

**SB 162** by **Joyner, Bradley**; (Identical to H 0103) Compensation of Victims of Wrongful Incarceration

**SB 164** by **Evers (CO-INTRODUCERS) Grimsley**; (Identical to H 0193) Crime Stoppers Trust Fund

**SB 312** by **Detert (CO-INTRODUCERS) Gaetz**; (Identical to H 0235) Restitution for Juvenile Offenses

**SB 330** by **Dean**; (Compare to CS/H 0069) Missing Persons with Special Needs

104312 A S RCS CJ, Bradley Delete L.122 - 148. 03/02 06:14 PM

**SB 378** by **Garcia, Gibson (CO-INTRODUCERS) Bullard**; Juvenile Justice

615206 A S WD CJ, Brandes Delete L.50 - 67: 03/02 06:14 PM

**SB 542** by **Benacquisto**; (Compare to H 7001) Interception of Wire, Oral, or Electronic Communication

858552 A S RCS CJ, Bradley Delete L.22: 03/02 06:14 PM

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

**CRIMINAL JUSTICE**  
**Senator Evers, Chair**  
**Senator Gibson, Vice Chair**

**MEETING DATE:** Monday, March 2, 2015  
**TIME:** 1:00 —4:00 p.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

**MEMBERS:** Senator Evers, Chair; Senator Gibson, Vice Chair; Senators Bradley, Brandes, and Clemens

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Testimony by employees of the Department of Corrections, other state employees, and other individuals on the safety and security of the state correctional system.		Discussed
2	<b>SB 162</b> Joyner / Bradley (Identical H 103)	Compensation of Victims of Wrongful Incarceration; Providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to, or was serving a concurrent incarceration for, another violent felony; providing that a wrongfully incarcerated person who commits a violent felony law violation, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation, etc.  CJ      03/02/2015 Favorable JU ACJ FP	Favorable Yeas 4 Nays 0
3	<b>SB 164</b> Evers (Identical H 193)	Crime Stoppers Trust Fund; Authorizing a county that is awarded a grant from the trust fund to use such funds for the purchase and distribution of promotional items, etc.  CJ      03/02/2015 Favorable CA ACJ FP	Favorable Yeas 4 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, March 2, 2015, 1:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 312</b> Detert (Identical H 235)	Restitution for Juvenile Offenses; Requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; authorizing the court to order both parents or guardians liable for the child's restitution regardless of one parent or guardian having sole parental responsibility; specifying that the Department of Children and Families, foster parents, and specified agencies contracted with the department are not guardians for purposes of restitution, etc.  CJ 03/02/2015 Favorable CF JU FP	Favorable Yeas 4 Nays 0
5	<b>SB 330</b> Dean (Compare CS/H 69)	Missing Persons with Special Needs; Providing immunity from civil liability for certain persons who comply with a request to release information concerning missing persons with special needs to appropriate agencies; requiring the Department of Law Enforcement, contingent on funding, to provide electronic monitoring devices to certain persons with autism spectrum disorder; requiring the Department of Children and Families, contingent on funding, to provide electronic monitoring devices to certain persons with dementia, etc.  CJ 03/02/2015 Fav/CS JU CF AP	Fav/CS Yeas 4 Nays 0
6	<b>SB 378</b> Garcia / Gibson	Juvenile Justice; Authorizing a law enforcement officer to issue a warning to a juvenile who admits having committed a misdemeanor or to inform the child's parent or guardian of the child's infraction; requiring a law enforcement officer who does not exercise one of these options to issue a civil citation or require participation in a similar diversion program; providing that, in exceptional situations, a law enforcement officer may arrest a first-time misdemeanor offender in the interest of protecting public safety, etc.  CJ 03/02/2015 Temporarily Postponed CF RC	Temporarily Postponed

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, March 2, 2015, 1:00 —4:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 542</b> Benacquisto (Compare H 7001, S 218)	Interception of Wire, Oral, or Electronic Communication; Authorizing a child younger than 18 years of age to intercept and record an oral communication if the child is a party to the communication and certain conditions are met, etc.  CJ      03/02/2015 Fav/CS JU RC	Fav/CS Yeas 4 Nays 0

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Other Related Meeting Documents

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Tab 1

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/15.

Meeting Date

Topic Request of chair.

Bill Number \_\_\_\_\_

Name Julie Jones.

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title Secretary.

(if applicable)

Address 501 S. Calhoun St.

Phone 850-717-3030

Street

Tallahassee FL 32319.

City

State

Zip

E-mail Jones.Julie@mail.de-

stat.fl.w.

Speaking:  For  Against  Information

Representing Doc.

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.

Tab 1

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/15

Meeting Date

Topic Request of chair.

Bill Number \_\_\_\_\_

(if applicable)

Name Kim Banks

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title CFO

Address 501 S. Calhoun ST.

Street

Phone 850 - 717 - 3019.

Tallahassee FL 32399.

City

State

Zip

E-mail banks.k.200@mail.rc.state.fl.us

Speaking:  For  Against  Information

Representing DOC.

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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Tab 1

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/2/15.  
Meeting Date

Topic Request of Chair -

Bill Number \_\_\_\_\_  
*(if applicable)*

Name Tim Cannon

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Deputy Secretary -

Address 501 S. Calhoun ST.

Phone 850-717-3456

Tallahassee FL 32399-  
City State Zip

E-mail Cannon.timothy@mail-de.  
state.fl.us

Speaking:  For  Against  Information

Representing DOC.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

Tab 1

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

3/2/15

Meeting Date

Bill Number (if applicable)

Topic Corrections / Private Prisons

Amendment Barcode (if applicable)

Name Mike Weber

Job Title Specialized Services Director

Address 4050 Esplanade Way

Phone 850-488-4909

Street

Tallahassee FL 32399

City

State

Zip

Email Michael.Weber@dms.my  
florida.com

Speaking:  For  Against  Information

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

Representing Department of Management Services

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**

Tas 1

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

3/2/2015

Meeting Date

Bill Number (if applicable)

Topic Criminal Justice Reform (DOC)

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S  
Street

Phone 727/897-9291

St Petersburg FL 33705  
City State 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

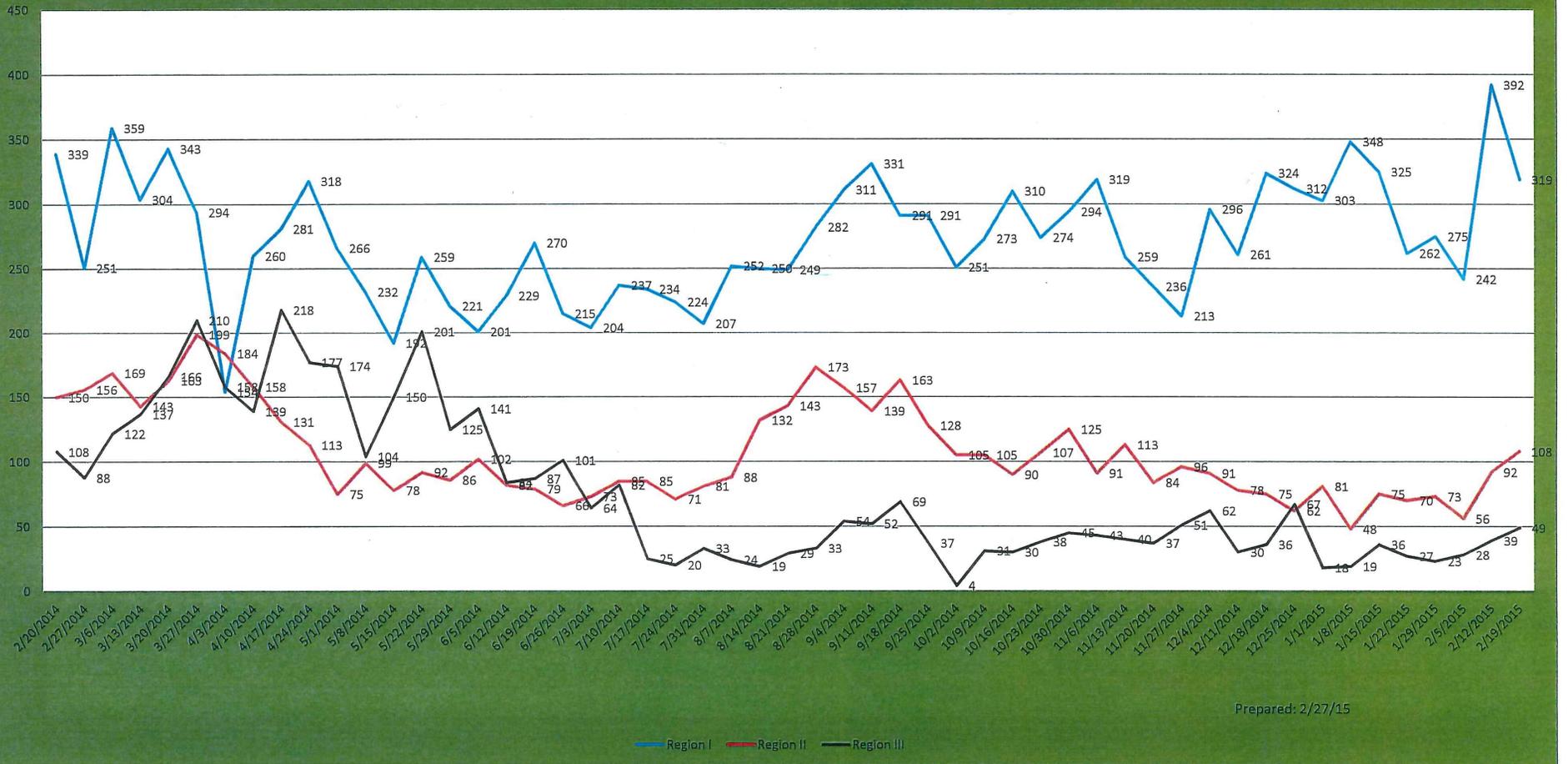
Appearing at request of Chair:  Yes  No

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.

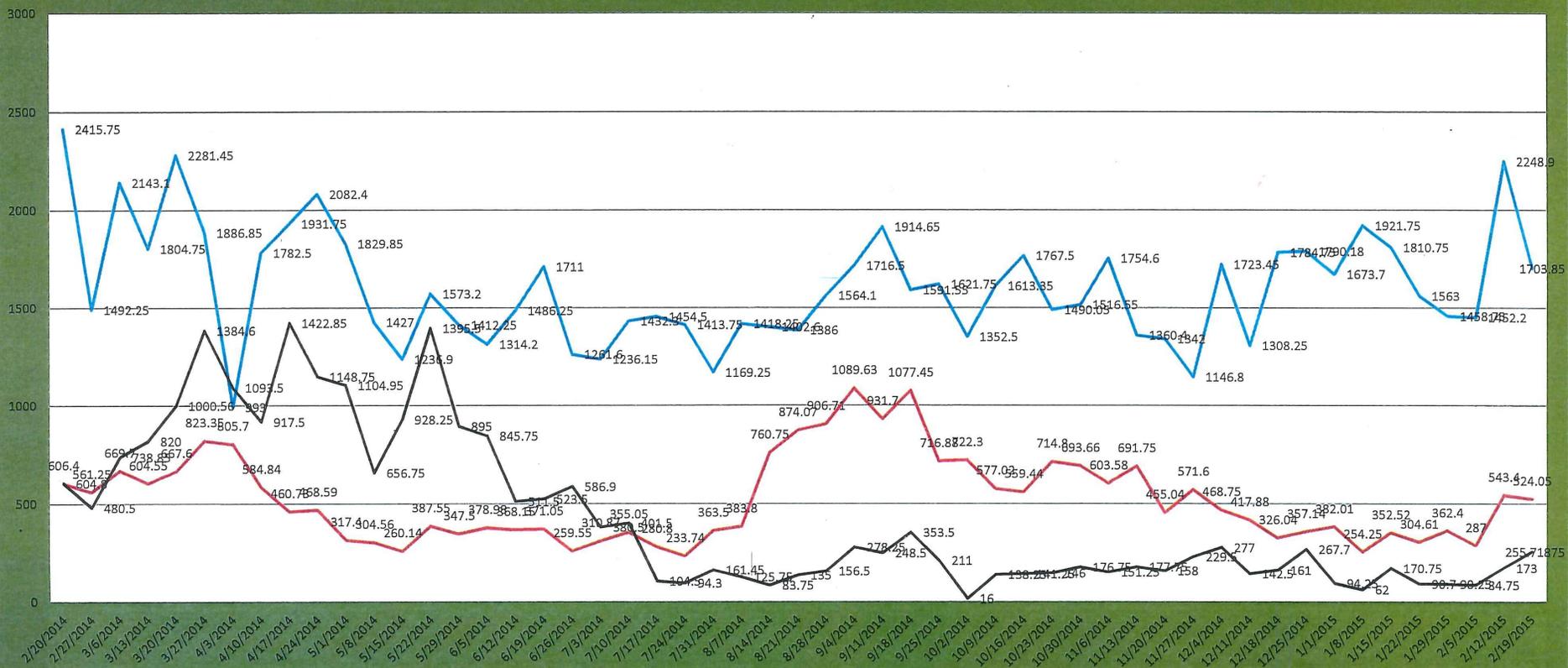
**This form is part of the public record for this meeting.**

Florida Department of Corrections Unmanned Post Information Request  
Instances of Unmanned Post 2/20/14 - 2/19/15



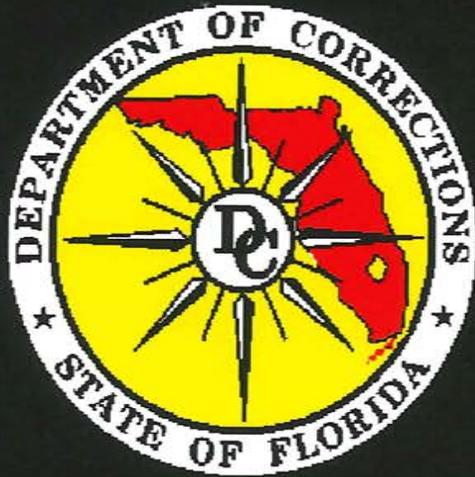
Prepared: 2/27/15

Florida Department of Corrections Unmanned Post Information Request  
 Unmanned Post Hours 2/20/14 - 2/19/15



Prepared: 2/27/15

Region I Region II Region III



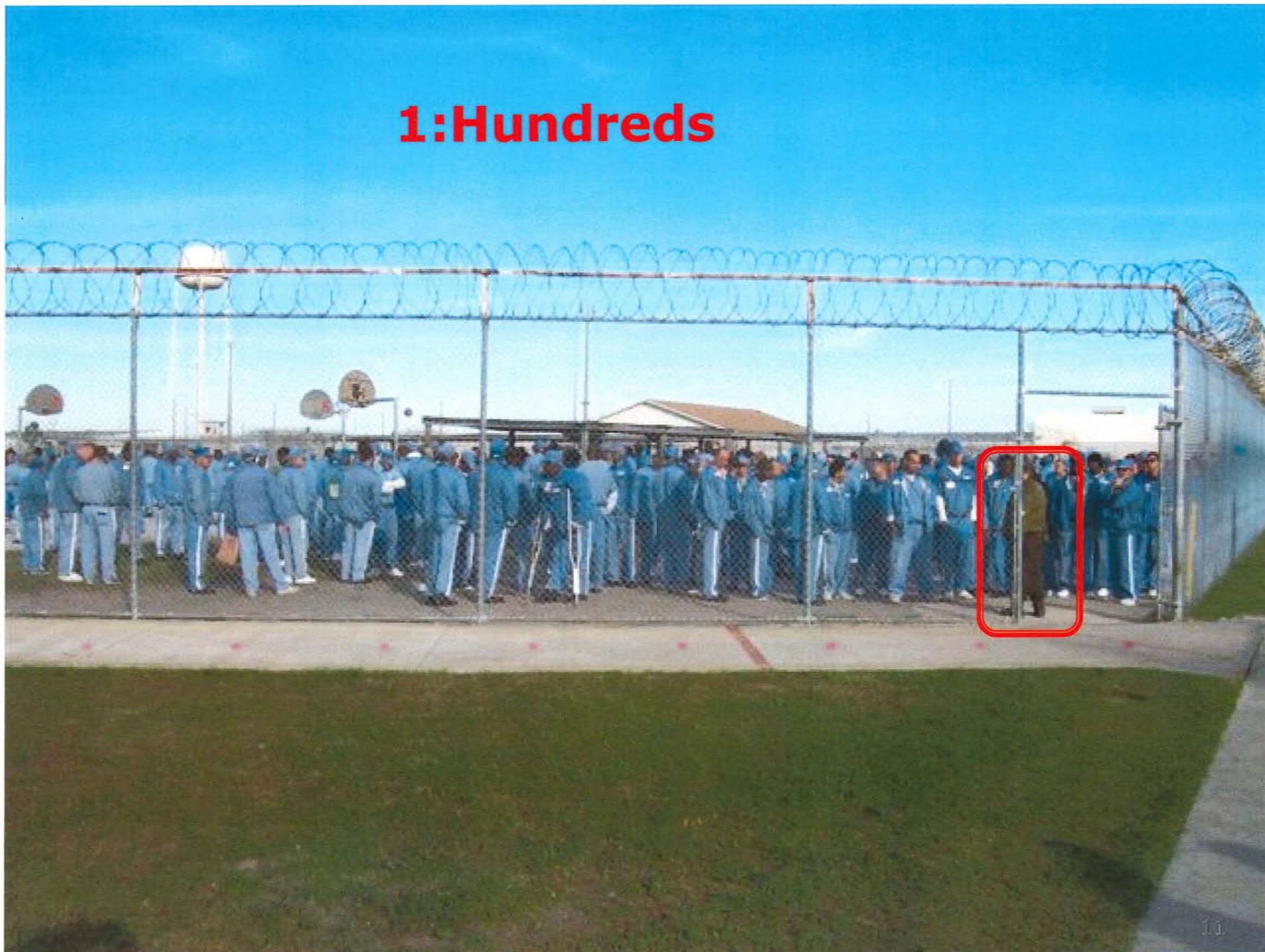
Florida Department of Corrections  
Julie Jones , Secretary

# The Reality of Prison Staffing



1:86

**1: Hundreds**



**1: Hundreds**



**1: Hundreds**

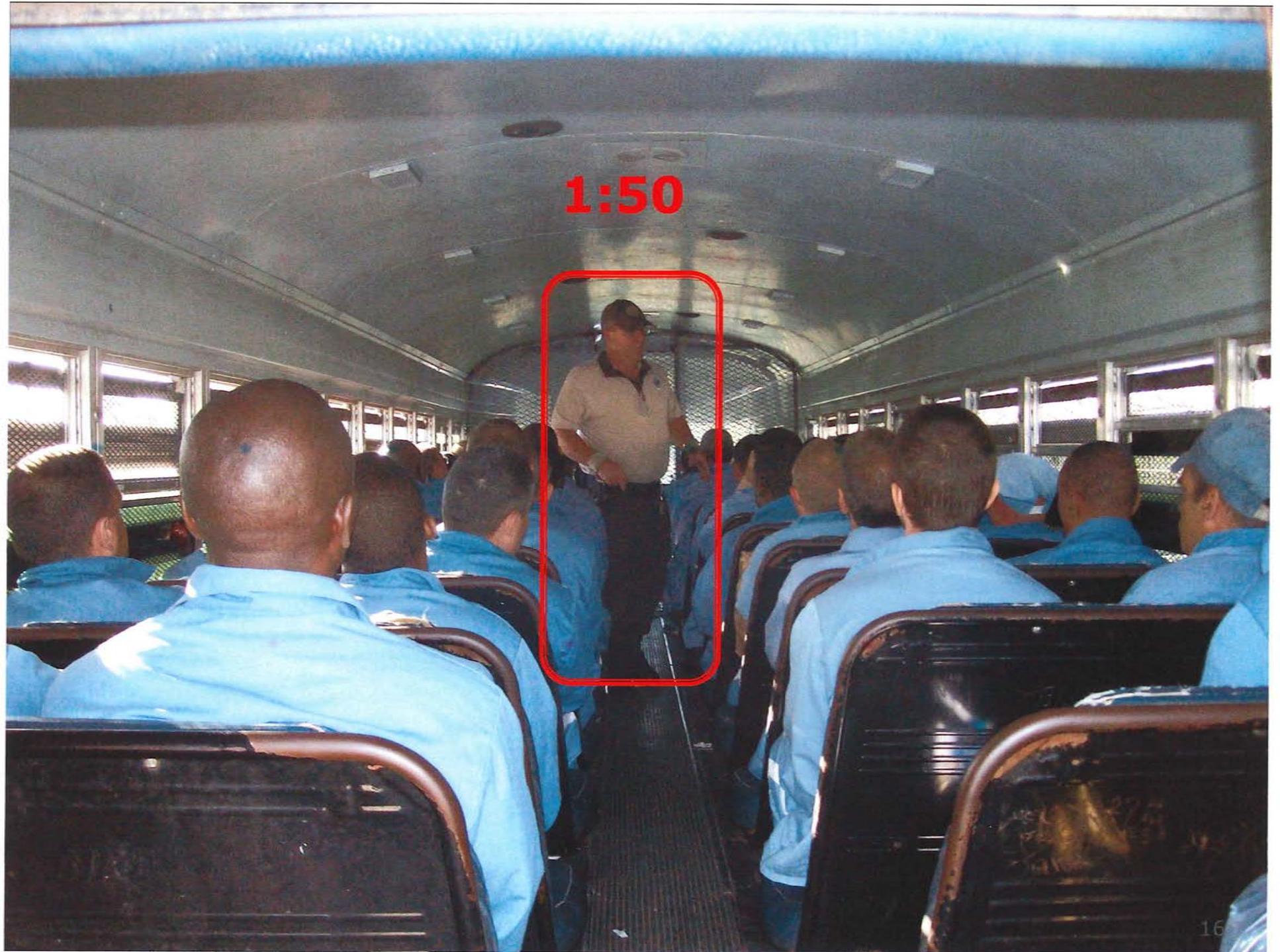




1:50



1:50



1:50

# Reality of Ratios

*"The utilization of staffing ratios is dangerously appealing to those who do not understand the complexity of the staffing determination and who are looking for a quick and easy method of making a comparative determination of staffing adequacy."* --**National Institute of Corrections  
– Prison Staffing Analysis Program**

# Reality of Ratios

*"Such ratios are of very limited value because they do not adequately account for variations in mission, operational philosophy, population, physical plant, supervision type, etc., and the subsequent requirement that staff be used in markedly different ways."* --**National Institute of Corrections – Prison Staffing Analysis Program**

# Question?

How did we get from our current authorized certified officer to inmate ratio of **1 to 5.25** ( every position filled – 16, 851) to what you have seen in the preceding slides??

# Ratio with ALL Authorized Positions Filled

## Actual Ratio On Duty

Posts	Week Nights & Weekends	Week Days
12 Hour	2,326	2,326
8 Hour	814	814
Administrative	0	2,736
<b>Total</b>	<b>3,140</b>	<b>5,846</b>
Population	*88,478	*88,478
<b>Ratio</b>	<b>1:28</b>	<b>1:15</b>

\* Excludes Private Facilities

# **Factors Diluting Ratios**

**The reality of institutional staffing involves factors that dilute actual inmate supervision levels to the dangerous levels displayed in the first few slides.**

- Specialty Positions**
- Relief Factor**

# **Special Assignments**

**Since 2002 certain administrative & operational support positions were cut from institutions, however the duties remained. Over time, additional duties have been added to institutions in response to new requirements. This results in the facility assigning correctional officers to perform these added duties. Currently 628 officers are assigned statewide.**

# Special Assignments

## Duties include, but not limited to:

- Recruitment
- Maintenance/Motor Pool
- Training
- Data Entry/Security Operations Administrative Support
- Inmate Grievance Response
- Inmate Disciplinary System Management
- Re-Entry Programs Security
- Security Threat Group (STG/Gang) Management
- American with Disabilities Act (ADA), American Correctional Association (ACA), & Prison Rape Elimination Act (PREA) Compliance Coordination

# Relief Factor Defined

That multiplying factor applied to each seven day post to determine the number of positions needed to provide coverage when the assigned staff member is not at work for authorized purposes, such as training and authorized leave.

# Relief Factor Calculation

Leave & Training Hours	12 Hr Shift Hours	8hr Shift Hours
Annual	27.42	27.44
Sick Leave	87.72	87.76
Compensatory Leave	102.61	102.64
Administrative Leave (including Military Leave)	22.59	22.56
Disability Leave	5.11	5.12
General Leave without Pay	21.62	21.60
Holiday Leave-actual	90.58	90.56
In Service Training Hours Used (required hours only)	40.00	40.00
<b>Total Leave and Training Hours Used</b>	<b>397.65</b>	<b>397.68</b>
Work Hours Available	12 Hr Shift Hours	8hr Shift Hours
12 hours *365 days	4,380	-
Less Normal Days/Hours Off	-2,190	-
Less Leave and Training Hours Used	-397.65	-
<b>Total Work Hours Available</b>	<b>1,792.35</b>	-
Work Hours Available	12 Hr Shift Hours	8hr Shift Hours
8 hours*365 days	-	2,920
Less Normal Days/Hours Off	-	-832
Less Leave and Training Hours Used	-	-397.68
<b>Total Work Hours Available</b>	-	<b>1690.32</b>
Relief Factor	12 Hr Shift Hours	8hr Shift Hours
365 work days required/ workdays or hours available	2.44	1.73

# Relief Factor

Relief Factor	12 Hr Shift Hours	8hr Shift Hours
Current Actual Required Relief Factor	2.44	1.73
Funded Relief Factor (1996) **	2.35	1.66
POSITIONS REQUIRED TO MEET ACTUAL CURRENT RELIEF FACTOR	498	

\*\* Last time Relief Factor was fully funded.

# Unavailable Staff

## Deductions

Unfunded Existing Positions	-1,400
Turnover Rate 15.3% Results in 2,500 New Hires/TEAs Annually – 800 at any given time unavailable due to training academy participation or limited availability for assignment due to lack of training and certification	-800
Special Assignments & Loans	-628
Insufficient Relief Factor	-498
<b>TOTAL DEDUCTIONS</b>	<b>-3,326</b>

# Staffing Reality

## Actual Positions for Staff to Inmate Ratio

Authorized Positions	16,850
<b>20% Unavailable</b>	<b>-3,326</b>
Remaining Actual	13,524

# Reality

As indicated previously, staff to inmate ratios are of limited value in making staffing level adequacy determinations/comparisons to other corrections entities/agencies unless numerous other factors are considered and included in any such comparative process. What must be considered in any such assessment of the our department's staffing adequacy is the ratio diluting impact of unfunded positions, special assignments, previous reductions, and insufficient relief factor as addressed in this presentation. These factors result in actual staff to inmate operating ratios in our institutions that frequently do not allow even critical staffing levels to be achieved and are imminently dangerous for our staff, the inmates and ultimately the public.

*"Continuing to operate at critical levels with high turnover will jeopardize staff safety, institutional security, and potentially endanger the public."* – **Correctional Officers: Turnover, Security and Safety, Florida House Committee on Corrections (1996 )**

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

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

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

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BILL: SB 162

INTRODUCER: Senators Joyner and Bradley

SUBJECT: Compensation of Victims of Wrongful Incarceration

DATE: February 27, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.			JU	
3.			ACJ	
4.			FP	

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**I. Summary:**

SB 162 amends ch. 961, F.S. Chapter 961, F.S., provides a process whereby a person who has been incarcerated due to a felony conviction may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation.

Under current law, regardless of the fact of his or her wrongful incarceration, the person is not eligible for compensation if he or she has a criminal history that includes a felony.<sup>1</sup>

He or she is also ineligible for compensation if during the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense.<sup>2</sup> Likewise, a felony law violation leading to revocation of parole or community supervision being served on the sentence that resulted in the wrongful incarceration, means the person is not eligible for compensation.<sup>3</sup>

The bill creates a definition of the term "violent felony" in s. 961.02, F.S. The bill provides that in order to be found ineligible for compensation under ss. 961.04(1), (2), or 961.06(2), F.S., the person must have committed a violent felony, not a simple felony, under the circumstances set forth in those sections.

The practical effect of the bill cannot be determined with any certainty. It appears the bill would increase the pool of people who could seek compensation under the statute based upon the relaxation of the ineligibility standard from "simple felony" to "violent felony." However, it

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<sup>1</sup> Section 961.04(1), F.S.

<sup>2</sup> Section 961.04(2), F.S.

<sup>3</sup> Section 961.06(2), F.S.

cannot be known or predicted how many cases of wrongful incarceration currently exist or may occur in the future or whether a person in the expanded pool will be or currently is wrongfully incarcerated. Without the existence of a wrongful incarceration, the standard for seeking redress is immaterial.

## II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.<sup>4</sup> The Act provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation.

The petition must:

- State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and
- State that the person is not disqualified, under the provisions of s. 961.04, F.S., from seeking compensation.<sup>5</sup>

The prosecuting authority's response to the petition may be to either:

- Certify to the court that, based upon the petition and verifiable and substantial evidence of actual innocence, no further criminal proceedings in the case can or will be initiated by the prosecuting authority, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from seeking compensation under the provisions of s. 961.04, F.S.; or
- Contest the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful incarceration, or whether the petitioner is ineligible from seeking compensation under the provisions of s. 961.04, F.S.

If the court finds the petitioner ineligible for compensation under s. 961.04, F.S., regardless of his or her wrongful incarceration claim, the court must dismiss the petition.<sup>6</sup> If, however, the petition is not dismissed but the petition is contested by the prosecutor, the matter proceeds to a hearing before an administrative law judge.<sup>7</sup>

At the hearing, the petitioner must establish by clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense.<sup>8</sup>

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<sup>4</sup> Chapter 961, F.S. (2008-39, Laws of Florida). To date, three persons have been compensated under the Act; one claim has recently been approved and forwarded to the Chief Financial Officer. (correspondence with the Office of the Attorney General, February 18, 2015.)

<sup>5</sup> Section 961.03(1), F.S.

<sup>6</sup> Section 961.03 (2)-(4), F.S.

<sup>7</sup> Section 961.03(5), F.S.

<sup>8</sup> Section 961.03(5) and (6), F.S. Ultimately, the original sentencing court will either adopt or decline to adopt the findings and recommendation of the administrative law judge. The court must then enter its final order in the matter either certifying the petitioner to be a wrongfully incarcerated person or denying the petition. s. 961.03(6)(d) and (7), F.S. If the order is favorable, the petitioner may apply to the Department of Legal Affairs for compensation.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.<sup>9</sup> The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.<sup>10</sup>

To date, three persons have been compensated under the Act. One additional claim has recently been through the application process and forwarded to the Chief Financial Officer.<sup>11</sup>

### **“Clean Hands” Provision of the Act – Section 961.04, Florida Statutes**

In cases where sufficient evidence of actual innocence exists, a person is nonetheless *ineligible* for compensation if:

- *Before* the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any felony offense*, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- *During* the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any felony offense*; or
- *During* the person's wrongful incarceration, the person was also serving a *concurrent sentence for another felony* for which the person was not wrongfully convicted.<sup>12</sup>

Of the 30 states that have statutes that provide for compensation for wrongfully incarcerated persons, Florida is the only state with a “clean hands” provision.<sup>13</sup>

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<sup>9</sup> Section 961.05, F.S.

<sup>10</sup> Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any community college as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets and maintains the regular admission requirements of such career center, community college, or state university; remains registered at such educational institution; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; the amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon the supporting documentation submitted as specified in s. 961.05, F.S.; and notwithstanding any provision to the contrary in s. 943.0583, F.S., or s. 943.0585, F.S., immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.

<sup>11</sup> Correspondence with the Office of the Attorney General, February 18, 2015.

<sup>12</sup> Section 961.04, F.S.

<sup>13</sup> *Making Up for Lost Time*, page 19, The Innocence Project, Benjamin N. Cardozo School of Law, [www.innocenceproject.org](http://www.innocenceproject.org); (“Clean hands” meaning that a person is ineligible for compensation if he or she has prior felony offenses to the one for which compensation is being sought.). Note that Hawaii is currently considering a statute. Other states generally take these matters up by “personal bills,” a process much like Florida's claim bill process.

### **Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense**

A person could be wrongfully incarcerated for a crime and then placed on parole or community supervision for that crime after the incarcerative part of the sentence is served.<sup>14</sup>

Section 961.06(2), F.S., addresses this situation in terms of eligibility for compensation for the period of wrongful incarceration. Under this provision if a person commits a misdemeanor or some technical violation of his or her supervision that results in revocation of the community supervision or parole, the person is still eligible for compensation. If, however, it is a felony law violation resulting in revocation, the person is no longer eligible for compensation.<sup>15</sup>

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

The bill amends the Wrongful Incarceration Act so that a person who otherwise meets the statutory criteria<sup>16</sup> for compensation is not ineligible due to a prior felony, a felony committed while wrongfully incarcerated, or a felony committed while on parole or community supervision.

The bill provides that in order to be found ineligible for compensation under ss. 961.04(1), (2), or 961.06(2), F.S., the person must have committed a violent felony, not a simple felony, under the circumstances set forth in those sections. Specifically,

- Before the person's wrongful incarceration, he or she committed a violent felony;
- During the person's wrongful incarceration, he or she committed a violent felony; or
- During a period of parole or community supervision on the sentence that led to his or her wrongful incarceration, the person committed a violent felony which resulted in the revocation of the parole or community supervision.

"Violent felony" is defined in the bill by cross-referencing ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar. The violent felony offenses which would preclude a wrongfully incarcerated person from being eligible for compensation under the bill are:

- Kidnapping
- False imprisonment of a child
- Luring or enticing a child
- Murder
- Manslaughter
- Aggravated manslaughter of a child
- Aggravated manslaughter of an elderly person or disabled adult

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<sup>14</sup> Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines which was October 1, 1983, and only then if they meet the statutory criteria. Ch. 82-171, Laws of Florida; s. 947.16, F.S. The term "community supervision" as used in s. 961.06(2), F.S., could include control release, conditional medical or conditional release under the authority of the Commission on Offender Review (ch. 947, F.S.) or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

<sup>15</sup> Section 961.06(2), F.S.

<sup>16</sup> The person committed neither the act nor the offense that served as the basis for the conviction and incarceration and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense. s. 961.03(5) and (6), F.S.

- Robbery
- Carjacking
- Home invasion robbery
- Sexual Battery
- Aggravated battery
- Armed burglary and other burglary offenses that are first or second degree felonies
- Aggravated child abuse
- Aggravated abuse of an elderly person or disabled adult
- Arson
- Aggravated assault
- Unlawful throwing, placing, or discharging of a destructive device or bomb
- Treason
- Aggravated stalking
- Aircraft piracy
- Abuse of a dead human body
- Poisoning food or water
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person
- Sexual performance by a child
- Computer pornography
- Transmission of child pornography and
- Selling or buying of minors.

The bill reorganizes s. 961.02, F.S., the “definitions” section of the Act so the definitions are in alphabetical order. Additionally, the bill reenacts ss. 961.03(1)(a), (2), (3), and (4), F.S., and s. 961.055(1), F.S., to incorporate the amendments to s. 961.04, F.S., made by the bill.

The bill will become effective October 1, 2015.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

**B. Private Sector Impact:**

A person who is entitled to compensation under the Act will be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. It is possible that more persons will be eligible for compensation under the provisions of the bill.

**C. Government Sector Impact:**

Although the statutory limits on compensation under the Act are clear, the actual fiscal impact of the bill is unquantifiable. The possibility that a person will be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future.

There have been three successful claims since the Act became effective. An additional claim is currently in the Office of the Chief Financial Officer awaiting payment arrangements.

The Office of the Attorney General, the office that processes applications for compensation, reports that applications of two persons claiming to be eligible for compensation were actually not eligible. Two other claims lack complete documentation and are currently being investigated. Since the Act became effective, there have been an additional 22 inquiries to the Office of the Attorney General but no further communication from those persons.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.04, 961.06, 961.03, and 961.055.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By Senators Joyner and Bradley

19-00004-15

2015162\_\_

A bill to be entitled

An act relating to compensation of victims of wrongful incarceration; amending s. 961.02, F.S.; defining the term "violent felony"; amending s. 961.04, F.S.; providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to, or was serving a concurrent incarceration for, another violent felony; amending s. 961.06, F.S.; providing that a wrongfully incarcerated person who commits a violent felony law violation, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation; reenacting s. 961.03(1)(a), (2), (3), and (4), F.S., relating to determination of status as a wrongfully incarcerated person and determination of eligibility for compensation, to incorporate the amendments made to s. 961.04, F.S., in references thereto; reenacting s. 961.055(1), F.S., relating to application for compensation for a wrongfully incarcerated person and exemption from application by nolle prosequi, to incorporate the amendments made to s. 961.04, F.S., in references thereto; providing an effective date.

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

Page 1 of 7

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

19-00004-15

2015162\_\_

Section 1. Section 961.02, Florida Statutes, is amended to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

(1) "Act" means the Victims of Wrongful Incarceration Compensation Act.

(2) "Department" means the Department of Legal Affairs.

(3) "Division" means the Division of Administrative Hearings.

~~(4) "Wrongfully incarcerated person" means a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and, with respect to whom pursuant to the requirements of s. 961.03, the original sentencing court has issued its order finding that the person neither committed the act nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.~~

(4)(5) "Eligible for compensation" means a person meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.

(5)(6) "Entitled to compensation" means a person meets the definition of the term "eligible for compensation" and satisfies the application requirements prescribed in s. 961.05, and may receive compensation pursuant to s. 961.06.

(6) "Violent felony" means a felony offense listed in s. 775.084(1)(c)1. or s. 948.06(8)(c).

(7) "Wrongfully incarcerated person" means a person whose felony conviction and sentence have been vacated by a court of

Page 2 of 7

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

19-00004-15 2015162\_\_  
 59 competent jurisdiction and the original sentencing court has  
 60 issued its order, pursuant to the requirements of s. 961.03,  
 61 finding that the person neither committed the act nor the  
 62 offense that served as the basis for the conviction and  
 63 incarceration and that the person did not aid, abet, or act as  
 64 an accomplice or accessory to a person who committed the act or  
 65 offense.

66 Section 2. Section 961.04, Florida Statutes, is amended to  
 67 read:

68 961.04 Eligibility for compensation for wrongful  
 69 incarceration.—A wrongfully incarcerated person is not eligible  
 70 for compensation under the act if:

71 (1) Before the person's wrongful conviction and  
 72 incarceration, the person was convicted of, or pled guilty or  
 73 nolo contendere to, regardless of adjudication, any violent  
 74 felony offense, or a crime committed in another jurisdiction the  
 75 elements of which would constitute a violent felony in this  
 76 state, or a crime committed against the United States which is  
 77 designated a violent felony, excluding any delinquency  
 78 disposition;

79 (2) During the person's wrongful incarceration, the person  
 80 was convicted of, or pled guilty or nolo contendere to,  
 81 regardless of adjudication, any violent felony offense; or

82 (3) During the person's wrongful incarceration, the person  
 83 was also serving a concurrent sentence for another felony for  
 84 which the person was not wrongfully convicted.

85 Section 3. Subsection (2) of section 961.06, Florida  
 86 Statutes, is amended to read:

87 961.06 Compensation for wrongful incarceration.—

19-00004-15 2015162\_\_  
 88 (2) In calculating monetary compensation under paragraph  
 89 (1) (a), a wrongfully incarcerated person who is placed on parole  
 90 or community supervision while serving the sentence resulting  
 91 from the wrongful conviction and who commits anything less than  
 92 a violent felony law violation that results in revocation of the  
 93 parole or community supervision is eligible for compensation for  
 94 the total number of years incarcerated. A wrongfully  
 95 incarcerated person who commits a violent felony law violation  
 96 that results in revocation of the parole or community  
 97 supervision is ineligible for any compensation under subsection  
 98 (1).

99 Section 4. For the purpose of incorporating the amendments  
 100 made by this act to section 961.04, Florida Statutes, in  
 101 references thereto, paragraph (a) of subsection (1) and  
 102 subsections (2), (3), and (4) of section 961.03, Florida  
 103 Statutes, are reenacted to read:

104 961.03 Determination of status as a wrongfully incarcerated  
 105 person; determination of eligibility for compensation.—

106 (1) (a) In order to meet the definition of a "wrongfully  
 107 incarcerated person" and "eligible for compensation," upon entry  
 108 of an order, based upon exonerating evidence, vacating a  
 109 conviction and sentence, a person must set forth the claim of  
 110 wrongful incarceration under oath and with particularity by  
 111 filing a petition with the original sentencing court, with a  
 112 copy of the petition and proper notice to the prosecuting  
 113 authority in the underlying felony for which the person was  
 114 incarcerated. At a minimum, the petition must:

115 1. State that verifiable and substantial evidence of actual  
 116 innocence exists and state with particularity the nature and

19-00004-15 2015162\_\_

117 significance of the verifiable and substantial evidence of  
 118 actual innocence; and

119 2. State that the person is not disqualified, under the  
 120 provisions of s. 961.04, from seeking compensation under this  
 121 act.

122 (2) The prosecuting authority must respond to the petition  
 123 within 30 days. The prosecuting authority may respond:

124 (a) By certifying to the court that, based upon the  
 125 petition and verifiable and substantial evidence of actual  
 126 innocence, no further criminal proceedings in the case at bar  
 127 can or will be initiated by the prosecuting authority, that no  
 128 questions of fact remain as to the petitioner's wrongful  
 129 incarceration, and that the petitioner is not ineligible from  
 130 seeking compensation under the provisions of s. 961.04; or

131 (b) By contesting the nature, significance, or effect of  
 132 the evidence of actual innocence, the facts related to the  
 133 petitioner's alleged wrongful incarceration, or whether the  
 134 petitioner is ineligible from seeking compensation under the  
 135 provisions of s. 961.04.

136 (3) If the prosecuting authority responds as set forth in  
 137 paragraph (2) (a), the original sentencing court, based upon the  
 138 evidence of actual innocence, the prosecuting authority's  
 139 certification, and upon the court's finding that the petitioner  
 140 has presented clear and convincing evidence that the petitioner  
 141 committed neither the act nor the offense that served as the  
 142 basis for the conviction and incarceration, and that the  
 143 petitioner did not aid, abet, or act as an accomplice to a  
 144 person who committed the act or offense, shall certify to the  
 145 department that the petitioner is a wrongfully incarcerated

19-00004-15 2015162\_\_

146 person as defined by this act. Based upon the prosecuting  
 147 authority's certification, the court shall also certify to the  
 148 department that the petitioner is eligible for compensation  
 149 under the provisions of s. 961.04.

150 (4) (a) If the prosecuting authority responds as set forth  
 151 in paragraph (2) (b), the original sentencing court shall make a  
 152 determination from the pleadings and supporting documentation  
 153 whether, by a preponderance of the evidence, the petitioner is  
 154 ineligible for compensation under the provisions of s. 961.04,  
 155 regardless of his or her claim of wrongful incarceration. If the  
 156 court finds the petitioner ineligible under the provisions of s.  
 157 961.04, it shall dismiss the petition.

158 (b) If the prosecuting authority responds as set forth in  
 159 paragraph (2) (b), and the court determines that the petitioner  
 160 is eligible under the provisions of s. 961.04, but the  
 161 prosecuting authority contests the nature, significance or  
 162 effect of the evidence of actual innocence, or the facts related  
 163 to the petitioner's alleged wrongful incarceration, the court  
 164 shall set forth its findings and transfer the petition by  
 165 electronic means through the division's website to the division  
 166 for findings of fact and a recommended determination of whether  
 167 the petitioner has established that he or she is a wrongfully  
 168 incarcerated person who is eligible for compensation under this  
 169 act.

170 Section 5. For the purpose of incorporating the amendments  
 171 made by this act to section 961.04, Florida Statutes, in  
 172 references thereto, subsection (1) of section 961.055, Florida  
 173 Statutes, is reenacted to read:  
 174 961.055 Application for compensation for a wrongfully

19-00004-15

2015162\_\_

175 incarcerated person; exemption from application by nolle  
176 prosequi.-

177 (1) A person alleged to be a wrongfully incarcerated person  
178 who was convicted and sentenced to death on or before December  
179 31, 1979, is exempt from the application provisions of ss.  
180 961.03, 961.04, and 961.05 in the determination of wrongful  
181 incarceration and eligibility to receive compensation pursuant  
182 to s. 961.06 if:

183 (a) The Governor issues an executive order appointing a  
184 special prosecutor to review the defendant's conviction; and

185 (b) The special prosecutor thereafter enters a nolle  
186 prosequi for the charges for which the defendant was convicted  
187 and sentenced to death.

188 Section 6. This act shall take effect October 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/2/15  
Meeting Date

SB 162  
Bill Number (if applicable)

Topic Compensation of Victims of Wrongful Incarceration

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President of The Florida Smart Justice Alliance

Address 204 S. Monroe St.  
Street

Phone (850) 577-3025

Tallahassee FL  
City State Zip

Email Barney@barneybishop.com

Speaking:  For  Against  Information

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

Representing The 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)

March 2, 2015

*Meeting Date*

162

*Bill Number (if applicable)*

Topic Compensation of Victims Wrongful Incarceration

*Amendment Barcode (if applicable)*

Name Honorable Nancy Daniels

Job Title Public Defender, 2nd Judicial Circuit

Address 301 South Monroe Street

Phone 850.606.1000

*Street*

Tallahassee

Florida

32301

*City*

*State*

*Zip*

Email nancy.daniels@flpd2.com

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on Criminal and  
Civil Justice, *Vice Chair*  
Appropriations  
Health Policy  
Higher Education  
Judiciary  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission

**SENATOR ARTHENIA L. JOYNER**

*Democratic Leader*  
19th District

January 6, 2015

Senator Greg Evers, Chair  
Senate Committee on Criminal Justice  
510 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Evers:

This is to request that Senate Bill 162, Compensation of Victims of Wrongful Incarceration, jointly sponsored by Senator Bradley and myself be placed on the agenda for the Committee on Criminal Justice. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner  
State Senator, District 19

**REPLY TO:**

508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277  
 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** December 18, 2014

---

I respectfully request that **Senate Bill # 162**, relating to Compensation of Victims of Wrongful Incarceration, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley".

---

Senator Rob Bradley  
Florida Senate, District 7

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

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

---

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

---

BILL: SB 164

INTRODUCER: Senator Evers

SUBJECT: Crime Stoppers Trust Fund

DATE: February 27, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	<b>Favorable</b>
2.			CA	
3.			ACJ	
4.			FP	

---

**I. Summary:**

SB 164 amends s. 16.555, F.S., to authorize a county that is awarded a grant from the Crime Stopper Trust Fund to purchase and distribute promotional items to increase public awareness and educate the public about Crime Stoppers.

**II. Present Situation:**

Section 16.555, F.S., provides a funding mechanism for Crime Stopper programs. The Department of Legal Affairs is required to make applications for all federal and state or private grants which meet the purposes of advancing Crime Stoppers in the state; establish a trust fund to administer grants to fund Crime Stoppers and its crime fighting programs within the units of local government; and administer and disburse the funds.

In 1998, the Legislature added a funding source in s. 938.06, F.S., by imposing a \$20 court cost on persons convicted of any criminal offense.<sup>1</sup> The proceeds from the \$20 court cost are deposited in a separate account within the trust fund. The clerks retain \$3 per assessment as a service charge and forward the money to the Department of Revenue for deposit in the Crime Stoppers Trust Fund. The funds are to be designated according to the judicial circuit where it was collected. However, grants may be awarded only to counties which are served by an official member of the Florida Association of Crime Stoppers.

Crime Stoppers began in Albuquerque, New Mexico in 1976. A homicide detective with the Albuquerque Police asked a local television station to broadcast a re-enactment of an unsolved murder on its newscast. A reward was offered and a caller contacted the police the next day with a tip that led the police to the two men who were responsible. The success of this concept

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<sup>1</sup> Ch. 98-319, L.O.F.

launched a program which is now internationally known as “Crime Stopper.” There are now over 1,200 Crime Stoppers programs worldwide.<sup>2</sup>

The Central Florida Crime Watch Program, now Central Florida Crimeline, was formed one year after the first Crime Stoppers program. Today there are 32 programs in Florida operating under the name the Florida Association of Crime Stoppers, Inc.<sup>3</sup>

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

The bill amends s. 16.555, F.S., to authorize a county that is awarded a grant from the Crime Stopper Trust Fund to purchase and distribute promotional items to increase public awareness and educate the public about Crime Stoppers.

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

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

None.

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

None.

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

The bill would allow for trust funds to be used to purchase and distribute promotional items.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

None.

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

None.

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<sup>2</sup> Florida Association of Crime Stoppers, *Where It All Started*, <http://www.floridacrimestoppers.com/pages/where> (last visited February 25, 2015).

<sup>3</sup> Florida Association of Crime Stoppers, *Who We Are*, <http://www.floridacrimestoppers.com/pages/who> (last visited February 25, 2015).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 16.555 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

---

By Senator Evers

2-00188-15

2015164\_\_

1 A bill to be entitled  
2 An act relating to the Crime Stoppers Trust Fund;  
3 amending s. 16.555, F.S.; authorizing a county that is  
4 awarded a grant from the trust fund to use such funds  
5 for the purchase and distribution of promotional  
6 items; making technical changes; providing an  
7 effective date.

8  
9 Be It Enacted by the Legislature of the State of Florida:

10 Section 1. Subsection (5) of section 16.555, Florida  
11 Statutes, is amended to read:

12 16.555 Crime Stoppers Trust Fund; rulemaking.-

13 (5) (a) The department shall be the disbursing authority for  
14 the distribution of funding to units of local government which  
15 apply, upon their application to the department for funding  
16 assistance.

17 (b) Funds deposited in the trust fund pursuant to paragraph  
18 (4) (b) shall be disbursed as provided in this paragraph. A Any  
19 county may apply to the department under s. 938.06 for a grant  
20 from the funds collected in the judicial circuit in which the  
21 county is located under s. 938.06. A grant may be awarded only  
22 to counties that which are served by an official member of the  
23 Florida Association of Crime Stoppers and may ~~only~~ be used only  
24 to support Crime Stoppers and its ~~their~~ crime fighting programs.  
25 Only one such official member is ~~shall be~~ eligible for support  
26 within any county. ~~In order~~ To aid the department in determining  
27 eligibility, the secretary of the Florida Association of Crime  
28 Stoppers shall furnish the department with a schedule of  
29

Page 1 of 2

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

2-00188-15

2015164\_\_

30 authorized crime stoppers programs and shall update the schedule  
31 as necessary. The department shall award grants to eligible  
32 counties from available funds and shall distribute funds as  
33 equitably as possible, based on amounts collected within each  
34 county, ~~if when~~ more than one county is eligible within a  
35 judicial circuit.

36 (c) A county that is awarded a grant under this section may  
37 use such funds to purchase and distribute promotional items to  
38 increase public awareness of, and to educate the public about,  
39 Crime Stoppers.

40 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-2-15

Meeting Date

SB-164

Bill Number (if applicable)

Topic Crime Stoppers Trust Fund

Amendment Barcode (if applicable)

Name Deborah Roche

Job Title Program Director - Santa Rosa Cty. CS

Address 510 James River Road

Phone 850-932-1403

Street

Gulf Breeze Fl. 32561

City

State

Zip

Email DeborahLynn1161@gmail.com

Speaking:  For  Against  Information

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

Representing Crime Stoppers (Fl. Assoc. of CS FACS)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/2/15  
Meeting Date

SB164  
Bill Number (if applicable)

Topic CRIME STOPPERS

Amendment Barcode (if applicable)

Name BARBARA BERGIN

Job Title EXECUTIVE DIRECTOR - CRIMELINE

Address PO BOX 913  
Street

Phone (407)423-8477

ORLANDO FL 32802  
City State Zip

Email bbergin@crimeline.org

Speaking:  For  Against  Information

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

Representing CENTRAL FLORIDA CRIMELINE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-2-15

Meeting Date

SB 164

Bill Number (if applicable)

Topic CRIME STOPPER TRUST FUND

Amendment Barcode (if applicable)

Name DENNIS STRANGE

Job Title LT.

Address 2500 West Colonial Dr

Phone 321-436-6064

Street

Orlando

FL

32804

City

State

Zip

Email dennis.strange@ocfl.net

Speaking:  For  Against  Information

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

Representing Orange County Sheriff - Jerry L. Demmig

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)

164  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic CRIME STOPPERS TRUST FUND

Amendment Barcode (if applicable) \_\_\_\_\_

Name ~~Chief~~ Philip THORNE

Job Title Chief

Address 3529 EAST 3RD ST.

Phone 8506252148

Street  
PANAMA CITY, FL 32401  
City State Zip

Email pthorne@springfield.fl.gov

Speaking:  For  Against  Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3.2.2015  
Meeting Date

1104  
Bill Number (if applicable)

Topic Crime Stoppers Trust Fund

Amendment Barcode (if applicable)

Name Sarah Carroll

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

Address 123 S. Adams St  
Street

Phone \_\_\_\_\_

City

State

32301  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Sheriffs 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.

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

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

---

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

---

BILL: SB 312

INTRODUCER: Senators Detert and Gaetz

SUBJECT: Restitution for Juvenile Offenses

DATE: February 27, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Favorable</b>
2.			CF	
3.			JU	
4.			FP	

---

**I. Summary:**

SB 312 expands the authority of the court to order restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld.

It requires, rather than authorizes, the child and the child's parent or legal guardian, to pay restitution when the court has determined that restitution is appropriate. It also authorizes the court to do the following:

- Set up a payment plan if the child and the parents or legal guardians are unable to pay the restitution in one lump-sum payment;
- Absolve the parent or guardian of any liability for restitution if after a hearing, the court finds that the current offense is the child's first referral and the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts, or the victim entitled to restitution is the child's parent or legal guardian; and
- Make both of the child's parents or guardians responsible for restitution, regardless of whether one parent or guardian has sole custody of the child.

The bill clarifies that the Department of Children and Families (DCF), a foster parent with whom the child is placed, or the community-based care lead agency supervising the placement of the child is not considered a guardian responsible for restitution for the delinquent acts of a dependent child.

## II. Present Situation:

Section 985.437, F.S., authorizes a court with jurisdiction over a child who has been adjudicated delinquent to order the child to pay restitution to the victim for any damage<sup>1</sup> or loss caused by the child's offense<sup>2</sup> in a reasonable amount or manner.<sup>3</sup> Section 985.35, F.S., authorizes the court to place a child whose adjudication of delinquency is withheld in a probation program.<sup>4</sup> The probation program may include paying restitution in money or in kind.<sup>5</sup> The court determines the amount and manner of restitution that is reasonable.<sup>6</sup>

Before entering an order of restitution, the court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution to which the victim is entitled.<sup>7</sup> A restitution hearing is not required if the child previously entered into an agreement to pay<sup>8</sup> or has waived his or her right to attend a restitution hearing.<sup>9</sup> When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or his parents or guardian can reasonably be expected to pay.<sup>10</sup>

Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service.<sup>11</sup> However, a parent or guardian may be absolved of any liability for restitution in their child's criminal case if, after a hearing, the court finds that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."<sup>12</sup> This provision is not limited to first offenses by the child.

The clerk of the circuit court receives and dispenses restitution payments and must notify the court if restitution is not made.<sup>13</sup> The Department of Juvenile Justice (DJJ) is responsible for monitoring restitution payments by the child, including notifying the court when restitution

<sup>1</sup> "Any damage" has been interpreted by Florida's courts to include damage for pain and suffering, *C.W. v. State*, 655 So.2d 87 (Fla. 1995).

<sup>2</sup> The damage or loss must be directly or indirectly related to the child's offense or criminal episode, *L.R.L. v. State*, 9 So.3d 714 (Fla. 2d DCA 2009).

<sup>3</sup> If restitution is ordered, it becomes a condition of probation, or if the child is committed to a residential commitment program, part of community-based sanctions upon release from the program, s. 985.437(1), F.S.

<sup>4</sup> Section 985.35(4), F.S.

<sup>5</sup> Section 985.437(2), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.

<sup>8</sup> *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

<sup>9</sup> *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

<sup>10</sup> Section 985.437(2), F.S.

<sup>11</sup> *Id.* Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution arising from offenses committed by their minor child without the court providing the parent with meaningful notice and an opportunity to be heard or without making a determination of the parents' ability to pay. See *S.B.L. v. State*, 737 So.2d 1131 (Fla. 1st DCA 1999) (holding that the trial court violated the mother's due process right by ordering her to pay restitution without affording her meaningful opportunity to be heard at the restitution hearing); *A.T. v. State*, 706 So.2d 109 (Fla. 2d DCA 1998) (trial court erred by ordering the juvenile and her mother to pay restitution without making a determination of either's ability to do so); and *C.D.D. v. State*, 684 So.2d 866, 867 (Fla. 2nd DCA 1996) (holding that the trial court was required to consider the juvenile's and mother's ability to pay before imposing a restitution order).

<sup>12</sup> Section 985.437(4), F.S.

<sup>13</sup> Section 985.437(3), F.S.

payments are not being made.<sup>14</sup> The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise.<sup>15</sup> According to the DJJ, many jurisdictions will not terminate the department's supervision until the child's restitution obligation is paid.<sup>16</sup>

If a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the real property of the child or parent.<sup>17</sup> The court may transfer a restitution order to a collection court or a private collection agent to collect unpaid restitution.<sup>18</sup>

Current law does not specifically exempt the DCF, a foster parent, or a community-based care organization supervising a child from paying restitution when the court requires the child's parent or legal guardian to be held accountable for the dependent child's delinquent acts.

### III. Effect of Proposed Changes:

**Section 1** amends s. 985.35, F.S., to specify that an order of restitution made in a delinquency case, including one in which the court withholds adjudication of delinquency, is the responsibility of the child and the child's parent or guardian.

**Section 2** amends s. 985.437, F.S., to expand the responsibility for payment of restitution to the parent or legal guardian of the child if the court enters an order of restitution in a juvenile case, regardless of whether the court adjudicates the child delinquent or withholds such adjudication. If the court finds it appropriate and orders restitution, the court may set up a payment plan for the child and the parent or guardian if they are unable to pay in one lump-sum payment.

The bill absolves the parent or guardian of liability for restitution if:

- After a hearing, the court finds that it is the child's first referral to the delinquency system and the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; or
- The victim is the child's parent or guardian.

The bill also authorizes the court to make both of the child's parents or guardians liable for restitution, regardless of whether one parent has sole parental responsibility for the child.

Finally, the bill specifies that the DCF, a foster parent with whom the child is placed, or the community-based care lead agency supervising the placement of the child pursuant to a contract with the DCF is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent.

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<sup>14</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 312* (2015) (on file with the Senate Criminal Justice Committee).

<sup>15</sup> Section 985.437(5), F.S.

<sup>16</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 312* (2015) (on file with the Senate Criminal Justice Committee).

<sup>17</sup> Section 985.0301(5)(d), F.S., provides that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089(5), F.S. That section provides that a restitution order may be enforced in the same manner as a judgment in a civil action.

<sup>18</sup> Section 985.045, F.S., provides that this is also allowed in a case where the circuit court has retained jurisdiction over the child and the child's parent or legal guardian.

**Section 3** amends s. 985.513, F.S., to remove duplicative language relating to the restitution obligations of parents and guardians.

**Section 4** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There exists a greater potential for victims to receive all or a portion of the restitution owed them as a result of changes made by the bill. On the other hand, parents ordered to pay restitution on behalf of their child under the bill will most likely be negatively impacted.

C. Government Sector Impact:

To the extent there are more restitution hearings conducted as a result of the bill, there may also be an additional workload increase on the court system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.35, 985.437, and 985.513.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By Senator Detert

28-00300-15

2015312\_\_

A bill to be entitled

An act relating to restitution for juvenile offenses; amending s. 985.35, F.S.; conforming provisions to changes made by the act; amending s. 985.437, F.S.; requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; providing for payment plans in certain circumstances; authorizing the parent or guardian to be absolved of liability for restitution in certain circumstances; authorizing the court to order both parents or guardians liable for the child's restitution regardless of one parent or guardian having sole parental responsibility; specifying that the Department of Children and Families, foster parents, and specified agencies contracted with the department are not guardians for purposes of restitution; amending s. 985.513, F.S.; removing duplicative provisions authorizing the court to require a parent or guardian to be responsible for any restitution ordered against the child; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 985.35, Florida Statutes, is amended to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

(4) If the court finds that the child named in the petition

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

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2015312\_\_

has committed a delinquent act or violation of law, it may, in its discretion, enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency.

(a) Upon withholding adjudication of delinquency, the court may place the child in a probation program under the supervision of the department or under the supervision of any other person or agency specifically authorized and appointed by the court. The court may, as a condition of the program, impose as a penalty component restitution in money or in kind to be made by the child and the child's parent or guardian as provided in s. 985.437, community service, a curfew, urine monitoring, revocation or suspension of the driver license of the child, or other nonresidential punishment appropriate to the offense, and may impose as a rehabilitative component a requirement of participation in substance abuse treatment, or school or other educational program attendance.

Section 2. Present subsection (5) of section 985.437, Florida Statutes, is renumbered as subsection (7), subsections (1), (2), and (4) are amended, and new subsections (5) and (6) are added to that section, to read:

985.437 Restitution.—

(1) Regardless of whether adjudication is imposed or withheld, the court that has jurisdiction over ~~a~~ an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, order the child and the child's parent or guardian to make restitution in the manner provided in this section. This order shall be part of the child's probation program to be implemented by the department or, in the case of a

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

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2015312\_\_

59 committed child, as part of the community-based sanctions  
60 ordered by the court at the disposition hearing or before the  
61 child's release from commitment.

62 (2) If the court orders restitution, the court shall ~~may~~  
63 order the child and the child's parent or guardian to make  
64 restitution in money, through a promissory note ~~assigned by the~~  
65 ~~child's parent or guardian,~~ or in kind for any damage or loss  
66 caused by the child's offense in a reasonable amount or manner  
67 to be determined by the court. When restitution is ordered by  
68 the court, the amount of restitution may not exceed an amount  
69 the child and the parent or guardian could reasonably be  
70 expected to pay or make. If the child and the child's parent or  
71 guardian are unable to pay the restitution in one lump-sum  
72 payment, the court may set up a payment plan that reflects their  
73 ability to pay the restitution amount.

74 (4) The parent or guardian may be absolved of liability for  
75 restitution under this section if:

76 (a) After a hearing, the court finds that it is the child's  
77 first referral to the delinquency system and ~~A finding by the~~  
78 court, ~~after a hearing,~~ that the parent or guardian has made  
79 diligent and good faith efforts to prevent the child from  
80 engaging in delinquent acts; or

81 (b) The victim entitled to restitution as a result of  
82 damage or loss caused by the child's offense is that child's  
83 absolves the parent or guardian of liability for restitution  
84 under this section.

85 (5) The court may order both parents or guardians liable  
86 for restitution associated with the child's care regardless of  
87 whether one parent or guardian has sole parental responsibility.

28-00300-15

2015312\_\_

88 (6) For purposes of this section, the Department of  
89 Children and Families, a foster parent with whom the child is  
90 placed, or the community-based care lead agency supervising the  
91 placement of the child pursuant to a contract with the  
92 Department of Children and Families is not considered a guardian  
93 responsible for restitution for the delinquent acts of a child  
94 who is found to be dependent as defined in s. 39.01(15).

95 Section 3. Subsection (1) of section 985.513, Florida  
96 Statutes, is amended to read:

97 985.513 Powers of the court over parent or guardian at  
98 disposition.—

99 (1) The court that has jurisdiction over an adjudicated  
100 delinquent child may, by an order stating the facts upon which a  
101 determination of a sanction and rehabilitative program was made  
102 at the disposition hearing,<sup>+</sup>

103 ~~(a)~~ order the child's parent or guardian, together with the  
104 child, to render community service in a public service program  
105 or to participate in a community work project. In addition to  
106 the sanctions imposed on the child, the court may order the  
107 child's parent or guardian to perform community service if the  
108 court finds that the parent or guardian did not make a diligent  
109 and good faith effort to prevent the child from engaging in  
110 delinquent acts.

111 ~~(b) Order the parent or guardian to make restitution in~~  
112 ~~money or in kind for any damage or loss caused by the child's~~  
113 ~~offense. The court may also require the child's parent or legal~~  
114 ~~guardian to be responsible for any restitution ordered against~~  
115 ~~the child, as provided under s. 985.437. The court shall~~  
116 ~~determine a reasonable amount or manner of restitution, and~~

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2015312\_\_

117 ~~payment shall be made to the clerk of the circuit court as~~  
118 ~~provided in s. 985.437.~~ The court may retain jurisdiction, as  
119 provided under s. 985.0301, over the child and the child's  
120 parent or legal guardian whom the court has ordered to pay  
121 restitution until the restitution order is satisfied or the  
122 court orders otherwise.

123 Section 4. This act shall take effect July 1, 2015.

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

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

March 2, 2015

*Meeting Date*

312

*Bill Number (if applicable)*

Topic Restitution for Juvenile Offenders

*Amendment Barcode (if applicable)*

Name Honorable Nancy Daniels

Job Title Public Defender, 2nd Judicial Circuit

Address 301 South Monroe Street

Phone 850.606.1000

*Street*

Tallahassee

Florida

32301

Email nancy.daniels@flpd2.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice



**Subject:** Committee Agenda Request

**Date:** January 27, 2015

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I respectfully request that **Senate Bill #312**, relating to Restitution for Juvenile Offenses, be placed on the:

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

A handwritten signature in cursive script that reads "Nancy Detert".

---

Senator Nancy C. Detert  
Florida Senate, District 28

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

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

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

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BILL: CS/SB 330

INTRODUCER: Criminal Justice Committee and Senator Dean

SUBJECT: Missing Persons with Special Needs

DATE: March 3, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			JU	
3.			CF	
4.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 330 expands the definition of the term “missing endangered person” in ch. 937, F.S., which establishes requirements for state and local law enforcement agencies in responding to and investigating reports of missing endangered persons. Specifically, the definition is expanded to include “missing person with special needs who is at risk of becoming lost or is prone to wander due to autism spectrum disorder, a developmental disability, or any other condition” (further described as a “person with special needs”).

The bill also:

- Authorizes any person to submit a missing endangered person report concerning a missing person with special needs to the Missing Endangered Persons Information Clearinghouse (MEPIC) if certain conditions are met; and
- Grants civil immunity to specified persons and entities responding to a law enforcement agency’s request to broadcast information relating to a missing person with special needs.

## II. Present Situation:

### Missing Endangered Person

Chapter 937, F.S., establishes a variety of requirements relating to how state and local law enforcement agencies respond to and investigate reports of missing endangered persons. A “missing endangered person” is:

- A missing child;<sup>1</sup>
- A missing adult<sup>2</sup> younger than 26 years of age;
- A missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; or
- A missing adult who meets the criteria for activation of the Silver Alert Plan of the Florida Department of Law Enforcement (FDLE).<sup>3</sup>

### Missing Endangered Person Information Clearinghouse

The Missing Endangered Person Information Clearinghouse (MEPIC) within the FDLE serves as a central repository of information regarding missing endangered persons. Such information shall be collected and disseminated to assist in the location of missing endangered persons.<sup>4</sup>

The MEPIC must establish a system of intrastate communication of information relating to missing endangered persons; provide a centralized file for the exchange of this information; and collect, process, maintain, and disseminate this information. Every state, county, or municipal law enforcement agency must submit to the MEPIC information concerning missing endangered persons.

Any person having knowledge may submit a missing endangered person report to the MEPIC concerning a child or adult younger than 26 years of age whose whereabouts is unknown, regardless of the circumstances, subsequent to reporting such child or adult missing to the appropriate law enforcement agency within the county in which the child or adult became

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<sup>1</sup> Section 937.0201(3), F.S., defines the term “missing child” as a person younger than 18 years of age whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

<sup>2</sup> Section 937.0201(2), F.S., defines the term “missing adult” as a person 18 years of age or older whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

<sup>3</sup> Section 937.021(4), F.S. According to the FDLE, “[t]he Florida Silver Alert Plan outlines two levels of Silver Alert activation: Local and State. Local and State Silver Alerts engage the public in the search for the missing person and provide a standardized and coordinated community response.” “Silver Alert Activation,” Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/Content/Silver-Alert-Plan/Menu/Activation-Steps.aspx> (last visited on February 17, 2015). “... [E]ach agency may have their own criteria for activation of a Local Silver Alert,” but “the Florida Silver Alert Support Committee recommends that agencies use” the following criteria “as a guideline when issuing a Local Silver Alert”: “[t]he person is 60 years and older”; “[t]he person is 18-59 and law enforcement has determined the missing person lacks the capacity to consent and that a Local Silver Alert may be the only possible way to rescue the missing person”; “[t]he person has an irreversible deterioration of intellectual faculties (e.g. Alzheimer’s disease or dementia) that has been verified by law enforcement.” *Id.* Further, there are special criteria that must be met for issuance of a State Silver Alert for persons with dementia who go missing in a vehicle with an identified tag. *Id.*

<sup>4</sup> Section 937.022, F.S. All additional information in this section of the analysis regarding the MEPIC is from s. 937.022, F.S., unless otherwise noted.

missing, and subsequent to entry by the law enforcement agency of the child or person into the Florida Crime Information Center (FCIC) and the National Crime Information Center (NCIC) databases. This report is included in the MEPIC database.

Only the law enforcement agency having jurisdiction over the case may:

- Submit a missing endangered person report to the MEPIC involving a missing adult age 26 years or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; and
- Make a request to the MEPIC for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan.

The person responsible for notifying the MEPIC or a law enforcement agency about a missing endangered person must immediately notify the MEPIC or the agency of any child or adult whose location has been determined.

The law enforcement agency having jurisdiction over a case involving a missing endangered person must, upon locating the child or adult, immediately purge information about the case from the FCIC or the NCIC databases and notify the MEPIC.

The FDLE notes: “While there are no provisions that specifically define “missing person with special needs” or identify a particular protocol regarding such individuals under any section of Chapter 937 Missing Person Investigations, the Missing Endangered Persons Information Clearinghouse (MEPIC) currently includes within its processes of reporting missing endangered persons any missing individual with any special needs (i.e. any persons with autism spectrum disorder, developmental disability, Alzheimer’s disease or other form of dementia, or any other such disease or condition), or any person missing and suspected by a law enforcement agency of being endangered due to any circumstance or status of being. (see F.S. 937.0201(4)(c)).”<sup>5</sup>

### **Civil Immunity Relating to Missing Persons Reporting**

Law enforcement agencies that receive a report of a missing child, missing adult, or missing endangered person must submit information about the report to other local law enforcement agencies and to the FDLE.<sup>6</sup> In an effort to locate the missing person, the law enforcement agency that originally received the report may request other specified entities (e.g., the FDLE, local law enforcement entities, radio and television networks, etc.) to broadcast information about the missing person to the public.<sup>7</sup>

Currently, specified persons or entities responding to such requests are granted immunity from civil liability if the broadcasted information relates to a missing adult, missing child, or a missing

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<sup>5</sup> Analysis of SB 330 (January 28, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This analysis is further cited as “FDLE Analysis of SB 330.”

<sup>6</sup> Sections 937.021 and 937.022, F.S.

<sup>7</sup> The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information. Section 937.021(5)(e), F.S.

adult who meets the criteria for activation of the Silver Alert Plan.<sup>8</sup> Current law does not specifically provide such civil immunity from damages to persons or entities responding to a request to broadcast information relating to a missing person with special needs (as defined in the bill).

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

The bill expands the definition of the term “missing endangered person” in ch. 937, F.S., which establishes requirements for state and local law enforcement agencies in responding to and investigating reports of missing endangered persons. Specifically, the definition is expanded to include “missing person with special needs who is at risk of becoming lost or is prone to wander due to autism spectrum disorder, a developmental disability, or any other condition” (“missing persons with special needs”). Therefore, information submitted about missing persons will include information about missing persons with special needs, which will be collected, processed, maintained, and disseminated by the MEPIC.

Any person is authorized to submit a missing endangered person report concerning a missing person with special needs to the MEPIC. Before doing so, the person must report the person with special needs missing to the appropriate law enforcement agency in the county where the person with special needs went missing and the agency must enter the missing person with special needs into the FCIC and NCIC databases.

The bill takes effect July 1, 2015.

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

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

None.

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

None.

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

None

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>8</sup> These entities are afforded a legal presumption that they acted in good faith in broadcasting the missing person information. This presumption is not overcome if a technical or clerical error is made by any entity acting at the request of the local law enforcement agency, or if the missing child, missing adult, or Silver Alert information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect. Section 937.021(5), F.S.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the FDLE's analysis of CS/HB 69, which is identical to CS/SB 330, "[a]dditional resources need to be acquired to complete the request to modify the clearinghouse database. This request would require the hiring of one new programmer."<sup>9</sup> Additionally, "[i]mplementation of these changes would require an estimated 2,507 hours to complete at \$215,460." The FDLE requests that the effective date of the bill be changed to August 6, 2016, to implement these changes.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The FDLE states "[e]xisting definitions in 937.0201(4)(a), (b), (c), and (d), capture all missing persons, children and adults, that may be endangered. Additionally, the Florida Crime Information Center defines missing categories of 'Disabled' or 'Endangered' to specifically identify missing disabled individuals."<sup>10</sup> The department also "currently issues Missing Child Alerts for all missing children with an autism spectrum disorder." The FDLE further comments that "[s]pecifying individual types of disabilities and circumstances that may limit an individual's capacity for self-care, ability to make sound choices, seeking help when needed, or protect themselves from harm in statute may result in unintended consequences of restricting certain missing person investigative services from others who do not meet the proposed, specified criteria, but who are nonetheless missing and endangered."

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 937.0201, 937.021, and 937.022.

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

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

**CS by Criminal Justice on March 2, 2015:**

- Removes provisions relating to electronic monitoring of certain persons with special needs.

<sup>9</sup> Analysis of CS/HB 69 (February 5, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). All other information in this section of the analysis is from this source.

<sup>10</sup> FDLE Analysis of SB 330. All other information in this section is from this source.

- Removes a provision requiring the Criminal Justice Standards and Training Commission to incorporate training of law enforcement officers in the retrieval of missing persons with special needs.

B. Amendments:

None.

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

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104312

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2015	.	
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	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 122 - 148.

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

And the title is amended as follows:

Delete lines 14 - 31

and insert:

missing person with special needs; providing an effective date.

By Senator Dean

5-00755-15

2015330\_\_

1 A bill to be entitled  
 2 An act relating to missing persons with special needs;  
 3 amending s. 937.0201, F.S.; revising the definition of  
 4 the term "missing endangered person" to include  
 5 certain persons with special needs; amending s.  
 6 937.021, F.S.; providing immunity from civil liability  
 7 for certain persons who comply with a request to  
 8 release information concerning missing persons with  
 9 special needs to appropriate agencies; providing a  
 10 presumption that a person recording, reporting,  
 11 transmitting, displaying, or releasing such  
 12 information acted in good faith; amending s. 937.022,  
 13 F.S.; specifying who may submit a report concerning a  
 14 missing person with special needs; creating s.  
 15 937.035, F.S.; requiring the Department of Law  
 16 Enforcement, contingent on funding, to provide  
 17 electronic monitoring devices to certain persons with  
 18 autism spectrum disorder; requiring the Agency for  
 19 Persons with Disabilities to make an annual report  
 20 concerning such individuals to the department;  
 21 requiring the Department of Children and Families,  
 22 contingent on funding, to provide electronic  
 23 monitoring devices to certain persons with dementia;  
 24 creating s. 943.17297, F.S.; requiring the Criminal  
 25 Justice Standards and Training Commission to  
 26 incorporate the retrieval of missing persons with  
 27 special needs into the curriculum required for law  
 28 enforcement officers; reenacting ss. 39.0141 and  
 29 39.301(22), F.S., to incorporate the amendment made to

Page 1 of 6

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

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30 s. 937.021, F.S., in references thereto; providing an  
 31 effective date.  
 32  
 33 Be It Enacted by the Legislature of the State of Florida:  
 34  
 35 Section 1. Paragraphs (c) and (d) of subsection (4) of  
 36 section 937.0201, Florida Statutes, are amended, and paragraph  
 37 (e) is added to that subsection, to read:  
 38 937.0201 Definitions.—As used in this chapter, the term:  
 39 (4) "Missing endangered person" means:  
 40 (c) A missing adult 26 years of age or older who is  
 41 suspected by a law enforcement agency of being endangered or the  
 42 victim of criminal activity; ~~or~~  
 43 (d) A missing adult who meets the criteria for activation  
 44 of the Silver Alert Plan of the Department of Law Enforcement;  
 45 or  
 46 (e) A missing person with special needs who is at risk of  
 47 becoming lost or is prone to wander due to autism spectrum  
 48 disorder, a developmental disability, or any other disease or  
 49 condition.  
 50 Section 2. Present paragraphs (d) and (e) of subsection (5)  
 51 of section 937.021, Florida Statutes, are amended, and a new  
 52 paragraph (d) is added to that subsection, to read:  
 53 937.021 Missing child and missing adult reports.—  
 54 (5)  
 55 (d) Upon receiving a request to record, report, transmit,  
 56 display, or release information about a missing person with  
 57 special needs, as described in s. 937.0201(4)(e), from the law  
 58 enforcement agency having jurisdiction over the missing person,

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59 the Department of Law Enforcement, any state or local law  
 60 enforcement agency, and the personnel of these agencies; any  
 61 radio or television network, broadcaster, or other media  
 62 representative; any dealer of communications services as defined  
 63 in s. 202.11; or any agency, employee, individual, or entity is  
 64 immune from civil liability for damages for complying in good  
 65 faith with the request and is presumed to have acted in good  
 66 faith in recording, reporting, transmitting, displaying, or  
 67 releasing information pertaining to the missing person with  
 68 special needs.

69 (e)~~(d)~~ The presumption of good faith is not overcome if a  
 70 technical or clerical error is made by any agency, employee,  
 71 individual, or entity acting at the request of the local law  
 72 enforcement agency having jurisdiction, or if the information  
 73 regarding an Amber Alert, Missing Child Alert, Silver Alert,  
 74 missing child information, missing adult information, or missing  
 75 person with special needs Silver Alert information is incomplete  
 76 or incorrect because the information received from the local law  
 77 enforcement agency was incomplete or incorrect.

78 (f)~~(e)~~ Neither this subsection nor any other provision of  
 79 law creates a duty of the agency, employee, individual, or  
 80 entity to record, report, transmit, display, or release the  
 81 information regarding an Amber Alert, Missing Child Alert,  
 82 Silver Alert, missing child information, missing adult  
 83 information, or missing person with special needs Silver Alert  
 84 information received from the local law enforcement agency  
 85 having jurisdiction. The decision to record, report, transmit,  
 86 display, or release information is discretionary with the  
 87 agency, employee, individual, or entity receiving the

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88 information.

89 Section 3. Paragraph (b) of subsection (3) of section  
 90 937.022, Florida Statutes, is amended to read:

91 937.022 Missing Endangered Persons Information  
 92 Clearinghouse.—

93 (3) The clearinghouse shall:

94 (b) Provide a centralized file for the exchange of  
 95 information on missing endangered persons.

96 1. Every state, county, or municipal law enforcement agency  
 97 shall submit to the clearinghouse information concerning missing  
 98 endangered persons.

99 2. Any person having knowledge may submit a missing  
 100 endangered person report to the clearinghouse concerning a  
 101 child, an ~~or~~ adult younger than 26 years of age, or a person  
 102 with special needs, as described in s. 937.0201(4)(e), whose  
 103 whereabouts are ~~is~~ unknown, regardless of the circumstances,  
 104 subsequent to reporting such child, ~~or~~ adult, or person with  
 105 special needs missing to the appropriate law enforcement agency  
 106 within the county in which the child, ~~or~~ adult, or person with  
 107 special needs went ~~became~~ missing, and subsequent to entry by  
 108 the law enforcement agency of the child or person into the  
 109 Florida Crime Information Center and the National Crime  
 110 Information Center databases. The missing endangered person  
 111 report shall be included in the clearinghouse database.

112 3. Only the law enforcement agency having jurisdiction over  
 113 the case may submit a missing endangered person report to the  
 114 clearinghouse involving a missing adult age 26 years or older  
 115 who is suspected by a law enforcement agency of being endangered  
 116 or the victim of criminal activity.

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117 4. Only the law enforcement agency having jurisdiction over  
 118 the case may make a request to the clearinghouse for the  
 119 activation of a state Silver Alert involving a missing adult if  
 120 circumstances regarding the disappearance have met the criteria  
 121 for activation of the Silver Alert Plan.

122 Section 4. Section 937.035, Florida Statutes, is created to  
 123 read:

124 937.035 Electronic monitoring devices for certain persons.-

125 (1) (a) The department shall, to the extent federally  
 126 funded, provide electronic monitoring devices to persons  
 127 described in s. 937.0201(4) (e) who have the potential to go  
 128 missing due to autism spectrum disorder.

129 (b) The Agency for Persons with Disabilities shall annually  
 130 provide the department with a list of the number of persons in  
 131 each county who would be eligible for an electronic monitoring  
 132 device under this subsection.

133 (2) The Department of Children and Families shall, subject  
 134 to legislative appropriation, provide electronic monitoring  
 135 devices to persons described in s. 937.0201(4) (e) who have the  
 136 potential to go missing due to diagnosed Alzheimer's disease or  
 137 any other form of dementia.

138 Section 5. Section 943.17297, Florida Statutes, is created  
 139 to read:

140 943.17297 Training in retrieval of persons with special  
 141 needs.-The commission shall incorporate detailed training in the  
 142 retrieval of missing persons with special needs as described in  
 143 s. 937.0201(4) (e) into the curriculum required for continuous  
 144 employment or appointment as a law enforcement officer.

145 Section 6. Section 39.0141 and subsection (22) of section

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146 39.301, Florida Statutes, are reenacted for the purpose of  
 147 incorporating the amendment made by this act to section 937.021,  
 148 Florida Statutes, in references thereto.

149 Section 7. This act shall take effect July 1, 2015.

Page 6 of 6

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-2-15  
Meeting Date

SB 330  
Bill Number (if applicable)

Topic Disabled Children

Amendment Barcode (if applicable)

Name Amy Detz

Job Title Mother

Address 1136 Crestview Ave

Phone 850 322-7599

Tallahassee Fla 32303  
City State Zip

Email amdetz@mac.com

Speaking:  For  Against  Information

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

Representing Mother of Disabled Child

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

This form is part of the public record for this meeting

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/2/15  
Meeting Date

SB 330  
Bill Number (if applicable)

Topic R/T Missing Reasons w/ Special Needs

Amendment Barcode (if applicable)

Name Bonney Bishop III

Job Title President of the Florida Smart Justice Alliance

Address 204 S. Monroe St.

Phone (850) 577-3025

Street

Tallahassee

City

FL

State

Zip

Email Bonney@bonneybishop.com

Speaking:  For  Against  Information

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

Representing The 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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3.2.2015

Meeting Date

330

Bill Number (if applicable)

Topic Missing Persons

Amendment Barcode (if applicable)

Name Sarah Canoll

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

Address 123 S. Adams St

Phone \_\_\_\_\_

Street

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Sheriffs 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)

3/2/2015  
Meeting Date

SB 330  
Bill Number (if applicable)

Topic MISSING PERSONS w/ SPECIAL NEEDS

Amendment Barcode (if applicable)

Name GARY STEIN

Job Title Dir. of Public Policy - FFAST, Inc

Address 3333 W. PENNSACOLA ST

Phone (850) 766-3733

Street

TALL  
City

FL  
State

32304  
Zip

Email GSTEIN@FFAST.ORG

Speaking:  For  Against  Information

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

Representing FFAST, Inc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and  
Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General  
Government  
Children, Families, and Elder Affairs  
Communications, Energy, and Public Utilities  
Community Affairs

**SENATOR CHARLES S. DEAN, SR.**  
5th District

January 29, 2015

The Honorable Greg Evers  
308 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100



Dear Chairman Evers,

I respectfully request you place Senate Bill 330, relating to Missing Persons with Special Needs, on your Criminal Justice Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean".

Charles S. Dean  
State Senator District 5

cc: Amanda Cannon, Staff Director

**REPLY TO:**

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and  
Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General  
Government  
Children, Families, and Elder Affairs  
Communications, Energy, and Public Utilities  
Community Affairs

**SENATOR CHARLES S. DEAN, SR.**

5th District

February 23, 2015

The Honorable Greg Evers  
308 Senate Office Building  
404 South Monroe St.  
Tallahassee, FL 32399-1100

Dear Chairman Evers:

Thank you for allowing Senate Bill 330, relating to Missing Persons with Special Needs, to be placed on your agenda. Unfortunately, I will be unable to attend the Committee meeting and would like to request your permission to allow my aide, Chase Daniels, to present this bill in my place.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean".

Charles S. Dean  
State Senator, District 5

Cc: Amanda Cannon, Staff Director

**REPLY TO:**

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
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Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

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

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

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

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BILL: SB 378

INTRODUCER: Senators Garcia, Gibson, and Bullard

SUBJECT: Juvenile Justice

DATE: February 27, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Pre-meeting</b>
2.			CF	
3.			RC	

---

**I. Summary:**

SB 378 expands juvenile civil citation by allowing law enforcement to issue a civil citation to youth who have committed a second or subsequent misdemeanor. (Civil citation is presently only available to youth who admit to committing a first-time misdemeanor.)

In addition, law enforcement will be authorized to issue a simple warning to the youth or inform the youth's parents of the misdemeanor, or the officer will be required to issue a civil citation or require participation in a similar diversion program under the bill. (These options are now discretionary with law enforcement.) Issuing a civil citation will no longer be discretionary for law enforcement under the bill.

The bill also provides that in exceptional circumstances, law enforcement may arrest a first-time juvenile misdemeanant by providing written documentation justifying why the arrest is needed to protect public safety.

**II. Present Situation:**

Section 985.12, F.S., establishes a civil citation process that provides an efficient and innovative alternative to the Department of Juvenile Justice's (DJJ) custody for youth who commit nonserious delinquent acts.<sup>1</sup> The DJJ is required to encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs around the state.<sup>2</sup> It must also develop guidelines for civil citation which include intervention services that are based upon proven civil citation or similar diversion programs within the state.<sup>3</sup>

---

<sup>1</sup> Section 985.12(1), F.S.

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

<sup>3</sup> Section 985.12(2), F.S.

These programs are to be established at the local level in concurrence with the chief circuit judge, state attorney, public defender, and head of each local law enforcement agency. The statute provides that a law enforcement officer may issue a civil citation to a youth who admits to committing a misdemeanor without having to take the youth into custody. Only first-time misdemeanants are eligible.<sup>4</sup> (A law enforcement officer currently has the discretion to give a warning to the youth, inform the parents, issue a civil citation, or arrest a youth.)

The law enforcement officer must send a copy of the citation to the department, sheriff, state attorney, the DJJ's intake office or the community service performance monitor, parent or guardian of the youth, and the victim.<sup>5</sup> The issuance of a civil citation is not considered a referral to the department.<sup>6</sup>

A civil citation program or similar diversion program may be operated by law enforcement, the department, a juvenile assessment center, a county or municipality, or an entity selected by the county or municipality. Operations must be in consultation and agreement with the state attorney and local law enforcement agencies.<sup>7</sup>

Youth issued a civil citation may be assigned up to 50 hours of community service and are required to participate in intervention services as indicated by a needs assessment. Intervention services include family counseling, urinalysis monitoring, substance abuse and mental health treatment services.<sup>8</sup> At the time a civil citation is issued, the law enforcement officer must advise the youth that he or she has the option of refusing the civil citation and of being referred to the DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.<sup>9</sup>

The youth is required to report to a community service performance monitor within seven working days after the civil citation has been issued. The youth must also complete at least five community service hours per week. The monitor reports information to the DJJ regarding the youth's service hour completion and the expected completion date.<sup>10</sup> If the youth fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or if the youth commits a subsequent misdemeanor, the law enforcement officer must issue a report to the DJJ alleging that the youth has committed a delinquent act, thereby initiating formal judicial processing.<sup>11</sup>

According to the DJJ, there are currently 59 counties that have implemented civil citation programs. In contrast, Bradford, Polk, Taylor, Calhoun, Gulf, Hardee, Sarasota, and Washington counties have not yet implemented one. However, these counties have similar diversion programs available.<sup>12</sup>

---

<sup>4</sup> Section 985.12(1)

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

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Section 985.12(6), F.S.

<sup>10</sup> Section 985.12(4), F.S.

<sup>11</sup> Section 985.12(5), F.S.

<sup>12</sup> Electronic mail from Meredith Stanfield, DJJ Legislative Director, dated February 25, 2015 (on file with the Senate Criminal Justice Committee).

Additionally, the department states that in calendar years 2013 and 2014, there were 16,149 civil citations issued (7,634 in 2013 and 8,515 in 2014). In fiscal year 2013-14, there were 21,349 youth who were eligible for civil citation and of those, 8,059 or 38%, received a civil citation. The DJJ also found that the recidivism rate for youth completing civil citation during fiscal year 2012-13 was 5 percent. (To calculate this rate, the department monitored the youth for 12 months to determine if there was a subsequent adjudication, adjudication withheld, or an adult conviction.)<sup>13</sup>

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

The bill expands juvenile civil citation by allowing law enforcement to issue a civil citation to youth who have committed a second or subsequent misdemeanor. Civil citation will no longer only be available to first-time misdemeanor offenders under the bill.

In addition, law enforcement will be authorized to issue a simple warning to the youth or inform the youth's parents of the misdemeanor, or the officer will be required to issue a civil citation or require participation in a similar diversion program under the bill. (These options are now discretionary with law enforcement.) Issuing a civil citation will no longer be discretionary for law enforcement under the bill.

The bill also provides that in exceptional circumstances, law enforcement may arrest a first-time juvenile misdemeanant by providing written documentation justifying why the arrest is needed to protect public safety.

The effective date of the bill is October 1, 2015.

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

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

None.

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

None.

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

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

---

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

**B. Private Sector Impact:**

Expanding civil citation could result in more youth having future opportunities for employment since these youth will not have the hurdle of an arrest record.

**C. Government Sector Impact:**

To the extent that youth are diverted from the more costly juvenile justice system, the greater the potential cost savings are to the state.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 985.12 of the Florida Statutes.

The bill reenacts sections 943.051 and 985.11 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.



615206

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/02/2015	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 50 - 67

and insert:

committed a misdemeanor, may, with the victim's consent, issue a simple warning or inform the child's guardian or parent of the child's infraction, or may issue a civil citation or require participation in a similar diversion program, and assess up to ~~not more than~~ 50 community service hours, and require participation in intervention services as indicated by an



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11 assessment of the needs of the juvenile, including family  
12 counseling, urinalysis monitoring, and substance abuse and  
13 mental health treatment services. Absent exceptional situations,  
14 the Legislature encourages law enforcement officers to issue a  
15 civil citation, unless the misdemeanor is a threat to public  
16 safety. A copy of each citation issued under this section shall  
17 be provided to the department, and the department shall enter  
18 appropriate information into the juvenile offender information  
19 system. Use of the civil citation or similar diversion program  
20 is not limited to first-time offenses and may be used in a  
21 second or subsequent offense. ~~Only first-time misdemeanor~~  
22 offenders are

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

24 And the title is amended as follows:

25 Delete lines 3 - 17

26 and insert:

27 985.12, F.S.; authorizing a law enforcement officer,  
28 with the victim's consent, to choose to issue a  
29 warning to a juvenile who admits having committed a  
30 misdemeanor or to inform the juvenile's parent or  
31 guardian of the juvenile's infraction; authorizing a  
32 law enforcement officer who does not exercise one of  
33 these options to issue a civil citation or require  
34 participation in a similar diversion program;  
35 providing that, absent exceptional situations, the  
36 Legislature encourages law enforcement officers to  
37 issue a civil citation, unless the misdemeanor is a  
38 threat to public safety; providing that repeat  
39 misdemeanor offenders may participate in the civil



615206

40  
41

citation program or a similar diversion program under  
certain circumstances; reenacting

By Senator Garcia

38-00317A-15

2015378\_\_

1 A bill to be entitled  
 2 An act relating to juvenile justice; amending s.  
 3 985.12, F.S.; authorizing a law enforcement officer to  
 4 issue a warning to a juvenile who admits having  
 5 committed a misdemeanor or to inform the child's  
 6 parent or guardian of the child's infraction;  
 7 requiring a law enforcement officer who does not  
 8 exercise one of these options to issue a civil  
 9 citation or require participation in a similar  
 10 diversion program; providing that repeat misdemeanor  
 11 offenders may participate in the civil citation  
 12 program or a similar diversion program under certain  
 13 circumstances; providing that, in exceptional  
 14 situations, a law enforcement officer may arrest a  
 15 first-time misdemeanor offender in the interest of  
 16 protecting public safety; requiring certain written  
 17 documentation if such an arrest is made; reenacting  
 18 ss. 943.051(3)(b) and 985.11(1)(b), F.S., relating to  
 19 the issuance of a civil citation, and the issuance of  
 20 a civil citation or similar diversion program,  
 21 respectively, to incorporate the amendments made to s.  
 22 985.12, F.S., in references thereto; providing an  
 23 effective date.

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

26  
 27 Section 1. Subsection (1) of section 985.12, Florida  
 28 Statutes, is amended to read:  
 29 985.12 Civil citation.—

Page 1 of 6

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2015378\_\_

30 (1) There is established a juvenile civil citation process  
 31 for the purpose of providing an efficient and innovative  
 32 alternative to custody by the Department of Juvenile Justice for  
 33 children who commit nonserious delinquent acts and to ensure  
 34 swift and appropriate consequences. The department shall  
 35 encourage and assist in the implementation and improvement of  
 36 civil citation programs or other similar diversion programs  
 37 around the state. The civil citation or similar diversion  
 38 program shall be established at the local level with the  
 39 concurrence of the chief judge of the circuit, state attorney,  
 40 public defender, and the head of each local law enforcement  
 41 agency involved. The program may be operated by an entity such  
 42 as a law enforcement agency, the department, a juvenile  
 43 assessment center, the county or municipality, or another ~~some~~  
 44 ~~other~~ entity selected by the county or municipality. An entity  
 45 operating the civil citation or similar diversion program must  
 46 do so in consultation and agreement with the state attorney and  
 47 local law enforcement agencies. Under such a juvenile civil  
 48 citation or similar diversion program, a ~~any~~ law enforcement  
 49 officer, upon making contact with a juvenile who admits having  
 50 committed a misdemeanor, may choose to issue a simple warning or  
 51 inform the child's guardian or parent of the child's infraction,  
 52 or shall ~~may~~ issue a civil citation or require participation in  
 53 a similar diversion program, and assess up to ~~not more than~~ 50  
 54 community service hours, and require participation in  
 55 intervention services as indicated by an assessment of the needs  
 56 of the juvenile, including family counseling, urinalysis  
 57 monitoring, and substance abuse and mental health treatment  
 58 services. A copy of each citation issued under this section

Page 2 of 6

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2015378\_\_

59 shall be provided to the department, and the department shall  
 60 enter appropriate information into the juvenile offender  
 61 information system. Use of the civil citation or similar  
 62 diversion program is not limited to first-time offenses and may  
 63 be used in a second or subsequent offense. In exceptional  
 64 situations, a local law enforcement officer may arrest a  
 65 juvenile for a first-time misdemeanor if he or she provides  
 66 written documentation as to why an arrest was warranted to  
 67 protect public safety. Only first-time misdemeanor offenders are  
 68 eligible for the civil citation or similar diversion program. At  
 69 the conclusion of a juvenile's civil citation program or similar  
 70 diversion program, the agency operating the program shall report  
 71 the outcome to the department. The issuance of a civil citation  
 72 is not considered a referral to the department.

73 Section 2. For the purpose of incorporating the amendment  
 74 made by this act to section 985.12, Florida Statutes, in a  
 75 reference thereto, paragraph (b) of subsection (3) of section  
 76 943.051, Florida Statutes, is reenacted to read:

77 943.051 Criminal justice information; collection and  
 78 storage; fingerprinting.—

79 (3)

80 (b) A minor who is charged with or found to have committed  
 81 the following offenses shall be fingerprinted and the  
 82 fingerprints shall be submitted electronically to the  
 83 department, unless the minor is issued a civil citation pursuant  
 84 to s. 985.12:

- 85 1. Assault, as defined in s. 784.011.
- 86 2. Battery, as defined in s. 784.03.
- 87 3. Carrying a concealed weapon, as defined in s. 790.01(1).

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38-00317A-15

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- 88 4. Unlawful use of destructive devices or bombs, as defined  
 89 in s. 790.1615(1).
- 90 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 91 6. Assault or battery on a law enforcement officer, a  
 92 firefighter, or other specified officers, as defined in s.  
 93 784.07(2)(a) and (b).
- 94 7. Open carrying of a weapon, as defined in s. 790.053.
- 95 8. Exposure of sexual organs, as defined in s. 800.03.
- 96 9. Unlawful possession of a firearm, as defined in s.  
 97 790.22(5).
- 98 10. Petit theft, as defined in s. 812.014(3).
- 99 11. Cruelty to animals, as defined in s. 828.12(1).
- 100 12. Arson, as defined in s. 806.031(1).
- 101 13. Unlawful possession or discharge of a weapon or firearm  
 102 at a school-sponsored event or on school property, as provided  
 103 in s. 790.115.

104 Section 3. For the purpose of incorporating the amendment  
 105 made by this act to section 985.12, Florida Statutes, in a  
 106 reference thereto, paragraph (b) of subsection (1) of section  
 107 985.11, Florida Statutes, is reenacted to read:

108 985.11 Fingerprinting and photographing.—

109 (1)

110 (b) Unless the child is issued a civil citation or is  
 111 participating in a similar diversion program pursuant to s.  
 112 985.12, a child who is charged with or found to have committed  
 113 one of the following offenses shall be fingerprinted, and the  
 114 fingerprints shall be submitted to the Department of Law  
 115 Enforcement as provided in s. 943.051(3)(b):

- 116 1. Assault, as defined in s. 784.011.

Page 4 of 6

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

38-00317A-15

2015378\_\_

117 2. Battery, as defined in s. 784.03.  
 118 3. Carrying a concealed weapon, as defined in s. 790.01(1).  
 119 4. Unlawful use of destructive devices or bombs, as defined  
 120 in s. 790.1615(1).  
 121 5. Neglect of a child, as defined in s. 827.03(1)(e).  
 122 6. Assault on a law enforcement officer, a firefighter, or  
 123 other specified officers, as defined in s. 784.07(2)(a).  
 124 7. Open carrying of a weapon, as defined in s. 790.053.  
 125 8. Exposure of sexual organs, as defined in s. 800.03.  
 126 9. Unlawful possession of a firearm, as defined in s.  
 127 790.22(5).  
 128 10. Petit theft, as defined in s. 812.014.  
 129 11. Cruelty to animals, as defined in s. 828.12(1).  
 130 12. Arson, resulting in bodily harm to a firefighter, as  
 131 defined in s. 806.031(1).  
 132 13. Unlawful possession or discharge of a weapon or firearm  
 133 at a school-sponsored event or on school property as defined in  
 134 s. 790.115.  
 135  
 136 A law enforcement agency may fingerprint and photograph a child  
 137 taken into custody upon probable cause that such child has  
 138 committed any other violation of law, as the agency deems  
 139 appropriate. Such fingerprint records and photographs shall be  
 140 retained by the law enforcement agency in a separate file, and  
 141 these records and all copies thereof must be marked "Juvenile  
 142 Confidential." These records are not available for public  
 143 disclosure and inspection under s. 119.07(1) except as provided  
 144 in ss. 943.053 and 985.04(2), but shall be available to other  
 145 law enforcement agencies, criminal justice agencies, state

Page 5 of 6

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

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2015378\_\_

146 attorneys, the courts, the child, the parents or legal  
 147 custodians of the child, their attorneys, and any other person  
 148 authorized by the court to have access to such records. In  
 149 addition, such records may be submitted to the Department of Law  
 150 Enforcement for inclusion in the state criminal history records  
 151 and used by criminal justice agencies for criminal justice  
 152 purposes. These records may, in the discretion of the court, be  
 153 open to inspection by anyone upon a showing of cause. The  
 154 fingerprint and photograph records shall be produced in the  
 155 court whenever directed by the court. Any photograph taken  
 156 pursuant to this section may be shown by a law enforcement  
 157 officer to any victim or witness of a crime for the purpose of  
 158 identifying the person who committed such crime.  
 159 Section 4. This act shall take effect October 1, 2015.

Page 6 of 6

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-2-2015

Meeting Date

378

Bill Number (if applicable)

615206

Amendment Barcode (if applicable)

Topic Civil Citation

Name Samah Camoll

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

Address 123 S. Adams

Street

Phone \_\_\_\_\_

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Sheriff's 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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

*Wants to speak on amendment*

3/2/15

Meeting Date

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

378

Bill Number (if applicable)

Topic JUVENILE JUSTICE / EXPANDING USE OF CIVIL CITATIONS

Amendment Barcode (if applicable)

Name MARTHA BRINSKO

Job Title TEACHER

Address 452 72ND AVENUE

Phone 727-360-6806

Street

ST. PETE BEACH, FL

33706

Email martilou21@verizon.net

City

State

Zip

Speaking:  For  Against  Information

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

Representing F.A.S.T. (FAITH AND ACTION FOR STRENGTH TOGETHER)

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)

3/2/15  
Meeting Date

378  
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W. Park Ave  
Street

Phone \_\_\_\_\_

City

State

32301  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/2/15  
Meeting Date

SB 378  
Bill Number (if applicable)

Topic R/T Increase Justice (civil citations)

Amendment Barcode (if applicable)

Name Barney Bishop #

Job Title President of the Florida Smart Justice Alliance

Address 204 S. Monroe St.  
Street

Phone (850) 577-3025

Tallahassee FL  
City State Zip

Email Barney@barneybishop.com

Speaking:  For  Against  Information

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

Representing The 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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/2/15  
Meeting Date

378  
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 227 South Adams St.

Phone 222-4082

Street

Tallahassee  
City

FL  
State

32311  
Zip

Email samantha@frf.org

Speaking:  For  Against  Information

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

Representing Florida Retail Federation

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)

378

Meeting Date

Bill Number (if applicable)

Topic 378 - A Amended

Amendment Barcode (if applicable)

Name Jerry Hill

Job Title STATE ATTORNEY - 10TH CIR

Address BARTON FL.  
Street

Phone 863-534-4801

City

State

Zip

Email

Speaking:  For  Against  Information

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

F.I.P.A.A.

Representing ST. ATTYS

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)

March 2, 2015

*Meeting Date*

378

*Bill Number (if applicable)*

Topic Juvenile Justice

*Amendment Barcode (if applicable)*

Name Honorable Nancy Daniels

Job Title Public Defender, 2nd Judicial Circuit

Address 301 South Monroe Street

Phone 850.606.1000

*Street*

Tallahassee

Florida

32301

*City*

*State*

*Zip*

Email nancy.daniels@flpd2.com

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

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)

03/02/2015

*Meeting Date*

SB 378

*Bill Number (if applicable)*

Topic Civil Citation

*Amendment Barcode (if applicable)*

Name Eliseo Santana Jr

Job Title (Retired) Communications Maintenance Supervisor PCSO

Address 1225 58th Street North, Unit 201A

Phone \_\_\_\_\_

*Street*

St. Petersburg

FL

33710

Email esantana33773@yahoo.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing FAST

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)

MAR 2, 2015  
Meeting Date

378  
Bill Number (if applicable)

Topic JUVENILE JUSTICE - CITATIONS

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title LEGISLATIVE ADVOCATE

Address 100 S. MONROE ST.  
Street

Phone 294-1838

TALLAHASSEE, FL 32301  
City State Zip

Email YOUMANSLE@FLCOUNTIES.COM

Speaking:  For  Against  Information

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

Representing FLORIDA ASSOCIATION 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.

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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)

3/2/15  
Meeting Date

378  
Bill Number (if applicable)

Topic SB 378 - Juvenile Justice

Amendment Barcode (if applicable)

Name Nick Matthews

Job Title Intergovernmental Affairs

Address 115 S. Andrews Ave  
Street

Phone \_\_\_\_\_

Ft. Lauderdale  
City State Zip

Email NMatthews@Browd.015

Speaking:  For  Against  Information

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

Representing Broward 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.

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

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

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

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**BILL:** CS/SB 542

**INTRODUCER:** Criminal Justice Committee and Senator Benacquisto

**SUBJECT:** Interception of Wire, Oral, or Electronic Communication

**DATE:** March 3, 2015      **REVISED:** \_\_\_\_\_

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 542 provides that it is lawful for a child under 18 years of age to intercept and record an oral communication if the child has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against another person. Therefore, the bill creates an exception to the general prohibition against interceptions of oral communications. Absent this exception, the recording would be proscribed and could not be received in evidence in a criminal proceeding.

**II. Present Situation:**

**Definitions of Relevant Terms**

Section 934.02(3), F.S., defines “intercept” as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

Section 934.02(2), F.S., defines “oral communication” as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

## Interception of Oral Communications

Paragraphs (1)(a) and (4)(a) of s. 934.03, F.S., make it a third degree felony<sup>1</sup> to intentionally intercept an oral communication. The statute provides for a number of exceptions to this general prohibition.<sup>2</sup> For example, it is lawful under ss. 934.03-934.09, F.S.<sup>3</sup> for:

- An investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept an oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to the interception and the purpose of such interception is to obtain evidence of a criminal act;<sup>4</sup> and
- A person to intercept an oral communication when all of the parties to the communication have given prior consent to such interception.<sup>5</sup>

The contents of an intercepted communication and evidence derived from the contents may not be received in evidence in court proceedings and other specified proceedings if the disclosure of the information would violate ch. 934, F.S. (i.e., creating a statutory exclusionary rule):

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter.<sup>6</sup>

## McDade v. State

In *McDade v. State*,<sup>7</sup> the Florida Supreme Court (“Court”) held that it was an error to receive in evidence at McDade’s criminal trial recordings that his stepdaughter surreptitiously made when she was 16 years-old. The recordings, which recorded conversations between McDade and his stepdaughter in McDade’s bedroom, were introduced at McDade’s trial for various crimes involving sexual abuse of his stepdaughter. The recorded conversations included statements by McDade that supported his stepdaughter’s testimony at trial that McDade had sexually abused her. McDade had objected to their introduction.

---

<sup>1</sup> A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

<sup>2</sup> Section 934.02(2)(a)-(j), F.S.

<sup>3</sup> These laws respectively relate to: interception and disclosure of wire, oral, and electronic communications; manufacture of communication-intercepting devices; confiscation of those devices; authorization of an interception; authorization for disclosure and use of an intercepted communication; and the procedure for interception.

<sup>4</sup> Section 934.03(2)(c), F.S.

<sup>5</sup> Section 934.03(2)(d), F.S.

<sup>6</sup> Section 934.06, F.S.

<sup>7</sup> 2014 WL 6977944 (Fla. 2014).

The question before the Court was whether a recording of solicitation and confirmation of child sexual abuse surreptitiously made by the child victim in the accused's bedroom falls within the proscription of ch. 934, F.S. The Court determined that this was a question of statutory interpretation. The Court found that none of the exceptions in s. 934.03, F.S., to the general prohibition in that statute against interception of oral communications called "for the interception of conversations based on one's status as the victim of a crime."<sup>8</sup> Further, the Court determined that the facts regarding the conversations and the recording of those conversations indicated the recordings were prohibited and inadmissible under ch. 934, F.S.:

... [U]nder the definition of oral communication provided by section 934.02(2), Florida Statutes (2010), McDade's conversations with his stepdaughter in his bedroom are oral communications. The facts related to the recorded conversations support the conclusion that McDade's statements were "uttered by a person exhibiting an expectation that [his] communication [was] not subject to interception" and that McDade made those statements "under circumstances justifying" his expectation that his statements would not be recorded. § 934.02(2), Fla. Stat. (2010). The recordings were made surreptitiously. McDade did not consent to the conversations being recorded, and none of the other exceptions listed in section 934.03(2) apply. The recordings, therefore, were prohibited. Because the recordings impermissibly intercepted oral communications, the recordings are inadmissible under section 934.06, Florida Statutes (2010).<sup>9</sup>

At the conclusion of its analysis, the Court stated:

It may well be that a compelling case can be made for an exception from chapter 934's statutory exclusionary rule for recordings that provide evidence of criminal activity -or at least certain types of criminal activities. But the adoption of such an exception is a matter for the Legislature. It is not within the province of the courts to create such an exception by ignoring the plain import of the statutory text.<sup>10</sup>

---

<sup>8</sup> *McDade*, 2014 WL 697794 at \*4.

<sup>9</sup> *McDade*, 2014 WL 697794 at \*5. The Court obtained jurisdiction when it agreed to consider a question (which the Court rephrased) that had been certified by the Second District Court of Appeal ("Second District") in *McDade v. State*, 114 So.2d 465 (Fla.2d DCA 2013). In that case, the Second District rejected McDade's argument that the trial court should have suppressed the recordings under the exclusionary rule in s. 934.06, F.S. The Second District determined that the statutory proscription on recording oral communications only applied "where the person uttering the communication has a reasonable expectation of privacy under the circumstances," *McDade*, 114 So.2d at 470, and determined that McDade did not have a reasonable expectation of privacy. The Second District relied on a prior Florida Supreme Court case, *State v. Inciarrano*, 473 So.2d 1272 (Fla.1985), which involved a victim recording. The Court rejected the Second District's application of *Inciarrano*. It found the circumstances in *Inciarrano* were "starkly different" from the circumstances in the case presented. *McDade*, 2014 WL 697794 at \*5. Further, *Inciarrano* was "not based on a general rule that utterances associated with criminal activity are by virtue of that association necessarily uttered in circumstances that make unjustified any expectation that the utterances will not be intercepted" and could not "be used as a basis for the decision reached by the Second District, which turns on McDade's status as a person engaged in crimes involving the sexual abuse of child." *McDade*, 2014 WL 697794 at \*6.

<sup>10</sup> *McDade*, 2014 WL 697794 at \*7.

**III. Effect of Proposed Changes:**

The bill addresses the decision of the Florida Supreme Court in *McDade v. State*.<sup>11</sup> The bill creates a new exception in s. 934.03, F.S., to the general prohibition in that statute against interception of oral communications. The bill provides that it is lawful for a child under 18 years of age to intercept and record an oral communication if the child has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against another person.

As a result of this exception, the recording would not be proscribed and the exclusionary rule in s. 934.06, F.S., would not prohibit the recording from being received in evidence in a criminal proceeding.

The bill takes effect on July 1, 2015.

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

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<sup>11</sup> 2014 WL 6977944 (Fla. 2014).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 934.03 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Criminal Justice on March 2, 2015:**

Amends the description of unlawful acts against a child under 18 years of age to include an unlawful sexual act.

- B. **Amendments:**

None.



858552

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2015	.	
	.	
	.	
	.	

---

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

**Senate Amendment**

Delete line 22  
and insert:  
unlawful sexual act or an unlawful act of physical force or  
violence against the child.

By Senator Benacquisto

30-00516C-15

2015542\_\_

A bill to be entitled

An act relating to interception of wire, oral, or electronic communication; amending s. 934.03, F.S.; authorizing a child younger than 18 years of age to intercept and record an oral communication if the child is a party to the communication and certain conditions are met; providing an effective date.

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

Section 1. Paragraph (k) is added to subsection (2) of section 934.03, Florida Statutes, to read:

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(2)

(k) It is lawful under ss. 934.03-934.09 for a child under 18 years of age to intercept and record an oral communication if the child is a party to the communication and has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful act of physical force or violence against the child.

Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/15

Meeting Date

SB542

Bill Number (if applicable)

Topic electronic eavesdropping

Amendment Barcode (if applicable)

Name Lauren Book

Job Title CEO / President

Address 104 West Jefferson

Phone 850-224-3427

Street

City

TLIF

TLH

State

Zip

Email Lauren @ Lauren's Kids, org

Speaking:  For  Against  Information

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

Representing Lauren's Kids

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/15

Meeting Date

SB 542

Bill Number (if applicable)

Topic electronic eaves dropping

Amendment Barcode (if applicable)

Name Ron Book

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

Address 104 West Jefferson

Phone 850-224-3427

Street

TLF

FLA

32301

Email Ron@RonBookPA.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Lauren's Kids

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/15  
Meeting Date

SB 542  
Bill Number (if applicable)

Topic RT Interception of Wire, Oral, or Electronic Comm. Devices

Amendment Barcode (if applicable)

Name Bonny Bishop III

Job Title President of the Florida Smart Justice Alliance

Address 204 S. Monroe St.

Phone (850) 577-3025

Street

City

Tallahassee

FL

State

Zip

Email Bonny@bonnybishop.com

Speaking:  For  Against  Information

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

Representing The 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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3.2.2015

Meeting Date

542

Bill Number (if applicable)

Topic Interception of Wire Communications

Amendment Barcode (if applicable)

Name Jannah Carroll

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

Address 123 S. Adams Street

Phone \_\_\_\_\_

Street

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Sheriffs 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**

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Banking and Insurance, *Chair*  
Appropriations, *Vice Chair*  
Appropriations Subcommittee on Health  
and Human Services  
Education Pre-K-12  
Higher Education  
Judiciary  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee  
Joint Select Committee on Collective Bargaining

**SENATOR LIZBETH BENACQUISTO**  
30th District

*Rec'd  
2/10/15*

February 5, 2015



The Honorable Greg Evers  
Senate Criminal Justice, Chair  
308 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

**RE: SB 542- Relating to Interception of a Communication**

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 542, Relating to Interception of a Communication, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Lizbeth Benacquisto  
Senate District 30

Cc: Amanda Cannon

**REPLY TO:**

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

Room: LL 37

Case:

Type:

Caption: Senate Criminal Justice Committee Judge:

Started: 3/2/2015 1:05:05 PM

Ends: 3/2/2015 3:13:29 PM Length: 02:08:25

1:05:08 PM Meeting called to order  
1:07:31 PM Tab 7-SB 542 by Senator Benacquisto — Interception of Wire, Oral, or Electronic Communication  
1:08:55 PM Barcode 858552 by Senator Bradley  
1:10:19 PM Barney Bishop III, President of the Florida AMRA  
1:11:11 PM Ron Book, Electronic eavesdropping, speaks, Lauren's Kids  
1:13:48 PM Lauren Book, Electronic Eavesdropping, Lauren's Kids  
1:17:04 PM Sarah Carroll, Florida Sheriffs Association waived in support.  
1:17:41 PM Roll call for SB 742  
1:18:40 PM Tab 6-SB 378 by Senator Garcia and Senator Gibson, Juvenile Justice  
1:20:37 PM Barcode 615206 by Senator Brandes  
1:22:26 PM Senator Bradley speaks on amendment  
1:28:31 PM SB 378 Tp'd  
1:29:26 PM Tab 4-SB 312 by Senator Detert, Restitution for Juvenile Offenses  
1:31:08 PM Honorable Nancy Daniels, Florida Public Defender Association, Inc.  
1:36:45 PM Senator Detert closes on SB 312  
1:37:06 PM Roll call for SB 312  
1:37:37 PM Tab 5-SB 330 by Senator Dean — Missing Persons with Special Needs  
1:38:28 PM Barcode.104312 by Senator Bradley  
1:39:39 PM Gary Stein, FAAST, Inc. speaks on SB 330  
1:41:11 PM Barry Bishop waived in support.  
1:41:34 PM Amy Dectz, mother of disabled child.  
1:43:17 PM Sarrah Carroll, waived in support.  
1:43:48 PM Senator Brandes speaks on SB 330.  
1:44:31 PM Roll call on SB 330.  
1:45:04 PM Tab 2-SB 162 by Senator Joyner & Senator Bradley — Compensation of Victims of Wrongful Incarceration  
1:48:25 PM Barney Bishop waived in support.  
1:48:53 PM Honorable Nancy Daniels waived in support.  
1:49:08 PM Roll call on SB 162.  
1:49:46 PM Tab 3-SB 164 by Senator Evers — Crime Stoppers Trust Fund  
1:50:37 PM Deborah Roche, Santa Rosa Crime Stoppers (Florida Assoc. of CS FACS)  
1:53:59 PM Roll call for SB 164  
1:56:22 PM Tab 1-Testimony by employees of Dept.of Corrections, other state employees and others.  
1:59:37 PM Senator Evers asks a question of Julie Jones, Secretary of Dept. of Corrections.  
2:20:33 PM Senator Bradley asks a question of Secretary Julie Jones  
2:37:51 PM Julie Jones, Secretary, DOC  
2:39:27 PM Tim Cannon, Deputy Secretary, DOC  
2:41:57 PM Mike Weber, Specialized Services Director, Dept. of Management Services  
2:45:39 PM Senator Evers asked a question of Julie Jones, Secretary, DOC.  
2:52:39 PM Senator Clemens asked Senator Evers a question.  
2:58:05 PM Senator Bradley makes some comments.  
3:03:12 PM Tim Cannon, Deputy Secretary, DOC was asked questions by Senator Brandes.  
3:12:53 PM MEETING AJOURNED



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR AUDREY GIBSON**  
9th District

**COMMITTEES:**  
Criminal Justice, *Vice Chair*  
Military and Veterans Affairs, Space, and  
Domestic Security, *Vice Chair*  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development  
Communications, Energy, and Public Utilities  
Rules  
Joint Legislative Auditing Committee

March 2, 2015

Senator Andy Gardiner, President  
409 The Capitol  
404 South Monroe St.  
Tallahassee, FL 32399

Mr. President:

I, respectfully ask to be excused from the first week of Legislative Session, because of the passing of my mother Dr. Lois D. Gibson.

Thank you in advance for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Audrey Gibson".

Audrey Gibson  
State Senator  
Senate District 9

Cc: Debbie Brown, Senate Secretary

REPLY TO:

- 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904)359-2553 FAX: (904) 359-2532
- 205 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore