watch said.

¹⁶ PUBLIC LAW 113–278 (Dec. 18, 2014), <https://www.congress.gov/113/plaws/publ278/PLAW-113publ278.pdf> (last visited March 1, 2019).

2014, “41 people had been killed, approximately 3,000 had been arrested unjustly, and more than 150 remained in prison and faced criminal charges as a result of antigovernment demonstrations throughout Venezuela.”¹⁷ The Act also notes that opposition leader, Leopoldo Lopez, who was arrested in February 2014 in connection with the protests, was “unjustly charged with criminal incitement, conspiracy, arson, and property damage,” had been “held in solitary confinement,” and had been “denied 58 out of 60 of his proposed witnesses at his ongoing trial.”¹⁸ Meanwhile, as noted by the Act, “not a single member” of the Government’s public security forces “had been held accountable for acts of violence perpetrated against antigovernment protesters.”¹⁹

The Act also noted that Venezuela was experiencing serious criminal and economic problems with the murder rate rising sharply between 1999 and 2013 to a rate of 79 people out of every 100,000.²⁰ Venezuela’s inflation rate in 2013 was 56.30, “the highest level of inflation in the Western Hemisphere and the third highest level of inflation in the world behind South Sudan and Syria.”²¹ The Venezuelan Government’s imposition of currency controls further exacerbated Venezuela’s economic problems and was deemed “the most problematic factor for doing business in Venezuela.”²² As a result, the March 2014 scarcity index indicated that “fewer than one in 4 basic goods” was available at any given time in Venezuela.²³

2015 to Present: Venezuela Politics

Maduro’s government continued to “crack down” on political opposition in 2015, 2016, and 2017. According to the Congressional Reporting Service, “[t]he number of political prisoners detained remained relatively constant from 2014 to 2016 (at an average of 100 prisoners at any given time), but the total number of political arrests made from 2014 to 2016 exceeded 6,800.”²⁴

The opposition fought on and, in December 2015, won Venezuela’s legislative elections by a landslide, capturing “a two-thirds majority in Venezuela’s National Assembly—a major setback for Maduro.”²⁵ However, the Venezuelan Supreme Court, under extensive influence by Madero’s administration, issued a ruling blocking “three newly elected National Assembly representatives from the [opposition party] from taking office[.]”²⁶ As a result, the opposition in the National Assembly was “deprived . . . of the two-thirds majority needed to submit bills directly to referendum and remove Supreme Court justices, among other extensive powers.”²⁷

¹⁷*Id.*

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.* Venezuela’s rising crime rate was the reason student protestors took to the streets in February 2014. See Irene Caselli, BBC News, *What lies behind the protests in Venezuela?* (Mar. 27, 2014), <http://www.bbc.com/news/world-latin-america-26335287> (last visited March 1, 2019). See also n. 1, *supra*.

²¹PUBLIC LAW 113–278 (Dec. 18, 2014), <https://www.congress.gov/113/plaws/publ278/PLAW-113publ278.pdf>.

²²*Id.*

²³*Id.*

²⁴ See n. 7, p. 6, *supra*.

²⁵Bureau of Democracy, Human Rights and Labor, United States Department of State, *Venezuela 2016 Human Rights Report, Executive Summary*, p. 1, <https://www.state.gov/documents/organization/265834.pdf> and n. 7, *supra*.

²⁶ *Id.*

²⁷ See n. 7, *supra*.

The Venezuelan Supreme Court went further in January 2016, blocking “numerous laws approved by the legislature,”²⁸ undermining its autonomy, ignoring the separation of powers, and enabling “the president to govern through a series of emergency decrees.”²⁹ As a result of these court decisions, Maduro’s party, the United Socialist Party, was able to thwart the opposition’s efforts to institute a constitutional recall of the president.³⁰ Additionally, “gubernatorial elections slated for December 2016 were summarily postponed.”³¹

Then on March 29, 2017, the Venezuelan Supreme Court made a “power grab” by attempting to dissolve the National Assembly and assume all legislative responsibilities. According to the Congressional Reporting Service, this sparked protests, international condemnation, and “a rare public rebuke by the attorney general (who was appointed by Chávez), who deemed the rulings illegal.” “President Maduro urged the court to revise those decisions on March 30[,] [a]lthough the Supreme Court’s reversal was incomplete.”³²

The opposition party began massive, sustained protests again on March 30, 2017, some of which were met with “repression by government forces (including the National Guard) and allied civilian militias.”³³ These protests intensified when it was announced on April 7, 2017, that Maduro’s opponent in the 2013 election, Henrique Capriles, “would be barred from seeking office for 15 years due to ‘administrative irregularities’ in the state government.”³⁴ As of April 26, 2017, “ongoing violent clashes between protesters and government forces . . . had claimed 26 lives and resulted in 1,300 detentions.”³⁵

President Maduro convened a Constituent Assembly in May 2017 through a presidential decree, “despite a constitutional requirement that a public referendum be held beforehand in order to rewrite the constitution.”³⁶

As of May 2017, the Venezuela human rights group *Foro Penal Venezolano* listed more than 140 political prisoners in Venezuela. The group reported more than 6,800 political arrests made from 2014 to 2016.³⁷ According to the United States Department of State, many of those detained have been subject to torture and other human rights abuses.³⁸

²⁸ *Id.*

²⁹ *See* n. 26, *supra*.

³⁰ *Id.*

³¹ *Id.*

³² *See* n. 7, p. 7, *supra*.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Human Rights Watch, *Venezuela, Events of 2017*, <https://www.hrw.org/world-report/2018/country-chapters/venezuela#56edeb> (last visited March 1, 2019). According to Human Rights Watch, “The assembly is made up exclusively of government supporters chosen through an election in July that Smartmatic, a British company hired by the government to verify the results, later alleged was fraudulent. The Constituent Assembly has sweeping powers that go well beyond drafting a constitution. In August, as soon as the assembly started operating, its members assumed all legislative powers and fired Attorney General Ortega Díaz, a former government loyalist who had become an outspoken critic in late March, and appointed a government supporter to the position.” *Id.*

³⁷ *Id.* at pg. 6.

³⁸ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2016-2017*, available at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=#wrapper> (last visited March 1, 2019).

Between April and July 2017, government security forces along with armed, pro-government civilian groups, attacked anti-government protestors. As of July 31, 2017, Attorney General Díaz's office reported that 124 people had been killed, and that her office had investigated nearly 2,000 cases of injuries during such crackdowns.³⁹ Between April and November 2017, about 5,400 people were arrested in connection to the protests.⁴⁰ After being fired, in August 2017, Attorney General Díaz went into exile.⁴¹

On May 20, 2018, Maduro won reelection for a second six-year term with 67.7 percent of the vote amidst high voter abstention.⁴² The elections took place within a climate of state repression and, there has been widespread international condemnation since Maduro's inauguration in January 2019. Juan Guaidó, the leader of the opposition-controlled National Assembly of Venezuela, has declared himself interim president after asserting election was fraudulently conducted to ensure Maduro would win a second six-year term.⁴³ Guaidó cited Title V, Chapter II, Article 233 of the Constitution of the Bolivarian Republic of Venezuela, which states that if the president fails at his or her duties, or if there is an absence in leadership, the National Assembly's chief will take temporary charge of the nation.⁴⁴

Numerous Western Hemisphere governments, including the United States, have recognized Guaidó as the new interim President of Venezuela. President Trump released a statement stating that the United States would press to restore Venezuela's democracy and would "continue to hold the illegitimate Maduro regime directly responsible for any threats it may pose to the safety of the Venezuelan people."⁴⁵ Consequently, Maduro cut diplomatic ties with the United States and told American diplomats to leave the country.

Additionally, the Venezuela military has pledged its allegiance to Nicolás Maduro.

2015 to Present: Venezuela Economic Hardship and Humanitarian Crisis

Other protests occurred in 2016, accompanied by rioting and looting, due to a severe shortage of food, medicine, and other basic goods, as well as the 75 percent devaluation of Venezuela's currency, the bolivar. Estimates put Venezuela's 2016 rate of inflation at 254 percent and 2017 rate of inflation at 1,133 percent.⁴⁶ "The International Monetary Fund projects that the

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See n. 1, *supra*.

⁴² Congressional Research Service Insight Report, *Venezuela's 2018 Presidential Elections*, available at <https://webcache.googleusercontent.com/search?q=cache:p67-ogCAUbsJ:https://fas.org/spp/crs/row/IN10902.pdf+&cd=1&hl=en&ct=clnk&gl=u> (last visited March 1, 2019).

⁴³ Alex Ward, *Why thousands of protesters and Trump are demanding Venezuela's president step down*, Vox (Jan. 23, 2019), <https://www.vox.com/world/2019/1/23/18193533/venezuela-maduro-protest-guaido-pence-trump-23-enero> (last visited March 1, 2019).

⁴⁴ *Id.*

⁴⁵ White House statement, *Recognizing Venezuelan National Assembly President Juan Guaido as the Interim President of Venezuela*, January 23, 2019, available at <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-recognizing-venezuelan-national-assembly-president-juan-guaido-interim-president-venezuela/> (last visited March 1, 2019).

⁴⁶ See n. 7, p. 7, *supra*.

Venezuelan economy will contract by 18 percent in 2018 under the weight of 1,370,000 percent inflation and with the prospect of 10,000,000 percent inflation in 2019.”⁴⁷

Additionally, since 2013, Venezuela’s economy has contracted by 30 percent. In August 2016, six checkpoints at the border into Colombia were opened so that the people could enter and buy food and goods. “[A]ccording to a 2016 national survey . . . , 27% of people across the country eat only once a day and 93.3% of households lack enough income to purchase food.”⁴⁸

Due to the growing economic crisis in Venezuela, the Vatican mediated talks between Maduro’s administration and the opposition in October 2016. However, those talks failed, and Maduro has not allowed international humanitarian aid into the country.⁴⁹

Additionally, healthcare in Venezuela is a serious concern:

Venezuela’s health system has been affected severely by budget cuts, with shortages of medicines and basic supplies. Some hospitals face critical shortages of antibiotics, intravenous solutions, and even food, and 50% of operating rooms in public hospitals are not in use. Pharmacies also are facing shortages, with more than 85% of drugs reported to be unavailable or difficult to find, according to the Pharmaceutical Federation of Venezuela. Declining immunization rates have resulted in a resurgence of diseases that once were eradicated, including diphtheria, a disease that affected 324 people in 2016 (with no cases recorded in 2015). According to health ministry data, infant mortality reportedly increased by 30% from 2015 to 2016 and maternal mortality increased by 65.8%. Mosquito-borne illnesses also increased significantly, with cases of malaria climbing 76.4% from 2015 to more than 240,600. Zika cases rose from 51 in 2015 to more than 59,000 last year. The government has stopped sharing timely health surveillance statistics with the Pan American Health Organization, the regional arm of the World Health Organization, a development that could endanger neighboring countries.⁵⁰

U.S. Responses

President Trump and the State Department have called for the release of opposition leader Leopoldo López and the rest of Venezuela’s political prisoners.⁵¹ Additionally, on August 24, 2017, President Trump signed Executive Order 13808 to impose financial sanctions on the government of Venezuela (defined as including the Central Bank and other entities owned or controlled by the government, such as the state-owned oil company). Executive Order 13808

⁴⁷ Center for American Progress, *Venezuela in Crisis: A Way Forward*, available at <https://www.americanprogress.org/issues/security/reports/2018/10/16/459352/venezuela-crisis-way-forward/> (citing International Monetary Fund, “Countries: República Bolivariana de Venezuela,” available at <https://www.imf.org/en/Countries/VEN>) (last accessed March 1, 2019).

⁴⁸ See n. 7, p. 7, *supra*.

⁴⁹ Congressional Research Service Report, *Venezuela: Background and U.S. Policy*, May 10, 2017, pg. 5, available at https://www.everycrsreport.com/files/20170510_R44841_fa3ec514ed07bb711220465fb833d0432061f98a.pdf (last visited March 1, 2019).

⁵⁰ *Id.*

⁵¹ *Id.* at p. 17.

restricts Venezuela's access to the U.S. financial system by prohibiting persons and entities in the U.S. from engaging in certain financial transactions with the government of Venezuela.⁵²

After the Venezuelan election on May 20, 2018, President Trump issued Executive Order 13835,⁵³ which, among other things, prohibits transactions by the United States or persons within the United States related to the purchase of any debt owed to the government of Venezuela, including Venezuela's state-owned oil company. The executive order also denies the Venezuelan regime the ability to earn money by selling off public assets at the expense of the Venezuelan people.⁵⁴

On March 1, 2019, President Trump announced sanctions against six of Maduro's security officials for blocking humanitarian aid at the border. "The Treasury Department said the six, including brass from the national guard and police . . . closed Venezuela's borders with Brazil and Colombia to prevent help from the US and other countries opposed to his continued hardline rule from entering."⁵⁵

III. Effect of Proposed Changes:

In recognition of the humanitarian aid crisis in Venezuela and the violations of its citizens' rights at the hands of the now illegitimate Venezuelan "President," Nicolás Maduro, and the other parts of the Venezuelan government under his regime, the memorial makes three primary requests:

- (1) First, the memorial requests that the United States Congress urge Maduro to allow delivery of humanitarian aid, in particular food and medicine.
- (2) Second, the memorial requests that the United States Congress not only maintain the current financial sanctions but intensify financial sanctions against Maduro and the Venezuelan government.
- (3) Finally, the memorial requests that the Congress of the United States instruct all federal agencies to hold Maduro and officials of the Venezuelan government responsible for violations and abuses of internationally recognized human rights.

Additionally, the memorial directs that copies should be dispatched to the President U.S. Senate President, U.S. House Speaker, and to each member of Florida's delegation in both houses of Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵² Exec. Order No. 13808, 3 C.F.R. 41155 (2017).

⁵³ Exec. Order No. 13835, 3 C.F.R. 24001 (2018).

⁵⁴ United States Department of State, *Venezuela-Related Sanctions*, available at <https://www.state.gov/e/eb/tfs/spi/venezuela/> (last visited March 1, 2019).

⁵⁵ New York Post, *Trump Administration Hits Venezuela with New Sanctions for Blocking Aid*, available at <https://nypost.com/2019/03/01/trump-administration-hits-venezuela-with-new-sanctions-for-blocking-aid/> (last visited March 1, 2019).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Judiciary on March 4, 2019:

The Committee Substitute:

- Clarifies that the regime of Nicolás Maduro is illegitimate.
- Removes any reference to Maduro as the Venezuelan “president” throughout the bill.

- Makes technical changes to wording.

B. Amendments:

None.

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



567004

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the resolving clause
and insert:
That the Congress of the United States is requested to take
appropriate actions to assist in the delivery of humanitarian
assistance, to continue and intensify financial sanctions
against the illegitimate regime of Nicolás Maduro and the
Government of Venezuela, and to instruct appropriate federal
agencies to hold the illegitimate regime of Nicolás Maduro and
officials of the Government of Venezuela accountable for



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violations of law and abuses of internationally recognized human rights.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

===== 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 resolving clause
and insert:

A bill to be entitled
A memorial to the Congress of the United States,
requesting Congress to take appropriate actions to
assist in the delivery of humanitarian assistance, to
continue and intensify financial sanctions against the
regime of Nicolás Maduro and the Government of
Venezuela, and to instruct appropriate federal
agencies to hold Nicolás Maduro and officials of the
Government of Venezuela accountable for violations of
law and abuses of internationally recognized human
rights.

WHEREAS, the hallmark of democracy is the free and peaceful exercise of rights guaranteed under the constitution of a democratically elected government, and

WHEREAS, in an effort to secure his personal rule and oppress Venezuelan freedoms, Nicolás Maduro has caused elections



567004

to be manipulated, established an illegitimate Constituent Assembly to undermine the will of the Venezuelan people, nationalized private industry, abandoned private property rights, and improperly assumed control over Venezuela's government and its institutions, and

WHEREAS, the deterioration of basic governance and the economic crisis in Venezuela have led to an unprecedented humanitarian situation in which people are suffering from severe shortages of basic food products and essential medicines, and

WHEREAS, despite the massive shortages of basic food products and essential medicines, the illegitimate regime of Maduro has rejected repeated requests from civil society organizations to bring humanitarian aid into that country, and

WHEREAS, over 8 million Venezuelans voted symbolically for a free and democratic government, and

WHEREAS, the illegitimate regime of Nicolás Maduro has sought to silence peaceful opposition to his government by killing innocent citizens of Venezuela for their political views, and

WHEREAS, those who cherish democratic principles condemn the perpetration of oppression and intimidation against the Venezuelan people, and

WHEREAS, to ensure the demise of such oppression and intimidation, it is imperative that the United States Government remain committed to continuing and intensifying financial sanctions against the illegitimate regime of Nicolás Maduro and the Government of Venezuela, and

WHEREAS, the people of Florida stand proudly with the people of Venezuela in the face of tyranny, NOW, THEREFORE,

By Senator Torres

15-01108A-19

2019804__

Senate Memorial

A memorial to the Congress of the United States, requesting Congress to urge the regime of President Nicolás Maduro to allow the delivery of humanitarian assistance, to continue and intensify financial sanctions against the regime of President Nicolás Maduro and the Government of Venezuela, and to instruct appropriate federal agencies to hold the regime of President Nicolás Maduro and officials of the Government of Venezuela accountable for violations of law and abuses of internationally recognized human rights.

WHEREAS, the hallmark of democracy is the free and peaceful exercise of rights guaranteed under the constitution of a democratically elected government, and

WHEREAS, in an effort to secure his personal rule and oppress Venezuelan freedoms, the regime of President Nicolás Maduro manipulated elections, established an illegitimate Constituent Assembly to undermine the will of the Venezuelan people, nationalized private industry, abandoned private property rights, and generally assumed control over Venezuela's government and its institutions, and

WHEREAS, the deterioration of basic governance and the economic crisis in Venezuela have led to an unprecedented humanitarian situation in which people are suffering from severe shortages of basic food products and essential medicines, and

WHEREAS, despite the massive shortages of basic food products and essential medicines, the regime of President Maduro

Page 1 of 3

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

15-01108A-19

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has rejected repeated requests from civil society organizations to bring humanitarian aid into the country, and

WHEREAS, over 8 million Venezuelans voted symbolically for a free and democratic government, and

WHEREAS, the regime of President Nicolás Maduro has sought to silence peaceful opposition to his government by killing innocent citizens of Venezuela for their political views, and

WHEREAS, those who cherish democratic principles condemn the perpetration of oppression and intimidation against the Venezuelan people, and

WHEREAS, to ensure the demise of such oppression and intimidation, it is imperative that the United States Government remain committed to continuing and intensifying financial sanctions against the regime of President Nicolás Maduro and the Government of Venezuela, and

WHEREAS, the people of Florida stand proudly with the people of Venezuela in the face of tyranny, NOW, THEREFORE,

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

That the Congress of the United States is requested to urge the regime of President Nicolás Maduro to allow the delivery of humanitarian assistance, to continue and intensify financial sanctions against the regime of President Nicolás Maduro and the Government of Venezuela, and to instruct appropriate federal agencies to hold the regime of President Nicolás Maduro and officials of the Government of Venezuela accountable for violations of law and abuses of internationally recognized human rights.

Page 2 of 3

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59 BE IT FURTHER RESOLVED that copies of this memorial be
60 dispatched to the President of the United States, to the
61 President of the United States Senate, to the Speaker of the
62 United States House of Representatives, and to each member of
63 the Florida delegation to the United States Congress.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Children, Families, and Elder Affairs
Governmental Oversight and Accountability
Military and Veterans Affairs and Space

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

SENATOR VICTOR M. TORRES, JR.
15th District

March 4, 2019

Chair David Simmons
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simmons

I respectfully request that SM 804 Humanitarian Assistance/Government of Venezuela be placed on the next available committee meeting. Thank you for your prompt attention. If you have any questions or need any additional information

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Victor M. Torres, Jr.", with a stylized flourish at the end.

Victor M. Torres, Jr.
Florida State Senator
District 15

C: Tom Cibula, Staff, Director, Committee on Judiciary

REPLY TO:

- ☐ 633 N.E. 167th Street, Suite 1101, North Miami Beach, Florida 33162 (305) 493-6009
- ☐ 218 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 980

INTRODUCER: Senator Harrell

SUBJECT: Public Records/Petition for Certain Protective Injunctions

DATE: March 5, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Tulloch	Cibula	JU	Favorable
2. _____	_____	GO	_____
3. _____	_____	RC	_____

I. Summary:

SB 980 creates a public records exemption that temporarily blocks public access to all information contained in a petition for a protective injunction alleging domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking filed with the court. The information in the petition for these protective injunctions will be confidential and exempt only until the respondent, i.e., alleged batterer or stalker, is served by a law enforcement officer with a copy of the petition, the notice of hearing, and copies of any affidavits or temporary injunctions.

The bill provides that the temporary exemption is a public necessity as it will ensure the physical safety of alleged victims and their families from retaliation by an abuser, as well as the physical safety of the law enforcement officers serving these petitions.

The bill takes effect July 1, 2019.

II. Present Situation:

Public Records Law

Article I, section 24 of the Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

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

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

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁵ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁵ with specified exceptions.¹⁶ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁷ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁸

Public Records and the Judicial Branch

The Public Records Act does not apply to judicial records.¹⁹ As a coequal branch of government, the judicial branch “is not an ‘agency’ subject to the supervision or control by another coequal branch of government.”²⁰

However, the judicial branch is required to maintain access to public records and court proceedings pursuant to article 1, section 24 of the Florida Constitution.²¹ To meet its

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

¹⁵ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁶ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). *See also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). Likewise, the Public Records Act does not apply to the Legislature. Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

²⁰ *Times Pub. Co. v. Ake*, 645 So. 2d 1003, 1004 (Fla. 2d DCA 1994), *approved*, 660 So. 2d 255 (Fla. 1995). *See also* FLA. CONST., art. II, s. 3 (providing for the separation of powers between the executive, judicial, and legislative branches; stating “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”). *See also* Florida Attorney General, GOVERNMENT-IN-THE-SUNSHINE MANUAL, A REFERENCE FOR COMPLIANCE WITH FLORIDA’S PUBLIC RECORDS AND OPEN MEETINGS LAWS, *Judiciary* at 10-11, (Vol. 39, 2017 Ed.), available at [http://myfloridalegal.com/webfiles.nsf/wf/mnos-akbs9l/\\$file/2017+sunshine+law+manual.pdf](http://myfloridalegal.com/webfiles.nsf/wf/mnos-akbs9l/$file/2017+sunshine+law+manual.pdf).

²¹ *See* GOVERNMENT-IN-THE-SUNSHINE MANUAL at 60-65, *supra*. Even before article I, section 24 was passed to require access to public records and meetings by all branches of government, the Florida Supreme Court had recognized that access to court proceedings must be safeguarded as open, “public events.” *See Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116–19 (Fla. 1988) (“[B]oth civil and criminal court proceedings in Florida are public events and adhere to the well established common law right of access to court proceedings and records. . . . The reason for openness is basic to our form of government. Public trials are essential to the judicial system’s credibility in a free society.”) (citing *Craig v. Harney*, 331 U.S. 367, 374 (1947); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17 (1980)). *See also* William A. Buzzett and Deborah K. Kearney, *Commentary to 1992 Addition [of FLA. CONST., art. I, s. 24]*, Fla. Stat. Ann. (Westlaw 1992), noting the following history leading to the passage of article I, section 24:

Florida’s public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to

constitutional obligation, the judicial branch adopted Florida Rule of Judicial Administration 2.420 entitled “Public Access to and Protection of Judicial Branch Records.” In pertinent part, Rule 2.420 provides:

(a) Scope and Purpose. Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to and the protection of the records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below. . . .

(c) Confidential and Exempt Records. The following records of the judicial branch shall be confidential:

- (7) All records made confidential under the Florida and United States Constitutions and Florida and federal law;
- (8) All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission;

(d) Procedures for Determining Confidentiality of Court Records.

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. The following information shall be maintained as confidential:

(B) except as provided by court order, information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07, Florida Statutes, and article I, section 24(a) of the Florida Constitution as specifically stated in any of the following statutes or as they may be amended or renumbered:

(xii) The victim’s address in a domestic violence action on petitioner’s request. § 741.30(3)(b), Fla. Stat.

the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

As evidenced by Rule 2.420, the judiciary may adopt, and has adopted, “legislative statements of policy as part of the rules governing matters within the jurisdiction of the judiciary,” including the disclosure or public inspection of court records.²²

Public Record Exemptions for Certain Court Records and Files

In s. 119.0714(1), F.S., the Legislature has provided that certain information, such as social security numbers²³ and bank account numbers,²⁴ contained in court records and files should be either exempt or confidential and exempt from the disclosure requirements of the public records laws. Rule of Judicial Administration 2.420 has not expressly adopted all of the statutory public records exemptions contained in s. 119.0714, F.S. However, the rule cross-references s. 119.0714, F.S., in listing social security numbers and bank account numbers as information the clerk of court must keep confidential when it is contained in a court file.²⁵

Exemptions Relating to Petitions for Protective Injunctions for Domestic, Repeat, Dating, and Sexual Violence and Stalking

In 2017, the Legislature amended s. 119.0714(1), F.S., to add a public records exemption for information contained in a petition for a protective injunction that has been dismissed by a court.²⁶ The exemption is specific to dismissed petitions seeking protective injunctions against

²² See *Florida Pub. Co. v. State*, 706 So. 2d 54, 56 (Fla. 1st DCA 1998) (citing *Timmons v. Combs*, 608 So.2d 1, 3 (Fla.1992)). See also *Barron*, 531 So. 2d 113, 118 (“closure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed. We find that, under appropriate circumstances, the constitutional right of privacy established in Florida by the adoption of article I, section 23, could form a constitutional basis for closure under (e) or (f). . . . Further, we note that it is generally the content of the subject matter rather than the status of the party that determines whether a privacy interest exists and closure should be permitted. However, a privacy claim may be negated if the content of the subject matter directly concerns a position of public trust held by the individual seeking closure.”) (holding that while a court has the power to close a proceeding, because a “strong presumption of openness exists for all court proceedings,” the court must consider certain factors before granting a request to close a proceeding).

²³ Section 119.0714(1)(i), F.S.

²⁴ Section 119.0714(1)(j), F.S.

²⁵ See also Fla. R. Jud. Admin. 2.420(d)(1)(B)(iii) (recognizing exemption of “[s]ocial Security, bank account, charge, debit, and credit card numbers. § 119.0714(1)(i)-(j), (2)(a)-(e), Fla. Stat. (Unless redaction is requested pursuant to § 119.0714(2), Fla. Stat., this information is exempt only as of January 1, 2012.)).

²⁶ Section 119.0714(1)(k)1.-2., F.S. For petitions filed on or after July 1, 2017, the exemption is automatic. For petitions filed before July 1, 2017, a request to make the petition exempt must be submitted to the court. *Id.*

domestic violence,²⁷ repeat violence,²⁸ dating violence,²⁹ sexual violence,³⁰ stalking,³¹ and cyberstalking.³² Although Rule of Judicial Administration 2.420 does not expressly adopt the foregoing legislative exemption, it expressly recognizes that a victim's address may be kept confidential when requested by the petitioner pursuant to s. 741.30(3)(b), F.S.³³ The Family Law Rules of Procedure 12.610 goes further, providing that a victim's address in a petition for a protective injunction against domestic, repeat, dating, or sexual violence and stalking may be kept confidential when requested by the victim in a separate document.

Petitions for Protective Injunctions for Domestic, Repeat, Dating, and Sexual Violence, and Stalking or Cyberstalking

Court Filing and Due Process

A petition for an injunction for protection against domestic violence,³⁴ repeat violence,³⁵ dating violence,³⁶ sexual violence,³⁷ stalking, and cyberstalking³⁸ generally requires the following information:

- The petitioner's name and address.
- The respondent's information, including name and aliases, addresses of home and employment, and a physical description of the respondent.
- Information concerning any other cases open between the parties, including case numbers.

²⁷ Section 741.28(2), F.S. Domestic violence is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member

²⁸ Section 784.046(1)(b), F.S. Repeat violence constitutes two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.

²⁹ Section 784.046(1)(d), F.S. Dating violence is violence between individuals who have or have had a continuing and significant romantic relationship.

³⁰ Section 784.046(1)(c), F.S. Sexual violence is any one incident of sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges were filed, reduced, or dismissed by the state attorney.

³¹ Section 784.048(2), F.S. Stalking is defined as a crime committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.

³² Section 784.048(1)(d), F.S.

³³ The petitioner or victim must file a separate document requesting that his or her address be kept confidential. The petitioner may be in a safe place, such as a shelter or the home of a family member or friend, where disclosing the address not only puts him or herself in danger but others as well. *See* National Association for Court Management, A GUIDE TO DOMESTIC VIOLENCE CASES 25-26 (17th Ed.), available at https://cms.flcourts.org/core/fileparse.php/531/urlt/Domestic-Violence-Guide2017_0.pdf.

³⁴ Section 741.30(1), F.S.

³⁵ Section 784.046(2), F.S.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Section 784.0485(1), F.S. Cyberstalking means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. Aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person. Section 784.048(3), F.S.

- Details concerning the respondent's behavior leading the petitioner to file for a protective injunction.³⁹

Upon filing a petition for a protective injunction, the clerk of court will open a court file, assign a case number, and create a docket for the case. The fact that a case has been docketed is generally available online to the public, and the parties (including the petitioner and respondent) will have additional online access to the pleadings filed in the case, including the petition.⁴⁰ Even if the petitioner requests that his or her address be kept confidential,⁴¹ once the petition is filed and docketed, the other information in the petition becomes a public record.

The judge who is assigned the petition must hold a hearing at the earliest possible time.⁴² If an immediate and present danger of domestic violence appears to exist, a judge may issue a temporary injunction *ex parte* prior to the full hearing.⁴³ Otherwise, the respondent/alleged batterer or stalker is entitled to due process, including a copy of the petition, any attached affidavits or temporary injunctions, and notice of the full hearing.

Generally, due to the risk of violence, petitions for domestic, repeat, dating, or sexual violence and stalking or cyberstalking must be personally served on the respondent/alleged batterer or stalker by a law enforcement officer.⁴⁴

Safety Risks Associated with Filing for Protective Injunctions

Filing for an injunction for protection against domestic or other types of violence and stalking is often a victim's first step toward separating from the abuser, but it is also the most dangerous time for a victim. Filing a petition for a protective injunctive places the abuser on notice that the victim is serious about the separation. "Men who have killed their wives state that threats of separation were most often the precipitating events that led to the murder."⁴⁵

In light of today's technology, it is possible that an abuser may know the victim's every move.⁴⁶ Many victims report that abusers routinely check on-line or otherwise contact the courthouse to monitor whether the victim has filed for an injunction or a divorce. "The availability of information that the victim intends to leave the abuser prior to service of court documents

³⁹ See Section 741.30(3)(b), F.S. (providing a form petition for protective injunction against domestic violence); s. 784.046(4)(b), F.S. (providing a form petition for protective injunction against repeat, sexual, or dating violence); s. 784.0485(3)(b), F.S. (providing a form petition for protective injunction against stalking and cyberstalking).

⁴⁰ See Florida Courts, *Standards for Access to Electronic Court Records*, 2 (March 2014), available at <https://www.flcourts.org/Resources-Services/Court-Technology/Technology-Standards>.

⁴¹ *Id.*

⁴² Sections 741.30(4) and 784.046(5), F.S.

⁴³ Section 741.30(5)(a), F.S.

⁴⁴ See Section 741.30(4), (8)(a)1, F.S.; s. 784.046(5), (8)(a)1, F.S.; s. 784.0485(4), (8)(a)1, F.S.

⁴⁵ National Association for Court Management, *A GUIDE TO DOMESTIC VIOLENCE CASES 9-10* (17th Ed.), available at https://cms.flcourts.org/core/fileparse.php/531/urlt/Domestic-Violence-Guide2017_0.pdf. According to the Florida Coalition Against Domestic Violence, FDLE reported that, in 2017, there were 106,797 domestic violence offenses, including 180 domestic homicides. For the first half of 2018, FDLE reported that there were 51,433 domestic violence offenses, including 101 domestic violence homicides. See n. 44, *infra*.

⁴⁶ *Id.* at 15.

dramatically decreases the amount of time victims have to take additional affirmative actions to remain safe.”⁴⁷

Additionally, publicly accessible court records give an abuser advance warning of a visit from law enforcement officers. With this information, the abuser may plan to retaliate against those officers, placing them in danger, or attempt to elude being personally served with the petition.⁴⁸

Attorney Solicitation of Respondents to Petitions for Protective Injunctions for Domestic, Repeat, Dating, and Sexual Violence and Stalking

Another risk to petitioners/victims is created by solicitation letters from attorneys and third party attorney referral services. Because a respondent’s name and address is listed in a petition for a protective injunction, attorneys or attorney referral services can access the respondent’s information through a public records request. The attorney or attorney referral service then mails a solicitation letter to the respondent offering legal assistance or a referral to a lawyer to assist the respondent with the recently filed petition.⁴⁹

Unfortunately, these letters often reach the respondent before law enforcement can serve the respondent with a copy of the petition and notice of hearing. There have been several reported cases of respondents receiving advance notice of a pending case through these letters and violently retaliating against the petitioner.⁵⁰

Although the judicial branch has approved a rule regulating The Florida Bar which prohibits attorneys from these types of solicitation practices, the rule does not apply when an attorney has previously represented the respondent.⁵¹ Additionally, third party referral services are not subject to The Florida Bar rules.

⁴⁷ Florida Coalition Against Domestic Violence, *SB 980 Public Records/Petition for Certain Protective Injunctions* (2019) (on file with Senate Judiciary Committee).

⁴⁸ *Id.*

⁴⁹ *Id.* See also Letter from Chief Judge Mark H. Mahon, Fourth Judicial Circuit, to the Florida Steering Committee on Families and Children in the Courts, “Re: Solicitation letters in injunction for protection cases,” Aug. 1, 2016 (on file with the Senate Judiciary Committee).

⁵⁰ *Id.* See news articles attached to the Letter from Chief Judge Mahon to the Steering Committee on Families and Children in the Courts, *supra*.

⁵¹ *Id.* See also Fla. Bar Rule 4-7.18(b)(1) “Direct Contact with Prospective Clients”:

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer’s firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if: . . .

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

. . . .

Comment

Prior Professional Relationship

Persons with whom the lawyer has a prior professional relationship are exempted from the general prohibition against direct, in-person solicitation. A prior professional relationship requires that the lawyer personally had a direct and continuing relationship with the person in the lawyer’s capacity as a professional.

III. Effect of Proposed Changes:

This bill creates a public records exemption that temporarily blocks public access to a court file containing a petition for a protective injunction alleging domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking.

Section 1 of the bill requires that all information in a petition for a protective injunction be maintained as confidential and exempt until the respondent has been personally served with a copy of the petition, the notice of hearing, and any affidavits or temporary injunctions.

Section 2 states that is a public necessity that the information contained in petitions for protective injunctions be maintained as confidential and exempt until the respondent is served with process in order to ensure the physical safety of alleged victims and their families, as well as the law enforcement officers serving such petitions on respondents.

Section 3 provides that the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Because the bill creates a public records exemption, Article I, s. 24(c) of the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires that the exemption be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement appears to support the public policy for the exemption, and is no broader than the stated purpose of the exemption.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

First Amendment Commercial Speech

The bill appears to potentially restrict commercial speech. Commercial speech is protected by the First Amendment to the United States Constitution. “Commercial speech that is not false or deceptive and does not concern unlawful activities . . . may be restricted only in the service of a substantial governmental interest, and only through means that directly advance that interest.”⁵² Government action restricting commercial speech is subject to the intermediate level of constitutional scrutiny, which asks “whether an imposition on commercial speech (1) promotes a substantial governmental interest; (2) directly advances the interest asserted; and (3) is not more extensive than necessary to serve that interest.”⁵³

Here, the bill restricts some lawful commercial speech, but the restriction is temporary, lasting only until the petition for a protective injunction has been served on the respondent. Additionally, the temporary restriction on commercial speech appears to be narrowly tailored to promote a substantial government interest: the safety and protection of victims of domestic, repeat, dating, or sexual violence, or stalking and cyberstalking who have filed a petition for injunctive relief.

Separation of Powers

While the judicial branch is not subject to the Public Records Act, the judicial branch generally honors or adopts the public records exemptions passed by the Legislature. Additionally, the Florida Supreme Court has indicated that it has no objection to the Florida Steering Committee on Children and Families in the Courts pursuing this bill.⁵⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill affords greater protection to victims of domestic and other violence and stalking from physical violence, and affords these victims time to safely separate from the abuser.

C. Government Sector Impact:

The court system reports that the bill will have no significant fiscal or operational impact.

⁵² *Rubenstein v. Florida Bar*, 72 F. Supp. 3d 1298, 1310–11 (S.D. Fla. 2014) (quoting *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 638 (1985))(internal quotations omitted).

⁵³ *Id.* at 1311 (citations omitted).

⁵⁴ See Judicial Branch 2019 Legislative Agenda, *Injunctions Against Violence of Stalking – Public Records*, p. 25 (on file with Senate Judiciary Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

While the bill makes the information contained in the actual petition temporarily confidential and exempt, it does not make the fact that a petition for a protective injunction has been filed and docketed confidential and exempt. In other words, a respondent may still see that he or she has been named as a party in a case if the respondent is routinely looking at the online court dockets (as reported by some victims).

VIII. Statutes Affected:

This bill substantially amends section 119.0714 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Harrell

25-00893B-19

2019980__

A bill to be entitled

An act relating to public records; amending s. 119.0714, F.S.; providing an exemption from public records requirements for all information contained in a petition for certain protective injunctions, and any related affidavit, notice of hearing, and temporary injunction, until the respondent has been personally served; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (k) of subsection (1) of section 119.0714, Florida Statutes, is amended to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(k)1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. A petition, and the contents thereof, for an injunction

Page 1 of 3

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

25-00893B-19

2019980__

for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such request.

3. All information contained in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notice of hearing, and temporary injunction, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.

Section 2. The Legislature finds that it is a public necessity that all information contained in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and affidavits, notice of hearing, and temporary injunction, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Release of such

Page 2 of 3

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

25-00893B-19

2019980

59 information before the respondent has been personally served
60 with a copy of the petition, affidavits, notice of hearing, and
61 temporary injunction could significantly threaten the physical
62 safety and security of persons seeking protection through
63 injunctive proceedings and their families, and of law
64 enforcement tasked with serving the petition for injunction,
65 affidavits, notice of hearing, and temporary injunction on the
66 respondent. The harm that may result from the release of the
67 information outweighs any public benefit that might result from
68 public disclosure of the information.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Health
and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Children, Families, and Elder Affairs
Military and Veterans Affairs and Space

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GAYLE HARRELL
25th District

February 23, 2019

Senator David Simmons
404 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Simmons,

I respectfully request that **SB 980 – Public Records/Petitions for Certain Protective Injunctions** be placed on the next available agenda for the Judiciary Committee Meeting..

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

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

Senator Gayle Harrell
Senate District 25

Cc: Tom Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 MAR 19

Meeting Date

SB 980

Bill Number (if applicable)

Topic SB 980

Amendment Barcode (if applicable)

Name Scott Howell

Job Title VP for External Affairs

Address 425 Office Plaza Dr.
Street

Phone 850-556-4001

Tall.
City

FL
State

32301
Zip

Email howell-scott@fcadv.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Coalition Against Domestic Violence

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.4.19

Meeting Date

980

Bill Number (if applicable)

Topic Public Records/Petition Certain Protective Injunctions

Amendment Barcode (if applicable)

Name Barney Bishop IIIJob Title President & CEOAddress 2215 Thomasville RoadPhone 850.510.9922

Street

Tallahassee

FL

32308Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Smart Justice AllianceAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.****This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3-4-19

Meeting Date

SB 980

Bill Number (if applicable)

Topic PUBLIC RECORDS / PETITION FOR CERTAIN PROTECTIVE INJUNCTIONS

Amendment Barcode (if applicable)

Name SEAN BURNFIN

Job Title SENIOR COURT ANALYST

Address 500 SOUTH DUVAL STREET

Street

Phone (850) 922-0358

TALLAHASSEE

FL

32309

City

State

Zip

Email BURNFIN@FLCOURTS.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing STEERING COMMITTEE ON FAMILIES & CHILDREN IN THE COURT

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

314/2019

Meeting Date

Topic _____

Bill Number 980
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Street

SAINT PETERSBURG

City

FLORIDA

State

33705

Zip

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

SB 980

Public Records/Petition for Certain Protective Injunctions (Provided by Florida Coalition Against Domestic Violence 2.26.19)

This bill proposes a temporary public records exemption for petitions for injunctions for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking and cyberstalking, related affidavits, notices of hearing, and temporary injunctions, until the respondent is personally served.

A temporary public records exemption protects survivors and their children who are seeking the court's emergency protection from abusers, and protects law enforcement officers who must serve the injunction petitions and temporary injunctions on respondents.

The most dangerous time for a victim of abuse is when the victim attempts to leave the relationship because abuse is about power and control. When a victim leaves, they threaten the abuser's power and control, which can result in escalated violence and death. This is particularly true for victims of domestic violence, who most often are sharing a residence with the batterer when they attempt to leave the relationship by filing for an injunction for protection. During 2017, the Florida Department of Law Enforcement (FDLE) reported 106,797 domestic violence offenses, including 180 domestic violence homicides. The FDLE data for the first six months of 2018 reflects 51,433 domestic violence offenses with 101 domestic violence homicides.

Victims report that batterers routinely check on-line court dockets to find out whether the victim has filed for an injunction for protection. The availability of information that the victim intends to leave the abuser prior to service of court documents dramatically decreases the amount of time victims have to take additional affirmative actions to remain safe. When abusers locate this information, survivors are at risk of increased violence and threats from the abuser to drop the injunction petition. If the court issued a temporary injunction, a victim is not protected from violence by this temporary injunction until the respondent is served.

If the abuser is alerted to the victim's petition for injunction prior to service, law enforcement tasked with serving the petition and temporary injunction are at risk because the abuser is aware law enforcement will attempt service. Additionally, abusers can use this information to evade service, depriving victims of obtaining permanent injunction relief due to lack of service.

This bill also addresses the practice of some attorneys of reviewing the injunction court dockets and notifying respondents that a petition for injunction has been filed against them, and offering legal representation. While attorneys are generally prohibited by the Florida Bar Rules from contacting prospective clients, such prohibitions do not apply if there is a prior professional relationship with the respondent. Additionally, some attorneys have bypassed the rules by advertising through non-attorney groups who send notices to individuals listed as respondents on petitions for injunctions. The current applicable Bar Rule is insufficient to protect victims seeking injunctive protection and law enforcement attempting to serve abusers because it applies only to petitions for injunction against "physical violence",

and not to all of the types of protective injunctions authorized by Florida Statutes.

SB 980 provides a comprehensive solution to protect survivors, their children, and law enforcement at a time of very high risk, by exempting from public record the petition for injunction, affidavits, notice of hearing, and temporary injunction until the respondent has been personally served. This temporary public records exemption maintains the public's ability to access these court documents after personal service of respondents.



CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT OF FLORIDA

CLAY, DUVAL AND NASSAU COUNTIES

MARK H. MAHON
CHIEF JUDGE

DUVAL COUNTY COURTHOUSE
601 W. ADAMS ST., ROOM 7140
JACKSONVILLE, FLORIDA 32202

August 1, 2016

The Honorable Christine H. Greider
Circuit Judge, 20th Judicial Circuit, State of Florida
Chair, Florida Steering Committee on Families and
Children in the Courts
Collier County Government Complex
3315 Tamiami Trail E., Suite 204
Naples, FL 34112

Re: Solicitation letters in injunction for protection cases

Dear Judge Greider,

I write to seek the assistance of the Steering Committee on Families and Children in the Courts in addressing a family law/injunction for protection issue fraught with danger for abused litigants, their children, and law enforcement officers.

I have been advised that in this circuit and around the state certain attorneys, either directly or indirectly through non-lawyer companies, are obtaining the names and addresses of respondents in newly-filed cases where petitioners are seeking injunctions for protection against domestic violence, repeat violence, sexual violence, dating violence, and stalking. They obtain this information by making Florida Public Records Act requests or "data dump" requests of the Clerk's Office. While the Clerk's Office properly refuses to release the addresses of *petitioners* who have exercised their statutory right to keep their addresses confidential, it believes, I am told, that it does not have similar legal authority with regard to the names and addresses of *respondents*.

Using the contact information mined in this manner, the involved attorneys have reportedly been sending employment solicitation letters to respondents. These letters often arrive before the respondents are served with initial process by law enforcement officers. In other words, respondents are learning of the pendency of injunction actions against them not by

being served with legal process (a temporary injunction and notice of hearing) but by receiving an attorney's letter of uncertain content.

There is an existing but little-known legal ethics rule that expressly prohibits lawyers from engaging in this practice.

Rule 4-7.18 of the Rules of Professional Conduct of The Florida Bar is entitled "Direct Contact with Prospective Clients." Subsection (b)(1)G of that rule states:

(b) Written Communication.

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, *if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.*

(Emphasis added.)

A lawyer who sends a solicitation letter to a respondent in an injunction for protection case violates Rule 4-7.18 if the lawyer "knows or reasonably should know" that the respondent receiving the letter has not yet been served with process in the case. In my circuit, we are undertaking multiple education efforts to acquaint attorneys with this rule.

A violation of this rule will subject the offending lawyer to sanctions by The Florida Bar. Moreover, a violation of this rule creates significant risk to petitioners and their children, all of whom may need additional time to seek safe shelter. It also creates significant risk to law enforcement personnel tasked with serving temporary injunctions.

This salutary rule of ethics for attorneys is unfortunately insufficient to provide complete protection to petitioners, families, and law enforcement. The rule does not restrict the actions of non-lawyers, who continue to be able to gather the names and addresses of Respondents prior to service. Our Clerk's Office advises that it does not presently have the authority to maintain that information as confidential.

I write to request that the Steering Committee discuss this issue and take such action as it deems appropriate to address this situation. One option would be to encourage the Florida Legislature to amend the Florida Public Records Act to add a *time-limited* exemption that would make injunction for protection case information, including party contact information, completely

confidential but *only* until the Respondent is served with initial process. (The petitioner's address, of course, would remain confidential if he or she had opted under Florida law for such confidentiality.) There may well be other options, as well.

I enclose a copy of a 1999 St. Petersburg Times newspaper article entitled, "Divorce Notice by Mail Assailed," with the sub-heading, "Lawyers soliciting clients are resorting to mass mailings, which can be how a mate learns that the marriage is over." See www.sptimes.com/News/62799/TampaBay/Divorce_notice_by_mai.shtml

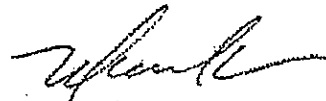
The article reports on a victim of domestic violence who filed a petition for a dissolution of marriage, but who asked the Court to delay service of process until her family members could travel to support and protect her from her husband's wrath. The Court delayed the service of process as requested. Unfortunately, two days after the wife filed her petition, her husband received a letter from a lawyer, soliciting the husband's business in connection with the dissolution of marriage proceeding, a proceeding about which the husband had previously been unaware. The wife, who was awaiting the imminent arrival of her relatives, had not yet taken protective measures because she did not know that there was any possibility that her husband could learn of the action before service.

The husband, upon receiving the lawyer's letter, located and savagely beat his wife, breaking her cheekbone.

Because of the potential for similar grave harm to petitioners, their families, and law enforcement, I would ask that the Steering Committee address this issue on an emergency basis and make such recommendations to the Florida Supreme Court, The Florida Bar, and/or the Florida Legislature as it deems appropriate.

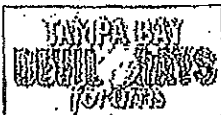
I am grateful to you and to the Steering Committee for your review and recommendations in connection with this important matter.

Sincerely,



Mark H. Mahon
Chief Judge, Fourth Judicial Circuit,
State of Florida

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Divorce notice by mail assailed

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Lawyers soliciting clients are resorting to mass mailings, which can be how a mate learns that the marriage is over,

By JEAN HELLER

© St. Petersburg Times, published June 27, 1999

PALM HARBOR -- A woman is desperate to get away from a husband with a history of abuse. She decides on divorce, hires a lawyer on a Thursday and files the petition the same day.

She asks the court not to serve the papers until the next week, when her mother and brother will be in town to shield her against her husband's wrath. The court puts the paperwork on hold.

But on Saturday morning, two days after the filing, her husband's mail brings solicitations from local lawyers who want to represent him in a divorce case he didn't even know existed. Infuriated, he beats his wife so badly she needs medical attention for a broken cheekbone.

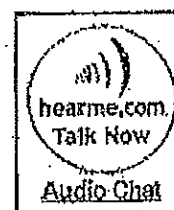
A man has taken his mother's body home to Venezuela for burial. While he is away, his wife files for divorce but postpones service of the papers because of his mother's death. The man arrives at home at midnight on a Friday and falls into bed. The next morning he finds in his mailbox three letters from local lawyers soliciting his business in a divorce action about which he knew nothing.

There is no easy way to learn your spouse is divorcing you.

But across the state, because of what some lawyers believe is a loophole in the Florida Bar Association's rules, people are getting the tough news in impersonal

partly cloudy

current temp: 70°F
partly cloudy
wind: from the W
at 6 mph
relative humidity:
78%
barometer: 30.08
inches



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mass mailings that begin, "Dear Potential Client," or "If you have already obtained the services of an attorney, please disregard this letter."

"It's being done, absolutely," said Clearwater family law attorney Warren Wilson. "It's pretty sleazy."

Divorce filings are public record in Florida. Anyone can walk into a Florida courthouse and review them, even copy them. Some people are making a living at it.

They make daily lists of the names and addresses of those named as defendants in divorce suits and sell the lists to lawyer-subscribers who then solicit the defendants' business. Lawyers who avail themselves of the service defend the practice but decline to identify those who sell them the lists or disclose what the service costs.

"We don't talk about who they are because we may not want the attorney down the street to know our game plan. It's part of our private business practice," said Alan Rosenthal, a 28-year-old divorce lawyer who has been in practice about a year. "I don't want to be so presumptuous as to say we're doing a service. It's just a way of letting the public know you're out there, of finding a client base."

Others are more defensive about their solicitations.

"I have a friend who advertises his pest-control business in Val-Pak advertising, and the St. Petersburg Times isn't writing a story about that," said Liz Richards, a former talk show host now practicing family law in St. Petersburg. "Why is it a story that lawyers advertise? I don't apologize for what I do. I don't need anyone's approval."

In 1995, the U.S. Supreme Court upheld Florida's requirement that lawyers wait 30 days to solicit accident victims or their families.

"Honestly, I don't know if the Bar ever considered a similar 30-day waiting period in divorce cases," said Joy Bruner, assistant ethics counsel for the Florida Bar Association. "As far as I know, there's never been a proposed rule change to extend the waiting period to family law."

Certainly, the Bar is aware that some divorce lawyers solicit clients. The lawyers must get Bar approval for the wording of their mailings. And Bar Association surveys have found that 3 percent to 5 percent of its members acknowledge using direct mail to solicit business.

However, some family law specialists suspect the Bar does not know about the potential bad consequences of solicitation in divorce cases.

"What these lawyers have done is take advantage of the public records law, and that's not unethical, but when it leads to harm or injury -- psychological or physical -- then it is unethical," said Caroline Black, a Tampa family law attorney who is the incoming secretary-treasurer of the family law section of the Florida Bar. "It's certainly something the Bar should look into."

One of Black's partners in Tampa, Miriam Mason, is a former officer of the family law section of the Florida Bar. Mason said she never heard of divorce lawyer solicitations.

"I would be shocked if a board-certified . . . lawyer did that. I am shocked," Mason said. "It's a very interesting issue, and I think the Bar has to deal with it."

Certainly, the public has spoken. In support of its argument before the U.S. Supreme Court in 1995 in favor of the 30-day waiting period on solicitation of accident victims and their families, the Florida Bar presented a survey that showed the general public hates the idea of lawyer solicitations -- in divorce cases as well as accident cases.

The majority questioned for the survey said that solicitation tended to take advantage of the vulnerable and the gullible, and that lawyers who engaged in the practice were shady, at best.

Victor Kasatshko of Palm Harbor agrees. He is the man who went to Argentina to bury his mother and returned to find three letters of solicitation from divorce lawyers waiting for him. He later received a fourth.

It wasn't the prospect of divorce that stunned Kasatshko, a fishing boat designer. He and his wife had been living apart and had discussed the matter. What he resents, he said, is her timing and the lawyers who tried to exploit his situation.

"It hit me so hard after I came back from burying my mom," he said. "And then to learn of it the way I did. How do the lawyers know what the situation is in the house where they send these letters -- what kinds of problems the letters will cause? It is so low. It's just not the way a professional should do business. It's taking advantage of people at the worst possible time."

An individual who is afraid of an abusive spouse can petition the court for a domestic violence injunction. It would be served by a sheriff's deputy who traditionally gives the spouse a few minutes to collect personal items and leave the house.

The Palm Harbor woman who was beaten by her husband after he received solicitation letters specifically declined such action, according to her attorney, Meredith Craig of St. Petersburg.

"The woman feared such a court order would inflame her husband even more, and that he would ignore it, in any event," said Craig. "It was just a horrible situation."

Alan Rosenthal, the young lawyer, said he once agreed with Craig on the subject of direct-mail solicitation, but no more.

"If I thought I was doing harm, I wouldn't use it," Rosenthal said.

And what about situations such as that which arose for Craig's client?

"It doesn't happen that often," he said. "It's negligible."

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TO TOP

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I have been asked by Chief Judge Mahon to add DV Injunction to the FCTC agenda in August. The issue concerns DV Injunctions that are available online prior to service. When I took over as the Chair of our local Criminal Justice Information group I was asked by a law enforcement officer to look into what could be done to delay the online access until service has been made. Since then I have learned a lot of information about DV Injunctions!

Judge Carithers is our Administrative Judge for Family Law. He and Judge Cole are working on drafting something in lieu of a rule change or change to the AO security matrix that would give the local clerks the ability to delay the online access until service can be made. They have both offered to add their input if requested. Of course we are hoping that a state-wide solution would be forthcoming. As an example of what is being requested I referred to Rule 3.140(I) which was created to block access to unserved capias.

We are aware of the public and media concerns when access to a public record is made confidential even if it is temporary.

In 2008 Senator Fasano introduced a Bill that addresses the issue. It died in Committee on Judiciary.

As for the Fla Bar attorneys we are aware of the Florida Bar Rule of Professional Conduct 4-7.18(b)(1)(G) that speaks to direct contact with clients and specifically injunctions. However we have had a recent instance here by an attorney.

Currently the public can search these cases by name and see that an injunction was filed. Although the actual document is VOR, the case information and docket lines are viewable. That alerts the respondent that law enforcement is coming and creates a problem to a petitioner who may have thought they had time to remove themselves from a harmful situation. The potential will increase as the public becomes more savvy as to what is available. This access puts the petitioner and law enforcement in harm's way.

I am hoping that the Access Committee may be to address this through the security matrix until such time a Rule or AOSC can be created.

As usual....

Thanks,

Mike Smith
Court Technology Officer
4th Judicial Circuit, Florida
501 West Adams Street
Room 5196
Phone: 904.255.1083
Cell: 904.402.1105

From: Tuten, Don F.
To: Smith, Mike
Subject: Domestic Violence Injunctions-Officer Safety
Date: Monday, July 25, 2016 11:01:39 AM

Mike, is there a way to delay Domestic Violence Injunctions from being released to "Public Access" (via the internet) until the actual injunction is served? As you know, by allowing public access to this information prior to a deputy sheriff serving the injunction, it poses an increased threat of violence against that officer who will be encountering a defendant who potentially has obtained the knowledge that he/she is going to be served with said injunction. I understand the importance of allowing our CJIS agency partners with this information if the defendant goes to another part of the state before being served, but if ANYONE can gain access to this information prior to service, then the police/court officials/petitioners all run the risk of being at a disadvantage.

Thank you, and let me know how we may be able to make the needed change.

Chief Don Tuten
Jacksonville Sheriff's Office
Services Division
(904) 630-2205
2 Timothy 2:15
NA 264

THE FLORIDA BAR

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Attachments 4a1 and 4a2, Confidentiality of petitions for injunctions against domestic violence

Citizens Forum, January 31, 2008

Title: Attorney's timing blasted

Published: 11/06/2007

Source: St. Petersburg Times

Type: Article

Issues:

Bar Published: 11/06/2007

Attorney's timing blasted

11/06/2007 © St. Petersburg Times (Requires Login)

Her ad could come at a dangerous time for those trying to leave abusers, some say.

By JAMAL THALJI, Times Staff Writer

Published November 6, 2007

The most dangerous time for an abused wife or girlfriend is when she's trying to leave her abuser, say domestic violence groups.

Now victims' advocates say an attorney's effort to drum up business makes it even more dangerous for those women and the deputies protecting them.

Port Richey attorney Jessica Miller, already under investigation by the Florida Bar, has been seeking business from those named in requests for domestic violence injunctions, often abusive husbands and boyfriends.

Miller's advertisement is not illegal. But it's the timing of her ad that state Sen. Mike Fasano, the Pasco County Sheriff's Office, the Florida Coalition Against Domestic Violence and the Florida Bar fear most.

That's because an abuser could read the lawyer's letter before a deputy can serve the protective order. That could inadvertently tip off abusers that their wives, their girlfriends, their children, are about to leave.

"It definitely puts a victim in a very dangerous situation," said coalition spokeswoman Dia Kuykendall, "because there

could be instances where they're still living with the abuser but haven't left and have filed the paperwork."

Lynn Needs, executive director of the Salvation Army's Domestic Violence Program, put it this way:

"It's like pouring gas onto a fire." * * *

Miller has a First Amendment right to commercial speech, to advertise her business. The public has a right to know about those legal services. And those served with injunctions have the right to fight them.

That's who Miller's advertisement is aimed at. But then it also says: "you have been, or are about to be, served with an injunction."

That could make a volatile situation even more so, Needs said.

"There's constant safety planning going on for someone to leave an abusive relationship," she said. "Notification before that could destroy that person's plan and it could make them even more vulnerable."

Filing the paperwork, asking a judge for a protective order, escalates the situation even more, Kuykendall said.

That's why deputies serve protective orders, to explain what they are and the consequences of failing to obey them.

It's safer for everyone involved, sheriff's spokesman Kevin Doll said, if the abuser is the last to know - and if a deputy is the first to tell them. If they're tipped off to the injunction, Doll said, they can avoid being served - and if they don't get the judge's order, they don't have to obey it.

"The process is there for a certain reason," Doll said. "This attempt by this lawyer could be throwing a monkey wrench into the whole procedure.

"It's already a delicate, emotionally tense time serving these injunctions." * * *

Miller did not return a call for comment from the Times on Monday. But her office did say that the ad was shown to and approved by the Florida Bar.

The Bar said the ad does appear to meet its rules.

Miller is already in trouble with the Bar for allegations of misconduct from past clients. The Bar also wants to suspend her law license for failing to obey subpoenas.

She has denied the allegations. * * *

So what can be done?

"We're going to be informing our deputies and our victim's advocates about this possible pre-emptive strike by this lawyer," Doll said.

The best solution, the Sheriff's Office, the Bar and Fasano all said, might be legislative.

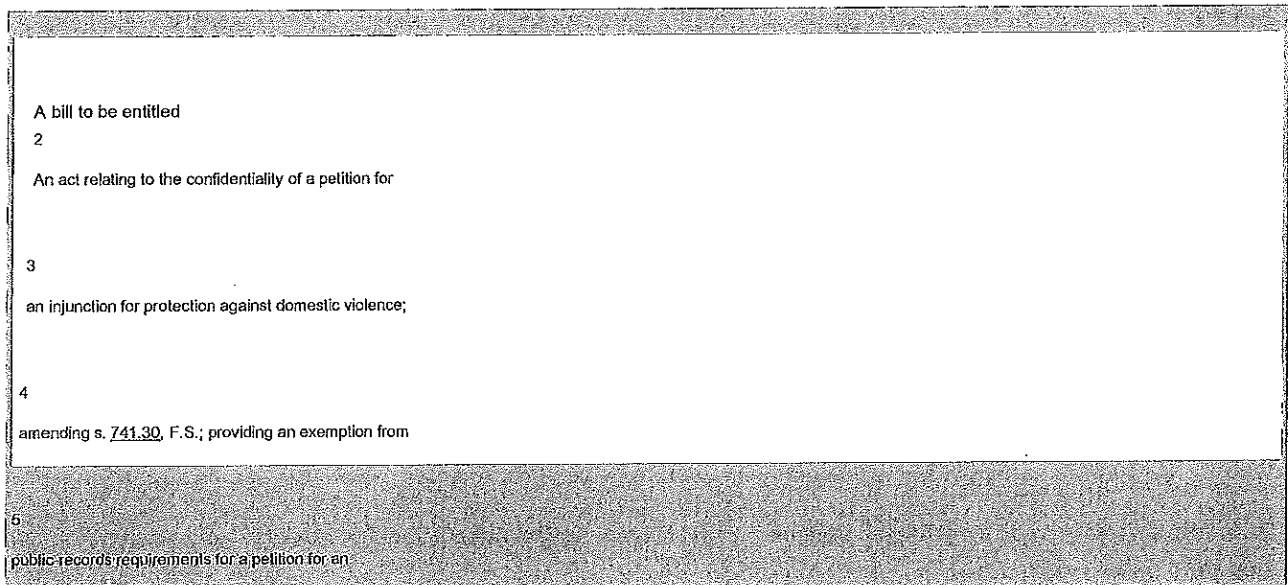
Fasano said he would sponsor a law to exempt domestic violence injunctions from public records law until they're served.

Then no one could obtain the names and addresses to send the fliers out in the first place.

Jamal Thalji can be reached at thalji@sptimes.com or 727 869-6236.

[Last modified November 5, 2007, 22:02:42]

Imported: Nov 6 2007 3:44AM Indexed: Nov 6 2007 3:47AM



A bill to be entitled

2

An act relating to the confidentiality of a petition for

3

an injunction for protection against domestic violence;

4

amending s. 741.30, F.S.; providing an exemption from

5

public records requirements for a petition for an

6

injunction for protection against domestic violence until

7

the petition is personally served on the respondent;

8

providing for future legislative review and repeal of the

9

exemption under the Open Government Sunset Review Act;

10

providing a statement of public necessity; providing an

11

effective date.

12

13

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

14

15

Section 1. Subsection (4) of section 741.30, Florida

16

Statutes, is amended to read:

17

741.30 Domestic violence; injunction; powers and duties of

18

court and clerk; petition; notice and hearing; temporary

19

injunction; issuance of injunction; statewide verification

20

system; enforcement.--

21

(4)(a) Upon the filing of the petition, the court shall set

22

a hearing to be held at the earliest possible time. The

23

respondent shall be personally served with a copy of the

24

petition, financial affidavit, Uniform Child Custody Jurisdiction

25

and Enforcement Act affidavit, if any, notice of hearing, and

26

temporary injunction, if any, prior to the hearing.

27

(b) All information contained in a petition for an

28

injunction for protection against domestic violence is

29

confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of

30

the State Constitution until the respondent has been personally

31

served with a copy of the petition for an injunction for

32

protection against domestic violence.

33

(c) Paragraph (b) is subject to the Open Government Sunset

34

Review Act in accordance with s. 119.15, and shall stand repealed

35

on October 2, 2013, unless reviewed and saved from repeal through

36

reenactment by the Legislature.

37

Section 2. The Legislature finds that it is a public

38

necessity that all information contained in a petition for an

39

injunction for protection against domestic violence be made

40

confidential and exempt from disclosure. Release of the

41

information in the petition before the respondent has been

42

personally served with a copy of the petition could significantly

43

threaten the physical safety and security of persons seeking

44

protection through judicial proceedings. Therefore, the harm that

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would result from the release of the information outweighs any

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public benefit that might result from disclosure of the

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information.

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Section 3. This act shall take effect July 1, 2008.

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



SB 670 by Fasano.doc SB 670.pdf St. Pete Times - Lawyer Solicits.doc

[Revised: 03-06-2008]





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Fastcase Legal Research

PRi - Practice Resource Institute

Henry Latimer Center for Professionalism

By Senator Fasano

11-02445-08

2008870__

1 A bill to be entitled

2 An act relating to the confidentiality of a petition for
3 an injunction for protection against domestic violence;
4 amending s. 741.30, F.S.; providing an exemption from
5 public-records requirements for a petition for an
6 injunction for protection against domestic violence until
7 the petition is personally served on the respondent;
8 providing for future legislative review and repeal of the
9 exemption under the Open Government Sunset Review Act;
10 providing a statement of public necessity; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Subsection (4) of section 741.30, Florida
16 Statutes, is amended to read:

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19 injunction; issuance of injunction; statewide verification
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22 a hearing to be held at the earliest possible time. The
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26 temporary injunction, if any, prior to the hearing.

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11-02445-08

2008870__


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31 served with a copy of the petition for an injunction for
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33 (c) Paragraph (b) is subject to the Open Government Sunset
34 Review Act in accordance with s. 119.15, and shall stand repealed
35 on October 2, 2013, unless reviewed and saved from repeal through
36 reenactment by the Legislature.

37 Section 2. The Legislature finds that it is a public
38 necessity that all information contained in a petition for an
39 injunction for protection against domestic violence be made
40 confidential and exempt from disclosure. Release of the
41 information in the petition before the respondent has been
42 personally served with a copy of the petition could significantly
43 threaten the physical safety and security of persons seeking
44 protection through judicial proceedings. Therefore, the harm that
45 would result from the release of the information outweighs any
46 public benefit that might result from disclosure of the
47 information.

48 Section 3. This act shall take effect July 1, 2008.

From: Devoe, Rose M
To: Smith, Mike
Subject: Emailing: Flsenate Archive Session Bills -Bill InfoS 0870-Session 2008
Date: Tuesday, July 12, 2016 4:58:26 PM
Attachments: image014.png
image015.png
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Senate 0870: Relating to Pub. Rec./Injunction/Domestic Violence [SPCC]															
<p>S870 PUBLIC RECORDS/GENERAL BILL by Fasano Pub. Rec./Injunction/Domestic Violence [SPCC]; Provides an exemption from public records requirements for a petition for an injunction for protection against domestic violence until the petition is personally served on the respondent. Provides for future legislative review and repeal under the Open Government Sunset Review Act, etc. EFFECTIVE DATE: 07/01/2008. 12/21/07 SENATE Filed 01/24/08 SENATE Referred to Children, Families, and Elder Affairs; Judiciary; 03/04/08 SENATE Introduced, referred to Children, Families, and Elder Affairs; Judiciary; Governmental Operations; Rules 00054 03/07/08 SENATE On Committee agenda-- Children, Families, and Elder Affairs, 03/12/08, 2:30 pm, 412-K 03/12/08 SENATE Favorable by Children, Families, and Elder Affairs; YEAS 8 NAYS 0 -SJ 00260 03/13/08 SENATE Now in Judiciary -SJ 00260 05/02/08 SENATE Died in Committee on Judiciary</p> <p>In addition to the above Bill History information, the Division of Legislative Information publishes a brief Bill Summary (PDF) for the Senate bill AS ORIGINALLY FILED. Check the Bill Analyses section below for detailed analyses, if available, prepared by the Senate's professional committee staff.</p> <p>Bills</p> <table><tr><td>Version:</td><td>Posted:</td><td>Format:</td></tr><tr><td>S 0870</td><td>01/17/2008</td><td>Web Page PDF</td></tr></table> <p>Committee Amendments</p> <p>NO COMMITTEE AMENDMENTS AVAILABLE</p> <p>Floor Amendments</p> <p>NO FLOOR AMENDMENTS AVAILABLE</p> <p>Bill Analyses</p> <table><tr><td>Analysis:</td><td>Committee:</td><td>Posted:</td><td>Format:</td></tr><tr><td></td><td>Children,</td><td></td><td></td></tr></table>		Version:	Posted:	Format:	S 0870	01/17/2008	Web Page PDF	Analysis:	Committee:	Posted:	Format:		Children,		
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s 0870

Families, and
Elder Affairs

03/13/2008

[PDF](#)

Vote History - Committee

Chamber: Committee:

Format:

Senate Children, Families, and Elder Affairs [Web Page](#)

Vote History - Floor

NO VOTE HISTORY AVAILABLE

Citations - Statute

[0741.30](#)

Citations - Constitution

NO CONSTITUTION CITATIONS FOUND FOR SENATE BILL 0870.

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Legislative Issue 2019 Legislative Session

Subject:

Injunctions Against Violence or Stalking – Public Records

Source of Proposal:

Steering Committee on Families and Children in the Court

Statement of Issue:

The Steering Committee on Families and Children in the Court (Steering Committee) is requesting approval to pursue the following issue: a statutory amendment should exempt the ex parte injunction petition, temporary order, and notice of hearing from public records disclosure requirements until the respondent is served.

Supreme Court Action:

The Court has no objection to the Steering Committee pursuing this issue.

Present Situation:

Currently, once a petition for protection against domestic violence, sexual violence, dating violence, repeat violence, or stalking is filed, the petition becomes public record.¹⁰ Some attorneys are checking public records and then contacting the respondent before the petition is served and offering to represent him or her in court. This situation has put many petitioners at risk because respondents who learn that petitions have been filed against them may respond violently.

The Florida Constitution requires a new public records exemption to be created through separate legislation passed by a two-thirds vote of each house of the Legislature.

Effect of Proposed Changes:

Until a restraining order is served on the respondent, the case file will be exempt from public records disclosure requirements.

¹⁰ Statutory provisions governing such petitions are located, respectively, in ss. 741.30, 784.046(6)(a), and 784.0485(5)(a), F.S.

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 Judiciary

BILL: SB 910

INTRODUCER: Senator Gainer

SUBJECT: Court-ordered Treatment Programs

DATE: March 5, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Tulloch	Cibula	JU	Favorable
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

I. Summary:

SB 910 expands the eligibility criteria for individuals who may participate in a military veterans' and servicemembers' court program, more commonly known as veterans' courts. A veterans' court is a problem-solving court providing treatment intervention to military veterans and servicemembers who are charged with or convicted of criminal offenses and who are also suffering military-related injuries, such as post-traumatic stress disorder, traumatic brain injury, or a substance abuse disorder.

Currently, individuals who are eligible to participate in the veterans' court include honorably discharged veterans, generally discharged veterans, and active duty servicemembers. The bill expands participation eligibility by eliminating the requirement that a veteran be honorably or generally discharged. Instead, the bill provides that any veteran discharged or released under any condition is eligible to participate in a veteran's court.

Additionally, the bill expands participation eligibility beyond veterans and active duty servicemembers to individuals who are current or former United States defense contractors and military members of a foreign allied country.

While the bill may increase the number of cases referred to veterans' courts, the bill does not have an impact on state revenues or expenditures.

The bill takes effect on October 1, 2020.

II. Present Situation:

Veterans' courts are problem-solving courts aimed at addressing the root causes of criminal behavior.¹ Modeled after the drug court treatment programs, the purpose of the veterans' courts is to divert eligible defendants who are veterans or servicemembers into treatment programs for military-related conditions or war-related trauma, such as post-traumatic stress disorder, mental illness, traumatic brain injury, or substance abuse. Diversion to a veterans' court treatment program may occur either before trial or at sentencing.²

Veterans' courts consider whether an individual's military-related condition can be addressed through an individualized treatment program.³ Like the drug courts, the veterans' courts implement the following 10 key components⁴ when addressing the needs of the individual:

- Integration of alcohol, drug treatment, and mental health services into justice system case processing;
- Nonadversarial approach;
- Early identification of eligible participants;
- Continuum of services;
- Alcohol and drug testing for abstinence;
- Coordinated strategy for responses to participants' compliance;
- Ongoing judicial interaction;
- Monitoring and evaluation for program effectiveness;
- Interdisciplinary education; and
- Partnerships with stakeholders.⁵

Significantly, veterans' courts involve not only nonadversarial cooperation among “traditional partners found in drug courts, such as the judge, state attorney, public defender, case manager, treatment provider, probation, and law enforcement[,]” but also cooperation with “representatives of the Veterans Health Administration (VHA) and the Veterans Benefit Administration as well as State Departments of Veterans Affairs, Vet Centers, Veterans Service Organizations, Department of Labor, volunteer veteran mentors, and other veterans support groups.”⁶ Veterans' courts are also able to “leverage resources available from the U.S. Department of Veterans Affairs” to provide treatment and other services to veterans and servicemembers.⁷

¹ Florida Courts, *Problem-Solving Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/> (last visited Feb. 25, 2019).

² See notes 14, 15, and 16 and accompanying text, *infra*.

³ Section 394.47891, F.S.

⁴ Section 397.334(4), F.S.

⁵ See Florida Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Feb. 25, 2019), noting that the 10 key components derive from “The Ten Key Components of Veterans Treatment Court” provided by Justice for Vets, a division of the National Association of Drug Court Professionals. See also Justice for Vets, *The Ten Key Components of Veterans Treatment Courts*, <https://justiceforvets.org/wp-content/uploads/2017/02/The-Ten-Key-Components-of-Veterans-Treatment-Courts.pdf> (last visited Feb. 25, 2019).

⁶ Florida Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Feb. 25, 2019).

⁷ *Id.*

Florida's Veterans' Courts

In 2012, the Florida Legislature passed the “T. Patt Maney Veterans’ Treatment Intervention Act.”⁸ The Act created the military veterans and servicemembers court program,⁹ better known as veterans’ courts.¹⁰ Specifically, the Act authorizes the chief judge of each judicial circuit to establish a veterans’ court program to serve the special needs of eligible veterans¹¹ and active duty servicemembers¹² who are:

- Suffering a military-related condition, such as mental illness, traumatic brain injury, or substance abuse; and
- Charged with or convicted of a criminal offense.¹³

The Act also added provisions to chapter 948, F.S., providing for when veterans and servicemembers may be eligible to participate in the veterans’ court program for treatment and services. Eligible individuals may participate after being:

- Charged with a criminal misdemeanor¹⁴ or certain felony offenses but before being convicted (pretrial intervention);¹⁵ or
- Convicted and sentenced, as a condition of probation or community control.¹⁶

Pretrial Intervention Participation

After a criminal arrest, rather than being prosecuted, eligible veterans may be diverted to a pretrial intervention program. Prior to placement in a pretrial intervention program, a veterans’ treatment intervention team must develop an individualized, coordinated strategy for the veteran. The team must present the coordinated strategy to the veteran in writing before he or she agrees to enter the program. The strategy is modeled after the ten therapeutic jurisprudence principles and key components for treatment-based drug court programs.¹⁷

If the defendant agrees to participate in the pretrial intervention program, while participating in the program, the court retains jurisdiction in the defendant’s case. At the end of the program, the court considers recommendations for disposition by the state attorney and the program administrator. If the veteran successfully completes the treatment program, the court must

⁸ CS/CS/SB 922 (ch. 2012-159, Laws of Fla.).

⁹ Section 394.47891, F.S.

¹⁰ Florida Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Feb. 25, 2019).

¹¹ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions.

¹² Section 250.01(19), F.S., defines a servicemember as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces..

¹³ Section 394.47891, F.S.

¹⁴ Section 948.16(2), F.S., establishes the misdemeanor pretrial veterans’ treatment intervention program.

¹⁵ Section 948.08(7), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans’ treatment intervention programs. There is also a cross-reference in section 948.08(7), F.S., to the disqualifying felony offenses listed in s. 948.06(8)(c), F.S., which lists 19 disqualifying felony offenses of a serious nature, including kidnapping, murder, sexual battery, treason, etc.

¹⁶ Section 948.21, F.S.

¹⁷ See section 948.08(7)(b), F.S. (requiring a coordinated strategy for veterans charged with felonies); section 948.16(2)(b), F.S. (requiring a coordinated strategy for veterans charged with misdemeanors). See also section 397.334(4), F.S. (requiring treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee).

dismiss the criminal charges. If the court finds that the veteran did not successfully complete the pretrial intervention program, the court can either order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.¹⁸

Eligible veterans who successfully complete the diversion program may petition the court to order the expunction of the arrest record and the plea.¹⁹

Participation in Treatment Program while on Probation or Community Control

Veterans and servicemembers may also qualify for treatment and services as part of their criminal sentence. For crimes committed on or after July 1, 2012, a court may order a veteran or servicemember suffering from a military-related mental illness, a traumatic brain injury, or a substance abuse disorder to successfully complete a mental health or substance abuse treatment program as a condition or probation or community control.²⁰

Current Court Statistics

According to the State Court Administrator's Office of Court Improvement, as of July 2018, there were 30 veterans' courts in Florida.²¹ Additionally, the Office of Court Improvement reports that in 2016, "Florida's veterans' courts admitted 1,090 participants and graduated 640."²²

Expansion of Participant Eligibility in Florida's Veterans' Courts

Under current law, to be eligible to participate in the veterans' court program, the defendant must allege that he or she is suffering a military-related injury and establish that he or she is:

- An honorably discharged veteran;²³
- A generally discharged veteran;²⁴ or
- An active duty servicemember.²⁵

By the recommendation of the Task Force on Substance Abuse and Mental Health Issues in the Courts,²⁶ Florida's court system has proposed that eligibility to participate in the veterans' courts be expanded to all veterans of any discharge status. The Task Force also recommends that

¹⁸ Section 948.08(7)(b)-(c), F.S.

¹⁹ Sections 948.16(2)(b), 948.08(7)(b), F.S.

²⁰ Section 948.21(1), F.S. For crimes committed after July 1, 2016, veterans discharged or released under a general discharge also qualified for participation in veterans' treatment programs as a condition of probation or community control. Section 948.21(2), F.S.

²¹ Florida Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Feb. 25, 2019).

²² *Id.*

²³ Section 1.01(14), F.S.

²⁴ Section 948.21(2), F.S.

²⁵ Section 250.01(19), F.S.

²⁶ The "Task Force on Substance Abuse and Mental Health Issues in the Courts" is the task forced "charged with developing a strategy for ensuring fidelity to nationally accepted key components of veterans courts" pursuant to Florida Supreme Court Administrative Order 14-46. See Judicial Branch 2019 Legislative Agenda, *Expansion of Veterans Court Eligibility*, p. 51, n. 17 (on file with Senate Judiciary Committee).

veterans' courts be extended to other military-related individuals: current or former United States defense contractors, and current or former military members of a foreign allied country.²⁷

The proposed expansion to include contractors and military members of foreign allied countries is in response to nationwide reports “that a large number of service personnel are being excluded from veterans courts because they do not meet the definition of ‘veteran’ or ‘servicemember’” who have “served our country and would respond well to veterans court interventions.”²⁸

III. Effect of Proposed Changes:

Section 1 amends s. 394.47891, F.S., to expand the eligibility criteria for who may participate in the Military Veterans' and Servicemembers' Court Program. This section does two things:

- (1) It eliminates the requirement that a veteran be honorably or generally discharged, providing instead that any veteran discharged or released under any condition is eligible to participate.
- (2) It expands eligibility beyond veterans and active duty servicemembers to include individuals who are current or former United States defense contractors and current or former military members of a foreign allied country.

Sections 2, 3, and 4 make conforming changes to the statutory provisions concerning pretrial intervention and sentencing based on the expanded eligibility for Veterans' court treatment programs set out in Section 1.

Section 2 amends s. 948.08, F.S., to clarify that pretrial intervention programs extend to any person charged with a **felony**²⁹ who is a veteran discharged for any reason, an active duty servicemember, a current or former United States defense contractor, or a current or former military member of a foreign allied country.

Section 3 amends s. 948.16, F.S., to clarify that **misdemeanor** pretrial intervention programs extend to any person charged with a misdemeanor who is a veteran discharged for any reason, an active duty servicemember, a current or former United States defense contractor, or a current or former military member of a foreign allied country.

Section 4 amends s. 948.21, F.S., to clarify that a court may impose a **condition of probation or community control** requiring participation in a treatment program to any person who is a veteran discharged for any reason, an active duty servicemember, a current or former United States defense contractor, or a current or former military member of a foreign allied country.

Section 5 provides the bill takes effect on October 1, 2020.

²⁷ *Id.* at 50.

²⁸ *Id.* at 52.

²⁹ Except the more serious felony offenses listed in s. 948.06(8)(c), F.S.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill's expansion of eligible veterans and other military-related individuals (contractors and allied country military members) for purposes of veterans' courts will increase the number of people eligible to participate in veterans' court programs, which will likely increase the costs associated with these programs. However, such costs will be limited by the amount of state funds appropriated to such programs. Additionally, such costs may be offset to the extent that the need for prison beds is reduced by placement in veterans' court programs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.47891, 948.08, 948.16, and 948.21.

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

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

None.

B. Amendments:

None.

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

By Senator Gainer

2-00872-19

2019910__

1 A bill to be entitled
 2 An act relating to court-ordered treatment programs;
 3 amending s. 394.47891, F.S.; providing that veterans
 4 who were discharged or released under any condition,
 5 individuals who are current or former United States
 6 Department of Defense contractors, and individuals who
 7 are current or former military members of a foreign
 8 allied country are eligible in a certain Military
 9 Veterans and Servicemembers Court Program; amending s.
 10 948.08, F.S.; authorizing a person who is charged with
 11 a certain felony and identified as a veteran who is
 12 discharged or released under any condition, an
 13 individual who is a current or former United States
 14 Department of Defense contractor, or an individual who
 15 is a current or former military member of a foreign
 16 allied country to be eligible for voluntary admission
 17 into a pretrial veterans' treatment intervention
 18 program under certain circumstances; amending s.
 19 948.16, F.S.; authorizing a veteran who is discharged
 20 or released under any condition, an individual who is
 21 a current or former United States Department of
 22 Defense contractor, or an individual who is a current
 23 or former military member of a foreign allied country
 24 and who is charged with a misdemeanor to be eligible
 25 for voluntary admission into a misdemeanor pretrial
 26 veterans' treatment intervention program under certain
 27 circumstances; amending s. 948.21, F.S.; authorizing
 28 the court to impose a condition requiring a
 29 probationer or community controllee who is a veteran

Page 1 of 5

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

2-00872-19

2019910__

30 discharged or released under any condition, an
 31 individual who is a current or former United States
 32 Department of Defense contractor, or an individual who
 33 is a current or former military member of a foreign
 34 allied country to participate in a certain treatment
 35 program under certain circumstances; providing an
 36 effective date.

37
 38 Be It Enacted by the Legislature of the State of Florida:

39
 40 Section 1. Section 394.47891, Florida Statutes, is amended
 41 to read:

42 394.47891 Military veterans and servicemembers court
 43 programs.—The chief judge of each judicial circuit may establish
 44 a Military Veterans and Servicemembers Court Program under which
 45 veterans, as defined in s. 1.01; including veterans who were
 46 discharged or released under any condition; ~~a general discharge,~~
 47 ~~and~~ servicemembers, as defined in s. 250.01; individuals who are
 48 current or former United States Department of Defense
 49 contractors; and individuals who are current or former military
 50 members of a foreign allied country, who are charged or
 51 convicted of a criminal offense, and who suffer from a military-
 52 related mental illness, traumatic brain injury, substance abuse
 53 disorder, or psychological problem can be sentenced in
 54 accordance with chapter 921 in a manner that appropriately
 55 addresses the severity of the mental illness, traumatic brain
 56 injury, substance abuse disorder, or psychological problem
 57 through services tailored to the individual needs of the
 58 participant. Entry into any Military Veterans and Servicemembers

Page 2 of 5

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

2-00872-19

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Court Program must be based upon the sentencing court's assessment of the defendant's criminal history, military service, substance abuse treatment needs, mental health treatment needs, amenability to the services of the program, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program.

Section 2. Paragraph (a) of subsection (7) of section 948.08, Florida Statutes, is amended to read:

948.08 Pretrial intervention program.—

(7) (a) Notwithstanding any provision of this section, a person who is charged with a felony, other than a felony listed in s. 948.06(8)(c), and identified as a veteran, as defined in s. 1.01; including a veteran who is discharged or released under any condition; a general discharge, or servicemember, as defined in s. 250.01; an individual who is a current or former United States Department of Defense contractor; or an individual who is a current or former military member of a foreign allied country, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, is eligible for voluntary admission into a pretrial veterans' treatment intervention program approved by the chief judge of the circuit, upon motion of either party or the court's own motion, except:

1. If a defendant was previously offered admission to a pretrial veterans' treatment intervention program at any time before trial and the defendant rejected that offer on the record, the court may deny the defendant's admission to such a program.

2. If a defendant previously entered a court-ordered

2-00872-19

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veterans' treatment program, the court may deny the defendant's admission into the pretrial veterans' treatment program.

Section 3. Paragraph (a) of subsection (2) of section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program; misdemeanor pretrial mental health court program.—

(2) (a) A veteran, as defined in s. 1.01; including a veteran who is discharged or released under any condition; a general discharge, or servicemember, as defined in s. 250.01; an individual who is a current or former United States Department of Defense contractor; or an individual who is a current or former military member of a foreign allied country, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, and who is charged with a misdemeanor is eligible for voluntary admission into a misdemeanor pretrial veterans' treatment intervention program approved by the chief judge of the circuit, for a period based on the program's requirements and the treatment plan for the offender, upon motion of either party or the court's own motion. However, the court may deny the defendant admission into a misdemeanor pretrial veterans' treatment intervention program if the defendant has previously entered a court-ordered veterans' treatment program.

Section 4. Subsection (2) of section 948.21, Florida Statutes, is amended to read:

948.21 Condition of probation or community control; military servicemembers and veterans.—

2-00872-19

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117 (2) Effective for a probationer or community controllee
118 whose crime is committed on or after July 1, 2016, and who is a
119 veteran, as defined in s. 1.01;~~including a veteran who is~~
120 discharged or released under any condition; ~~a general discharge,~~
121 ~~or~~ servicemember, as defined in s. 250.01; an individual who is
122 a current or former United States Department of Defense
123 contractor; or an individual who is a current or former military
124 member of a foreign allied country, who suffers from a military
125 service-related mental illness, traumatic brain injury,
126 substance abuse disorder, or psychological problem, the court
127 may, in addition to any other conditions imposed, impose a
128 condition requiring the probationer or community controllee to
129 participate in a treatment program capable of treating the
130 probationer or community controllee's mental illness, traumatic
131 brain injury, substance abuse disorder, or psychological
132 problem.

133 Section 5. This act shall take effect October 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Agriculture, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal
and Civil Justice
Military and Veterans Affairs and Space

SENATOR GEORGE B. GAINER
2nd District

February 19, 2019

Re: SB 910

Dear Chair Simmons,

I am respectfully requesting Senate Bill 910, related to Court Ordered Treatment Programs, be placed on the agenda for the next meeting of the Judiciary Committee.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A handwritten signature in cursive script that reads "George B. Gainer".

Senator George Gainer
District 2

Cc. Tom Cibula, Joyce Butler, Valerie Clarke, Carolyn Grzan, Diane Suddes

REPLY TO:

- ☐ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- ☐ 302 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002
- ☐ Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville, Florida 32578 (850) 747-5454

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.4.19

Meeting Date

910

Bill Number (if applicable)

Topic Court Ordered Treatment Programs

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

3/4/19

Meeting Date

910

Bill Number (if applicable)

Topic Court-ordered Treatment Programs

Amendment Barcode (if applicable)

Name Sarah Naf Bieh1

Job Title Chief of Legislative Affairs, OSCA

Address 500 S. Duval St.

Street

Tallahassee

City

FL

State

32399

Zip

Phone

850-922-5692

Email

nafs@flcourts.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Steering Committee on Problem-Solving Courts

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019

Meeting Date

910

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S

Street

Phone 727/897-9291

St Petersburg

City

FL

State

33705

Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

910

Bill Number (if applicable)

Topic

VETERANS COURT

Amendment Barcode (if applicable)

Name

DAN HENDRICKSON

Job Title

president

Address

319 E PARK

Phone

2505701967

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email

danhendrickson@comcast.net

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

910

Bill Number (if applicable)

Topic COURT ORDERED TREATMENT

Amendment Barcode (if applicable)

Name RJ MEARS

Job Title LOBBYIST

Address 113 E COLLEGE AVE, 300

Street

TAMPA

City

FL

State

32301

Zip

Phone _____

Email RJ@SUSKINADVISORY.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL PUBLIC DEFENDERS ASSOC.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

SB910

Bill Number (if applicable)

Topic SB910

Amendment Barcode (if applicable)

Name Enica Medina

Job Title _____

Address 2295 Underwood me
Street

Phone 407 212 0904

Saint Cloud FL 34771
City State Zip

Email Enica1007Medina@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

Legislative Issue 2019 Legislative Session

Subject:

Expansion of Veterans Court Eligibility

Source of Proposal:

Steering Committee on Problem-Solving Courts

Statement of Issue:

The Administrative Order (AOSC18-32) creating the Steering Committee on Problem-Solving Courts (Steering Committee) authorizes the Steering Committee to address statutory changes previously proposed by the Task Force on Substance Abuse and Mental Health Issues in the Courts (Task Force) and approved by the Supreme Court (Court) but that have not yet been enacted. This proposal falls under that category.

Currently, each judicial circuit may establish a veterans court program under which veterans and servicemembers who are charged or convicted of a criminal offense and who suffer from a military-related mental illness, traumatic brain injury (TBI), substance abuse disorder, or psychological problem may be sentenced in a manner that appropriately addresses the severity of the issue through services tailored to the individual needs of the participant. However, private military contractors, military members of foreign allied countries, and individuals who served in the active military, naval, or air service and who were discharged or released under less than a general discharge are not included in the definition of “veterans” as defined in s. 1.01, F.S., or “servicemembers” as defined in s. 250.01, F.S. The Task Force proposed addressing this situation by adding additional language to the appropriate statutes (ss. 394.47891, 948.08, 948.16, and 948.21, F.S.) to expand veterans court eligibility to authorize participation of individuals who served and deployed with the military services and were discharged or released under any condition, or are current or former United States Department of Defense contractors, or are current or former military members of a foreign allied country.

Pursuant to AOSC18-32, the Steering Committee is requesting approval to pursue the Task Force’s approved veterans court eligibility proposal that was part of previous judicial branch legislative agendas.

Supreme Court Action:

The Court has no objection to the Steering Committee pursuing this issue.

Present Situation:

In 2012, the Legislature established the T. Patt Maney Veterans' Treatment Act, which authorizes the creation of veterans courts with the purpose of addressing the substance abuse and mental health needs of veterans and servicemembers within the criminal justice system.¹⁴ To be eligible to participate in a veterans court, the individual must be a veteran¹⁵ or servicemember¹⁶ who suffers from a military-related substance use or mental health disorder, including traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD). Veterans and servicemembers are able to access services available through the U.S. Department of Veterans Affairs (VA), providing critical treatment options to local courts. In 2016, the Legislature enacted and the Governor signed into law a bill that included a more limited expansion of veterans court eligibility (HB 439). Specifically, the law authorized participation of any individual who was released pursuant to a general discharge.

Similar to drug courts, veterans courts require participants to appear regularly before the court, attend mandatory treatment sessions, and submit to frequent testing for substance use. In addition, veterans courts include volunteer veteran mentors who work with participants and provide a wide array of support. There are currently 30 veterans courts in the state. Nine of these veterans courts are receiving recurring state funding through the State Courts System to support program operations.

The Task Force was charged with developing a strategy for ensuring fidelity to nationally accepted key components of veterans courts.¹⁷ An important component of fidelity is targeting the right population for services. As veterans courts expand nationwide and research-based

¹⁴ Section 948.08(7)(a), F.S., provides: "Notwithstanding any provision of this section, a person who is charged with a felony, other than a felony listed in s. 948.06(8)(c), and identified as a veteran, as defined in s. 1.01, or servicemember, as defined in s. 250.01, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, is eligible for voluntary admission into a pretrial veterans' treatment intervention program approved by the chief judge of the circuit..."

¹⁵ Section 1.01(14), F.S., defines veteran: "The term 'veteran' means a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges..."

¹⁶ Section 250.01(19) F.S., defines service member: "The term 'servicemember' means any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces."

¹⁷ Florida Supreme Court Administrative Order 14-46 (Task Force on Substance Abuse and Mental Health Issues in the Courts): "Recommend a strategy for ensuring that drug courts are operating with fidelity to the ten key components enumerated in section 397.334 (4), Florida Statutes. In addition, the recommendation of the Task Force shall include a strategy for ensuring fidelity to the nationally accepted key components of veterans and mental health courts. Recommendations must include evidence-based best practices that will assist circuits in implementing these key components..."

practices are implemented, courts and the veterans community are reporting that a large number of service personnel are being excluded from veterans courts because they do not meet the definition of “veteran” or “servicemember.” The task force is concerned that Florida’s veterans courts are also excluding individuals that have served our country and would respond well to veterans court interventions.¹⁸

The system of military discipline has not adjusted to the reality of modern warfare in which career soldiers deploy multiple times and are more vulnerable to the cumulative effects of stress and concussive injuries. These troops suffer from traumatic brain injuries (TBI) and post-traumatic stress disorder (PTSD). Substance abuse and volatile outbursts are frequently linked to TBI and PTSD. This type of behavior has resulted in an increasing number of troops receiving less than honorable discharges. These individuals do not qualify for veterans benefits or veterans court.¹⁹

The prevalence of military contractors on the battlefield has also increased. Contractors serve in a variety of support roles during combat, including logistics, maintenance, transportation, intelligence, communication, and security. According to the RAND Corporation, U.S. Department of Defense contractors outnumbered those in uniform during the height of the Iraq and Afghanistan wars.²⁰ Like military personnel, current and former military contractors suffer from PTSD and TBI, and their consequent behavior exposes them to the justice system. Because military contractors are not included in the statutory definition of “veteran,” they are not eligible for veterans court.

Similarly, Florida’s definition of “veteran” does not include current or former soldiers of the United States’ allied countries. As the United States’ military presence in Iraq and Afghanistan decreases, the United States government is granting visas to allied soldiers who assisted the United States with its military mission. Many of these foreign soldiers are currently living in the United States. Some are committing crimes due to war-related injuries and are entering the criminal justice system as a result. They are not currently eligible for veterans court.

¹⁸ National Association of Drug Court Professionals: Adult Drug Court Best Practices Standards – “The Drug Court targets offenders for admission who are addicted to illicit drugs or alcohol and are at substantial risk for reoffending or failing to complete a less intensive disposition, such as standard probation or pretrial supervision. These individuals are commonly referred to as high-risk and high-need offenders. If a Drug Court is unable to target only high-risk and high-need offenders, the program develops alternative tracks with services that are modified to meet the risk and need levels of its participants. If a Drug Court develops alternative tracks, it does not mix participants with different risk or need levels in the same counseling groups, residential treatment milieu, or housing unit.”

¹⁹ The Gazette, “Other than Honorable,” by Dave Phillips. May 19, 2013. <http://cdn.csgazette.biz/soldiers/day1.html>. Since 2009, misconduct discharges have increased 67% at Army posts with the most military troops.

²⁰ The Washington Post, “PTSD Rates Similar Among Defense Contractors and Veterans, Report Says,” by Josh Hicks. December 10, 2013. <http://www.washingtonpost.com/blogs/federal-eye/wp/2013/12/10/ptsd-rates-similar-among-defense-contractors-and-veterans-report-says/>

Although veterans courts leverage treatment resources and benefits through the VA, many veterans courts have access to some local treatment resources. These resources can be used for those soldiers who do not qualify for VA benefits. Veterans courts can also leverage the camaraderie that exists among all veterans, as illustrated by the critical role the volunteer veteran mentor plays in assisting participants in veterans court. Their interaction with the participant, including a supportive relationship that is maintained throughout the program, increases the likelihood that the participant will remain in treatment and maintain sobriety.

Effect of Proposed Changes:

This proposal would expand veterans court eligibility by amending ss. 394.47891, 948.08, 948.16, and s. 948.21, F.S., to allow private military contractors, military members of foreign allied countries, and individuals who served in the active military, naval, or air service and who were discharged or released under any condition to participate in a veterans court. Serving these additional individuals in veterans court could help them obtain the services needed to restore their lives and families, thereby reducing recidivism and creating healthier and safer communities.

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 Judiciary

BILL: CS/SB 256

INTRODUCER: Judiciary Committee and Senator Baxley

SUBJECT: Child Protection Teams

DATE: March 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Favorable
2.	Davis	Cibula	JU	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 256 extends sovereign immunity protections to any member of a child protection team when the team member is carrying out her or his duties under the control, direction, and supervision of the state or any of its agencies or subdivisions. A child protection team is a group of professionals who receive referrals, primarily from child protective investigators and sheriff's offices, when child abuse, abandonment, or neglect is alleged. The team, directed by a physician, evaluates the allegations, assesses risks, and provides recommendations for child safety and support services.

The bill takes effect July 1, 2019.

II. Present Situation:

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of those governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state.

Under this statute, officers, employees, and agents of the state may not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. Instead, the state steps in as the party litigant and defends against the claim. However, people may be held personally liable for acts committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The recovery by any one person is limited to \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$300,000.¹ The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff is not entitled to recover the excess damages without action by the Legislature.²

Child Protection Teams

Description

The Department of Health currently contracts with 22 independent, community-based organizations that serve as child protection teams.³ A child protection team is a group of professionals, directed by a physician, who receive referrals from the investigators of the Department of Children and Families (DCF) and sheriff's offices when child abuse or neglect is alleged.⁴ The teams perform medical evaluations, assess risks, and provide recommendations for child safety and support services.

Composition and Responsibilities

Each of the 22 teams operates under the oversight of a medical director who is a board-certified pediatrician with special training in child abuse and neglect. In the case of a large geographical areas, some may have an associate medical director to ensure adequate coverage. The physician must be approved by Children's Medical Services at the Department of Health (DOH). Teams consist of additional physicians, attorneys, advanced registered nurse practitioners, psychologists, physician assistants,⁵ registered nurses, team coordinators, support staff, case coordinators, and support and data personnel.⁶

Each office must be available 24 hours per day, every day, to provide immediate medical diagnosis and evaluation, for consultations by phone, or for other assessment services. The

¹ Section 768.28(5), F.S.

² *Id.*

³ Florida Department of Health, *Senate Bill 256 Agency Legislative Bill Analysis* (Jan. 8, 2019) (on file with the Senate Committee on Judiciary).

⁴ Department of Health, Children's Medical Services, *Child Protection Teams*, http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html and s. 39.303(3), F.S.

⁵ Florida Department of Health, Children's Medical Services, *Child Protection Team Program Handbook*, 6-7 (June 2015) http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook_cpt.pdf.

⁶ See note 3, *supra*.

groups that the teams target for assessments are children who may be physically abused, sexually abused, and those who lack health care, including medically neglected children.⁷

Services

When a child protection team accepts a referral from DCF or law enforcement, the team may provide these services:

- Medical diagnosis and evaluation services;
- Nursing assessments;
- Child and family social assessments;
- Multidisciplinary case staffings;
- Psychological and psychiatric diagnosis and evaluations;
- Specialized and forensic interviews; and
- Expert medical, psychological, and related professional testimony in court cases.⁸

Cases that must be referred to a Child Protection Team

The following cases involving child abuse, abandonment, or neglect that are reported to the Child Abuse Hotline must be referred to a child protection team:

- Head injuries, bruises to the head or neck, burns, or fractures in a child, regardless of age.
- Bruises that appear anywhere on a child who is five years old or younger.
- Alleged child sexual abuse.
- A sexually transmitted disease that occurs in a prepubescent child.
- Reported malnutrition or failure to thrive.
- Medical neglect.
- Instances of a child or sibling remaining in a home where a child has been pronounced dead on arrival at a hospital or a child has been injured and then died due to suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional issues occurring in a child where emotional or other forms of abuse, abandonment, or neglect are suspected.⁹

Funding

The Child Protection Team Program receives funding through the Department of Health, Division of Children's Medical Services.¹⁰

⁷ Florida Department of Health, Children's Medical Services, *Child Protection Team Program Handbook*, 4 (June 2015) http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook_cpt.pdf

⁸ See note 4, *supra*, and s. 39.303, F.S.

⁹ Section 39.303(4), F.S.

¹⁰ Florida Department of Health, Children's Medical Services, *Child Protection Team Program Handbook*, 4 (June 2015) http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook_cpt.pdf. The Department of Health, Division of Children's Medical Services, Bureau of Child Protection and Special Technologies staff oversees the statewide Child Protection Team system.

Employees and Sovereign Immunity

According to the Department of Health, the state's child protection teams have approximately 364 team members¹¹ who are employed by private, non-profit entities. Of the 22 child protection teams, five teams are employees of a governmental entity and *are covered* by sovereign immunity. Those teams, composed of 126 members, are: the University of Florida in Gainesville team, the University of Florida in Jacksonville team, the University of Miami team, the University of South Florida team, and the Broward County team, whose members are employees of the Broward County Sheriff's Office. The remaining 238 employees who make up the other 17 teams are independent contractors and *are not* covered by sovereign immunity in tort actions.¹² The teams that do not receive sovereign immunity protection must purchase their own liability coverage.

Lawsuits Filed Against Child Protection Teams

The Division of Risk Management within the Chief Financial Officer's office queried its files for recent lawsuits involving child protection teams. For fiscal years 2016-2017, 2017-2018, and the current year to date, the Division of Risk Management was not able to identify a lawsuit filed against a government employed child protection team.¹³

Sovereign Immunity and Child Protection Team Physicians

It is not definitively settled whether all child protection team *physicians* are covered under sovereign immunity. Whether sovereign immunity applies depends on the degree of control that the state maintains over the agent. In *Stoll v. Noel*,¹⁴ the Florida Supreme Court explained that, under the appropriate circumstances, independent contractor physicians may be agents of the state for purposes of sovereign immunity:

One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.¹⁵

The *Stoll* Court examined the employment contract between the Children's Medical Services (CMS) physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did. The manuals and guides given to physician

¹¹ According to the Department of Health, the 364 employees figure does not include the child protection team medical directors.

¹² See note 3, *supra*.

¹³ Email prepared by Molly C. Merry, CPA, Director, Division of Risk Management, and forwarded by Chase Mitchell, Office of Legislative Affairs, Office of the Chief Financial Officer (Feb. 16, 2019) (on file with the Senate Committee on Judiciary). Risk Management noted that it did not have a specific code in its system that identified child protection teams that were involved in lawsuits. In updating a 2016 report, the workers queried all cases against DCF since July 1, 2012, and used cause codes such as child abuse, failure to protect, wrongful death by a foster parent, or similar category. The liability adjusters found no reported cases related to child protection teams in fiscal years 2016-2017 to the present. In fiscal years 2013-2014 through 2015-2016 notices were filed that litigation might ensue, but no lawsuits have been filed based upon those notices. The email shows that earlier lawsuits were filed dating back to fiscal year 2006-2007, but it is not readily apparent the extent to which child protections teams were named in the litigation.

¹⁴ *Stoll v. Noel*, 694 So. 2d 701 (Fla. 1997).

¹⁵ *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).

consultants demonstrated that CMS had final authority over all care and treatment provided to CMS patients, and that CMS could refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons. Furthermore, the Court's conclusion was supported by the state's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and the state acknowledged full financial responsibility for the physicians' actions. The Court noted that the state's interpretation of its manual is entitled to judicial deference and great weight.¹⁶

III. Effect of Proposed Changes:

The bill amends s. 768.28(9)(b), F.S., by expanding the definition of "officer, employee, or agent" to include "any member of a child protection team, as defined in s. 39.01, when carrying out her or his duties as a team member under the control, direction, and supervision of the state or any of its agencies or subdivisions" As a result, a member of a child protection team will receive sovereign immunity protection in a tort action only when the team member is determined to have acted under the control, direction, and supervision of the state or one of its entities. If the child protection team member is found to be acting outside of that control, then sovereign immunity will not protect the team member in a tort lawsuit.

This amendatory language appears to focus on the agency role of the team member in a manner similar to the Supreme Court's *Stoll* decision discussed in the Present Situation above. To receive sovereign immunity, the team member cannot be acting independently and separate from the supervision of the state or one of its entities. In the *Stoll* decision, the Court held that physician consultants were agents of the state and entitled to sovereign immunity because the state had to authorize the physician's services in advance and maintain supervisory authority over the physician. Additionally, final authority for the treatment of the patients did not reside with the physician consultants, but with the employing state entity.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁶ *Id.*

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may reduce the need for child protection teams to purchase liability insurance.

C. Government Sector Impact:

The Department of Health estimates that the fiscal impact of providing sovereign immunity coverage to child protection teams cannot be determined but might be significant. Potential costs to the Department could include legal representation, the cost to settle a suit, and related litigation expenses. Because 126 of the 364 statewide CPT employees are already covered by sovereign immunity, the number of additional persons contributing to any potential fiscal impact is approximately 238.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28 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 March 4, 2019:

The underlying bill broadly granted sovereign immunity to any member of a child protection team when she or he was carrying out duties as a team member. The

¹⁷Florida Department of Health, *Senate Bill 256 Agency Legislative Bill Analysis* (Jan. 8, 2019) (on file with the Senate Committee on Judiciary).

committee substitute limits the scope of that grant. For a team member to receive liability protection under the committee substitute, he or she must have acted under the control, direction, and supervision of the state or one of its agencies or subdivisions.

B. Amendments:

None.

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



162110

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Baxley) recommended the following:

Senate Amendment

Delete line 57
and insert:
team member under the control, direction, and supervision of the
state or any of its agencies or subdivisions.

By Senator Baxley

12-00534-19

2019256__

A bill to be entitled

An act relating to child protection teams; amending s. 768.28, F.S.; revising the definition of the term "officer, employee, or agent," as it applies to immunity from personal liability in certain actions, to include any member of a child protection team established by the Department of Health in certain circumstances; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (9) of section 768.28, Florida Statutes, are amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(9) (a) ~~An~~ No officer, employee, or agent of the state or of any of its subdivisions may not ~~shall~~ be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. However, such officer, employee, or agent shall be considered an adverse witness in a tort action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. The exclusive

Page 1 of 2

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

12-00534-19

2019256__

remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers ~~is shall be~~ by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions are ~~shall~~ not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any health care provider when providing services pursuant to s. 766.1115; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); ~~and~~ any public defender or her or his employee or agent, including, ~~among others,~~ an assistant public defender or ~~and~~ an investigator; and any member of a child protection team, as defined in s. 39.01, when carrying out her or his duties as a team member.

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

Page 2 of 2

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

THE FLORIDA SENATE

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

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY
12th District

February 5, 2019

The Honorable Chair David Simmons
404 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32309

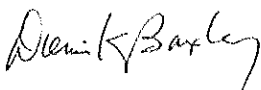
Dear Chairman Simmons,

I would like to request that SB 256 Child Protection Teams be heard in your next Judiciary Committee meeting.

This bill revises the definition of the term "officer, employee, or agent," as it applies to immunity from personal liability in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope or her or his employment or function, unless they acted in bad faith. This includes any member of a child protection team, when carrying out her or his duties as a team member.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley
Senate District 12

DKB/dd

cc: Tom Cibula, Staff Director

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

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

04 MAR 2019
Meeting Date

SB 256
Bill Number (if applicable)

Topic CHILD PROTECTION TEAMS

162110
Amendment Barcode (if applicable)

Name PAUL JESS

Job Title _____

Address 218 S. MONROE ST
Street

Phone 850-224-9403

TALLAHASSEE FL 32301
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information
AMENDMENT 162110

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

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.4.19

Meeting Date

256

Bill Number (if applicable)

Topic Child Protection Teams

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

APPEARANCE RECORD

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

3/4/19

Meeting Date

256

Bill Number (if applicable)

Topic

Child Protection Team

Amendment Barcode (if applicable)

Name

SHARI HICKEY

Job Title

Dir of Executive Leg. Operations

Address

1430 Piedmont Dr.

Phone

850-224-6444

Street

TLH, FL 32308

Email

Shickey@flmedical.com

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Florida Medical Association

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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3.4.19

Meeting Date

SB 0256

Bill Number (if applicable)

Topic CHILD PROTECTION TEAMS

Amendment Barcode (if applicable)

Name VICTORIA ZEPP

Job Title CHIEF POLICY OFFICER

Address 411 EAST COLLEGE AVE.

Street

Phone 850.561.1102

TALLAHASSEE, FL

City

State

32301

Zip

Email VICTORIA@FLCHILDREN.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA COALITION FOR CHILDREN

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19
Meeting Date

256
Bill Number (if applicable)

Topic Child Protection Teams

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 119 S. Monroe
Street

Phone 205-9000

TLH
City State Zip

Email doug.bell@childfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chapter, American Academy of Pediatrics

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

256

Bill Number (if applicable)

Topic

CPT

Amendment Barcode (if applicable)

Name

Stephen Winn

Job Title

Exec. Director

Address

2544 Blairstone Pines Dr

Phone

878-7364

Street

Tallahassee

FL

32301

Email

winnsr@earthlink.net

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Florida Osteopathic Medical Association

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 1 4 / 2019

Meeting Date

Topic _____

Bill Number 256
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

Davis, Eva

From: Mitchell, Chase <Chase.Mitchell@myfloridacfo.com>
Sent: Saturday, February 16, 2019 9:08 AM
To: Davis, Eva
Subject: Fwd: SB 256 - Sovereign Immunity for Child Protection Teams

Hope this helps!

Get [Outlook for iOS](#)

From: Merry, Molly <molly.merry@myfloridacfo.com>
Sent: Friday, February 15, 2019 5:19 PM
To: Stanfield, Meredith
Cc: Mitchell, Chase; Delaney, Robin
Subject: RE: SB 256 - Sovereign Immunity for Child Protection Teams

Meredith,
Here is the updated information:

Fiscal Year	Lawsuits	Notices	Total	
			Claims	Claim Open or Closed
2006-2007	9	2	11	All Closed
2007-2008	4	1	5	All Closed
2008-2009	4	1	5	All Closed
2009-2010	0	1	1	All Closed
2010-2011	0	1	1	All Closed
2011-2012	0	1	1	All Closed
2012-2013	3	0	3	All Closed
2013-2014	1	2	3	All Closed
2014-2015	0	1	1	All Closed
2015-2016	1	1	2	All Closed
2016-2017	0	0	0	
2017-2018	0	0	0	
2018-2019	0	0	0	
Total	22	11	33	

As discussed with the information we provided in 2016, we do not have a specific code in our system that identifies Child Protection Teams. In order to update the table above, we queried cases against DCF reported since 7/1/2012 involving certain cause codes such as child abuse, failure to protect, wrongful death by foster parent, etc. This query provided us a list of cases (around 150) which were reviewed by our liability adjusters to determine which cases involved Child Protection Teams on some level. We found no cases related to CPTs reported to us in fiscal years 2016-2017 to present. The only updates we made were to fiscal years 2013-2014 and 2015-2016. In each of those fiscal years, one additional notice under sec. 768.28, F.S., was received by Risk Management, but no lawsuits have been filed on those notices.

If you have any questions, please let me know.

Thanks.

Molly C. Merry, CPA

Director, Division of Risk Management

Office of Chief Financial Officer Jimmy Patronis
Florida Department of Financial Services
200 E. Gaines Street
Tallahassee, FL 32399-0336
(850) 413-4700 Molly.Merry@myfloridacfo.com

Subscribe to Weekly Rundown, CFO Patronis' weekly newsletter



Please note that Florida has a broad public records law. Most written communications to or from state officials regarding state business are considered to be public records and will be made available to the public and the media upon request. Therefore, your e-mail message may be subject to public disclosure.



2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Florida Department of Health

BILL INFORMATION

BILL NUMBER:	SB 256
BILL TITLE:	Child Protection Teams
BILL SPONSOR:	Sen. Baxley
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE

- 1) Children, Families, and Elder Affairs
- 2) Judiciary
- 3) Rules
- 4) Click or tap here to enter text.
- 5) Click or tap here to enter text.

CURRENT COMMITTEE

Children, Families, and Elder Affairs

SIMILAR BILLS

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

PREVIOUS LEGISLATION

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS

BILL NUMBER:	HB 535
SPONSOR:	Rep. Smith (D)

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	Jan 8, 2019
LEAD AGENCY ANALYST:	Nicole Jordan
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Adrienne Rodgers
FISCAL ANALYST:	Ashley Anderson

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Senate Bill 256 amends Section 768.28, F.S., to revise the definition of the term "officer, employee or agent" to include any member of a Child Protection Team (CPT) contracted to provide services through the Department of Health (DOH). The revision will provide sovereign immunity to all members of Child Protection Teams. CPTs supplement child protective investigation activities of Department of Children and Families (DCF) or designated sheriff's offices. Multidisciplinary staff provide medical evaluations and assessment services to children and families involved in child abuse and neglect investigations.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Department of Health, Division of Children's Medical Services (CMS), Bureau of Child Protection and Special Technologies staff provides oversight of the statewide Child Protection Team (CPT) system. DOH contracts with 22 entities to serve as local CPTs. Each team has a local CPT Medical Director, who operates under the medical oversight of the Statewide Medical Director for Child Protection and the Assistant Statewide Medical Director. The local and statewide Medical Directors for Child Protection are either DOH OPS employees or employed by one of the state universities that oversee the CPT contract. Child Protection Teams consist of multidisciplinary staff, including Medical Directors, other Physicians, Advanced Practice Registered Nurses (APRNs), Physician Assistants, Registered Nurses (RNs), Team Coordinators, Case Coordinators, and support staff. As state or state university system employees, all of CPT Medical Directors have sovereign immunity when carrying out their duties as a team member.

Excluding CPT Medical Directors, there are approximately 364 Child Protection Team members in Florida employed by private, non-profit entities carrying out duties related to children being abused or neglected. Of these 364 Child Protection Team Members, approximately 126 are employed by parent organizations that are state universities or operated by a county governmental entity.

- ☐ 6 physicians
- ☐ 64 APRNs
- ☐ 2 Physician Assistants
- ☐ 8 RNs/Medical Assistants
- ☐ 12 Psychologists
- ☐ 27 Team Coordinators/Assistant Team Coordinators
- ☐ 186 Case Coordinators/Clinical Supervisors
- ☐ 42 Support Staff
- ☐ 17 Data Staff

Of these 364 Child Protection Team Members, approximately 126 are employed by parent organizations that are state universities or operated by a county governmental entity. Members of the following five CPTs currently have sovereign immunity protection as they are either state universities or a county governmental entity. These CPT programs include:

- 1) University of Florida in Gainesville CPT
- 2) University of Florida in Jacksonville CPT
- 3) University of Miami CPT
- 4) University of South Florida CPT
- 5) Broward County CPT

Currently, tort litigations involving state employees are represented by DOH Legal Counsel in collaboration with the Department of Financial Services, Division of Risk Management. The state's Risk Management Trust Fund covers litigation costs, which may be outsourced to outside counsel occasionally.

2. EFFECT OF THE BILL:

The impact of the bill will result in expanded sovereign immunity coverage to all members of Child Protection Teams. CPT staff employed by private non-profit entities will have equivalent protection to DOH employees and other entities covered by sovereign immunity as per Section 768.28, F.S. Legal resources and representation would need to be expanded to cover the cost of increased exposure to litigation.

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

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

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

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

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

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

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

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A

Bill Section Number(s):	N/A
-------------------------	-----

FISCAL ANALYSIS

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

Y ☐ N ☒

Revenues:	N/A
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

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

Y ☒ N ☐

Revenues:	N/A
Expenditures:	Senate Bill 256 would expand sovereign immunity coverage to approximately 364 Child Protection Team members. The fiscal impact will include the cost of legal representation, potential settlement costs, and other associated fees. The fiscal impact of extending sovereign immunity to any member of a Child Protection Team cannot be determined but could be significant.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

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

Y ☒ N ☐

Revenues:	Unknown
Expenditures:	Unknown
Other:	N/A

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

Y ☐ N ☒

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

--	--

TECHNOLOGY IMPACT

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

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

N/A

FEDERAL IMPACT

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

If yes, describe the anticipated impact including any fiscal impact.

Click or tap here to enter text.

ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:

None.

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 Judiciary

BILL: CS/SB 656

INTRODUCER: Judiciary Committee and Senator Baxley

SUBJECT: Background Screening

DATE: March 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 656 provides the Office of the State Courts Administrator (OSCA) with statutory authority to conduct national background screenings for court-appointed mediators and foreign language court interpreters. Conducting background screenings is an element of OSCA's regulatory responsibility when determining the qualifications of applicants. This statutory change is needed to comply with requirements established by the U.S. Department of Justice and the Federal Bureau of Investigation.

The bill takes effect July 1, 2019.

II. Present Situation:

Mediators and Foreign Language Court Interpreters

In 1988, the Florida Supreme Court was tasked with the responsibility of establishing minimum standards for qualifications, professional conduct, and training for court mediators^{1,2} and

¹ A mediator is a neutral and impartial person who tries to help opposing parties reach a solution to their conflict. BLACK'S LAW DICTIONARY (10th ed. 2014).

² Generally, in order to become a certified mediator someone must be at least 21 years old, of good moral character, and earn a designated number of points for training, education, and mentorship. Training and education requirements vary depending on whether someone seeks to become a county court, family, circuit court, dependency, or appellate mediator. Fla. R. Cert. & Ct.-Apptd. Mediators 10.100(a).

arbitrators. Before a mediator could be appointed to serve in a circuit, he or she was required to be certified by the chief judge in accordance with the Supreme Court standards.³

Similarly, in 2006, the Florida Supreme Court was given the responsibility of establishing minimum standards and procedures to qualify, certify, discipline, and train foreign language interpreters who are appointed by a court.^{4,5}

The Authority of the Court Interpreter Certification and Regulation Program/Board and the Florida Dispute Resolution Center

The Supreme Court, with the assistance of the Office of the State Courts Administrator (OSCA), established two boards to oversee the responsibilities required of them by statute. The Florida Dispute Resolution Center (DRC) was established to assess the qualifications of mediators and the Court Interpreter Certification and Regulation Program/Board was established to determine the qualifications of foreign language interpreters. As part of their responsibilities, OSCA conducted background checks to determine the suitability of applicants. According to OSCA, as early as 2007, both groups conducted nationwide criminal history background checks, which required the submission of fingerprints through the Florida Department of Law Enforcement (FDLE) to the Federal Bureau of Investigation (FBI).⁶

In 2017, FDLE conducted records compliance and technical audits to determine whether state entities possessed the appropriate authority to access national criminal justice information.⁷ Pursuant to s. 943.053(2), F.S., FDLE is prohibited from disseminating criminal justice information that is not in compliance with federal and state laws, regulations, and rules. FDLE determined that OSCA did not have sufficient statutory authority to request national criminal history checks for a regulatory purpose.⁸ FDLE determined that OSCA had the authority to perform background checks as a criminal justice agency on its employees, but it did not have the authority to perform criminal history background checks on people who were not employees, such as mediators and court interpreters. Because OSCA lacked the authority to have FDLE access the national criminal history background information in the FBI databases, it was determined that OSCA was limited to accessing the results of Florida background information.

Because FDLE contends that there is no current statutory authority to provide for national criminal background screenings on foreign language court interpreters and mediators, OSCA is

³ Ch. 87-133, s. 6, Laws of Florida.

⁴ Ch. 2006-253, s. 1, Laws of Florida.

⁵ To become certified, a court interpreter must be of good moral character, pass a background check, complete courtroom observation requirements, and pass a written and oral exam demonstrating language proficiency. Florida Courts, *Court Interpreter Certification and Regulation Program, Application for Court Interpreter Registration Renewal* (Effective July, 18, 2018), <https://www.flcourts.org/content/download/402733/3454022/application-for-court-interpreter-registration-renewal.pdf>; Florida Courts, *Court Interpreter Certification and Regulation Program, Steps to Court Interpreter Certification* <https://www.flcourts.org/content/download/217092/1968498/FINAL-Certification-Process-Flow-Chart.pdf>.

⁶ Office of the State Courts Administrator, *Judicial Branch 2019 Legislative Agenda*, 19-20, (Jan. 14, 2019) (on file with the Senate Committee on Judiciary).

⁷ *Id.*

⁸ *Id.* OSCA's position, as stated in the *Judicial Branch 2019 Legislative Agenda*, is that the Department of Justice changed its policy on what constituted the proper authority to conduct national background checks, and this change has necessitated this bill.

of the opinion that this situation would be remedied by crafting a statute that provides the express authority and complies with the requirements of federal law.⁹

FBI Requirements for Conducting a Criminal Record Check for a Noncriminal Justice Licensing or Employment Purpose

The FBI derives its authority to conduct a *criminal* record check for a *noncriminal* justice licensing or employment purpose from Public Law 92-544. Under that law, the FBI is authorized to exchange identification records with state and local government officials for licensing and employment purposes when authorized by a state statute. The statute must be approved by the U.S. Attorney General.¹⁰ The standards that the FBI relies upon in approving state authorizations have been developed through a number of memoranda issued by the Office of Legal Counsel in the Department of Justice.¹¹

An authorization consistent with the standards must:

- Be the result of a legislative enactment or its functional equivalent;
- Require fingerprinting of applicants for a license or employment;
- Expressly or by implication authorize the use of FBI records for screening applicants;
- Not be against public policy; and
- Identify the specific category of applicants or licenses to prevent the authorization from being overly broad in scope.¹²

Additionally, the state must designate a government agency that is authorized and will be responsible for receiving the results of the record check and screen those results to determine whether the applicant is suitable for employing or licensing.¹³

If OSCA receives the requisite statutory authority to conduct criminal history checks for a regulatory purpose, it will be in compliance with federal law.

Level 1 and Level 2 Screening Standards

Chapter 435, F.S., establishes two levels of background screenings that employees must undergo as a condition of employment. Level 1 is the more basic screening and involves an in-state name-based background check, employment history check, statewide criminal correspondence check through FDLE, a sex offender registry check, local criminal records check, and a domestic violence check.¹⁴ Level 2 screenings are more thorough because they apply to positions of responsibility or trust, often with more vulnerable people, such as children, the elderly, or the disabled. Level 2 screenings require a security background investigation that includes

⁹ *Id.*

¹⁰ The Department of Justice has determined that Attorney General's authority to approve the state "statute is delegated to the FBI by Title 28, Code of Federal Regulations, Section 0.85(j)." U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Identification Services, *Appendix B: Criminal Justice Information (CJIS) Information Letter 95-3*, 5 (July 17, 1995), <https://www.ojjdp.gov/pubs/guidelines/appen-b2.html>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Section 435.03, F.S.

fingerprint-based searches for statewide criminal history records through FDLE and a national criminal history records check through the Federal Bureau of Investigation. It may also include local criminal records checks. A level 2 screening disqualifies a person from employment if the person has a conviction or unresolved arrest for any one of more than 50 criminal offenses.¹⁵

III. Effect of Proposed Changes:

The bill provides the statutory language for OSCA to comply with the federal standards for conducting background screenings. The bill requires the submission of fingerprints and provides for the submission of the fingerprints to the FBI for national processing. The bill does not appear to violate public policy and specifically identifies the categories of applicants, foreign language court interpreters and mediators, to be screened. Because the bill amends the statute sections where the Florida Supreme Court is authorized to establish minimum standards for foreign language court interpreters and mediators, it designates the government agency authorized to receive the results of the background screenings.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19, of the State Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1) of the State Constitution defines “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

The bill authorizes the use of background screenings at the national level, something that has not been done recently, and will require applicants to pay the additional fingerprinting fee for accessing the federal databases. The state background fees are existing statutory fees that are not increased; however, the bill will impose the national

¹⁵ Section 435.04, F.S.

background fees on new applicants under the bill. As such, the state Constitution may require that the fees be passed in a separate bill by a two-thirds vote of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the fiscal analysis by the Department of Law Enforcement, the cost for a state and national criminal history record check is \$37.25. The national portion costs \$13.25 and the state portion costs \$24. Individuals seeking certification under this bill would likely pay the total cost.¹⁶

C. Government Sector Impact:

The Office of State Courts Administrator states that the bill is not likely to have any meaningful effect on judicial or court workload. The Court's staff currently conducts background screenings of mediators and interpreter applicants so this additional responsibility would not affect them significantly.

The FDLE bill analysis provides that the \$24 state portion is deposited into FDLE's Operating Trust Fund. The cost to retain the information for the first year is included in the criminal history record check. The additional cost to retain a set of fingerprints is \$6 annually, which also is deposited in FDLE's Operating Trust Fund. FDLE states that when it begins to participate in the federal retention program, the FBI will not require a fee for federal fingerprint retention.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

FDLE states in its bill analysis that is unclear if the Supreme Court will be conducting the criminal history record checks and receiving the results, or if each Clerk of Court will conduct the screenings. An Originating Agency Identifier number (ORI) must be requested by the authorized entity responsible for requesting and receiving the criminal history record check

¹⁶ Florida Department of Law Enforcement, *Senate Bill 656 Legislative Analysis* (Feb. 13, 2019) (on file with the Senate Committee on Judiciary).

¹⁷ *Id.*

results and the FBI must review, approve, and issue the ORI prior to this population being screened. If OSCA is the agency responsible for requesting and receiving the information, and not the clerks of court, then perhaps this is not an issue.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.386 and 44.106.

IX. Additional Information:

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

CS by Judiciary on March 4, 2019:

The intent of this committee substitute does not differ significantly from the underlying bill; it primarily differs in form. The committee substitute differs by expressly stating the federal requirements for an entity to conduct national background screenings, which are: require fingerprinting of the applicant, authorize the use of FBI records for screening the applicant, not violate public policy, specifically identify the category of applicants or licensees to be checked so that the authorization is not too broad, and designate an authorized governmental agency for receiving and screening the results of the record check.

- B. **Amendments:**

None.



673990

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 25.386, Florida Statutes, is amended to
read:

25.386 Foreign language court interpreters.—

(1) The Supreme Court shall establish minimum standards and
procedures for qualifications, certification, professional
conduct, discipline, and training of foreign language court
interpreters who are appointed by a court of competent



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jurisdiction. The Supreme Court shall set fees to be charged to applicants for certification and renewal of certification as a foreign language court interpreter. The revenues generated from such fees shall be used to offset the costs of administration of the certification program and shall be deposited into the Administrative Trust Fund within the state courts system. The Supreme Court may appoint or employ such personnel as are necessary to assist the court in administering this section.

(2) An applicant for certification as a foreign language court interpreter shall undergo security background investigations that include, but need not be limited to, the submission of a full set of fingerprints to the Department of Law Enforcement or to a vendor, entity, or agency authorized under s. 943.053(13). The vendor, entity, or agency shall forward the applicant's fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

Section 2. Section 44.106, Florida Statutes, is amended to read:

44.106 Standards and procedures for mediators and arbitrators; fees.—

(1) The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training for mediators and arbitrators who are appointed pursuant to this chapter. The Supreme Court is authorized to set fees to be charged to applicants for certification and renewal of certification. The revenues generated from these fees shall be used to offset the costs of



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administration of the certification process. The Supreme Court may appoint or employ such personnel as are necessary to assist the court in exercising its powers and performing its duties under this chapter.

(2) An applicant for certification as a mediator shall undergo security background investigations that include, but need not be limited to, the submission of a full set of fingerprints to the Department of Law Enforcement or to a vendor, entity, or agency authorized under s. 943.053(13). The vendor, entity, or agency shall forward the applicant's fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to background screening; amending ss. 25.386 and 44.106, F.S.; requiring that applicants for certification as a foreign language court interpreter or as a mediator, respectively, undergo certain background security investigations; providing an effective date.

By Senator Baxley

12-00955-19

2019656__

A bill to be entitled

An act relating to background screening; amending ss. 25.386 and 44.106, F.S.; requiring that certain standards and procedures for foreign language court interpreters and mediators, respectively, include level 2 background screenings; providing an effective date.

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

Section 1. Section 25.386, Florida Statutes, is amended to read:

25.386 Foreign language court interpreters.—The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training of foreign language court interpreters who are appointed by a court of competent jurisdiction. Such standards and procedures must require a level 2 background screening conducted in accordance with chapter 435. The Supreme Court shall set fees to be charged to applicants for certification and renewal of certification as a foreign language court interpreter. The revenues generated from such fees shall be used to offset the costs of administration of the certification program and shall be deposited into the Administrative Trust Fund within the state courts system. The Supreme Court may appoint or employ such personnel as are necessary to assist the court in administering this section.

Section 2. Section 44.106, Florida Statutes, is amended to read:

Page 1 of 2

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

12-00955-19

2019656__

44.106 Standards and procedures for mediators and arbitrators; fees.—The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training for mediators and arbitrators who are appointed pursuant to this chapter. Such standards and procedures for mediators must require a level 2 background screening conducted in accordance with chapter 435. The Supreme Court is authorized to set fees to be charged to applicants for certification and renewal of certification. The revenues generated from these fees shall be used to offset the costs of administration of the certification process. The Supreme Court may appoint or employ such personnel as are necessary to assist the court in exercising its powers and performing its duties under this chapter.

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

Page 2 of 2

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



THE FLORIDA SENATE

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

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY
12th District

February 19, 2019

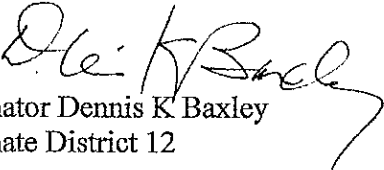
The Honorable Chairman David Simmons
404 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chairman Simmons,

I would like to request SB 656 Background Screening be heard in your next Judiciary Committee Meeting.

This bill requires foreign language court interpreters and mediators to have a level 2 background screening.

Onward & Upward,


Senator Dennis K. Baxley
Senate District 12

DKB/dd

cc: Tom Cibula, Staff Director

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

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.4.19

Meeting Date

656

Bill Number (if applicable)

Topic Background Screening

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-4-19

Meeting Date

SB 656

Bill Number (if applicable)

Topic BACKGROUND SCREENING

Amendment Barcode (if applicable)

Name SARAH NAF BIEHL

Job Title CHIEF OF LEGISLATIVE AFFAIRS

Address 500 SOUTH DUVAL STREET

Phone (850) 922-5692

Street

TALLAHASSEE

State

FL

32399

Zip

Email NAFS@FLCOURTS.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing STATE COURTS SYSTEM

Appearing at request of Chair: ☐ Yes ☒ No

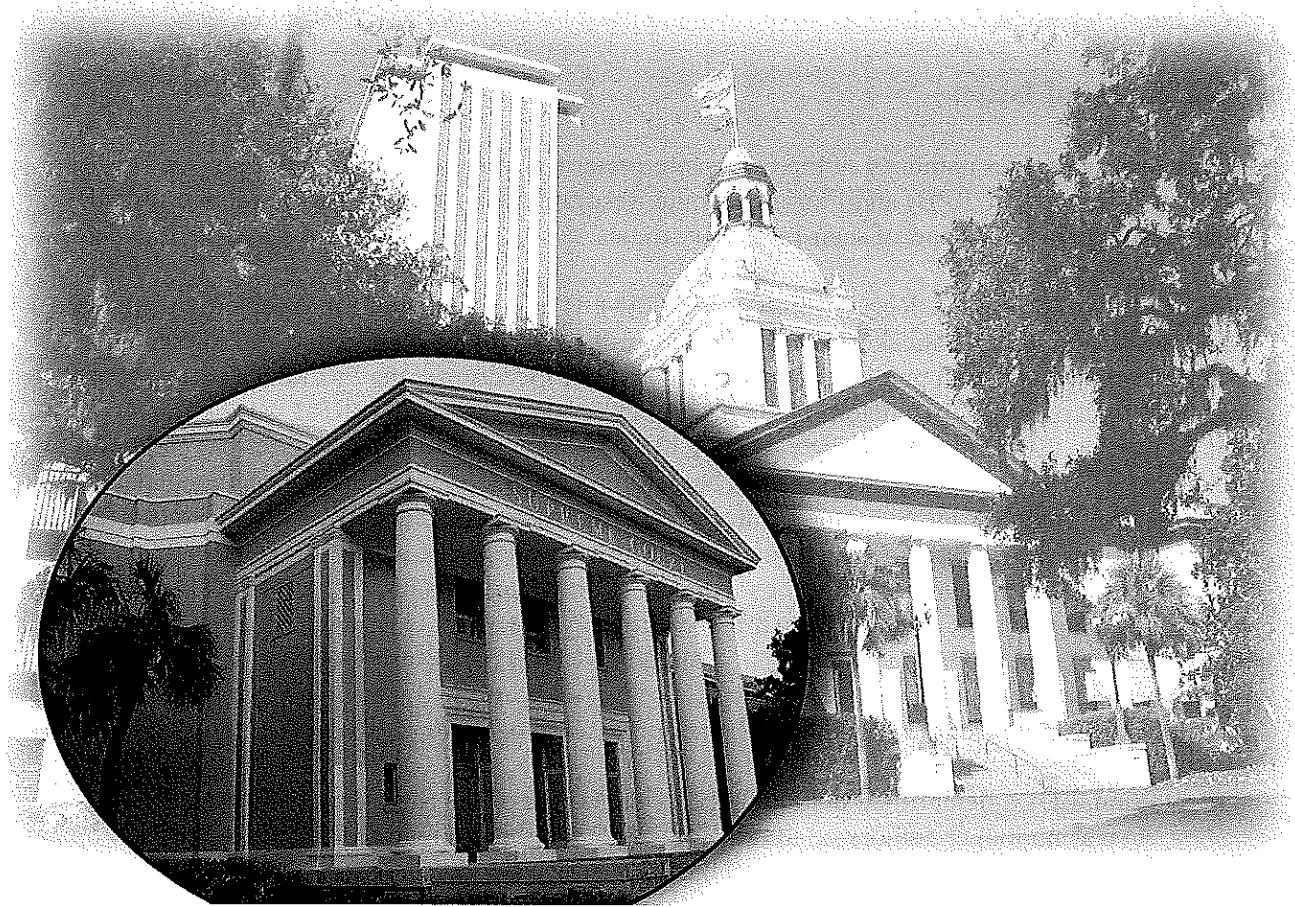
Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

Judicial Branch 2019 Legislative Agenda



January 14, 2019

Legislative Issue 2019 Legislative Session

Subject:

Authority to Conduct Criminal Background Checks

Source of Proposal:

Court Interpreter Certification and Regulation Program/Board and Florida Dispute Resolution Center

Statement of Issue:

This issue addresses authority of the Court Interpreter Certification and Regulation Program/Board (CICRPB) and Florida Dispute Resolution Center (DRC) to conduct criminal background checks as part of their regulatory duties.

Although Fla. R. Cert. & Reg. Ct. Interp. 14.200(b)(5) requires all court interpreters to “undergo and pass a background check according to standards prescribed by the [Court Interpreter Certification] board and published in board operating procedures,” the Florida Department of Law Enforcement (FDLE) determined on October 6, 2017, that the CICRPB was no longer authorized to utilize the Originating Agency Identifier (ORI) number assigned to the Supreme Court/OSCA for conducting name-based background checks on interpreters.⁸ Although s. 25.386, F.S., requires the Supreme Court to “establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training of foreign language court interpreters who are appointed by a court of competent jurisdiction,” FDLE contends that this does not give the CICRPB the expressed authority necessary to conduct national criminal history checks on program participants. Ultimately, FDLE has determined that without explicit statutory authority, the use of the Department of Justice’s criminal justice information system is limited only to the Court’s function in the administration of criminal justice.

In addition, FDLE determined that the DRC of the Office of the State Courts Administrator (OSCA) was no longer authorized to utilize the OIR number assigned to the Supreme Court/OSCA for conducting name-based background checks on mediators. Although s. 44.106, F.S., requires the Supreme Court to “establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training for mediators and arbitrators who are appointed,” FDLE contends that this does not give DRC the expressed authority necessary to conduct national criminal history checks on mediators. As with the CICRPB, FDLE has determined that without explicit statutory authority, the use of the

⁸ Both the CICRPB and DRC conducted nationwide criminal background checks through the FDLE as far back as 2007. Due to recent policy changes by the U.S. Department of Justice, however, the FDLE now requires express statutory authority in order to ensure it maintains its own accreditation.

Department of Justice's criminal justice information system is limited only to the Court's function in the administration of criminal justice.

The CICRPB and DRC request that the Court affirmatively support pursuit of explicit statutory authority to conduct criminal background checks.

Supreme Court Action:

The Court affirmatively supports pursuit of this issue.

Present Situation:

Since FDLE contends that there is currently no statutory provision that provides for national criminal background checks, statewide criminal history checks from FDLE are the only method of background screening available to the CICRPB and DRC at this time. With the mobility of the modern workforce, especially as the state of Florida attracts new residents from around the United States, the statewide criminal history check leaves immense gaps in background information. These gaps in background information could be detrimental to the Florida residents and judiciary that depend on trustworthy interpretations from certified interpreters and on trustworthy, certified mediators.

Effect of Proposed Changes:

An amendment to s. 25.386, F.S., would enable the CICRPB to fulfill the requirement under Fla. R. Cert. & Reg. Ct. Interp. 14.200 to conduct a thorough background check according to the standards prescribed by the board.

An amendment to s. 44.106, F.S., would enable the DRC to conduct a thorough background check on mediators.



2019 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION

BILL NUMBER:	SB 656
BILL TITLE:	<u>Background Screening</u>
BILL SPONSOR:	Baxley
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE

1)
2)
3)
4)
5)

CURRENT COMMITTEE

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SIMILAR BILLS

BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION

BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS

BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	February 13, 2019
LEAD AGENCY ANALYST:	Charles Schaeffer
ADDITIONAL ANALYST(S):	Tracy Townsend, Becky Bezemek
LEGAL ANALYST:	Jason Jones, Linton Eason
FISCAL ANALYST:	Cynthia Barr, Deshawn Byrd

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Mandates certain standards and procedures for foreign language court interpreters and mediators, respectively, to include level 2 criminal history record checks.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Presently, there is no state law requiring foreign language court interpreters or mediators to undergo level 2 criminal history record checks.

2. EFFECT OF THE BILL:

Requires foreign language court interpreters and mediators to undergo level 2 criminal history record checks in accordance with chapter 435, FS.

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

If yes, explain:	
What is the expected impact to the agency's core mission?	
Rule(s) impacted (provide references to F.A.C., etc.):	

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

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

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

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

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

Board:	
Board Purpose:	
Who Appointments:	
Appointee Term:	

Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

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

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

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

Revenues:	<p>Unknown; FDLE has contacted the Office of State Courts Administrator (OSCA) for an estimated number of new criminal history record checks that could result from the passage of this bill and is awaiting a response.</p> <p>The total fiscal revenue for the state portion of a state and national criminal history record check is \$24, which goes into FDLE's Operating Trust Fund.</p>
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

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

Revenues:	<p>Unknown; FDLE has contacted the OSCA for an estimated number of new criminal history record checks that could result from the passage of this bill and is awaiting a response.</p> <p>The total fiscal impact to the private sector for a state and national criminal history record check is \$37.25.* Of this total amount, the cost for the national portion of the criminal history record check is \$13.25 and the cost for the state portion is \$24, which goes into FDLE's Operating Trust Fund.</p> <p>*Effective January 1, 2019, the fee for the national check portion of criminal history record requests increased from \$12.00 to \$13.25.</p>
Expenditures:	
Other:	

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

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

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

If yes, describe the anticipated impact to the agency including any fiscal impact.	<p>The impact of this bill is unknown. FDLE would need to know the estimated number of individuals falling under the scope of this bill to assess its impact.</p> <p>Although there is no programming required, this bill combined with other background screening bills add to the workload on FDLE's Biometric Identification System. Key components of the system are sized to support projected workload (including this bill) through 2020 / 2021, by which time, FDLE plans to implement the next generation of Biometric Identification System.</p>
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FEDERAL IMPACT**1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒**

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

Issues/concerns/comments and recommended action:	No further comments or concerns.
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ADDITIONAL COMMENTS

- It is unclear if the Supreme Court will be conducting the criminal history record checks and receiving the results, or if each Clerk of Court will conduct the screenings. If the bill passes, an ORI number must be requested by the authorized entity responsible for receiving the criminal history record check results and the FBI must review, approve, and issue the ORI prior to this population being screened.
- Lines 17-19, 34-36: Additionally, FDLE recommends participation in the state and federal fingerprint retention programs to ensure all arrests occurring after the initial criminal history record check are reported to the appropriate state agency. Both FDLE and the FBI (when FDLE begins participation in the federal program) will retain the fingerprints, search the fingerprints against incoming arrests and FDLE will notify the agency if the retained

fingerprints match an incoming arrest. To facilitate state and national criminal history record checks and fingerprint retention, FDLE recommends including the following language:

An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

Fees for state and federal fingerprint processing and retention shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e) for records provided to persons or entities other than those specified as exceptions therein.

Fingerprints submitted to the Department of Law Enforcement pursuant to this paragraph shall be retained by the Department of Law Enforcement as provided in s. 943.05(2)(g) and (h) and, when the Department of Law Enforcement begins participation in the program, enrolled in the Federal Bureau of Investigation's national retained fingerprint arrest notification program, as provided in s. 943.05(4). Any arrest record identified shall be reported to the department.

- If fingerprints are to be retained, the updated fiscal analysis applies:

FDLE Fiscal Impact – Revenue:

The total fiscal revenue for the state portion of a state and national criminal history record check is \$24, which goes into FDLE's Operating Trust Fund. The first year of retention is included in the cost of the criminal history record check. The cost to retain fingerprints at the state level is \$6 annually, per set of applicant fingerprints. This fee also goes into FDLE's Operating Trust Fund.

Fiscal Impact – Private Sector:

The total fiscal impact to the private sector for a state and national criminal history record check is \$37.25.* Of this total amount, the cost for the national portion of the criminal history record check is \$13.25 and the cost for the state portion is \$24, which goes into FDLE's Operating Trust Fund. The first year of state retention is included in the cost of the criminal history record check. The cost to retain fingerprints at the state level is \$6 annually, per set of applicant fingerprints. This fee also goes into FDLE's Operating Trust Fund. When FDLE begins participation in the federal retention program, there will be no fees required by the FBI for federal fingerprint retention.

*Effective January 1, 2019, the fee for the national check portion of criminal history record requests increased from \$12.00 to \$13.25.

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 Judiciary

BILL: SJR 690

INTRODUCER: Senator Rodriguez

SUBJECT: Single Subject Limitation for Taxation and Budget Reform Commission

DATE: March 1, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula	JU	Favorable
2. _____	_____	EE	_____
3. _____	_____	RC	_____

I. Summary:

SJR 690 limits any amendment to the Constitution proposed by the Taxation and Budget Reform Commission to “one subject and matter connected therewith.”

As a joint resolution, this legislation must be agreed to by three-fifths of the membership of each house of the Legislature. Then, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot, and will take effect if approved by at least 60 percent of the votes cast on the measure. The next Taxation and Budget Reform Commission convenes in 2027, and thus it would be the first Commission to be governed by the amendment.

II. Present Situation:

Overview

The Florida Constitution requires that a Taxation and Budget Reform Commission be established once every 20 years and that it have the authority to propose a revision of the “Constitution or any part of it dealing with taxation or the state budgetary process.” Although the Commission’s proposals are limited to this area of law, each proposal may nonetheless embrace multiple subjects within this area.

Taxation and Budget Reform Commission

Origin

In 1988, this state's voters approved a constitutional amendment that was proposed by the Legislature to create the Taxation and Budget Reform Commission.¹ The amendment specified that the Commission must convene for the first time in 2007, and once every 20 years afterward.²

Members

The Constitution requires that the Commission be comprised of 25 voting members and 4 non-voting "ex-officio" members. The 25 voting members must be appointed by the Governor (11), the Speaker of the House (7), and the Senate President (7). The 4 non-voting members must be chosen by the Speaker (2) and the Senate President (2) from the members of their respective houses; one of the two choices from each house must be from the minority party. At its initial meeting, the commissioners must elect a commissioner who is not also a legislator to serve as chair.

Task, Procedures, and Authority

The Commission is tasked with examining this state's budgetary process, revenue needs, and expenditure processes.³ Upon examining these matters, the Commission must issue a report of the results of its review, and propose any recommended statutory changes to the Legislature. The Commission may also propose "a revision of this Constitution or any part of it dealing with taxation and the state budgetary process."⁴

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. It says only that the Commission must elect a chair at its initial meeting, convene for further meetings at the call of the chair, adopt rules of procedure, and "hold [an unspecified number of] public hearings as it deems necessary to carry out its responsibilities."⁵

The Single-Subject Requirement

Amendments that are Limited to One Subject

The Constitution authorizes five sources from which an amendment may originate: the Legislature, the Constitution Revision Commission, a citizen initiative, a constitutional convention, or the Taxation and Budget Reform Commission. As the Florida Supreme Court has repeatedly stated, "the citizen initiative is the only method that is constrained by the single-subject requirement."⁶

¹ See HJR 1616 (1988).

² *Id.*

³ FLA. CONST. art. XI, s. 6(d).

⁴ FLA. CONST. art. XI, s. 6(e).

⁵ FLA. CONST. art. XI, s. 2.

⁶ *Advisory Op. to Atty. Gen. ex rel. Amendment to Bar Government from Treating People Differently Based on Race in Public Educ.*, 778 So. 2d 888 (Fla. 2000); see also, *Charter Review Commission of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994) ("Only proposals originating through a petition initiative are subject to the single-subject rule.").

Policy Reasons for the Single-Subject Limitation on Amendments Originating as Initiatives

The Florida Supreme Court has also repeatedly explained the purposes for the single-subject requirement, at least with regard to citizen-initiative amendments. In its decision in *Fine v. Firestone*, the Court stated that the single-subject limitation allows

the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.⁷

Moreover, the Court stated, the single-subject limitation protects the Constitution “against precipitous and spasmodic changes in the organic law.”⁸ Making a similar point in a later case, the Florida Supreme Court stated that the

single-subject requirement in article XI, section 3, mandates that the electorate’s attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution.⁹

As to why this reasoning should not apply to prohibit multi-subject amendments that originate from other than a citizen initiative, such as the Taxation and Budget Reform Commission, the Court noted that the other methods of propounding a constitutional amendment “all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal.”¹⁰ This is not true, the Court noted, of citizen initiatives.¹¹

What “One Subject” Means

Over the years, the Florida Supreme Court has issued several opinions in which it explained what it means for an amendment to be limited to one subject.

In these opinions, the Court has stated, the single-subject limitation is “functional and not locational.”¹² In other words, the question is primarily one of what the amendment does, rather than a question of what part(s) of the Constitution it alters. As such, the single-subject limitation requires of each amendment a “natural and logical oneness of purpose.”¹³ Moreover, the single-subject limitation prohibits an amendment from

(1) engaging in “logrolling” or (2) “substantially altering or performing the functions of multiple aspects of government.” The term logrolling refers to a practice whereby an amendment is proposed which contains unrelated provisions,

⁷ *Fine v. Firestone*, 448 So. 2d 984, 994 (Fla. 1984).

⁸ *Id.* at 832 (quoting *Adams v. Gunter*, 238 So. 2d 824, 832 (Fla. 1970) (Thornal, J., concurring)).

⁹ *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (quoting *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984)).

¹⁰ *See Id.* at 1339.

¹¹ *Id.*

¹² *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984).

¹³ *Advisory Op. to Att’y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So. 3d 822, 828 (Fla. 2016).

some of which electors might wish to support, in order to get an otherwise disfavored provision passed.¹⁴

And although “no single proposal can substantially *alter* or *perform* the functions of multiple branches,” the single-subject limitation does not prohibit a proposal that would “*affect* several branches of government.”¹⁵ However, “how an initiative proposal *affects* other articles or sections of the constitution *is an appropriate factor* to be considered in determining whether there is more than one subject included in an initiative proposal.”¹⁶

A brief look at three Supreme Court opinions will help illuminate the Court’s understanding of these legal principles, and therefore of what “one subject” means.

In a recent advisory opinion, the Court analyzed an amendment that would have guaranteed a

right for electricity consumers “to own or lease solar equipment installed on their property to generate electricity for their own use” while simultaneously ensuring that “State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.”¹⁷

In the Court’s analysis of the amendment, it identified two basic “components”—the establishment of a right and a guarantee of the government’s authority to regulate that right. And the Court rejected the argument that these components embraced different subjects as a matter of law, stating instead that the components were “two sides of the same coin,” and were therefore “component parts or aspects of a single dominant plan or scheme,” and accordingly were “naturally related and connected to the amendment’s oneness of purpose.”¹⁸ The Court also noted that the amendment did not engage in impermissible logrolling, as it did not combine a popular measure with an unpopular measure in hopes of compelling sufficient support for the unpopular measure.¹⁹

In another advisory opinion, the Court examined an amendment proposed by citizen initiative that would have created a “trust to restore the Everglades funded by a fee on raw sugar.”²⁰ The Court held that the amendment violated the single-subject rule because it “perform[ed] the functions of multiple branches of government.”²¹ The amendment performed the legislative functions of imposing a levy, establishing a trust, and granting the trustees with power to set and redefine the boundaries of the “Everglades Ecosystem.” Additionally, the amendment “contemplate[d] the exercise of vast executive powers” by the trustees, including the

¹⁴ *Id.* at 827-28 (internal citations omitted).

¹⁵ *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (emphasis in the original).

¹⁶ *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984) (emphasis added).

¹⁷ *Advisory Op. to Att’y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So. 3d 822, 828 (Fla. 2016) (quoting the language of the proposed amendment at issue, titled, “Rights of Electricity Consumers Regarding Solar Energy Choice”).

¹⁸ *Id.* at 828.

¹⁹ *Id.*

²⁰ *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1337 (Fla. 1994).

²¹ *Id.* at 1340.

“management, construction, and operation of water storage and sewer systems.”²² Finally, the Court stated that the amendment would have performed a judicial function by essentially adjudicating that the sugar cane industry had polluted the Everglades and by imposing a judgment-like fee on that industry to cover cleanup costs.²³

In yet another opinion, issued in *Fine v. Firestone*, the Court disapproved of a proposed amendment that contained three subjects.²⁴ But the Court did so without specifying that the subjects were related to the functions of various branches of government or that the amendment was an attempt at logrolling. Instead, the Court stated that the amendment

limits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital improvements with revenue bonds that are paid for from revenue generated by the improvements.²⁵

Joint Resolution

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.²⁶ Like a bill, it may begin in either house of the Legislature.

To pass out of the Legislature and be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each house of the Legislature.²⁷ Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the people voting on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.²⁸

III. Effect of Proposed Changes:

The constitutional amendment proposed in the joint resolution, if approved by the voters at the general election in 2020, requires that any amendment proposed by a future Taxation and Budget Reform Commission be limited to “one subject and matter connected therewith.”

Because the wording of the single subject requirement for Commission proposals is identical to that used in the Constitution for citizen initiatives, the Supreme Court will likely presume that the single-subject requirements are the same.²⁹

²² *Id.*

²³ *Id.*

²⁴ *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984).

²⁵ *Id.* at 992 (Fla. 1984).

²⁶ FLA. CONST. art. XI. An amendment or revision may originate as a proposal by the Legislature, the Constitution Revision Commission, a Constitutional Convention, the Taxation and Budget Reform Commission, or the people directly, by way of an initiative.

²⁷ FLA. CONST. art. XI, s. 1.

²⁸ FLA. CONST. art. XI, s. 5.

²⁹ See e.g., *State v. Hackley*, 95 So. 3d 92, 95 (Fla. 2012); *State v. Hearn*, 961 So. 2d 211, 217 (Fla. 2007) (“We have held that where the Legislature uses the exact same words or phrases in two different statutes, we may assume it intended the same meaning to apply.”).

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State, Division of Elections, provided the following information regarding the cost of advertising the proposed amendment contained in the resolution:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$58,174.18, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This resolution amends Article XI, section 6 of the Florida Constitution.

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.

³⁰ Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Feb. 25, 2019) (on file with the Senate Committee on Judiciary).

By Senator Rodriguez

37-01098-19

2019690__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article XI of the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Taxation and Budget Reform Commission be limited to a single subject.

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

That the following amendment to Section 6 of Article XI of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE XI

AMENDMENTS

SECTION 6. Taxation and budget reform commission.—

(a) Beginning in 2007 and each twentieth year thereafter, there shall be established a taxation and budget reform commission composed of the following members:

(1) eleven members selected by the governor, none of whom shall be a member of the legislature at the time of appointment.

(2) seven members selected by the speaker of the house of representatives and seven members selected by the president of the senate, none of whom shall be a member of the legislature at the time of appointment.

(3) four non-voting ex officio members, all of whom shall be members of the legislature at the time of appointment. Two of these members, one of whom shall be a member of the minority

37-01098-19

2019690__

party in the house of representatives, shall be selected by the speaker of the house of representatives, and two of these members, one of whom shall be a member of the minority party in the senate, shall be selected by the president of the senate.

(b) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) At its initial meeting, the members of the commission shall elect a member who is not a member of the legislature to serve as chair and the commission shall adopt its rules of procedure. Thereafter, the commission shall convene at the call of the chair. An affirmative vote of two thirds of the full commission shall be necessary for any revision of this constitution or any part of it to be proposed by the commission.

(d) The commission shall examine the state budgetary process, the revenue needs and expenditure processes of the state, the appropriateness of the tax structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; examine constitutional limitations on taxation and expenditures at the state and local level; and review the state's comprehensive planning, budgeting and needs assessment processes to determine whether the resulting information adequately supports a

37-01098-19

2019690__

59 strategic decisionmaking process.

60 (e) The commission shall hold public hearings as it deems
61 necessary to carry out its responsibilities under this section.
62 The commission shall issue a report of the results of the review
63 carried out, and propose to the legislature any recommended
64 statutory changes related to the taxation or budgetary laws of
65 the state. Not later than one hundred eighty days prior to the
66 general election in the second year following the year in which
67 the commission is established, the commission shall file with
68 the custodian of state records its proposal, if any, of a
69 revision of this constitution or any part of it dealing with
70 taxation or the state budgetary process. Any proposal of a
71 revision of this constitution, or any part thereof, filed by the
72 commission with the custodian of state records must embrace but
73 one subject and matter directly connected therewith.

74 BE IT FURTHER RESOLVED that the following statement be
75 placed on the ballot:

76 CONSTITUTIONAL AMENDMENT

77 ARTICLE XI, SECTION 6

78 ESTABLISHING SINGLE-SUBJECT LIMITATION FOR TAXATION AND
79 BUDGET REFORM COMMISSION PROPOSALS.—Proposing an amendment to
80 the State Constitution to require that any proposal of a
81 revision to the State Constitution, or any part thereof, filed
82 by the Taxation and Budget Reform Commission with the custodian
83 of state records for placement on the ballot be limited to a
84 single subject and matter directly connected to such subject.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment and General Government
Ethics and Elections
Rules

SENATOR JOSE JAVIER RODRIGUEZ
37th District

February 19, 2019

Chair Simmons
Committee on Judiciary
404 S. Monroe Street
Tallahassee, FL 32399-1100
Sent via email to simmons.david@flsenate.gov

Chair Simmons,

I respectfully request that you place SB 690 Single Subject Limitation for Taxation and Budget Reform Commission on the agenda of the Committee on Judiciary at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink, appearing to read "JR", with a stylized flourish extending from the end.

Senator José Javier Rodríguez
District 37

CC:

Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant
Valerie Clarke, Legislative Assistant to Senator Simmons
Carolyn Grzan, Legislative Assistant to Senator Simmons
Diane Suddes, Legislative Assistant to Senator Simmons

REPLY TO:

- ☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365
- ☐ 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 690

Bill Number (if applicable)

Topic Single ~~Bad~~ Subject Limit

Amendment Barcode (if applicable)

Name Demetrius Mihov

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-19

Meeting Date

SB 690

Bill Number (if applicable)

Topic Tax & Budget Reform Comm

Amendment Barcode (if applicable)

Name JAN RUBINO

Job Title _____

Address 726 Ingleside Ave
Street

Phone 224-9262

Tallahassee, Fla. 32303
City State Zip

Email rubinojan@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019

Meeting Date

Topic _____

Bill Number 690
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-2019

Meeting Date

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Arthur J. Jorgensen

Job Title Attorney

Address 7810 Whittier St

Street

City

Tampa

State

FL

Zip

33617

Phone 813-326-4022

Email henj1625@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

Stallard, Adam

From: Dover, Brittany N. <Brittany.Dover@dos.myflorida.com>
Sent: Monday, February 25, 2019 11:12 AM
To: Stallard, Adam
Subject: RE: SJR 690

Adam,

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish* twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$58,174.18, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.

*The requirement to provide these publications in Spanish stems from Section 203 of the federal Voting Rights act.

Please let me know if you have any questions.

Thank you,

Brittany N. Dover
Legislative Affairs Director
Department of State
850.245.6509 (office)
850.274.3105 (cell)

From: Stallard, Adam [mailto:Stallard.Adam@flsenate.gov]
Sent: Monday, February 25, 2019 9:48 AM
To: Dover, Brittany N. <Brittany.Dover@dos.myflorida.com>
Subject: SJR 690

EMAIL RECEIVED FROM EXTERNAL SOURCE

Hi Brittany,

If you could provide me with advertising cost information for SJR 690 by COB Thursday, I would appreciate it.

Thanks!

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 Judiciary

BILL: SB 780

INTRODUCER: Senator Simmons

SUBJECT: Office of the Judges of Compensation Claims

DATE: March 1, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula	JU	Favorable
2. _____	_____	AEG	_____
3. _____	_____	AP	_____

I. Summary:

SB 780 requires judges of compensation claims to be paid “a salary equal to that of a county court judge,” which is currently \$27,527.80 higher than the salary of a judge of compensation claims. The bill sets the salary of the Deputy Chief Judge of Compensation Claims at \$1,000 more than that of a county court judge. County court judges are currently paid \$151,822 per year.

The bill has a significant impact on the state’s Workers’ Compensation Administration Trust Fund.

II. Present Situation:

Overview

Judges of compensation claims are paid \$124,564.20 per year, except the Deputy Chief Judge, who is paid \$127,422.12 per year.

Judges of Compensation Claims

The judges of compensation claims have exclusive jurisdiction over workers’ compensation cases.¹ When an employer disputes an employee’s claim for workers’ compensation, the employee may initiate litigation of the matter by filing a petition with the Office of the Judges of Compensation Claims (OJCC). Even after a petition is filed, a workers’ compensation dispute may be resolved through mediation² or arbitration.³ But, when necessary, a judge of compensation claims may hold a hearing to resolve the matter.⁴ Upon conclusion of the hearing,

¹ See *Sanders v. City of Orlando*, 997 So. 2d 1089, 1094 (Fla. 2008).

² See s. 440.25, F.S.

³ See s. 440.1926, F.S.

⁴ See s. 440.25(4), F.S.

the judge's order may be appealed to the First District Court of Appeal, which has sole appellate jurisdiction.⁵

The OJCC is headed by the Deputy Chief Judge, who reports to the director and Chief Judge of the Division of Administrative Hearings.⁶

Judges of compensation claims are nominated by a statewide nominating commission and appointed by the Governor to a 4-year term. The Governor may re-appoint a judge to successive 4-year terms and may remove a judge for cause during any term.⁷

The Annual Salary of the Judges of Compensation Claims

Judges of compensation claims are paid \$124,564.20 per year, except the Deputy Chief Judge, who is paid \$127,422.12 per year.⁸

These salaries are roughly equivalent to those of administrative law judges (ALJs), who preside at the Division of Administrative Hearings. The standard ALJ salary is \$123,070 per year, while Senior ALJs are paid \$124,320 per year and the Deputy Chief ALJ is paid \$125,820 per year.⁹ The Chief Judge determines these salaries, except for his own, which is \$131,409.36, and was set by the Florida Cabinet upon his hiring.¹⁰

Until January 1, 1994, the salary of the judges of compensation claims was linked to the salary of Circuit Court judges, who are now paid \$160,688.04 annually.¹¹ But since 1994, the salary of judges of compensation claims has increased only when the Legislature has appropriated general state-employee salary increases. The salaries and other expenses of the OJCC are paid from the Workers' Compensation Administration Trust Fund.¹²

III. Effect of Proposed Changes:

The bill requires judges of compensation claims to be paid "a salary equal to that of a county court judge," which is currently \$27,527.80 higher than the salary of a judge of compensation claims. The bill sets the salary of the Deputy Chief Judge of Compensation Claims at \$1,000 more than that of a county court judge. County court judges are currently paid \$151,822 per year.

The bill does not appear to affect the salary of the Chief Judge of the Division of Administrative Hearings. Though the Chief Judge serves as the "agency head" of the OJCC, he is not listed as a

⁵ Section 440.271, F.S.

⁶ The DOAH Chief Judge acts as the OJCC's "agency head for all purposes." Section 440.45(1)(a), F.S. DOAH and the OJCC exist within the Department of Management Services, but the department may not direct DOAH or the OJCC in any way. Instead the department must "provide administrative support and service to the office to the extent requested by the director of the Division of Administrative Hearings." Section 440.45(1)(a), F.S.

⁷ *Id.*

⁸ Div. of Admin. Hearings, *Analysis of Senate Bill 780* (Feb. 11, 2019) (on file with the Senate Committee on Judiciary).

⁹ Newly hired ALJs are paid \$121,320 for their first year, before being raised to the standard rate. Conversation with Cindy Ardoin, Budget Officer, Florida Division of Administrative Hearings (Feb. 22, 2019).

¹⁰ *Id.*

¹¹ Ch. 2018-9, s. 8, Laws of Fla.

¹² Div. of Admin. Hearings, *Analysis of Senate Bill 780* (Feb. 11, 2019) (on file with the Senate Committee on Judiciary).

judge of compensation claims on the OJCC's website, nor does the statutory description of his position include service as a JCC.¹³ Under the bill, the salary of the current DOAH Chief Judge will be approximately \$7,500 less than that of the Deputy Chief Judge of Compensation Claims.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the 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:

According to the Division of Administrative Hearings, increasing the salaries of the judges of compensation claims will increase expenditures from the Workers' Compensation Administration Trust Fund by \$1,097,126 for each of the next three 3 fiscal years.¹⁴

¹³ Office of the Judges of Compensation Claims, *Judges of Compensation Claims*, <https://www.jcc.state.fl.us/JCC/judges/> (last visited Feb. 22, 2019).

¹⁴ Div. of Admin. Hearings, *Analysis of Senate Bill 780* (Feb. 11, 2018) (on file with the Senate Committee on Judiciary).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 440.45 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Simmons

9-01015-19

2019780__

A bill to be entitled

An act relating to the Office of the Judges of Compensation Claims; amending s. 440.45, F.S.; specifying the salaries of full-time judges of compensation claims and the Deputy Chief Judge; requiring that salaries be paid out of the Workers' Compensation Administration Trust Fund; providing an effective date.

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

Section 1. Paragraph (f) is added to subsection (2) of section 440.45, Florida Statutes, to read:

440.45 Office of the Judges of Compensation Claims.—
(2)

(f) All full-time judges of compensation claims shall receive a salary equal to that of a county court judge. The Deputy Chief Judge shall receive a salary of \$1,000 more per year than the salary paid to a full-time judge of compensation claims. The salaries of the judges of compensation claims must be paid out of the Workers' Compensation Administration Trust Fund established under s. 440.50.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

53780

Bill Number (if applicable)

Topic W/C - OTCC SALARIES

Amendment Barcode (if applicable)

Name PAUL ANDERSON

Job Title ATTORNEY

Address 1584 METROPOLITAN BLVD.

Street

Phone 850-544-0304

FORT TALLAHASSEE FL

City

State

32308

Zip

Email paul@becamejustinmatters.com

Speaking: ☒ For ☐ Against ☒ Information

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

Representing W/C SECTION OF THE FLORIDA BAR

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03.04.19

Meeting Date

SB780

Bill Number (if applicable)

Topic SB 780 Judges of Compensation Claims

Amendment Barcode (if applicable)

Name DAVID LANGHAM

Job Title DEPT. CHIEF JUDGE

Address 700 S. PALAFOX ST STE 305

Street

Phone 850 595 6310

PENSACOLA

City

FL

State

32502

Zip

Email david.langham@doah.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

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

Representing OFFICE OF JUDGES OF COMPENSATION CLAIMS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/04/2019

Meeting Date

SB 780

Bill Number (if applicable)

Topic Workers' Compensation

Amendment Barcode (if applicable)

Name Robert S. Cohen

Job Title Director and Chief Judge Division of Administrative Hearings

Address 1230 Apalachee Parkway

Phone 850-488-9675

Street

Tallahassee

FL

32301-3060

Email bob.cohen@doah.state.fl.us

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Division of Administrative Hearings

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

314 12019

Meeting Date

Topic _____

Bill Number 780
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

To: Florida Senate Appropriations Committee
201 The Capitol
Tallahassee, FL 32399-1100
Email to: **Senate.FiscalNote@LASPBS.state.fl.us**

Date: February 11, 2019

From:

Agency Affected:	<u>Division of Administrative Hearings</u>	Telephone: (850) 488-9675
Program Manager:	<u>Robert Cohen, Chief Judge</u>	Telephone: (850) 488-9675
Agency Contact:	<u>Cindy Ardoin</u>	Telephone: (850) 488-9675 ext. 112
Respondent:	<u></u>	Telephone: <u></u>

RE: SENATE BILL # 0780

(Note if analysis is for a committee substitute or a bill with amendments.)

I. SUMMARY

Office of The Judges of Compensation Claims; Specifying the salaries of full-time judges of compensation claims and the Deputy Chief Judge; requiring that salaries be paid out of the Workers' Compensation Administration Trust Fund, etc. Effective Date: 7/1/2019

II. PRESENT SITUATION

Effective January 1, 1994, the Judges of Compensation Claims (JCC) salary was no longer tied to the Circuit Court Judge salary. Therefore, the current JCC salary is the FY 93-94 salary amount plus any state employee increases appropriated by the Legislature since then. Therefore, the JCC current annual salary is \$124,564.20 and the Deputy Chief Judge of Compensation Claims' current annual salary is \$127,422.12.

Over the years, as the salary discrepancy has become more pronounced, the number of qualified applicants for vacant JCC positions has significantly declined. By statute, the Statewide Nominating Commission for Judges of Compensation Claims is required to nominate three applicants for each vacancy from which the Governor selects a new judge. With many of the applicants coming from the private sector, where salaries are generally much higher than the current salary of a JCC, the number of applicants often is barely more than the minimum number of names required to be submitted. In fact, in 2017, only one name was submitted for a vacancy in Tallahassee which resulted in the position being reopened to solicit additional names. This caused a delay in filling the position for a retiring judge. It has been rare to receive more than 5-6 applications for an opening, unlike the number of applicants for county and circuit court vacancies, which generally number 20-30 applicants when a vacancy occurs.

The funding source for the Office of the Judges of Compensation claims is the Workers' Compensation Administration Trust Fund.

III. EFFECT OF PROPOSED CHANGES

Effective July 1, 2019, the bill would establish a tie to the County Court Judge salary in s. 440.45, Florida Statutes. Each full-time JCC salary would be equal to the annual salary paid to a County Court Judge, which is currently \$151,822. The Deputy Chief Judge of Compensation Claims' salary would be \$1,000 more than the JCC salary.

An increase in salary should result in more individuals being willing to apply for JCC vacancies and, if selected, shut down a private practice to enter the public sector.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

	(FY 19-20) Amount / FTE	(FY 20-21) Amount / FTE	(FY 21-22) Amount / FTE
A. Revenues			
1. Recurring			
2. Non-Recurring			
B. Expenditures			
1. Recurring	\$1,097,126	\$1,097,126	\$1,097,126
2. Non-Recurring			

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

None

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

None

VII. LEGAL ISSUES

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations? *No*

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)? *No*

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties? *No*

D. Other:

VIII. COMMENTS:

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 Judiciary

BILL: SB 968

INTRODUCER: Senator Simmons

SUBJECT: Court Reporter Registry

DATE: March 1, 2019

REVISED: 03/04/19

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Davis	Cibula	JU	Favorable
2.		ACJ	
3.		AP	

I. Summary:

SB 968 requires the Florida Supreme Court to create and administer a court reporter registry that must be posted on the Court's website.

Each court reporter, by July 1, 2020, must register his or her name, address, phone number, e-mail address, the type of reporting provided, and list each professional credential he or she has along with the professional association that issued the credential. The Court will add the court reporter's information in the registry after the reporter submits a completed registration form which will be created by the Court. Each court reporter bears the responsibility to update his or her information within 30 days after any of the required information changes.

The bill takes effect July 1, 2019.

II. Present Situation:

A court reporter records testimony and judicial proceedings and if requested, converts the recording to a written transcript.¹ According to the "Legislative Intent" section of the bill, court reporters manage large amounts of confidential information and are impartial record keepers in court and deposition proceedings. One of their most important functions is to provide an accurate, written record for an appellate court to review in order to determine whether proper procedures and principles were followed in a lower court.²

No Standards or Licensure is Required

Florida court reporters are not required to pass any competency standards, complete any licensure requirements, or register with any professional board in order to work in this state.

¹ BLACK'S LAW DICTIONARY (10th ed. 2014).

² Florida Courts, *Court Reporting*, <https://www.flcourts.org/Resources-Services/Court-Services/Court-Reporting>.

However, because the Florida Rules of Civil Procedure state that a deposition may be taken before any notary public or other specified person authorized to take acknowledgments, many court reporters are also notaries.³

The lack of a central registry creates some concerns in the legal community. For example, if an attorney decides to order a transcript a significant amount of time after a proceeding took place but the reporter has moved, there is no central registry where the court reporter may leave a forwarding address where he or she may be reached. As a result, the record of the proceeding may leave with the reporter. Additionally, if an attorney wants to lodge a complaint against a court reporter, there is no professional board where the grievance may be registered.⁴

Estimated Number of Court Reporters in the State

Although no one can know precisely how many court reporters work in Florida because there is no central registry, one trade association estimated that there could possibly be a range of 2,500–3,000 people.⁵

Certification Requirements in Other States

According to data supplied from the National Court Reporters Association, 28 states require mandatory certification for court reporters, 11 states do not require certification, 8 states permit voluntary certification, and 3 states fall into a hybrid category which requires certification for official court reporters but not for freelance reporters.⁶

Previous Legislation

Legislation was enacted in 1995⁷ that required the Florida Supreme Court to establish minimum standards and procedures for court reporters to become qualified, certified, disciplined, and trained. The Court was authorized to set fees for the certification and renewal process and the fees were to be used to offset the costs of administering the program. The Court was also authorized to appoint or employ the necessary personnel to perform the duties that were established in the legislation. In 1998, the Florida Supreme Court adopted proposed rules contingent on the Legislature appropriating funds sufficient to cover the costs of implementing the program.⁸ However, no funds were ever appropriated and the rules were not implemented.

III. Effect of Proposed Changes:

The bill requires the Florida Supreme Court to create and administer a court reporter registry which must be posted on the Court's website.

³ FLA. R. CIV. P. 1.300.

⁴ Florida Court Reporters Association, *Registration/Certification for Court Reporters*, 5 (Feb. 2016) (on file with the Senate Committee on Judiciary).

⁵ *Id.* at 6.

⁶ Email from Matthew Barusch, National Court Reporters Association (Feb. 25, 2019) (on file with the Senate Committee on Judiciary).

⁷ Ch. 95-286, s.2, Laws of Florida (creating s. 25.383, F.S. effective July 1, 1995).

⁸ *Amendments to Florida Rule of Judicial Admin. 2.070-Court Reporters*, 725 So. 2d 1094 (1998).

By July 1, 2020, each court reporter must register his or her name and:

- Address;
- Phone number;
- E-mail address;
- The type of reporting provided; and
- List each professional credential he or she has along with the professional association that issued the credential.

The Court will add the court reporter's information in the registry after the reporter submits a completed registration form which will be created by the Court. Each court reporter bears the responsibility to update his or her information within 30 days after any of the required information changes.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

OSCA states that a full-time Senior Court Analyst II position would be necessary to implement and maintain the registry at an annual cost of \$81,899.56 for an OPS position. If it is an ongoing FTE, the annual cost is estimated to be \$89,191. However, the annual staff support may be reducible after the implementation is completed.

OSCA currently has the hardware and software needed to store the registry data. However, an intermediate systems software programmer would be needed to program the necessary functions. The position is estimated to cost \$90 per hour. For 12 months and a total of 2,100 hours to complete the implementation, the cost would be \$189,000 in nonrecurring funds. Once implementation is completed, the existing technical staff would provide ongoing staff support.

The remaining cost would be for an Adobe Pro license which is projected to be \$311.74.⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 25.389 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.

⁹ Office of the State Courts Administrator, *2019 Judicial Impact Statement* (March 4, 2019)
<http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=28220>

By Senator Simmons

9-01431-19

2019968__

A bill to be entitled

An act relating to court reporter registry; creating s. 25.389, F.S.; providing legislative intent; requiring the Supreme Court to create and administer a court reporter registry; requiring the registry to be posted on the Supreme Court website; requiring court reporters to register with the Supreme Court by a specified date; requiring court reporters to update their information within a specified time; providing an effective date.

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

Section 1. Section 25.389, Florida Statutes, is created to read:

25.389 Court reporter registry.—

(1) LEGISLATIVE INTENT.—

(a) The Legislature recognizes that court reporters manage volumes of confidential information and are the impartial record keepers in court and in deposition proceedings.

(b) The Legislature finds that the creation of a court reporter registry will improve consumer protection and provide court reporter accountability, protect confidential information, and provide the ability to locate transcripts and other records if a court reporter moves his or her office or leaves the state.

(2) CREATION.—There is created and administered within the Supreme Court a court reporter registry. The Supreme Court must post the registry on its website.

(3) REGISTRATION.—

Page 1 of 2

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

9-01431-19

2019968__

(a) By July 1, 2020, each court reporter must register with the Supreme Court his or her name, address, phone number, e-mail address, and method of reporting, such as stenography, voice, or digital, and must list each professional credential the reporter holds with the identity of the professional association that issued the credential, for inclusion in the court reporter registry. The Supreme Court shall add the court reporter's information in the registry after the court reporter has submitted a completed registration on a form created by the court.

(b) Each court reporter must update his or her name, address, phone number, or e-mail address within 30 days after any change to his or her information.

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

Page 2 of 2

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

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

City

State

Zip

Phone

Email

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019

Meeting Date

Topic _____

Bill Number 968
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

968

Bill Number (if applicable)

Topic Court Reporters

Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Lobbyist

Address 119 S. Monroe St.
Street

Phone (850) 766-5795

Tallahassee FL 32301
City State Zip

Email corinne@rutledge-
eventa.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Court Reporters Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

Registration/Certification For Court Reporters

Information Packet

Compiled by Holly Kapacinskas, RPR, CRR, FPR,
FCRA Immediate Past President and Government Relations Chair
and
Melanie Simpkins, RPR, CRR, FPR,
Government Relations Committee Member/Immediate Past Chair

Compiled February 2016



Advancing. Advocating. Educating.

Why Certification for Court Reporters?

- Court reporters carry a heavy responsibility as the impartial record keepers in court and deposition proceedings. Certification legislation will establish a minimum level of competency, code of professional ethics, succinct rules of practice, and continuing education requirement. Thus, a statewide certification program will guarantee judges, attorneys, and the public that Florida has competent, informed, up-to-date, and knowledgeable reporters serving the needs of the justice system.
- Certification will offer a mechanism for the public to address grievances and for the state to investigate and discipline individuals who do not practice in an ethical and/or legal manner. FCRA fields several calls each year from attorneys looking to file a grievance. They are shocked to find out that there are no state requirements to practice as a reporter in the state, especially when, oftentimes, life and liberty rely on the record.
- Florida is a transient state. Reporters who cannot pass minimum requirements in other states come to Florida to work because they do not need to demonstrate a level of competency. The only requirement in Florida is a reporter must be a Florida notary to swear in a deponent, a requirement not even needed in hearings and trials.
- Florida is not an “automatic transcript order” state. If an attorney wants to order a transcript a year or two after a proceeding and the reporter has moved, there is no court reporter board, mandatory registry, no place for a reporter to leave a forwarding address. The record goes with the reporter.
- Many judges around the state recognize the importance of certification to the integrity of our justice system. For example, in the Seventh Circuit, Judge Terence Perkins has issued an administrative order requiring certification of reporters working in his circuit as of July 1, 2015. Certification of reporters should not be piecemeal and unequal; it should be uniform across the state.
- There are 28 states that place the highest value on the quality/integrity of the record and require their reporters to be certified. Certification will demonstrate to all Florida citizens that protecting the record is a priority in our state. TCP&A Workgroup recommendations accepted by FSC even agree, “The qualifications of court reporters have a significant impact on the effectiveness of court reporting services from the actual monitoring of a proceeding to the production of a quality transcript.”
- Court reporters manage volumes of confidential information. Certification, continuing education, and ethical standards will help to ensure that confidential information is protected (i.e., HIPAA, juvenile proceedings, closed session board meetings).
- Certification will help to protect reporting jobs in Florida. Presently, transcription of digital recordings in Florida cases can be outsourced to other states and other countries that have no ethical, privacy, or educational standards. Every assignment performed by an uncertified or out-of-state

reporter is a lost job opportunity for the Florida reporter currently maintaining their professional credentials.

- Certification will give the state a tracking system through a licensure number that will provide reporter accountability (i.e., timeliness of appellate transcripts) and a method to identify a reporter on the E-filing portal should the state require it in the future. Tracking will also help us gauge the number of reporters that need to be trained in the future to maintain an adequate level of reporting services throughout the state.

How many court reporters are there in Florida?

Without mandatory certification or registry available to gauge the number of reporters (all methods) in the state, we estimate a range of 2,500-3,000 total, including:

- FCRA can confidently estimate between 2,000-2,500 stenographic reporters.
- State employees (from MyFlorida.com) – 75 stenographic, 178 digital
- Voice Writers – only a handful, probably less than 5
- Digital freelance – unknown - possibly a few hundred, estimating on the high side

Davis, Eva

From: Matthew Barusch <mbarusch@ncra.org>
Sent: Monday, February 25, 2019 4:23 PM
To: Davis, Eva
Subject: RE: Pending Florida Legislation Requiring Court Reporter Registration

Hi Eva,

I copied and pasted a page from our site for certification requirements in the states below. The page is [here](#) if that's easier, but I think its members protected. Hope this helps! Let me know if I can be of any more help. Thanks!

State Certification Requirements

State

Certification requirements

Alabama

Mandatory
Written: Yes
Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

Alaska

None

Arizona

Mandatory - Must pass an NCRA (or NVRA) exam and an Arizona exam.
Written: Yes
Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

Arkansas

Mandatory
Written: Yes
Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A
California

Mandatory
Colorado

Mandatory
Official Court Reporters must have their RPR and CRR
Connecticut

Mandatory
Written: Yes
Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A
Delaware

None
Florida

Voluntary
Georgia

Mandatory - must pass NCRA (or NVRA) test before applying for
Georgia certification
Written: Yes
Skills: Yes, testing speeds of national certifications
Hawaii

Mandatory
Tested RPR must pass Hawaii written exam.
Idaho

Mandatory
Written: Yes
Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A
Illinois

Mandatory

Reciprocity when applying for the CSR

Written: Yes

Skill: 200 wpm general dictation and 225 wpm Q&A

Indiana

Voluntary

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

Iowa

Mandatory

Conditional Reciprocity. Tested RPR must pass Iowa written exam.

Written: Yes

Skill: 180 wpm technical Q&A, 200 & 225 wpm nontechnical

Kansas

Mandatory

Reciprocity granted to tested RPRs.

Written: YES

Skill: 180 medical Q&A, 200 wpm solid matter, 225 wpm Q&A

Kentucky

Voluntary

Louisiana

Mandatory

Will grant CSR to tested RPRs

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

Maine

No CSR

Maryland

No CSR

Massachusetts

Two Types:

1. No mandatory certification for state officials.
2. Voluntary for freelancers (by state association).

Skill: 170 wpm Lit., 190 wpm JC, 210 wpm Q&A

Michigan

Mandatory

Reciprocity given for RPR Skills portion. However, must pass CSR Written Knowledge test.

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

Minnesota

Officials must have their RPR and have graduated from an NCRA certified program.

Mississippi

Mandatory certification on NCRA exam.

Grant reciprocity to RPRs only on Skills; to CSRs but must take WKT.

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

Missouri

Mandatory

Written: Yes

Skill: 180 wpm Lit., 200 wpm

JC, 225 wpm Q&A

Montana

No certification required

Nebraska

Voluntary.

There is no official state test. Proficiency is proven through past work, RPR certificate, or a state proficiency test is administered. Reciprocity is granted to tested RPRs & CSRs if their standards are same as test.

Nevada

Mandatory

Written: Yes

Skill: Dictation not less than 200 wpm and not more than 225 wpm

New Hampshire

Mandatory licensure with reciprocity to the RPR or CVR and no state-to-state reciprocity. There is no NH-specific examination (written or skills). The license requirement includes a \$1,000 bond. More information can be found at: <http://www.nh.gov/jtboard/>

New Jersey

Mandatory

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

New Mexico

Mandatory unless granted waiver.

Reciprocity to tested RPRs & CSRs who passed an equivalent exam, and have three out of four years' court-reporting experience immediately prior to application.

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

New York

Voluntary

Written: Yes

Skill: 7 min. 4-voice 200 wpm Q&A, 4min 175 wpm JC, 5 min 175 wpm Q&A

North Carolina

Freelance reporters: none required

Official: reporters: RPR (or CVR) and maintain all CEU

North Dakota

None

Ohio

None

Oklahoma

Mandatory. Reciprocity granted for RPR, RMR, and certain CSRs.

Written: Yes

Skill: 180 wpm Lit., no JC, 200 wpm Q&A

Oregon

Voluntary CSR

Will grant CSR to tested RPRs who been tested within 24-mo. period preceding application for CSR

Pennsylvania

None

Rhode Island

Voluntary

Written: No

Skill: Must report an actual trial and transcribe 10 pages

South Carolina

Mandatory testing administered by Court Administration for court. May be waived if RPR or CM.

South Dakota

None

Tennessee

Mandatory Licensure

Will grant CSR to tested RPRs or states with equivalent testing.

Texas

Mandatory

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

Utah

NCRA RPR or National Verbatim Reporters Association CVR

Vermont

None

Virginia

Voluntary
Washington

Mandatory
West Virginia

Mandatory for Official reporters. Voluntary for Freelancers
Wisconsin

None - Officials receive a pay raise for certification
Wyoming

Officials must have graduated from an accredited court reporting school **and** pass a 225 Q&A.

From: Davis, Eva [mailto:DAVIS.EVA@flsenate.gov]
Sent: Monday, February 25, 2019 4:20 PM
To: Matthew Barusch
Subject: Pending Florida Legislation Requiring Court Reporter Registration

Hello Matthew,

I was given your name by the NCRA as someone who might could help me locate some information. I am analyzing legislation pending in Florida that would require court reporters to register with the Florida Supreme Court.

Would you happen to have any idea how many states require registration or certification before a court reporter may work in a state?

Please feel free to call me if that would be faster.

Thank you,
Eva Davis
Direct Line – 850-487-5783

Eva M. Davis
Senior Attorney
Committee on Judiciary
The Florida Senate
515 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399

(850) 487-5198

Mon 2/25/2019 4:23 PM

Matthew Barusch <mbarusch@ncra.org>

RE: Pending Florida Legislation Requiring Court Reporter Registration

Hi Eva,

I copied and pasted a page from our site for certification requirements in the states below. The page is [here](#) if that's easier, but I think its members protected. Hope this helps! Let me know if I can be of any more help. Thanks!

State Certification Requirements

State

Certification requirements

Alabama

Mandatory

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

Alaska

None

Arizona

Mandatory - Must pass an NCRA (or NVRA) exam and an Arizona exam.

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

Arkansas

Mandatory

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

California

Mandatory

Colorado

Mandatory

Official Court Reporters must have their RPR and CRR

Connecticut

Mandatory

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

Delaware

None

Florida

Voluntary

Georgia

Mandatory - must pass NCRA (or NVRA) test before applying for
Georgia certification

Written: Yes

Skills: Yes, testing speeds of national certifications

Hawaii

Mandatory

Tested RPR must pass Hawaii written exam.

Idaho

Mandatory

Written: Yes

Skill: 180 wpm Lit., 200 wpm JC, 225 wpm Q&A

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NCRA RPR or National Verbatim Reporters Association CVR

Vermont

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Virginia

Voluntary

Washington

Mandatory

West Virginia

Mandatory for Official reporters. Voluntary for Freelancers

Wisconsin

None - Officials receive a pay raise for certification

Wyoming

Officials must have graduated from an accredited court reporting school and pass a 225 Q&A.

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 3/4/2019 3:31:28 PM

Ends: 3/4/2019 4:59:19 PM **Length:** 01:27:52

3:31:27 PM Meeting called to order by Chair Simmons
3:31:28 PM Roll call by Administrative Assistant Joyce Butler
3:31:44 PM Quorum present
3:31:49 PM Announcements by Chair Simmons
3:32:25 PM CS/SB 160 presented by Senator Book
3:33:33 PM Speaker Don Delano
3:40:01 PM Speaker Barney Bishop III
3:40:15 PM Speaker Brian Pitts
3:42:08 PM Debate by Senator Baxley
3:43:07 PM Senator Book closes on CS/SB 160
3:44:36 PM Roll call vote on CS/SB 160
3:44:44 PM CS/SB 160 reported favorably
3:44:57 PM SB 910 presented by Senator Gainer
3:47:55 PM Speaker Barney Bishop III
3:48:25 PM Speaker Sarah Naf Biehl
3:48:42 PM Speaker Brian Pitts
3:49:05 PM Speaker Dan Hendrickson
3:49:35 PM Speaker R. J. Myers
3:50:35 PM Speaker Erica Medina
3:52:20 PM Question by Senator Gibson
3:52:58 PM Response by Senator Gainer
3:53:51 PM Senator Gainer closes on SB 910
3:54:52 PM Roll call vote on SB 910
3:54:59 PM SB 910 reported favorably
3:55:31 PM SB 746 presented by Senator Wright
3:57:47 PM Speaker Alison Dudley
3:58:30 PM Senator Wright closes on 746
3:58:37 PM Roll call vote on SB 746
3:58:52 PM SB 746 reported favorably
3:59:08 PM SB 256 presented by Senator Baxley
4:00:06 PM Amendment Barcode 162110 presented by Senator Baxley
4:01:33 PM Speaker Paul Jess
4:02:12 PM Senator Baxley closes on Amendment Barcode 162110
4:02:29 PM Amendment adopted
4:02:55 PM Speaker Barney Bishop III
4:03:03 PM Speaker Shari Hickey
4:03:22 PM Speaker Victoria Zepp waives in support
4:03:43 PM Speaker Doug Bell
4:03:51 PM Speaker Stephen Winn
4:04:05 PM Speaker Brian Pitts
4:06:07 PM Senator Baxley closes on CS/SB 256
4:06:27 PM Roll call vote on CS/SB 256

4:06:32 PM CS/SB 256 reported favorably
4:07:04 PM SB 980 presented by Senator Harrell
4:10:33 PM Question by Senator Gibson
4:10:40 PM Response by Senator Harrell
4:11:05 PM Speaker Scott Howell
4:11:39 PM Speaker Barney Bishop III
4:11:55 PM Speaker Sean Burnfin
4:12:13 PM Speaker Brian Pitts
4:14:20 PM Senator Harrell closes on SB 980
4:15:06 PM Roll call vote on SB 980
4:16:05 PM SB 980 reported favorably
4:16:24 PM CS/SB 204 presented by Senator Brandes
4:17:39 PM Question by Senator Rodriguez
4:17:44 PM Response by Senator Brandes
4:17:54 PM Speaker Demetrius Mihor
4:18:36 PM Speaker R. J. Meyers
4:18:45 PM Speaker Dr. Adina Thompson
4:19:01 PM Speaker Mark Jeffries
4:19:14 PM Speaker Tonnnette Graham
4:19:38 PM Speaker Jess McCarty
4:19:54 PM Speaker Kara Gross
4:20:05 PM Speaker Brian Pitts
4:21:25 PM Speaker Scott McCoy
4:21:34 PM Speaker Barney Bishop III
4:21:58 PM Senator Brandes closes on CS/SB 204
4:22:53 PM Roll call vote on CS/SB 204
4:23:03 PM CS/SB 204 reported favorably
4:23:18 PM SB 530 presented by Senator Brandes
4:24:38 PM Speaker Mark Fontaine
4:24:55 PM Speaker Barney Bishop III
4:25:02 PM Speaker Greg Newburn
4:25:22 PM Speaker Kara Gross
4:25:38 PM Speaker Evon Steinberg
4:27:19 PM Speaker R. J. Myers
4:27:42 PM Speaker Brian Pitts
4:29:14 PM Speaker Scott McCoy
4:29:43 PM Debate by Senator Hudson
4:29:55 PM Response by Senator Brandes
4:31:10 PM Senator Brandes closes on SB 530
4:31:17 PM Roll call vote on SB 530
4:31:26 PM SB 530 reported favorably
4:31:53 PM SB 656 presented by Senator Baxley
4:32:18 PM Amendment Barcode 673990 presented pursuant to the bill by Senator Baxley
4:33:08 PM Speaker Barney Bishop III
4:34:07 PM Speaker Sarah Naf Biehl
4:34:36 PM Senator Baxley closes on Amendment Barcode 673990
4:34:47 PM Amendment Barcode 673990 adopted
4:34:56 PM Senator Baxley closes on CS/SB 656
4:35:21 PM Roll call vote on CS/SB 656
4:35:29 PM CS/SB 656 reported favorably
4:36:07 PM SJR 690 presented by Vice Chair Rodriguez
4:38:02 PM Speaker Demetrius Minor

4:38:20 PM Speaker Jan Rubino
4:38:37 PM Speaker Senator Arthenia Joyner
4:39:59 PM Speaker Brian Pitts
4:42:38 PM Senator Rodriguez closes on SJR 690
4:42:49 PM Roll call vote on SJR 690
4:43:15 PM SJR 690 reported favorably
4:43:34 PM SM 804 presented by Senator Simmons
4:44:28 PM Amendment Barcode 567004 presented by Senator Simmons
4:45:16 PM Senator Simmons closes
4:46:16 PM Amendment Barcode 567004 adopted
4:46:36 PM Comments by Chair Rodriguez
4:46:52 PM Senator Simmons closes on SM 804
4:47:11 PM Roll call vote for SM 804
4:47:19 PM CS/SM 804 reported favorably
4:47:43 PM SB 780 presented by Senator Simmons
4:49:06 PM Speaker Paul Anderson
4:50:32 PM Speaker David Langham
4:50:37 PM Speaker Robert Cohen
4:50:43 PM Speaker Brian Pitts
4:51:55 PM Senator Simmons closes on SB 780
4:52:56 PM Roll call vote on SB 780
4:53:02 PM SB 780 reported favorably
4:53:15 PM SB 968 presented by Senator Simmons
4:56:22 PM Speaker Holly Kapacinskas
4:56:34 PM Speaker Brian Pitts
4:57:10 PM Speaker Corinne Mixon
4:58:16 PM Senator Simmons closes on SB 968
4:58:26 PM Roll call vote on SB 968
4:58:32 PM SB 968 reported favorably
4:58:43 PM Closing remarks by Chair Simmons
4:59:05 PM Chair Stargel moves to adjourn, meeting adjourned without objection