

Tab 1 SB 936 by Powell; (Similar to H 00509) Juvenile Justice

348374	A	S		CJ, Powell	Delete L.83 - 92.	01/12 01:17 PM
284830	A	S		CJ, Powell	Delete L.268 - 273:	01/12 01:17 PM
392502	A	S		CJ, Powell	Delete L.389 - 433:	01/12 01:18 PM
531932	A	S		CJ, Powell	Delete L.480 - 481:	01/12 01:18 PM

Tab 2 SB 1004 by Brandes; (Similar to H 00361) Persons Authorized to Visit State Juvenile Facilities

245102	A	S	RCS	CJ, Brandes	Delete L.23 - 44:	01/16 02:25 PM
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Tab 3 SB 1206 by Brandes; Supervised Community Release

211666	D	S	RCS	CJ, Brandes	Delete everything after	01/16 02:25 PM
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Tab 4 SB 1208 by Brandes; (Similar to H 01169) Florida Correctional Operations Oversight Council

536786	A	S	RCS	CJ, Brandes	Delete L.84 - 87:	01/16 02:25 PM
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Tab 5 SB 1220 by Brandes; (Similar to H 00929) Custodial Interrogations

580628	A	S	RCS	CJ, Brandes	Delete L.58 - 67:	01/16 02:25 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Bracy, Chair
Senator Baxley, Vice Chair

MEETING DATE: Tuesday, January 16, 2018
TIME: 1:30—3:30 p.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Bracy, Chair; Senator Baxley, Vice Chair; Senators Bean, Bradley, Brandes, Grimsley, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 936 Powell (Similar H 509, Compare H 195, S 288, S 1552)	Juvenile Justice; Creating an exception to the suspension of civil rights upon the conviction of a felony for children convicted as adults; revising the list of crimes for which children of specified ages who are charged with committing, attempting to commit, or conspiring to commit may have an information filed against them by a state attorney; requiring children of certain ages who are convicted and sentenced to the Department of Corrections to be kept completely separated from adult offenders in the facility, etc. CJ 01/16/2018 Temporarily Postponed ACJ AP	Temporarily Postponed
2	SB 1004 Brandes (Similar H 361)	Persons Authorized to Visit State Juvenile Facilities; Authorizing specified persons to visit, during certain hours, all state facilities housing juveniles which are operated or overseen by the Department of Juvenile Justice; prohibiting the department from unreasonably withholding permission for visits to such facilities by certain persons, etc. CJ 01/16/2018 Fav/CS RC	Fav/CS Yeas 6 Nays 0
3	SB 1206 Brandes	Supervised Community Release; Authorizing the Department of Corrections to extend the limits of confinement to allow an inmate to participate in supervised community release, subject to certain requirements, as prescribed by the department by rule; authorizing a law enforcement officer to arrest, or a probation officer to arrest or request any county or municipal law enforcement officer to arrest, the inmate without warrant wherever he or she is found under certain circumstances, etc. CJ 01/16/2018 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, January 16, 2018, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1208 Brandes (Similar H 1169)	Florida Correctional Operations Oversight Council; Creating the council within the Office of Chief Inspector General; specifying the purpose of the council; providing terms of office and requirements regarding the council's membership; prohibiting the council from interfering with the operations of the Department of Corrections or the Department of Juvenile Justice; establishing certain restrictions applicable to members of the council and council staff, etc. CJ 01/16/2018 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0
5	SB 1220 Brandes (Similar H 929)	Custodial Interrogations; Requiring that a custodial interrogation at a place of detention be electronically recorded in its entirety in connection with certain offenses; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a place other than a place of detention to prepare a specified report; providing immunity from civil liability to law enforcement agencies that enforce certain rules, etc. CJ 01/16/2018 Fav/CS JU RC	Fav/CS Yeas 6 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 936

INTRODUCER: Senator Powell

SUBJECT: Juvenile Justice

DATE: January 12, 2018

REVISED: _____

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

I. Summary:

SB 936 eliminates mandatory direct file of a child and changes the discretionary prosecution of children as adults by:

- Modifying the age in which a child can be prosecuted as an adult from 14 or 15 to 16 or 17 and limits the specified offenses that qualify a child to be prosecuted as an adult.
- Prohibiting the prosecution of a 16 or 17 year old as an adult for the offense of grand theft in violation of s. 812.014(2)(a), F.S.
- Providing a child transferred to adult court the opportunity to request a hearing before the court to determine if his or her case should remain in adult court.

The bill requires the court to include certain information in the disposition order or the judgment and sentence order at the time the court adjudicates a case eligible for transfer to adult court.

The bill removes involuntary mandatory waiver from the judicial waiver process and provides that only a child of 14 years of age or older can be subject to an indictment by a grand jury.

The bill prohibits a child who is incompetent or has a pending competency hearing from being transferred to adult court until his or her competency is restored.

The bill provides that a child transferred to adult court may be sentenced as an adult, a youthful offender under ch. 958, F.S., or a juvenile. The bill also modifies and adds criteria that the court must consider when determining what type of sanctions are appropriate.

The bill requires the Department of Juvenile Justice (DJJ) to collect and annually report data to the Governor, President of the Senate, and Speaker of the House of Representatives regarding children who qualify for prosecution as adults. The DJJ must work with the Office of Program Policy Analysis and Government Accountability (OPPAGA) to aggregate the data and create a report.

The bill prohibits children convicted as adults from losing their civil rights.

The bill is effective July 1, 2018.

II. Present Situation:

Transferring of a Child to Adult Court

There are three methods of transferring a child to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing an information.

Judicial Waiver

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. Section 985.556, F.S., provides three types of judicial waivers:

- Voluntary Waiver – the child requests to have his or her case transferred to adult court;¹
- Involuntary Discretionary Waiver – the state attorney may file a motion requesting the court to transfer any case where the child is 14 years of age or older;² and
- Involuntary Mandatory Waiver – the state attorney must request the transfer of a child 14 years of age or older if the child:
 - Has been previously adjudicated delinquent for an enumerated felony³ and the child is currently charged with a second or subsequent violent crime against a person; or
 - Was 14 years of age or older at the time of commission of a fourth or subsequent felony offense and was previously adjudicated delinquent or had adjudication withheld for three felony offenses, one or more of which involved the use or possession of a firearm or violence against a person.⁴

If the state attorney files a motion to transfer a child to adult court, the court must hold a hearing to determine whether the child should be transferred.⁵ The court must consider the following factors to determine whether transfer is appropriate:

- The seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child;
- Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the alleged offense was against persons or against property;
- The probable cause found in the report, affidavit, or complaint;
- The desirability of trial and disposition of the entire offense in one court when the child's associates in the alleged crime are adults or children who are to be tried as adults;
- The sophistication and maturity of the child;
- The record and previous history of the child, including:

¹ Section 985.556(1), F.S.

² Section 985.556(2), F.S.

³ The enumerated felonies are: murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery. *See* s. 985.556(3)(a), F.S.

⁴ Section 985.556(3), F.S.

⁵ Section 985.556(4), F.S.

- Previous contacts with the DJJ, Department of Corrections (DOC), former Department of Health and Rehabilitative Services (HRS), Department of Children and Families (DCF), other law enforcement agencies, and court;
- Prior periods of probation;
- Prior adjudications that the child committed a delinquent act or violation of law; and
- Prior commitments to institutions.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child.⁶

The court must provide an order specifying the reasons for its decision to impose adult sanctions.⁷

If a child is transferred to adult court by a voluntary waiver or involuntary discretionary waiver and is found to have committed the offense or a lesser included offense, the court may sentence the child as an adult, a youthful offender, or a juvenile.⁸ If the transfer was by an involuntary mandatory waiver, the court must impose adult sanctions.⁹

Indictment by a Grand Jury

Section 985.56, F.S., specifies that a child of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment by a grand jury. If the grand jury returns an indictment on the charge, the child's case must be transferred to adult court.¹⁰

If the child is found to have committed the offense punishable by death or life imprisonment, the court must sentence the child as an adult.¹¹ If the child is instead found to have committed a lesser included offense or any other offense for which he or she was indicted as part of the criminal episode, the court may sentence the child as an adult, a youthful offender, or a juvenile.¹²

Direct File

Direct file is when a state attorney files an information charging a child in adult court. Direct file under s. 985.557, F.S., can either be discretionary or mandatory. Direct file is the predominant transfer method to adult court accounting for 98 percent of the transfers each year.¹³

Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney with discretion to file a case in adult court for certain juvenile cases when he or she believes the offense requires that adult sanctions be

⁶ Section 985.556(4)(c), F.S.

⁷ Section 985.556(4)(e), F.S.

⁸ Section 985.565(4)(a)2.a.-c., F.S.

⁹ Section 985.565(4)(a)3., F.S.

¹⁰ Section 985.56(1), F.S.

¹¹ Section 985.565(4)(a)1., F.S.

¹² Section 985.565(4)(a)1.a.-c., F.S.

¹³ SB 936 (2018) is similar to SB 192 (2017). Department of Juvenile Justice, *2017 Bill Analysis for CS/SB 192 (2017)*, (March 6, 2017) (on file with the Senate Criminal Justice Committee).

considered or imposed. Specifically, the state attorney may file an information (direct file a child) in adult court when a child is:

- 14 or 15 years of age and is charged with one of the following felony offenses:
 - Arson;
 - Sexual battery;
 - Robbery;
 - Kidnapping;
 - Aggravated child abuse;
 - Aggravated assault;
 - Aggravated stalking;
 - Murder;
 - Manslaughter;
 - Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - Armed burglary in violation of s. 810.02(2)(b), F.S.;
 - Burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
 - Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
 - Aggravated battery;
 - Any lewd or lascivious offense committed upon or in the presence of a person less than 16;
 - Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
 - Grand theft in violation of s. 812.014(2)(a), F.S.;
 - Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
 - Home invasion robbery;
 - Carjacking;
 - Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or
 - Grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.¹⁴
- 16 or 17 years of age and is charged with any felony offense;¹⁵ or
- 16 or 17 years of age and is charged with a misdemeanor, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.¹⁶

If a child transferred to adult court by discretionary direct file is found to have committed the offense or a lesser included offense, the court may sentence the child as an adult, a youthful offender, or a juvenile.¹⁷

Mandatory Direct File

Section 985.557(2), F.S., requires the state attorney to file a case in adult court when the child is:

- 16 or 17 years of age at the time of the alleged offense and:

¹⁴ Section 985.557(1)(a)1.-19., F.S.

¹⁵ Section 985.557(1)(b), F.S.

¹⁶ *Id.*

¹⁷ Sections 985.565(4)(a)2. and (b), F.S.

- Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;¹⁸
- Is charged with a forcible felony¹⁹ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other;²⁰ or
- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)1.a.-p., F.S.,²¹ and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;²² or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the child, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.

The court has the discretion to sentence a child transferred to adult court by mandatory direct file as an adult, a youthful offender, or a juvenile if:

- The child was 16 or 17 years old at the time of the offense, the charged offense is listed in s. 775.087(2)(a)1.a.-p., F.S., and during the commission of the offense the child actually possessed or discharged a firearm or destructive device; or
- The charged offense involves stealing a vehicle in which the child, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.²³

However, the court must impose adult sanctions for a child transferred to adult court by mandatory direct file who was 16 or 17 years old at the time of the offense and:

- Is charged with committing a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony; or
- Is charged with committing a forcible felony and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other.²⁴

¹⁸ The enumerated felonies include: murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault. *See* s. 985.557(2)(a), F.S.

¹⁹ Section 776.08, F.S., defines “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the threat of physical force or violence against any individual.

²⁰ Section 985.557(2)(b), F.S., provides that this provision does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the child in adult court.

²¹ The offenses include murder; sexual battery; robbery; burglary; arson; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis; trafficking in cocaine; capital importation of cocaine; trafficking in illegal drugs; capital importation of illegal drugs; trafficking in phencyclidine; capital importation of phencyclidine; trafficking in methaqualone; capital importation of methaqualone; trafficking in amphetamine; capital importation of amphetamine; trafficking in flunitrazepam; trafficking in gamma-hydroxybutyric acid (GHB); trafficking in 1,4-Butaneidol; trafficking in Phenethylamines; or other violation of s. 893.135(1), F.S. Section 775.087(2)(a)1.a.-p., F.S.

²² The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

²³ Section 985.565(4)(a)2., F.S.

²⁴ Section 985.565(4)(a)3., F.S.

Imposing Adult or Juvenile Sanctions

Judges often have discretion to impose adult or juvenile sanctions when a child is transferred to adult court and found to have committed an offense. In determining whether adult or juvenile sanctions are appropriate, the judge must consider the following factors:

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;²⁵
- The sophistication and maturity of the offender;
- The record and previous history of the offender, including:
 - Previous contacts with the DOC, DJJ, former HRS, DCF, law enforcement agencies, and the courts;
 - Prior periods of probation;
 - Prior adjudications that the offender committed a delinquent act or violation of law as a child; and
 - Prior commitments to the DJJ, former HRS, DCF, or other facilities or institutions;
- The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to the DJJ's services and facilities;
- Whether the DJJ has appropriate programs, facilities, and services immediately available; and
- Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than juvenile sanctions.²⁶

If juvenile sanctions are imposed, the court must adjudge the child to have committed a delinquent act²⁷ and may:

- Place the child on probation with the DJJ for an indeterminate period of time until he or she reaches the age of 19 years or sooner if discharged by order of the court;
- Commit the child to the DJJ for treatment in an appropriate program for an indeterminate period of time until he or she reaches 21 years of age or sooner if discharged by the DJJ;²⁸ or
- Order any of the following if the court determines not to impose youthful offender or adult sanctions:
 - Probation and postcommitment probation or community service under s. 985.435, F.S.;
 - Restitution under s. 985.437, F.S.;
 - Consequences for violation of probation or postcommitment probation under s. 985.439, F.S.;
 - Commitment under s. 985.441, F.S.;
 - Work program liability and remuneration under s. 985.45, F.S.; and

²⁵ Greater weight is given to offenses against persons, especially if personal injury resulted.

²⁶ Section 985.565(1)(b), F.S.

²⁷ Section 985.565(4)(b), F.S. Adjudication of delinquency is not deemed a conviction, nor does it operate to impose any of the civil disabilities ordinarily resulting from a conviction.

²⁸ The DJJ must notify the court of its intent to discharge no later than 14 days prior to discharge. Failure of the court to timely respond to the DJJ's notice shall be considered approval for discharge.

- Other dispositional issues under s. 985.455, F.S.²⁹

If the court imposes a juvenile sanction and the DJJ determines that the sanction is unsuitable for the child, the DJJ must return custody of the child to the sentencing court for further proceedings, including the imposition of adult sanctions.³⁰

Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or list the criteria used as any basis for its decision to impose adult sanctions.³¹

The court may not sentence a child to a combination of adult and juvenile sanctions.³²

Effect of Transferring a Child to Adult Court

If a child transferred to adult court is found to have committed the offense or a lesser included offense, the child must have any subsequent violations of law handled in adult court.³³ The court must also immediately transfer and certify all unresolved³⁴ felony cases pertaining to the child to adult court for prosecution.³⁵

If the child is acquitted of all charged offenses (or lesser included offenses) contained in the originally direct filed case, all felony cases transferred to adult court as a result of the originally transferred case must be subject to juvenile sanctions.³⁶

Detention Transfer and Release

The court must order the delivery of a child to a jail or other facilities intended or used for the detention of adults in the following circumstances:

- When the child has been transferred or indicted for prosecution as an adult;³⁷ or
- When a child taken into custody in this state is wanted by another jurisdiction for prosecution as an adult.³⁸

²⁹ Section 985.565(4)(b)1.-3., F.S.

³⁰ Section 985.565(4)(b), F.S.

³¹ Section 985.565(4)(a)4., F.S.

³² Section 985.565(4)(b), F.S.

³³ Sections 985.556(5), 985.56(4)(a), 985.557(3)(a), F.S. This provision does not apply if the adult court imposes juvenile sanctions under s. 985.565, F.S.

³⁴ Unresolved cases include those which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not yet been made. *See* s. 985.557(3)(b), F.S.

³⁵ Sections 985.556(5), 985.56(4), and 985.557(3), F.S.

³⁶ *Id.*

³⁷ The court may not order or allow a child alleged to have committed a misdemeanor who is being transferred for prosecution pursuant so either ss. 985.556 or 985.557, F.S., to be detained or held in a jail or other facility intended or used for the detention of adults; however, such child may be held temporarily in a detention facility. Section 985.265(5)(a), F.S.

³⁸ Section 985.265(5), F.S.

Suspension of Civil Rights

The civil rights of a person are suspended in Florida upon conviction of a felony.³⁹ These rights are suspended until they are restored by a full pardon, conditional pardon, or restoration of civil rights pursuant to Art. IV, s. 8 of the State Constitution.⁴⁰

The power to pardon and restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members.⁴¹ Section 940.05, F.S., provides that a person who has been convicted of a felony may be entitled to the restoration of all the rights of citizenship enjoyed by him or her before conviction if the person has:

- Received a full pardon from the Board of Executive Clemency;
- Served the maximum term of the sentence imposed upon him or her; or
- Been granted his or her final release by the Florida Commission on Offender Review.⁴²

III. Effect of Proposed Changes:

Judicial Waiver (Section 2, amending s. 985.556, F.S.)

The bill eliminates involuntary mandatory waiver from the judicial waiver process. Related to hearings on transfer requests, the bill also repeals the factor which required the court to consider the desirability of the trial and disposition of the case be handled in the same court as the child's codefendants. Furthermore, the bill adds a factor to require the court to consider a child's mental development in determining whether a child should be transferred to adult court.

Indictment of a Juvenile (Section 4, amending s. 985.56, F.S.)

The bill specifies that only a child 14 years of age or older can be subject to an indictment by a grand jury.

The bill prohibits a child eligible for indictment from being transferred to adult court until his or her competency is restored if he or she has:

- A pending competency hearing in juvenile court; or
- Been previously found to be incompetent and has not been restored to competency by a court.

The bill provides that a pending competency hearing or a finding of incompetency tolls the time limits provided in s. 985.56(2), F.S.

³⁹ A person's loss of certain civil rights as a result of a felony conviction are specified both in the Florida Constitution and Florida Statutes. The Florida Constitution specifies the loss of the right to vote and the right to hold public office. *See* Article IV, s. 4, Fla. Const. Section 40.013, F.S., specifies the loss of the right to serve on a jury and ss. 790.06(2)(d) and (k) and 790.23, F.S., specify the loss of the right to possess a firearm.

⁴⁰ Section 944.292(1), F.S.

⁴¹ Article IV, s. 8(a), Fla. Const. *See also* s. 940.01, F.S.

⁴² Section 940.05, F.S.

Prosecuting Children as Adults (Direct File) (Section 3, amending s. 985.557, F.S.)

The bill eliminates mandatory direct file and modifies the discretionary prosecution of children as adults (discretionary direct file). The bill changes the age in which a child can be prosecuted as an adult from 14 or 15 to 16 or 17.

The bill narrows the discretion afforded to a state attorney in prosecuting a child as an adult, providing that a 16 or 17-year-old child may only be prosecuted as an adult when he or she commits one of the qualifying offenses enumerated in s. 985.557(1)(a), F.S. The bill removes grand theft in violation of s. 812.014(2)(a), F.S., from the list of qualifying offenses.

The bill requires the DOC to make every reasonable effort to ensure that any child between the ages of 14 and 18 years old who is convicted and sentenced be completely separated from adult offenders in the facility.

The bill requires the court, beginning October 1, 2018, with the assistance of the DJJ, prosecutor, and defense counsel, to include the following information in the disposition order or the judgement and sentence order at the time the court adjudicates a case eligible for transfer to adult court:

- Whether the case was adjudicated in juvenile or adult court;
- The length of time the child spent in a detention facility or jail awaiting disposition;
- If the case was adjudicated in juvenile court:
 - Whether the child had to waive statutory limits on secure detention in order to avoid being prosecuted as an adult and, if available, the amount of time the child who waived secure detention limits actually spent in secure detention;
 - Whether the child waived the right to trial in exchange for the case remaining in juvenile court;
 - If the decision not to transfer to adult court resulted in a plea agreement, the details of the plea agreement, including previous plea offers made by the state but not accepted by the child, and any conditions placed on the plea offer;
 - Whether any discovery was conducted on the case before the plea; and
 - Whether the judge sentenced the child to a disposition other than what the prosecutor was offering in exchange for the child not being prosecuted as an adult.
- If the case was adjudicated in adult court:
 - Whether any discovery was conducted on the case after the child's transfer to adult court;
 - Whether the sentence was the result of a plea agreement that did not involve the judge;
 - Whether the sentence was the result of a plea agreement that did involve the judge; and
 - Whether the sentence was the result of a trial.

The bill provides that the chief judge in each judicial circuit must collect the information specified above for all cases disposed of in the previous month and submit that information to the DJJ on or before the 15th of each month.

Fitness Hearings before a Judge (Section 3, amending s. 985.557, F.S.)

A child transferred to adult court by discretionary prosecution may request a hearing before the court to determine whether public safety would be best served by keeping the child in adult court. In making this determination, the court must consider:

- The seriousness of the offense;
- The extent of the child's alleged participation or role in the offense;
- The sophistication, maturity, and mental development of the child;
- Any prior adjudications or adjudications withheld of the child; and
- Any other consideration set forth in s. 985.556(3)(c), F.S.

Based on these considerations, the adult court may transfer the case back to juvenile court.

Transfer Prohibitions (Section 3, amending s. 985.557, F.S.)

A child eligible for discretionary prosecution as an adult who has been previously found to be incompetent cannot be transferred to adult court for criminal prosecution until his or her competency has been restored.

Data Collection Relating to Prosecuting Children as Adults (Section 3, amending s. 985.557, F.S.)

The bill requires the DJJ, beginning January 1, 2019, to collect data relating to children who qualify to be prosecuted as adults. This data includes, but is not limited to:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence and offense;
- Prior adjudications or adjudications withheld;
- Prior periods of probation, including any violations of probation;
- Previous contact with law enforcement agencies or the court which resulted in a civil citation, arrest, or other charge being filed with the state;
- Initial charges;
- Charges at disposition;
- Whether child codefendants were involved who were transferred to adult court;
- Whether the child was represented by counsel or waived counsel;
- The child's risk assessment instrument score;
- The child's medical, mental health, substance abuse, or trauma history;
- The child's history of mental impairment or disability-related accommodations;
- The child's history of abuse or neglect;
- The child's history of foster care placements, including the number of prior placements;
- Whether the child has below-average intellectual functioning;
- Whether the child has received mental health services or treatment;
- Whether the child has been the subject of a child-in-need-of-services or families-in-need-of-services petition or a dependency petition;
- Whether the child was transferred for criminal prosecution as an adult;

- The case resolution in juvenile court;
- The case resolution in adult court; and
- Information generated by the state attorney's office in each judicial circuit under s. 985.557(1)(c)1., F.S.

Beginning January 1, 2019, the DJJ must also collect data relating to children transferred for prosecution as an adult. This data includes, but is not limited to:

- Disposition data, including, but not limited to, adult sanctions, juvenile sanctions, or diversions received and, if sentenced to prison, the length of the prison sentence or the length of the enhanced sentence; and
- Incompetence to proceed in juvenile court.

The DJJ must work with OPPAGA to generate a report analyzing the aggregated data listed above for every juvenile case transferred between July 1, 2017, and June 30, 2018. Such report must be provided to the Governor, President of the Senate, and Speaker of the House by January 31, 2019.

The DJJ must work with OPPAGA analyzing the aggregated data listed above on an annual basis. Such report must be provided annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 31 of the following calendar year.

Imposing Adult or Juvenile Sanctions (Section 5, amending s. 985.565, F.S.)

The bill adds additional criteria and modifies existing criteria that the court must consider when determining whether to impose adult or juvenile sanctions.

The bill adds the following criteria that courts must consider:

- The extent of the child's participation in the offense.
- The effects, if any, of familial or peer pressure on the child's actions.
- Whether the DOC has appropriate programs, facilities, and services immediately available.

The bill modifies the following existing criteria that courts must consider:

- The sophistication, maturity, and mental development of the child, including:
 - The child's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense;
 - The child's background, including his or her family, home, and community environment;
 - The effect, if any, of immaturity, impetuosity, or failure to appreciate the risks and consequences of the offense on the child's participation in the offense; and
 - The effect, if any, of characteristics attributable to the child's age on the child's judgment.
- The record and previous history of the child, including:
 - Previous contacts with the DOC, DJJ, former HRS, or DCF, and the adequacy and appropriateness of the services provided by the DJJ to address the child's needs;

- Prior commitments to the DJJ, former HRS, DCF, or other facilities or institutions and the adequacy and appropriateness of the services provided by such entity to address the child's needs;
- Previous contacts with law enforcement agencies and the courts;
- History of abuse, abandonment, neglect, or foster care placements;
- Identification of the child as having a disability; and
- History of mental health services or treatment.

The bill provides that a child transferred pursuant to indictment, information (discretionary prosecution), or waiver of juvenile court jurisdiction and found to have committed a violation of law or a lesser included offense may be sentenced:

- As an adult;
- As a youthful offender under ch. 958, F.S.; or
- As a juvenile.

Detention Transfer and Release (Section 8, amending s. 985.265, F.S.)

The bill provides that the court is authorized, but not required, to order a child to be delivered to a jail or other facility intended or used for the detention of adults in certain circumstances.

Suspension of Civil Rights (Section 1, amending s. 944.292, F.S.)

The bill provides that a child convicted as an adult will not be subject to the suspension of his or her civil rights.

Other (Sections 6, 7, 8, 9, 10)

The bill also amends ss. 985.03 and 985.15, F.S., to reflect changes made by the bill and reenacts ss. 985.26(2)(c) and 985.514(3), F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted section.

The bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill provides that a child convicted as an adult will not be subject to the suspension of his or her civil rights. Florida's Constitution and Florida Statutes provide that a person's civil rights are suspended upon conviction of a felony.⁴³ These rights are suspended until they are restored by a full pardon, conditional pardon, or restoration of civil rights pursuant to Art. IV, s. 8 of the State Constitution.⁴⁴

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is likely to reduce the number of children transferred to the adult system, thus increasing the DJJ's population. The Criminal Justice Impact Conference has not provided an estimate of the bill's impact. However, to the extent that these changes occur, the bill will likely result in a significant negative prison bed impact (a decrease in the number of prison beds) on the DOC and a significant positive residential bed impact (an increase in the number of beds) on the DJJ.

The DJJ and the DOC have not yet submitted analyses for this bill. The DJJ's conservative estimate for a similar bill in 2017 (CS/SB 192) was that the bill would avert approximately 315 youth from direct file. Whereas, this bill further limits the number of children who could be prosecuted as an adult, which would lead to more children remaining under the supervision of the DJJ. The DJJ estimated the fiscal impact of the bill to be a minimum of \$19.02 million in the first year and \$24.70 million annually in subsequent years.⁴⁵

The fiscal impact estimate did not take into consideration the need to procure additional programs and to build or procure facilities to accommodate this additional population. The DJJ's current operating capacity is just over 2,100 residential beds and has a utilization rate of 98 percent. If sufficient beds were not made available, youth awaiting placement to a residential program would be housed in secure detention or in their home communities, creating a significant backlog of youth awaiting placement.⁴⁶

⁴³ See Article IV, s. 4, Fla. Const. and ss. 790.06(2)(d) and (k), 790.23, and 944.292, F.S.

⁴⁴ Section 944.292(1), F.S.

⁴⁵ Department of Juvenile Justice, *2017 Bill Analysis for CS/SB 192*, (March 6, 2017) (on file with the Senate Committee on Criminal Justice).

⁴⁶ *Id.*

Alternatively, the DJJ would require funding in addition to the \$24.70 million addressed previously to procure additional programs and to build or procure facilities to house these youths. Construction costs could exceed \$65 million to provide bed space sufficient for the high-risk and max-risk residential programs. The per diem rates used were based on per diems for programs that utilize the DJJ (state-owned) facilities. Per Diem rates for programs that do not utilize state-owned facilities are potentially higher.⁴⁷

Additionally, the bill requires the DJJ to collect data for review and analysis which would require modification of the Juvenile Justice Information System at an estimated cost of \$93,600. The time necessary for analysis, design, testing, and implementation could take up to six months to complete.⁴⁸

Tasks assigned to OPPAGA in the proposed legislation may be accomplished with existing resources.⁴⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 944.292, 985.03, 985.15, 985.265, 985.556, 985.557, 985.56, and 985.565

The bill reenacts the following sections of the Florida Statutes: 985.26 and 985.514.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

⁴⁷ Department of Juvenile Justice, *2017 Bill Analysis for CS/SB 192*, (March 6, 2017) (on file with the Senate Committee on Criminal Justice).

⁴⁸ *Id.*

⁴⁹ Office of Program Policy Analysis and Government Accountability, *2018 Bill Analysis for SB 936*, (December 6, 2017) (on file with the Senate Committee on Criminal Justice).



348374

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 83 - 92.

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

And the title is amended as follows:

Delete lines 2 - 5

and insert:

An act relating to juvenile justice; amending s.
985.556,



284830

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 268 - 273

and insert:

(b)1. Beginning October 1, 2018, the court shall, with the assistance of the department, prosecutor, and defense counsel, include the following information in the disposition order or the judgment and sentence order for all cases eligible for transfer to adult court under this section, s. 985.556, or s. 985.56:



392502

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 389 - 433
and insert:
reasonable effort to ensure that any child who is 16 years of age or older but has not yet reached the age of 18 and ~~16 or 17~~ years of age who is convicted and sentenced under this section ~~is paragraph~~ be completely separated such that there is no physical contact with adult offenders in the facility, to the extent that it is consistent with chapter 958.



392502

11 (2)~~(3)~~ EFFECT OF PROSECUTION OF CHILDREN AS ADULTS DIRECT
12 FILE.—

13 (a) Once a child has been transferred for criminal
14 prosecution pursuant to an information and has been found to
15 have committed the presenting offense or a lesser included
16 offense, the child shall be handled thereafter in every respect
17 as if an adult for any subsequent violation of state law, unless
18 the court imposes juvenile sanctions under s. 985.565.

19 (b) When a child is transferred for criminal prosecution as
20 an adult, the court shall immediately transfer and certify to
21 the adult circuit court all felony cases pertaining to the
22 child, for prosecution of the child as an adult, which have not
23 yet resulted in a plea of guilty or nolo contendere or in which
24 a finding of guilt has not been made. If a child is acquitted of
25 all charged offenses or lesser included offenses contained in
26 the original case transferred to adult court, all felony cases
27 that were transferred to adult court as a result of this
28 paragraph shall be subject to the same penalties to which such
29 cases would have been subject before being transferred to adult
30 court.

31 (c) When a child has been transferred for criminal
32 prosecution as an adult and has been found to have committed a
33 violation of state law, the disposition of the case may be made
34 under s. 985.565 and may include the enforcement of any
35 restitution ordered in any juvenile proceeding.

36 (3) FITNESS HEARING BEFORE A JUDGE.—A child who is
37 transferred to adult court under this section may request, in
38 writing, a hearing before the court to determine whether he or
39 she shall remain in adult court. The adult court, in determining



392502

40 whether public safety would be best served by retaining
41 jurisdiction, shall consider the seriousness of the offense; the
42 extent of the child's alleged participation or role in the
43 offense; the sophistication, maturity, and mental development of
44 the child; any prior adjudications or adjudications withheld of
45 the child; and any other consideration set forth in s.
46 985.556(3)(c). The adult court may, based on these
47 considerations, transfer the case back to juvenile court.

48 (4) TRANSFER PROHIBITION.—Notwithstanding any other law, a
49 child who is eligible for prosecution as an adult and who has a
50 pending competency hearing in juvenile court or who has



531932

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 480 - 481

and insert:

24. Information included in the disposition order or the judgment and sentence order under subparagraph (1) (b)1.

By Senator Powell

30-01093-18

2018936__

1 A bill to be entitled
 2 An act relating to juvenile justice; amending s.
 3 944.292, F.S.; creating an exception to the suspension
 4 of civil rights upon the conviction of a felony for
 5 children convicted as adults; amending s. 985.556,
 6 F.S.; deleting provisions requiring that a state
 7 attorney request the court to transfer and certify a
 8 child for prosecution as an adult under certain
 9 circumstances; revising the factors that a court must
 10 consider when determining whether a child should be
 11 transferred to adult court; amending s. 985.557, F.S.;
 12 eliminating discretionary direct filing for children
 13 of specified ages; revising the list of crimes for
 14 which children of specified ages who are charged with
 15 committing, attempting to commit, or conspiring to
 16 commit may have an information filed against them by a
 17 state attorney; requiring specified information to be
 18 included in certain orders; requiring chief judges of
 19 the judicial circuits to periodically collect and
 20 report certain data to the Department of Juvenile
 21 Justice; deleting provisions requiring that a child be
 22 prosecuted as an adult if the child committed or
 23 attempted to commit specified crimes; deleting
 24 provisions relating to sentencing a child who commits
 25 or attempts to commit specified crimes; requiring
 26 children of certain ages who are convicted and
 27 sentenced to the Department of Corrections to be kept
 28 completely separated from adult offenders in the
 29 facility; authorizing a child who is transferred to

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30 adult court to request, in writing, a hearing before
 31 the court to determine whether he or she shall remain
 32 in adult court; requiring the court to consider
 33 specified facts in determining whether the public
 34 safety would be served by retaining jurisdiction;
 35 authorizing the court to transfer a child back to a
 36 juvenile court; prohibiting the transfer of a child to
 37 adult court until his or her competency is restored in
 38 certain circumstances; requiring the department,
 39 beginning on a specified date, to collect specified
 40 information relating to children who qualify for
 41 prosecution as adults and children who are transferred
 42 for criminal prosecution as adults; requiring the
 43 department to work with the Office of Program Policy
 44 Analysis and Government Accountability to generate a
 45 report analyzing the data of juveniles transferred for
 46 prosecution as adults during a certain period and
 47 provide such report to the Governor and Legislature by
 48 a specified date; requiring the department to work
 49 with the Office of Program Policy Analysis and
 50 Government Accountability to generate an annual report
 51 analyzing certain data and provide such report to the
 52 Governor and Legislature by a specified date; amending
 53 s. 985.56, F.S.; providing a minimum age limit for
 54 children who are subject to the jurisdiction of a
 55 court if they are charged with a violation punishable
 56 by death or life imprisonment; prohibiting the
 57 transfer of a child to adult court until his or her
 58 competency is restored in certain circumstances;

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59 providing for the tolling of time limits for specified
 60 purposes; making technical changes; amending s.
 61 985.565, F.S.; revising the criteria to be used in
 62 determining whether to impose juvenile or adult
 63 sanctions; deleting provisions requiring the
 64 sentencing of children who commit offenses punishable
 65 by death or life imprisonment or other specified
 66 offenses; conforming provisions to changes made by the
 67 act; amending s. 985.03, F.S.; conforming a cross-
 68 reference; amending s. 985.15, F.S.; conforming
 69 provisions to changes made by the act; amending s.
 70 985.265, F.S.; authorizing, rather than requiring, a
 71 court to order a child to be housed in an adult
 72 detention facility in certain circumstances;
 73 reenacting s. 985.26(2)(c), F.S., relating to the
 74 definition of the term "disposition," to incorporate
 75 the amendments made to ss. 985.557 and 985.56, F.S.,
 76 in references thereto; reenacting s. 985.514(3), F.S.,
 77 relating to responsibility for cost of care and fees,
 78 to incorporate the amendment made to s. 985.565, F.S.,
 79 in a reference thereto; providing an effective date.

81 Be It Enacted by the Legislature of the State of Florida:
 82

83 Section 1. Subsection (1) of section 944.292, Florida
 84 Statutes, is amended to read:

85 944.292 Suspension of civil rights.—

86 (1) Upon conviction of a felony as defined in s. 10, Art. X
 87 of the State Constitution, the civil rights of the person

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88 convicted, except for a child convicted as an adult pursuant to
 89 s. 985.56, s. 985.556, or s. 985.557, shall be suspended in
 90 Florida until such rights are restored by a full pardon,
 91 conditional pardon, or restoration of civil rights granted
 92 pursuant to s. 8, Art. IV of the State Constitution.

93 Section 2. Subsections (2) through (5) of section 985.556,
 94 Florida Statutes, are amended, and subsection (1) of that
 95 section is republished, to read:

96 985.556 Waiver of juvenile court jurisdiction; hearing.—

97 (1) VOLUNTARY WAIVER.—The court shall transfer and certify
 98 a child's criminal case for trial as an adult if the child is
 99 alleged to have committed a violation of law and, prior to the
 100 commencement of an adjudicatory hearing, the child, joined by a
 101 parent or, in the absence of a parent, by the guardian or
 102 guardian ad litem, demands in writing to be tried as an adult.
 103 Once a child has been transferred for criminal prosecution
 104 pursuant to a voluntary waiver hearing and has been found to
 105 have committed the presenting offense or a lesser included
 106 offense, the child shall be handled thereafter in every respect
 107 as an adult for any subsequent violation of state law, unless
 108 the court imposes juvenile sanctions under s. 985.565(4)(b).

109 (2) INVOLUNTARY DISCRETIONARY WAIVER.—~~Except as provided in~~
 110 ~~subsection (3),~~ The state attorney may file a motion requesting
 111 the court to transfer the child for criminal prosecution if the
 112 child was 14 years of age or older at the time the alleged
 113 delinquent act or violation of law was committed.

114 ~~(3) INVOLUNTARY MANDATORY WAIVER.—~~

115 ~~(a) If the child was 14 years of age or older, and if the~~
 116 ~~child has been previously adjudicated delinquent for an act~~

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117 ~~classified as a felony, which adjudication was for the~~
 118 ~~commission of, attempt to commit, or conspiracy to commit~~
 119 ~~murder, sexual battery, armed or strong-armed robbery,~~
 120 ~~carjacking, home-invasion robbery, aggravated battery,~~
 121 ~~aggravated assault, or burglary with an assault or battery, and~~
 122 ~~the child is currently charged with a second or subsequent~~
 123 ~~violent crime against a person; or~~

124 ~~(b) If the child was 14 years of age or older at the time~~
 125 ~~of commission of a fourth or subsequent alleged felony offense~~
 126 ~~and the child was previously adjudicated delinquent or had~~
 127 ~~adjudication withheld for or was found to have committed, or to~~
 128 ~~have attempted or conspired to commit, three offenses that are~~
 129 ~~felony offenses if committed by an adult, and one or more of~~
 130 ~~such felony offenses involved the use or possession of a firearm~~
 131 ~~or violence against a person;~~

132 ~~the state attorney shall request the court to transfer and~~
 133 ~~certify the child for prosecution as an adult or shall provide~~
 134 ~~written reasons to the court for not making such request, or~~
 135 ~~proceed under s. 985.557(1). Upon the state attorney's request,~~
 136 ~~the court shall either enter an order transferring the case and~~
 137 ~~certifying the case for trial as if the child were an adult or~~
 138 ~~provide written reasons for not issuing such an order.~~

139 ~~(3)(4) WAIVER HEARING BEFORE A JUDGE.-~~

140 ~~(a) Within 7 days, excluding Saturdays, Sundays, and legal~~
 141 ~~holidays, after the date a petition alleging that a child has~~
 142 ~~committed a delinquent act or violation of law has been filed,~~
 143 ~~or later with the approval of the court, but before an~~
 144 ~~adjudicatory hearing and after considering the recommendation of~~
 145

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146 the juvenile probation officer, the state attorney may file a
 147 motion requesting the court to transfer the child for criminal
 148 prosecution.

149 (b) After the filing of the motion of the state attorney,
 150 summonses must be issued and served in conformity with s.
 151 985.319. A copy of the motion and a copy of the delinquency
 152 petition, if not already served, must be attached to each
 153 summons.

154 (c) The court shall conduct a hearing on all transfer
 155 request motions for the purpose of determining whether a child
 156 should be transferred. In making its determination, the court
 157 shall consider:

158 1. The seriousness of the alleged offense to the community
 159 and whether the protection of the community is best served by
 160 transferring the child for adult sanctions.

161 2. Whether the alleged offense was committed in an
 162 aggressive, violent, premeditated, or willful manner.

163 3. Whether the alleged offense was against persons or
 164 against property, greater weight being given to offenses against
 165 persons, especially if personal injury resulted.

166 4. The probable cause as found in the report, affidavit, or
 167 complaint.

168 ~~5. The desirability of trial and disposition of the entire~~
 169 ~~offense in one court when the child's associates in the alleged~~
 170 ~~crime are adults or children who are to be tried as adults.~~

171 5.6- The sophistication, ~~and~~ maturity, and mental
 172 development of the child.

173 6.7- The record and previous history of the child,
 174 including:

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175 a. Previous contacts with the department, the Department of
176 Corrections, the former Department of Health and Rehabilitative
177 Services, the Department of Children and Families, other law
178 enforcement agencies, and courts_+.

179 b. Prior periods of probation_+.

180 c. Prior adjudications that the child committed a
181 delinquent act or violation of law, greater weight being given
182 if the child has previously been found by a court to have
183 committed a delinquent act or violation of law involving an
184 offense classified as a felony or has twice previously been
185 found to have committed a delinquent act or violation of law
186 involving an offense classified as a misdemeanor_+ and

187 d. Prior commitments to institutions.

188 7.8 The prospects for adequate protection of the public
189 and the likelihood of reasonable rehabilitation of the child, if
190 the child is found to have committed the alleged offense, by the
191 use of procedures, services, and facilities currently available
192 to the court.

193 (d) Prior to a hearing on the transfer request motion by
194 the state attorney, a study and report to the court relevant to
195 the factors in paragraph (c) must be made in writing by an
196 authorized agent of the department. The child and the child's
197 parents or legal guardians and counsel and the state attorney
198 shall have the right to examine these reports and to question
199 the parties responsible for them at the hearing.

200 (e) Any decision to transfer a child for criminal
201 prosecution must be in writing and include consideration of, and
202 findings of fact with respect to, all criteria in paragraph (c).
203 The court shall render an order including a specific finding of

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204 fact and the reasons for a decision to impose adult sanctions.
205 The order shall be reviewable on appeal under s. 985.534 and the
206 Florida Rules of Appellate Procedure.

207 ~~(4)(5)~~ EFFECT OF ORDER WAIVING JURISDICTION.-

208 (a) Once a child has been transferred for criminal
209 prosecution pursuant to an involuntary waiver hearing and has
210 been found to have committed the presenting offense or a lesser
211 included offense, the child shall thereafter be handled in every
212 respect as an adult for any subsequent violation of state law,
213 unless the court imposes juvenile sanctions under s. 985.565.

214 (b) When a child is transferred for criminal prosecution as
215 an adult, the court shall immediately transfer and certify to
216 the adult circuit court all felony cases pertaining to the
217 child, for prosecution of the child as an adult, which have not
218 yet resulted in a plea of guilty or nolo contendere or in which
219 a finding of guilt has not been made. If the child is acquitted
220 of all charged offenses or lesser included offenses contained in
221 the original case transferred to adult court, all felony cases
222 that were transferred to adult court under this paragraph shall
223 be subject to the same penalties such cases were subject to
224 before being transferred to adult court.

225 Section 3. Section 985.557, Florida Statutes, is amended to
226 read:

227 985.557 Prosecuting children as adults ~~Direct filing of an~~
228 ~~information;~~ discretionary and mandatory criteria.-

229 (1) DISCRETIONARY PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~
230 ~~FILE~~.-

231 (a) With respect to any child who was 16 ~~14~~ or 17 ~~15~~ years
232 of age at the time the alleged offense was committed, the state

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233 attorney may file an information when in the state attorney's
 234 judgment and discretion the public interest requires that adult
 235 sanctions be considered or imposed and when the offense charged
 236 is for the commission of, attempt to commit, or conspiracy to
 237 commit:

- 238 1. Arson;
- 239 2. Sexual battery;
- 240 3. Robbery;
- 241 4. Kidnapping;
- 242 5. Aggravated child abuse;
- 243 6. Aggravated assault;
- 244 7. Aggravated stalking;
- 245 8. Murder;
- 246 9. Manslaughter;
- 247 10. Unlawful throwing, placing, or discharging of a
 248 destructive device or bomb;
- 249 11. Armed burglary in violation of s. 810.02(2)(b) or
 250 specified burglary of a dwelling or structure in violation of s.
 251 810.02(2)(c), or burglary with an assault or battery in
 252 violation of s. 810.02(2)(a);
- 253 12. Aggravated battery;
- 254 13. Any lewd or lascivious offense committed upon or in the
 255 presence of a person less than 16 years of age;
- 256 14. Carrying, displaying, using, threatening, or attempting
 257 to use a weapon or firearm during the commission of a felony;
- 258 ~~15. Grand theft in violation of s. 812.014(2)(a);~~
- 259 ~~15.16.~~ Possessing or discharging any weapon or firearm on
 260 school property in violation of s. 790.115;
- 261 ~~16.17.~~ Home invasion robbery;

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262 ~~17.18.~~ Carjacking; or
 263 ~~18.19.~~ Grand theft of a motor vehicle in violation of s.
 264 812.014(2)(c)6. or grand theft of a motor vehicle valued at
 265 \$20,000 or more in violation of s. 812.014(2)(b) if the child
 266 has a previous adjudication for grand theft of a motor vehicle
 267 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

(b)1. Beginning October 1, 2018, at the time the court
 269 adjudicates a case eligible for transfer to adult court under
 270 this section, s. 985.556, or s. 985.56, the court shall, with
 271 the assistance of the department, prosecutor, and defense
 272 counsel, include the following information in the disposition
 273 order or the judgment and sentence order:

- 274 a. Whether the case was adjudicated in juvenile or adult
 275 court.
- 276 b. The length of time the child spent in a detention
 277 facility or jail awaiting disposition.
- 278 c. If the case was adjudicated in juvenile court:
- 279 (I) Whether the child had to waive statutory limits on
 280 secure detention in order to avoid being prosecuted as an adult
 281 and, if available, the amount of time the child who waived
 282 secure detention limits actually spent in secure detention.
- 283 (II) Whether the child waived the right to trial in
 284 exchange for the case remaining in juvenile court.
- 285 (III) If the decision not to transfer to adult court
 286 resulted in a plea agreement, the details of the plea agreement,
 287 including previous plea offers made by the state but not
 288 accepted by the child, and any conditions placed on the plea
 289 offer.
- 290 (IV) Whether any discovery was conducted on the case before

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291 the plea.

292 (V) Whether the judge sentenced the child to a disposition
 293 other than what the prosecutor was offering in exchange for the
 294 child not being prosecuted as an adult.

295 d. If the case was adjudicated in adult court:

296 (I) Whether any discovery was conducted on the case after
 297 the child's transfer to adult court.

298 (II) Whether the sentence was the result of a plea
 299 agreement that did not involve the judge.

300 (III) Whether the sentence was the result of a plea
 301 agreement that did involve the judge.

302 (IV) Whether the sentence was the result of a trial.

303 2. On or before the 15th of each month, the chief judge in
 304 each judicial circuit shall collect the information specified in
 305 subparagraph 1. for all cases disposed of in the previous month
 306 and submit such information to the department for data
 307 collection.

308 ~~(b) With respect to any child who was 16 or 17 years of age~~
 309 ~~at the time the alleged offense was committed, the state~~
 310 ~~attorney may file an information when in the state attorney's~~
 311 ~~judgment and discretion the public interest requires that adult~~
 312 ~~sanctions be considered or imposed. However, the state attorney~~
 313 ~~may not file an information on a child charged with a~~
 314 ~~misdemeanor, unless the child has had at least two previous~~
 315 ~~adjudications or adjudications withheld for delinquent acts, one~~
 316 ~~of which involved an offense classified as a felony under state~~
 317 ~~law.~~

318 ~~(2) MANDATORY DIRECT FILE.--~~

319 ~~(a) With respect to any child who was 16 or 17 years of age~~

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320 ~~at the time the alleged offense was committed, the state~~
 321 ~~attorney shall file an information if the child has been~~
 322 ~~previously adjudicated delinquent for an act classified as a~~
 323 ~~felony, which adjudication was for the commission of, attempt to~~
 324 ~~commit, or conspiracy to commit murder, sexual battery, armed or~~
 325 ~~strong-armed robbery, carjacking, home-invasion robbery,~~
 326 ~~aggravated battery, or aggravated assault, and the child is~~
 327 ~~currently charged with a second or subsequent violent crime~~
 328 ~~against a person.~~

329 ~~(b) With respect to any child 16 or 17 years of age at the~~
 330 ~~time an offense classified as a forcible felony, as defined in~~
 331 ~~s. 776.08, was committed, the state attorney shall file an~~
 332 ~~information if the child has previously been adjudicated~~
 333 ~~delinquent or had adjudication withheld for three acts~~
 334 ~~classified as felonies each of which occurred at least 45 days~~
 335 ~~apart from each other. This paragraph does not apply when the~~
 336 ~~state attorney has good cause to believe that exceptional~~
 337 ~~circumstances exist which preclude the just prosecution of the~~
 338 ~~juvenile in adult court.~~

339 ~~(c) The state attorney must file an information if a child,~~
 340 ~~regardless of the child's age at the time the alleged offense~~
 341 ~~was committed, is alleged to have committed an act that would be~~
 342 ~~a violation of law if the child were an adult, that involves~~
 343 ~~stealing a motor vehicle, including, but not limited to, a~~
 344 ~~violation of s. 812.133, relating to carjacking, or s.~~
 345 ~~812.014(2)(c)6., relating to grand theft of a motor vehicle, and~~
 346 ~~while the child was in possession of the stolen motor vehicle~~
 347 ~~the child caused serious bodily injury to or the death of a~~
 348 ~~person who was not involved in the underlying offense. For~~

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349 purposes of this section, the driver and all willing passengers
 350 in the stolen motor vehicle at the time such serious bodily
 351 injury or death is inflicted shall also be subject to mandatory
 352 transfer to adult court. "Stolen motor vehicle," for the
 353 purposes of this section, means a motor vehicle that has been
 354 the subject of any criminal wrongful taking. For purposes of
 355 this section, "willing passengers" means all willing passengers
 356 who have participated in the underlying offense.

357 (d)1. With respect to any child who was 16 or 17 years of
 358 age at the time the alleged offense was committed, the state
 359 attorney shall file an information if the child has been charged
 360 with committing or attempting to commit an offense listed in s.
 361 775.087(2)(a)1.a. p., and, during the commission of or attempt
 362 to commit the offense, the child:

363 a. Actually possessed a firearm or destructive device, as
 364 those terms are defined in s. 790.001.

365 b. Discharged a firearm or destructive device, as described
 366 in s. 775.087(2)(a)2.

367 c. Discharged a firearm or destructive device, as described
 368 in s. 775.087(2)(a)3., and, as a result of the discharge, death
 369 or great bodily harm was inflicted upon any person.

370 2. Upon transfer, any child who is:

371 a. Charged under sub-subparagraph 1.a. and who has been
 372 previously adjudicated or had adjudication withheld for a
 373 forcible felony offense or any offense involving a firearm, or
 374 who has been previously placed in a residential commitment
 375 program, shall be subject to sentencing under s. 775.087(2)(a),
 376 notwithstanding s. 985.565.

377 b. Charged under sub-subparagraph 1.b. or sub-subparagraph

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378 ~~1.c., shall be subject to sentencing under s. 775.087(2)(a),~~
 379 ~~notwithstanding s. 985.565.~~

380 ~~3. Upon transfer, any child who is charged under this~~
 381 ~~paragraph, but who does not meet the requirements specified in~~
 382 ~~subparagraph 2., shall be sentenced under s. 985.565; however,~~
 383 ~~if the court imposes a juvenile sanction, the court must commit~~
 384 ~~the child to a high-risk or maximum-risk juvenile facility.~~

385 ~~4. This paragraph shall not apply if the state attorney has~~
 386 ~~good cause to believe that exceptional circumstances exist that~~
 387 ~~preclude the just prosecution of the child in adult court.~~

388 (c)5. The Department of Corrections shall make every
 389 reasonable effort to ensure that any child who is 14 years of
 390 age or older but has not yet reached the age of 18 and 16 or 17
 391 years of age who is convicted and sentenced under this section
 392 is paragraph be completely separated such that there is no
 393 physical contact with adult offenders in the facility, to the
 394 extent that it is consistent with chapter 958.

395 (2)(3) EFFECT OF PROSECUTION OF CHILDREN AS ADULTS DIRECT
 396 FILE.

397 (a) Once a child has been transferred for criminal
 398 prosecution pursuant to an information and has been found to
 399 have committed the presenting offense or a lesser included
 400 offense, the child shall be handled thereafter in every respect
 401 as if an adult for any subsequent violation of state law, unless
 402 the court imposes juvenile sanctions under s. 985.565.

403 (b) When a child is transferred for criminal prosecution as
 404 an adult, the court shall immediately transfer and certify to
 405 the adult circuit court all felony cases pertaining to the
 406 child, for prosecution of the child as an adult, which have not

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407 yet resulted in a plea of guilty or nolo contendere or in which
 408 a finding of guilt has not been made. If a child is acquitted of
 409 all charged offenses or lesser included offenses contained in
 410 the original case transferred to adult court, all felony cases
 411 that were transferred to adult court as a result of this
 412 paragraph shall be subject to the same penalties to which such
 413 cases would have been subject before being transferred to adult
 414 court.

415 (c) When a child has been transferred for criminal
 416 prosecution as an adult and has been found to have committed a
 417 violation of state law, the disposition of the case may be made
 418 under s. 985.565 and may include the enforcement of any
 419 restitution ordered in any juvenile proceeding.

420 (3) FITNESS HEARING BEFORE A JUDGE.—A child who is
 421 transferred to adult court under this section may request, in
 422 writing, a hearing before the court to determine whether he or
 423 she shall remain in adult court. The adult court, in determining
 424 whether public safety would be best served by retaining
 425 jurisdiction, shall consider the seriousness of the offense; the
 426 extent of the child's alleged participation or role in the
 427 offense; the sophistication, maturity, and mental development of
 428 the child; any prior adjudications or adjudications withheld of
 429 the child; and any other consideration set forth in s.
 430 985.556(3)(c). The adult court may, based on these
 431 considerations, transfer the case back to juvenile court.

432 (4) TRANSFER PROHIBITION.—Notwithstanding any other law, a
 433 child who is eligible for prosecution as an adult and who has
 434 previously been found to be incompetent but has not been
 435 restored to competency by a court may not be transferred to

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436 adult court for criminal prosecution until the child's
 437 competency has been restored.

438 (5) DATA COLLECTION RELATING TO PROSECUTING CHILDREN AS
 439 ADULTS.—

440 (a) Beginning January 1, 2019, the department shall collect
 441 data relating to children who qualify to be prosecuted as adults
 442 under this section and s. 985.556, regardless of the outcome of
 443 the case, including, but not limited to:

- 444 1. Age.
- 445 2. Race and ethnicity.
- 446 3. Gender.
- 447 4. Circuit and county of residence.
- 448 5. Circuit and county of offense.
- 449 6. Prior adjudications or adjudications withheld.
- 450 7. Prior periods of probation, including any violations of
 451 probation.
- 452 8. Previous contact with law enforcement agencies or the
 453 court which resulted in a civil citation, arrest, or other
 454 charge being filed with the state.
- 455 9. Initial charges.
- 456 10. Charges at disposition.
- 457 11. Whether child codefendants were involved who were
 458 transferred to adult court.
- 459 12. Whether the child was represented by counsel or waived
 460 counsel.
- 461 13. The child's risk assessment instrument score.
- 462 14. The child's medical, mental health, substance abuse, or
 463 trauma history.
- 464 15. The child's history of mental impairment or disability—

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465 related accommodations.

466 16. The child's history of abuse or neglect.

467 17. The child's history of foster care placements,
468 including the number of prior placements.

469 18. Whether the child has below-average intellectual
470 functioning.

471 19. Whether the child has received mental health services
472 or treatment.

473 20. Whether the child has been the subject of a child-in-
474 need-of-services or families-in-need-of-services petition or a
475 dependency petition.

476 21. Whether the child was transferred for criminal
477 prosecution as an adult.

478 22. The case resolution in juvenile court.

479 23. The case resolution in adult court.

480 24. Information generated by the office of the state
481 attorney in each judicial circuit under subparagraph (1)(b)1.

482 (b) Beginning January 1, 2019, the department shall also
483 collect data relating to children transferred for criminal
484 prosecution as adults, including, but not limited to:

485 1. Disposition data, including, but not limited to, adult
486 sanctions, juvenile sanctions, or diversions received and, if
487 sentenced to prison, the length of the prison sentence or the
488 length of the enhanced sentence.

489 2. Incompetence to proceed in juvenile court.

490 (c) For every juvenile case transferred between July 1,
491 2017, and June 30, 2018, the department shall work with the
492 Office of Program Policy Analysis and Government Accountability
493 to generate a report analyzing the aggregated data under

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494 paragraphs (a) and (b). The department must provide the report
495 to the Governor, the President of the Senate, and the Speaker of
496 the House of Representatives by January 31, 2019.

497 (d) The department must work with the Office of Program
498 Policy Analysis and Government Accountability to generate a
499 report analyzing the aggregated data under paragraphs (a) and
500 (b) on an annual basis. The department shall provide the report
501 annually to the Governor, the President of the Senate, and the
502 Speaker of the House of Representatives no later than January 31
503 of the following calendar year.

504 (6)(4) An information filed pursuant to this section may
505 include all charges that are based on the same act, criminal
506 episode, or transaction as the primary offenses.

507 Section 4. Section 985.56, Florida Statutes, is amended to
508 read:

509 985.56 Indictment of a juvenile.—

510 (1) A child 14 years of age or older ~~of any age~~ who is
511 charged with a violation of state law punishable by death or by
512 life imprisonment is subject to the jurisdiction of the court as
513 set forth in s. 985.0301(2) unless and until an indictment on
514 the charge is returned by the grand jury. When such indictment
515 is returned, the petition for delinquency, if any, must be
516 dismissed and the child must be tried and handled in every
517 respect as an adult:

518 (a) On the indicting offense punishable by death or by life
519 imprisonment; and

520 (b) On all other felonies or misdemeanors charged in the
521 indictment which are based on the same act or transaction as the
522 indicting offense punishable by death or by life imprisonment or

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523 on one or more acts or transactions connected with the offense
524 punishable by death or by life imprisonment.

525 (2) An adjudicatory hearing may not be held until 21 days
526 after the child is taken into custody and charged with having
527 committed an indictable offense punishable by death or by life
528 imprisonment, unless the state attorney advises the court in
529 writing that he or she does not intend to present the case to
530 the grand jury, or has presented the case to the grand jury and
531 the grand jury has not returned an indictment. If the court
532 receives such a notice from the state attorney, or if the grand
533 jury fails to act within the 21-day period, the court may
534 proceed as otherwise authorized under this part.

535 (3) Notwithstanding any other law, a child who is eligible
536 for indictment and who has a pending competency hearing in
537 juvenile court or who has been previously found to be
538 incompetent and has not been restored to competency by a court
539 may not be transferred to adult court for criminal prosecution
540 until the child's competency is restored. A pending competency
541 hearing or a finding of incompetency tolls the time limits in
542 subsection (2). If the child is found to have committed the
543 offense punishable by death or by life imprisonment, the child
544 shall be sentenced as an adult. If the juvenile is not found to
545 have committed the indictable offense but is found to have
546 committed a lesser included offense or any other offense for
547 which he or she was indicted as a part of the criminal episode,
548 the court may sentence under s. 985.565.

549 (4) (a) ~~If once~~ a child has been indicted pursuant to this
550 section and has been found to have committed any offense for
551 which he or she was indicted as a part of the criminal episode,

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552 the child shall be handled thereafter in every respect as if an
553 adult for any subsequent violation of state law, unless the
554 court imposes juvenile sanctions under s. 985.565.

555 (b) ~~If when~~ a child has been indicted pursuant to this
556 section, the court shall immediately transfer and certify to the
557 adult circuit court all felony cases pertaining to the child,
558 for prosecution of the child as an adult, which have not yet
559 resulted in a plea of guilty or nolo contendere or in which a
560 finding of guilt has not been made. If the child is acquitted of
561 all charged offenses or lesser included offenses contained in
562 the indictment case, all felony cases that were transferred to
563 adult court pursuant to this paragraph shall be subject to the
564 same penalties such cases were subject to before being
565 transferred to adult court.

566 Section 5. Subsection (1) and paragraphs (a) and (b) of
567 subsection (4) of section 985.565, Florida Statutes, are amended
568 to read:

569 985.565 Sentencing powers; procedures; alternatives for
570 juveniles prosecuted as adults.—

571 (1) POWERS OF DISPOSITION.—

572 (a) A child who is found to have committed a violation of
573 law may, as an alternative to adult dispositions, be committed
574 to the department for treatment in an appropriate program for
575 children outside the adult correctional system or be placed on
576 juvenile probation.

577 (b) In determining whether to impose juvenile sanctions
578 instead of adult sanctions, the court shall consider the
579 following criteria:

580 1. The seriousness of the offense to the community and

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581 whether the protection of the community would be best served be
 582 ~~protected~~ by juvenile or adult sanctions.

583 2. The extent of the child's participation in the offense.
 584 3. The effect, if any, of familial or peer pressure on the
 585 child's actions.

586 ~~4.2-~~ Whether the offense was committed in an aggressive,
 587 violent, premeditated, or willful manner.

588 ~~5.3-~~ Whether the offense was against persons or against
 589 property, with greater weight being given to offenses against
 590 persons, especially if personal injury resulted.

591 ~~6.4-~~ The sophistication, ~~and~~ maturity, and mental
 592 development of the child, including: offender.

593 a. The child's age, maturity, intellectual capacity, and
 594 mental and emotional health at the time of the offense.

595 b. The child's background, including his or her family,
 596 home, and community environment.

597 c. The effect, if any, of immaturity, impetuosity, or
 598 failure to appreciate the risks and consequences of the offense
 599 on the child's participation in the offense.

600 d. The effect, if any, of characteristics attributable to
 601 the child's age on the child's judgment.

602 ~~7.5-~~ The record and previous history of the child offender,
 603 including:

604 a. Previous contacts with the Department of Corrections,
 605 the Department of Juvenile Justice, the former Department of
 606 Health and Rehabilitative Services, or the Department of
 607 Children and Families, and the adequacy and appropriateness of
 608 the services provided by the Department of Juvenile Justice to
 609 address the child's needs law enforcement agencies, and the

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610 ~~courts.~~

611 b. Prior periods of probation.

612 c. Prior adjudications that the offender committed a
 613 delinquent act or violation of law as a child.

614 d. Prior commitments to the Department of Juvenile Justice,
 615 the former Department of Health and Rehabilitative Services, the
 616 Department of Children and Families, or other facilities or
 617 institutions and the adequacy and appropriateness of the
 618 services provided by such entity to address the child's needs.

619 e. Previous contacts with law enforcement agencies and the
 620 courts.

621 f. History of abuse, abandonment, or neglect.

622 g. History of foster care placements.

623 h. Identification of the child as having a disability.

624 i. History of mental health services or treatment.

625 ~~8.6-~~ The prospects for adequate protection of the public
 626 and the likelihood of deterrence and reasonable rehabilitation
 627 of the offender if assigned to services and facilities of the
 628 Department of Juvenile Justice.

629 ~~9.7-~~ Whether the Department of Juvenile Justice has
 630 appropriate programs, facilities, and services immediately
 631 available.

632 ~~10.8-~~ Whether adult sanctions would provide more
 633 appropriate punishment and deterrence to further violations of
 634 law than the imposition of juvenile sanctions.

635 11. Whether the Department of Corrections has appropriate
 636 programs, facilities, and services immediately available.

637 (4) SENTENCING ALTERNATIVES.-

638 (a) *Adult sanctions.-*

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639 ~~1. Cases prosecuted on indictment. If the child is found to~~
 640 ~~have committed the offense punishable by death or life~~
 641 ~~imprisonment, the child shall be sentenced as an adult. If the~~
 642 ~~juvenile is not found to have committed the indictable offense~~
 643 ~~but is found to have committed a lesser included offense or any~~
 644 ~~other offense for which he or she was indicted as a part of the~~
 645 ~~criminal episode, the court may sentence as follows:~~

- 646 a. ~~As an adult;~~
- 647 b. ~~Under chapter 958; or~~
- 648 c. ~~As a juvenile under this section.~~

649 ~~1.2. Other cases.~~ If a child who has been transferred for
 650 criminal prosecution pursuant to indictment, information, or
 651 waiver of juvenile court jurisdiction is found to have committed
 652 a violation of state law or a lesser included offense for which
 653 he or she was charged as a part of the criminal episode, the
 654 court may sentence as follows:

- 655 a. As an adult;
- 656 b. Under chapter 958; or
- 657 c. As a juvenile under this section.

658 ~~3. Notwithstanding any other provision to the contrary, if~~
 659 ~~the state attorney is required to file a motion to transfer and~~
 660 ~~certify the juvenile for prosecution as an adult under s.~~
 661 ~~985.556(3) and that motion is granted, or if the state attorney~~
 662 ~~is required to file an information under s. 985.557(2)(a) or~~
 663 ~~(b), the court must impose adult sanctions.~~

664 ~~4. Any sentence imposing adult sanctions is presumed~~
 665 ~~appropriate, and the court is not required to set forth specific~~
 666 ~~findings or enumerate the criteria in this subsection as any~~
 667 ~~basis for its decision to impose adult sanctions.~~

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668 ~~2.5. If~~ When a child who has been transferred for criminal
 669 prosecution as an adult is ~~and has been~~ found to have committed
 670 a violation of state law, the disposition of the case may
 671 include the enforcement of any restitution ordered in any
 672 juvenile proceeding.

673 (b) ~~Juvenile sanctions.~~ ~~For juveniles transferred to adult~~
 674 ~~court but who do not qualify for such transfer under s.~~
 675 ~~985.556(3) or s. 985.557(2)(a) or (b),~~ The court may impose
 676 juvenile sanctions under this paragraph for juveniles
 677 transferred to adult court. If juvenile sentences are imposed,
 678 the court shall, under this paragraph, adjudge the child to have
 679 committed a delinquent act. Adjudication of delinquency shall
 680 not be deemed a conviction, nor shall it operate to impose any
 681 of the civil disabilities ordinarily resulting from a
 682 conviction. The court shall impose an adult sanction or a
 683 juvenile sanction and may not sentence the child to a
 684 combination of adult and juvenile punishments. An adult sanction
 685 or a juvenile sanction may include enforcement of an order of
 686 restitution or probation previously ordered in any juvenile
 687 proceeding. However, if the court imposes a juvenile sanction
 688 and the department determines that the sanction is unsuitable
 689 for the child, the department shall return custody of the child
 690 to the sentencing court for further proceedings, including the
 691 imposition of adult sanctions. Upon adjudicating a child
 692 delinquent under subsection (1), the court may:

- 693 1. Place the child in a probation program under the
- 694 supervision of the department for an indeterminate period of
- 695 time until the child reaches the age of 19 years or sooner if
- 696 discharged by order of the court.

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697 2. Commit the child to the department for treatment in an
 698 appropriate program for children for an indeterminate period of
 699 time until the child is 21 or sooner if discharged by the
 700 department. The department shall notify the court of its intent
 701 to discharge no later than 14 days prior to discharge. Failure
 702 of the court to timely respond to the department's notice shall
 703 be considered approval for discharge.

704 3. Order disposition under ss. 985.435, 985.437, 985.439,
 705 985.441, 985.45, and 985.455 as an alternative to youthful
 706 offender or adult sentencing if the court determines not to
 707 impose youthful offender or adult sanctions.

708
 709 It is the intent of the Legislature that the criteria and
 710 guidelines in this subsection are mandatory and that a
 711 determination of disposition under this subsection is subject to
 712 the right of the child to appellate review under s. 985.534.

713 Section 6. Subsection (54) of section 985.03, Florida
 714 Statutes, is amended to read:

715 985.03 Definitions.—As used in this chapter, the term:

716 (54) "Waiver hearing" means a hearing ~~provided for~~ under s.
 717 985.556(3) ~~s. 985.556(4)~~.

718 Section 7. Subsection (1) of section 985.15, Florida
 719 Statutes, is amended to read:

720 985.15 Filing decisions.—

721 (1) The state attorney may in all cases take action
 722 independent of the action or lack of action of the juvenile
 723 probation officer and shall determine the action that is in the
 724 best interest of the public and the child. ~~If the child meets~~
 725 ~~the criteria requiring prosecution as an adult under s. 985.556,~~

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726 ~~the state attorney shall request the court to transfer and~~
 727 ~~certify the child for prosecution as an adult or shall provide~~
 728 ~~written reasons to the court for not making such a request. In~~
 729 ~~all other cases,~~ The state attorney may:

- 730 (a) File a petition for dependency;
- 731 (b) File a petition under chapter 984;
- 732 (c) File a petition for delinquency;
- 733 (d) File a petition for delinquency with a motion to
- 734 transfer and certify the child for prosecution as an adult;
- 735 (e) File an information under s. 985.557;
- 736 (f) Refer the case to a grand jury;
- 737 (g) Refer the child to a diversionary, pretrial
- 738 intervention, arbitration, or mediation program, or to some
- 739 other treatment or care program if such program commitment is
- 740 voluntarily accepted by the child or the child's parents or
- 741 legal guardian; or
- 742 (h) Decline to file.

743 Section 8. Subsection (5) of section 985.265, Florida
 744 Statutes, is amended to read:

745 985.265 Detention transfer and release; education; adult
 746 jails.—

747 (5) The court may ~~shall~~ order the delivery of a child to a
 748 jail or other facility intended or used for the detention of
 749 adults:

- 750 (a) When the child has been transferred or indicted for
- 751 criminal prosecution as an adult under part X, except that the
- 752 court may not order or allow a child alleged to have committed a
- 753 misdemeanor who is being transferred for criminal prosecution
- 754 pursuant to either s. 985.556 or s. 985.557 to be detained or

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755 held in a jail or other facility intended or used for the
756 detention of adults; however, such child may be held temporarily
757 in a detention facility; or

758 (b) When a child taken into custody in this state is wanted
759 by another jurisdiction for prosecution as an adult.

760
761 The child shall be housed separately from adult inmates to
762 prohibit a child from having regular contact with incarcerated
763 adults, including trustees. "Regular contact" means sight and
764 sound contact. Separation of children from adults shall permit
765 no more than haphazard or accidental contact. The receiving jail
766 or other facility shall contain a separate section for children
767 and shall have an adequate staff to supervise and monitor the
768 child's activities at all times. Supervision and monitoring of
769 children includes physical observation and documented checks by
770 jail or receiving facility supervisory personnel at intervals
771 not to exceed 10 minutes. This subsection does not prohibit
772 placing two or more children in the same cell. Under no
773 circumstances shall a child be placed in the same cell with an
774 adult.

775 Section 9. For the purpose of incorporating the amendments
776 made by this act to sections 985.557 and 985.56, Florida
777 Statutes, in references thereto, paragraph (c) of subsection (2)
778 of section 985.26, Florida Statutes, is reenacted to read:

779 985.26 Length of detention.—

780 (2)

781 (c) A prolific juvenile offender under s. 985.255(1) (j)
782 shall be placed on nonsecure detention care with electronic
783 monitoring or in secure detention care under a special detention

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784 order until disposition. If secure detention care is ordered by
785 the court, it must be authorized under this part and may not
786 exceed:

787 1. Twenty-one days unless an adjudicatory hearing for the
788 case has been commenced in good faith by the court or the period
789 is extended by the court pursuant to paragraph (b); or

790 2. Fifteen days after the entry of an order of
791 adjudication.

792
793 As used in this paragraph, the term "disposition" means a
794 declination to file under s. 985.15(1)(h), the entry of nolle
795 prosequi for the charges, the filing of an indictment under s.
796 985.56 or an information under s. 985.557, a dismissal of the
797 case, or an order of final disposition by the court.

798 Section 10. For the purpose of incorporating the amendment
799 made by this act to section 985.565, Florida Statutes, in a
800 reference thereto, subsection (3) of section 985.514, Florida
801 Statutes, is reenacted to read:

802 985.514 Responsibility for cost of care; fees.—

803 (3) When the court under s. 985.565 orders any child
804 prosecuted as an adult to be supervised by or committed to the
805 department for treatment in any of the department's programs for
806 children, the court shall order the child's parents to pay fees
807 as provided in s. 985.039.

808 Section 11. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/16/18

Meeting Date

936

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Honorable Carlos Martinez

Job Title Public Defender, 11th Judicial Circuit

Address 1320 NW 14th St.

Phone (305) 545-1900

Street

Miami

Florida

33135

Email cmartinez@pdmiami.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

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1004

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Persons Authorized to Visit Juvenile Facilities

DATE: January 17, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1004 authorizes the following persons to visit at their pleasure between the hours of 6 a.m. and 11 p.m. all facilities housing juveniles that are operated or overseen by the Department of Juvenile Justice (DJJ) or a county:

- The Governor;
- A Cabinet member;
- A member of the Legislature;
- A judge of a state court;
- A state attorney;
- A public defender; and
- A person authorized by the secretary of the DJJ.

The bill provides that a person specified may visit a state facility housing juveniles between 11 p.m. and 6 a.m. pursuant to rules prescribed by the DJJ.

The bill states that permission to visit a state facility housing juveniles must not be unreasonably withheld from a person who gives sufficient evidence that he or she is a bona fide reporter or writer.

The bill requires the DJJ to make rules for purposes of implementing the bill.

The bill is effective July 1, 2018.

II. Present Situation:

Juvenile Detention Centers and Residential Facilities

Juveniles within the Florida juvenile justice system may be housed in detention centers and/or residential facilities.

Juvenile Detention Centers

There are 21 juvenile detention centers throughout Florida. Detention is the custody status for juveniles who are held pursuant to a court order or after being taken into custody for a violation of law. Detention centers provide custody, supervision, education, and mental health/substance abuse and medical services to juveniles.¹

Generally a juvenile cannot be held in detention care for longer than 24 hours.² Section 985.255, F.S., requires a juvenile to have a detention hearing to determine the existence of probable cause and the need for continued detention within 24 hours of being taken into custody and placed in detention.³ A juvenile cannot be held in detention for more than 21 days unless an adjudicatory hearing has been commenced.⁴ The court may extend the length of the detention by nine days if more time is required for the prosecution or defense to prepare for cases involving certain serious crimes.⁵ A prolific juvenile offender⁶ may also be held for 15 days after the order of adjudication.⁷

Juvenile Residential Commitment Programs

The DJJ contracts with private providers that operate the residential commitment programs throughout Florida. Residential programs provide behavioral health, mental health, substance abuse, and sex offender treatment services to juveniles.⁸ In Florida, only a judge can place a juvenile into a DJJ residential commitment program for an adjudication. Commitment to a residential program is for an indeterminate period of time and may include periods of temporary release.⁹

Each residential program is monitored regularly and evaluated through the DJJ's Bureau of Monitoring and Quality Improvement (Bureau).¹⁰ The Bureau conducts reviews throughout the

¹ Florida Department of Juvenile Justice, *Detention Services*, available at <http://www.djj.state.fl.us/services/detention> (last visited January 9, 2018).

² Section 985.26(1), F.S.

³ Section 985.255(3)(a), F.S.

⁴ Section 985.26(2) and (3), F.S.

⁵ These serious crimes include capital felonies, life felonies, and first or second degree felonies. Section 985.26(2), F.S.

⁶ A juvenile is a prolific juvenile offender if the juvenile: is charged with a delinquent act that would be a felony if committed by an adult; has been adjudicated or had adjudication withheld for a felony offense or delinquent act that would be a felony if committed by an adult, before the current charge; and has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult: an arrest event for which a disposition has not been entered, an adjudication or an adjudication withheld. Section 985.255(1)(j), F.S.

⁷ Section 985.26(3), F.S.

⁸ Florida Department of Juvenile Justice, *Residential Services*, available at <http://www.djj.state.fl.us/services/residential> (last visited January 9, 2018).

⁹ *Id.*

¹⁰ *Id.*

fiscal year to ensure that the programs are in compliance with contract terms and conditions, Florida Statutes, Rules of the Florida Administrative Code, and the DJJ policies.¹¹

Investigation into State Facilities Housing Juveniles

A recent investigation conducted by the *Miami Herald* delved into the DJJ's detention centers and residential programs. The investigation probed 10 years of the DJJ's incident reports, investigations and reviews, inspections, emails, and surveillance videos, revealing incidents of misconduct that have occurred at the DJJ's facilities over the years.¹² The article discussed some of the symptoms that have plagued the DJJ's facilities over the years: inexperienced and underpaid staff, inadequate personnel screening and standards, tolerance for cover-ups, faulty security cameras, and legal impunity for abusive staffers.¹³

In response to the article, the DJJ issued a press release, stating that the stories published in the *Miami Herald* did not accurately define the juvenile justice system in Florida. The DJJ's response addressed each claim asserted in the *Miami Herald* article and further stated that the article ignored the aggressive reforms that the DJJ has implemented over the past six years.¹⁴ A subsequent article published by the *Miami Herald* evidenced that the investigation had furthered discussion between lawmakers surrounding potential initiatives and reform for the DJJ's facilities.¹⁵

Visitation of State Juvenile Facilities

Currently, any member of the Legislature who wishes to tour any of the detention centers or residential programs may arrange a visit with the DJJ Legislative Affairs Office or may schedule a visit of any of the DJJ's facilities on his or her own accord.¹⁶ In contrast, any member of the Legislature, including other specified persons, have unrestricted visitation privileges to state correctional facilities.¹⁷

On October 18, 2018, the DJJ sent a letter to members of the Legislature concerning the visitation of the DJJ's facilities. The letter addressed unannounced visits to the DJJ's facilities and the differences between adult correctional facilities and the DJJ's facilities. The letter noted that juveniles in the DJJ's programs are statutorily entitled to a degree of confidentiality while adult offenders are not entitled to such protections. Specifically, s. 985.04, F.S., requires a

¹¹ Florida Department of Juvenile Justice, *Monitoring and Quality Improvement*, available at <http://www.djj.state.fl.us/partners/QI> (last visited January 9, 2018).

¹² Audra D.S. Burch and Carol Marbin Miller, *Dark secrets of Florida juvenile justice: 'honey-bun hits,' illicit sex, cover-ups*, MIAMI HERALD, October 10, 2017, available at <http://www.miamiherald.com/news/special-reports/florida-prisons/article177883676.html> (last visited January 9, 2018).

¹³ *Id.*

¹⁴ Press Release, Florida Department of Juvenile Justice, *Setting the Record Straight: Miami Herald Omits Facts, Ignores Reforms in Series Targeting DJJ* (October 10, 2017) (on file with the Senate Committee on Criminal Justice).

¹⁵ Mary Ellen Klas, Caitlin Ostroff and Carol Marbin Miller, *Powerful lawmaker calls for juvenile justice review in wake of Herald series*, MIAMI HERALD, October 13, 2017, available at <http://www.miamiherald.com/news/local/community/miami-dade/article178771326.html> (last visited January 9, 2018).

¹⁶ Email from Rachel Moscoso, Legislative Affairs Director, Florida Department of Juvenile Justice, to Lauren Storch, Attorney, The Florida Senate Committee on Criminal Justice, (October 26, 2017) (on file with the Senate Committee on Criminal Justice).

¹⁷ Section 944.23, F.S.

juvenile's information to be kept confidential. The letter further noted that many of the juveniles suffer from previous trauma and interruptions to their daily schedules can be problematic. The letter requests that members of the Legislature wishing to visit a DJJ facility take these noted circumstances into consideration.¹⁸

Visitation of State Correctional Institutions

Section 944.23, F.S., authorizes the following persons to visit at their pleasure all state correctional institutions:

- The Governor;
- All Cabinet members;
- Members of the Legislature;
- Judges of state courts;
- State attorneys;
- Public defenders; and
- Authorized representatives of the Florida Commission on Offender Review.¹⁹

Current law prohibits any person not otherwise authorized by law from entering a state correctional institution except pursuant to rules prescribed by the Department of Corrections (DOC). Additionally, permission to visit state prisons must not be unreasonably withheld from those who give sufficient evidence to the DOC that they are bona fide reporters or writers.²⁰

III. Effect of Proposed Changes:

The bill authorizes the following persons to visit at their pleasure between the hours of 6 a.m. and 11 p.m. all facilities housing juveniles that are operated or overseen by the DJJ or a county:

- The Governor;
- A Cabinet member;
- A member of the Legislature;
- A judge of a state court;
- A state attorney;
- A public defender; and
- A person authorized by the secretary of the DJJ.

The bill provides that a person specified may visit a state facility housing juveniles between 11 p.m. and 6 a.m. pursuant to rules prescribed by the DJJ.

The bill prohibits the DJJ from unreasonably withholding permission to visit a state facility housing juveniles from a person who provides sufficient evidence that he or she is a bona fide reporter or writer.

The bill requires the DJJ to make rules for purposes of implementing the bill.

¹⁸ *Supra* n. 8.

¹⁹ Section 944.23, F.S.

²⁰ *Id.*

The bill is effective July 1, 2018.

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.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 985.6885 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 January 16, 2018:

The Committee Substitute:

- Adds facilities housing juveniles that are county-run to the list of facilities included under the bill;
- Removes members of the Florida Commission on Offender Review from the list of personnel authorized to visit facilities housing juveniles under the bill; and
- Requires the DJJ to make rules for the purpose of implementing the bill.

- B. **Amendments:**

None.

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



245102

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 23 - 44
and insert:
between the hours of 6 a.m. and 11 p.m. all facilities housing juveniles which are operated or overseen by the department or county:

- (a) The Governor.
- (b) A Cabinet member.
- (c) A member of the Legislature.



245102

- 11 (d) A judge of a state court.
- 12 (e) A state attorney.
- 13 (f) A public defender.
- 14 (h) A person authorized by the secretary of the department.
- 15 (2) A person specified in subsection (1) may visit a
16 facility subject to this section before 6 a.m. or after 11 p.m.
17 pursuant to rules adopted by the department.
- 18 (3) The department may not unreasonably withhold permission
19 to visit a facility subject to this section from a person who
20 gives sufficient evidence that he or she is a bona fide reporter
21 or writer.
- 22 (4) The department shall adopt rules to implement this
23 section.

24
25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete lines 2 - 14

28 and insert:

29 An act relating to persons authorized to visit
30 juvenile facilities; creating s. 985.6885, F.S.;

31 authorizing specified persons to visit, during certain
32 hours, all facilities housing juveniles which are
33 operated or overseen by the Department of Juvenile
34 Justice or county; authorizing such persons to visit
35 the juvenile facilities outside of certain hours
36 pursuant to department rules; prohibiting the
37 department from unreasonably withholding permission
38 for visits to such facilities by certain persons;

39 authorizing the department to adopt rules to implement



245102

40

this section; providing an effective date.

By Senator Brandes

24-00868B-18

20181004__

1 A bill to be entitled
 2 An act relating to persons authorized to visit state
 3 juvenile facilities; creating s. 985.6885, F.S.;
 4 authorizing specified persons to visit, during certain
 5 hours, all state facilities housing juveniles which
 6 are operated or overseen by the Department of Juvenile
 7 Justice; authorizing such persons to visit the state
 8 juvenile facilities outside of certain hours according
 9 to department rules; prohibiting other persons from
 10 visiting such facilities except according to
 11 department rules; prohibiting the department from
 12 unreasonably withholding permission for visits to such
 13 facilities by certain persons; providing an effective
 14 date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 985.6885, Florida Statutes, is created
 19 to read:

20 985.6885 Persons authorized to visit state juvenile
 21 facilities.—

22 (1) The following persons may visit at their pleasure
 23 between the hours of 6 a.m. and 11 p.m. all state facilities
 24 housing juveniles which are operated or overseen by the
 25 department:

- 26 (a) The Governor.
 27 (b) A Cabinet member.
 28 (c) A member of the Legislature.
 29 (d) A judge of a state court.

Page 1 of 2

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

24-00868B-18

20181004__

30 (e) A state attorney.
 31 (f) A public defender.
 32 (g) An authorized representative of the Florida Commission
 33 on Offender Review.
 34 (h) A person authorized by the secretary of the department.
 35 (2) A person specified in subsection (1) may visit a
 36 facility subject to this section before 6 a.m. or after 11 p.m.
 37 under rules that the department may prescribe.
 38 (3) A person not otherwise authorized by law may not visit
 39 a facility subject to this section except under rules that the
 40 department may prescribe.
 41 (4) The department may not unreasonably withhold permission
 42 to visit a facility subject to this section from a person who
 43 gives sufficient evidence that he or she is a bona fide reporter
 44 or writer.

45 Section 2. This act shall take effect July 1, 2018.

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)

1/16/18

Meeting Date

SB 1004

Bill Number (if applicable)

Topic Persons Authorized to Visit State Juvenile Facilities

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

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)

Jan 16 18
Meeting Date

1004
Bill Number (if applicable)

Topic Barney Bishop

Amendment Barcode (if applicable)

Name Visit Juvenile Facilities

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone _____

Tall FL
City State Zip

Email _____

Speaking: For Against Information

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

Representing Fla. 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

Committee Agenda Request

To: Senator Randolph Bracy
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: November 14, 2017

I respectfully request that **Senate Bill #1004**, relating to **Persons Authorized to Visit State Juvenile Facilities**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1206

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: State Inmates

DATE: January 18, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1206 amends s. 945.091, F.S., authorizing the Department of Corrections (DOC) to consider an inmate that would not otherwise qualify for participation in work release due to a higher custody level or other risk factors for work release with electronic monitoring. The DOC must administer a risk assessment tool to determine an inmate's eligibility for work release with an electronic monitoring device.

The bill also authorizes an inmate to participate in a supervised community release program (Program) up to 90 days before the inmate's tentative release date as an extension of the inmate's confinement. The DOC must also administer a risk assessment tool to determine eligibility for this program. The Program must include electronic monitoring and community control as defined in s. 948.001, F.S.

An inmate's participation in the Program may be terminated by the DOC if the inmate fails to comply with any of the terms of the Program as proscribed by the rules promulgated under this act. If an inmate is terminated from the supervision, he or she must be recommitted to the DOC.

If there is reasonable grounds to believe that the inmate violated his or her supervised community release, the bill authorizes a law enforcement officer or probation officer to arrest the inmate in accordance with s. 948.06, F.S. An alleged violation of the conditions of the supervised community release program must be reported to a correctional officer for disposition of disciplinary charges as proscribed in the DOC rules.

The bill specifies that an inmate who participated in the Program is still considered to be in confinement for purposes of earning and losing gain-time pursuant to s. 944.275, F.S. This also includes the prohibition on earning gain-time in an amount that results in serving less than 85 percent of the imposed sentence. However, the inmate may not be counted as part of the inmate population and the approved community-based housing in which the inmate lives cannot be counted in capacity figures for the prison system.

Lastly, the bill creates s. 948.33, F.S., authorizing a state inmate who has an unserved violation of probation or violation of community control arrest warrant to file a state prisoner's notice of unserved warrant. The bill provides a process for confirming the existence of such unserved warrant, and if confirmed, for the transportation of the inmate to the county at issue for prosecution and resolution of the outstanding warrant.

The bill likely has a negative indeterminate fiscal impact (i.e. a decrease in prison beds) on the DOC. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2018.

II. Present Situation:

The Criminal Punishment Code¹ (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.² The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is five years.³

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time,⁴ and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.⁵

Extension on the Limits of Confinement

There are a limited number of instances where an inmate who is in the custody of the DOC may continue serving his or her sentence outside the physical walls of a prison. When a reasonable belief exists that an inmate will adhere to conditions placed upon him or her, s. 945.091, F.S., authorizes the DOC to allow an inmate to leave the confines of a physical facility unaccompanied for a specified period of time to:

- Visit a:
 - Dying relative or attend a funeral of a relative;

¹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

² Section 921.0022, F.S.

³ Section 775.082, F.S.

⁴ Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

⁵ Section 921.002(1), F.S.

- Specified location to arrange for employment or for a suitable residence for use upon release;
- Specified place to aide in the successful transition back into the community;
- Specifically designated location for any other compelling reason;⁶
- Work at paid employment;⁷
- Participate in an educational or training program;⁸
- Voluntarily serve a public or nonprofit agency or faith-based service group in the community;⁹ or
- Participate in a residential or nonresidential rehabilitative program.¹⁰

The DOC must perform an investigation to determine whether the inmate is suitable for consideration of extension of his or her confinement prior to being approved for one of the provisions described above.¹¹

Work Release

An inmate who is approved for participation in work release must be in community custody status¹² and be within three years of their release date.¹³ These inmates are housed at the work release center during their participation.¹⁴ Certain inmates are prohibited from participating in work release, regardless of current custody level.¹⁵

⁶ Section 945.091(1)(a), F.S. An inmate released from the custody of a facility under this subsection must return to the same or another facility as designated by the DOC. *See also* Department of Corrections, *Senate Bill 1206 Analysis*, at p. 3 (January 8, 2018) (on file with the Senate Committee on Criminal Justice)[hereinafter cited as “The DOC SB 1206 Analysis”].

⁷ This provision is commonly referred to as “Work Release.” Section 945.091(1)(b), F.S., further provides that this form of release occurs while the inmate continues as an inmate of the institution or facility in which the inmate is confined. The only time in which the inmate is released unaccompanied is during the hours of his or her employment, education, training, or service and traveling to and from such approved activity. An inmate is permitted to travel to and from the place of employment, education, or training by walking, bicycling, or using public transportation or transportation that is provided by a family member or employer.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 945.091(1)(c), F.S. The treatment program must be operated by a public or private nonprofit agency, including faith-based service groups, with which the DOC has contracted for the treatment of such inmate. The provisions of ss. 216.311 and 287.057, F.S., must apply to all contracts considered under this provision. The DOC must ensure each agency provides appropriate supervision of inmates participating in such program.

¹¹ Section 945.091(1), F.S.

¹² Custody level is used to determine an inmate’s placement in appropriate facilities and programming and is associated with the level of risk that an inmate poses to staff and inmates. Community custody is defined by the DOC to apply to inmates eligible for placement at a community residential facility. *See* Electronic mail from Scotti Vaughan, Deputy Director of Legislative Affairs, Department of Corrections, RE: Community Custody (January 18, 2018) (on file with the Senate Criminal Justice Committee).

¹³ Department of Corrections, *Frequently Asked Questions*, available at <http://www.dc.state.fl.us/oth/faq.html> (last visited January 14, 2018). *See also* Rule 33-601.602, F.A.C.

¹⁴ *Id.* Work release centers do not have perimeter fences and inmates must remain at the work release center when not working or attending programs such as Alcoholics Anonymous (AA).

¹⁵ Such inmates include, but are not limited to, those that have a current or prior conviction for a sex offense; murder or attempted murder; aggravated manslaughter of an elderly or disabled person or a child; attempted manslaughter of an elderly or disabled person or a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic; attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic; and murder of an unborn child or attempted murder of an unborn child. Rule 33-601.602, F.A.C.

Inmates participating in work release must save part of their earnings for when they are released, in order to pay toward victim restitution, and for room and board.¹⁶ More than 3,000 inmates participate in Florida's work release programs annually, with about 3.5 percent of the prison population enrolled at any given time.¹⁷

Supervised Community Release Program

Prior to July 1, 1996, a fourth provision, known as the Supervised Community Release Program (SCRCP), existed that allowed inmates to be released on an extension of confinement to participate in a rehabilitative community reentry program on conditional release.¹⁸ This release was for a period of no more than 90 days prior to the termination of his or her confinement. The inmate was released and placed on community supervision, but was not considered to be in the custody or care of the DOC or in confinement. If the inmate did not demonstrate sufficient progress with the reentry program, the DOC was able to terminate the inmate's participation and return the inmate to the prior institution or a new facility as designated by the DOC.¹⁹

Gain-time

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.²⁰ An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.²¹

Basic gain-time, which automatically reduced an inmate's sentence by a designated amount each month, was eliminated for offenses committed on or after January 1, 1994.²² The only forms of gain-time that can currently be earned are:

- Incentive gain-time, which is a total of up to ten days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs;²³
- Meritorious gain-time, which is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate;²⁴ and

¹⁶ *Supra* at note 12.

¹⁷ *Id.*

¹⁸ Section 945.091(1)(d), F.S. (1995). This paragraph was repealed in ch. 96-312, L.O.F.

¹⁹ *Id.*

²⁰ Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

²¹ Section 944.275(4)(f), F.S.

²² Chapter 93-406, L.O.F.

²³ Section 944.275(4)(b), F.S. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

²⁴ Section 944.275(4)(c), F.S. The award may range from one day to 60 days and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

- Educational achievement gain-time, which is a one-time award of 60 days that is granted to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program.²⁵

The procedure for applying gain-time awards to an inmate's sentence is dependent upon the calculation of a "maximum sentence expiration date" and a "tentative release date." The tentative release date may not be later than the maximum sentence expiration date.²⁶ The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire.²⁷ To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.²⁸

The tentative release is the date projected for the prisoner's release from custody after gain-time is granted or forfeited in accordance with s. 944.275, F.S.²⁹ Gain-time is applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, are applied to make the tentative release date proportionately later.³⁰

Community Control

Section 948.001(3), F.S., defines "community control" to mean a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.³¹ The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.³²

A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.³³

Conditions of community control are determined by the court when the offender is placed on such supervision. However, there are standard conditions of community control that all controlees must comply with, including, but not limited to:

- Specified contact with the parole and probation officer;

²⁵ Section 944.275(4)(d), F.S.

²⁶ Section 944.275(3)(c), F.S.

²⁷ Section 944.275(2)(a), F.S.

²⁸ *Id.*

²⁹ Section 944.275(3)(a), F.S.

³⁰ *Id.* See also s. 944.275(4)(b), F.S.

³¹ Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

³² Section 948.10(1), F.S.

³³ *Id.* See also Florida Department of Corrections, *Succeeding on Community Control*, available at <http://www.dc.state.fl.us/oth/cc/Succeeding-on-Community-Control.pdf> (last visited on January 10, 2018). A Community Control Offender Schedule and Daily Activity Log must be submitted weekly with a proposed schedule for the week and the parolee's officer reviews such schedule and either approves or denies the schedule. Additionally, a person is required to provide an hourly accounting of his or her whereabouts for the previous week to verify any deviations from the pre-approved schedule.

- Confinement to an agreed-upon residence during hours away from employment and public service activities;
- Mandatory public service;
- Supervision by the DOC through an electronic monitoring device or system;³⁴ and
- The standard conditions of probation³⁵ set forth in s. 948.03, F.S.³⁶

A person may be placed on additional terms of supervision as part of his or her community control sentence.³⁷

Violations of Probation or Community Control

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.³⁸ A violation of probation (VOP) or violation of community control (VOCC) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender on probation or community control has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.³⁹

The offender must be returned to the court granting such probation or community control.⁴⁰ Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.⁴¹

Upon the filing of an affidavit alleging a VOP or a VOCC and following the issuance of a warrant for such violation, a warrantless arrest, or a notice to appear, the period of supervision is tolled until the court enters a ruling on the VOP or the VOCC.⁴² The probation officer is

³⁴ An electronic monitoring device (EM) is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed by the person. EM systems can be either "passive" or "active" and are typically operated through radio frequency or global positioning system (GPS) monitoring. Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October, 2014, available at https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf (last visited January 10, 2018).

³⁵ Section 948.001(9), F.S., defines "probation" to mean a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S. Some of the standard conditions of probation provided for in s. 948.03, F.S., include, but are not limited to, for the offender to report to the probation officer as directed, permit the probation officer to visit him or her at his or her home or elsewhere, work at suitable employment, live without violating any law, and make restitution to the aggrieved party for the damage or loss caused by his or her offense as determined by the court.

³⁶ Section 948.101(1), F.S.

³⁷ Section 948.101(2), F.S.

³⁸ Section 948.10(3), F.S.

³⁹ Section 948.06(1)(a), F.S.

⁴⁰ *Id.*

⁴¹ Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the controllee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.

⁴² Section 948.06(1)(f), F.S.

permitted to continue to supervise any offender who remains available to the officer for supervision until the supervision expires pursuant to the order of supervision or until the court revokes or terminates the supervision, whichever comes first.⁴³

The court must advise the offender of the allegations included in the VOP or the VOCC and may revoke, modify, or continue the supervision if the offender admits the charge or, if, through a hearing, the court finds the violation to be true.⁴⁴ If supervision is revoked, the court must adjudge the offender guilty of the offense charged (if not previously adjudicated guilty) and impose any sentence which it might have originally imposed before placing the offender into supervision.⁴⁵

Unservd Arrest Warrants for Violations of Probation or Community Control

When the VOP or the VOCC stems from an offender committing a new violation of law, two criminal proceedings commence. The first is the proceeding involving the new offense that was committed, which is initiated in the county where the new law violation occurred. The second is the VOP or the VOCC proceeding, which is initiated in the county where a VOP or VOCC arrest warrant is issued for the violation.⁴⁶

While rare, there have been instances in which a probationer has committed and been convicted of a new offense and sentenced to state prison, during which time, the VOP or VOCC proceeding is still pending (e.g., this may occur if the new offense occurred in a county other than the one in which the offender was being supervised). In 2017, the DOC reviewed a similar bill, HB 1091 (2017), and estimated that approximately 20 inmates were incarcerated with unserved probation warrants.⁴⁷

In such instances, a detainer may be filed against the inmate for the VOP or the VOCC, which postpones the VOP or VOCC proceedings until the inmate is released from prison. An inmate's custody level is affected if they have a pending VOP or VOCC warrant, which can bar them from being housed in certain facilities and participating in programs.⁴⁸

Currently, inmates do not have a right to compel the commencement of proceedings for a VOP or a VOCC. This was confirmed in *Chapman v. State*, where the court held that the entity seeking prosecution is the entity that has a right to serve an arrest warrant, and that a prisoner has no right to compel the sheriff to arrest someone in prison being held on a detainer for a VOP or a VOCC.⁴⁹

Furthermore, *Chapman* sought to compel the trial court to hold a hearing on the probation violation. A court has no ministerial duty to conduct a hearing on an affidavit alleging a violation

⁴³ *Id.*

⁴⁴ Section 948.06(2)(a), (d), and (e), F.S.

⁴⁵ Section 948.06(2)(b), F.S.

⁴⁶ A VOP or VOCC arrest warrant will always be issued in the same county as the offender was originally placed on supervision.

⁴⁷ Department of Corrections, *Agency Analysis for HB 1091* (2017), March 9, 2017 (hereinafter cited as "The DOC HB 1091 (2017) Analysis" (on file with the Senate Criminal Justice Committee).

⁴⁸ *Id.*

⁴⁹ *Chapman v. State*, 910 So.2d 940, 941–42 (Fla. 5th DCA 2005).

of probation.⁵⁰ A probationer is only entitled to be heard on a VOP or a VOCC after his arrest and return to the court that granted the probation.⁵¹

III. Effect of Proposed Changes:

Work Release

The bill amends s. 945.091, F.S., authorizing the DOC to consider an inmate that would not otherwise qualify for participation in work release due to a higher custody level or other risk factors for work release with electronic monitoring. The DOC is required to administer a risk assessment tool to determine an inmate's eligibility for work release with an electronic monitoring device.

Supervised Community Release

Further, the bill amends s. 945.091, F.S., allowing an inmate to participate in a supervised community release program (Program) as an extension of the inmate's confinement, similar to the former SCRCP discussed above. The supervised community release term may begin 90 days before the inmate's provisional or tentative release date and must include electronic monitoring and community control as defined in s. 948.001, F.S. The bill requires the DOC to administer a risk assessment tool to determine an inmate's eligibility for this program as well. The bill authorizes the DOC to create rules to implement the supervised community release program created in the act.

The DOC is authorized to terminate the inmate's participation in the program if he or she fails to comply with any of the terms of the Program as proscribed by rule. If an inmate is terminated from the supervision, he or she must be recommitted to the same institution or another institution designated by the DOC.

The bill allows a law enforcement officer or probation officer to arrest an inmate without a warrant in accordance with s. 948.06(1), F.S., if there are reasonable grounds to believe the inmate violated the terms of the Program. A law enforcement officer or probation officer that arrests an inmate for a violation of the conditions of the supervised community release program is required to report the inmate's alleged violations to a correctional officer for disposition of disciplinary charges as proscribed in the DOC rules.

The bill provides that an inmate released on the Program in accordance with this provision is eligible to earn and lose gain-time as proscribed in law and rule, which includes the prohibition on an inmate earning or receiving gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.⁵² However, the bill provides the inmate is not counted as part of the inmate population and the approved community-based housing in which the inmate lives is not counted in capacity figures for the prison system.

⁵⁰ *Id.* at p. 942.

⁵¹ *Id.* at p. 941-942. *See also Norman v. State*, 900 So.2d 702 (Fla. 2d DCA 2005).

⁵² *See* s. 944.275(4)(f), F.S.

The DOC reports that there are approximately 770 inmates assigned to a community facility who have between 10-90 days remaining on their sentence and an additional 580 community custody inmates who have not been to work release who are within this time frame to release.⁵³

Arrest Warrants

The bill creates s. 948.33, F.S., authorizing a state inmate who has an unserved VOP or VOCC arrest warrant to file a state prisoner's notice of unserved warrant. Notice must be filed in the circuit court of the judicial circuit in which the unserved warrant was issued and served on the state attorney.

Upon receipt, the state attorney must schedule the notice for a status hearing with the judge within 90 days. The state prisoner may not be transported for this hearing. In the case that an unserved warrant exists, the court must enter an order for the inmate to be transported to the issuing county's jail within 30 days of the status hearing for prosecution. The court must then send the order to the county sheriff for execution.

This portion of the bill will result in fewer inmates being prevented from participating in transitional and reintegration programs or from having detainers for active warrants upon completion of their prison sentence.

The bill is effective October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill is not affected by the restrictions in the State Constitution which limit the Legislature's authority to impose mandates on counties and municipalities because the bill relates to criminal laws.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁵³ The DOC SB 1206 Analysis, p. 4.

B. Private Sector Impact:**Extension on Confinement**

The bill authorizes the DOC to release a specified inmate into the community on work release with an electronic monitoring device or on supervised release up to 90 days before the end of his or her sentence. This will provide private companies the opportunity to hire an inmate earlier than without the act.

Unserviced Arrest Warrants

The bill may get prisoners back into the workforce more efficiently. Many transitional programs are not open to prisoners with open warrants, so resolving the warrants may help these prisoners re-integrate into society.

C. Government Sector Impact:

The Criminal Justice Estimating Conference has not heard the bill at this time.

Extension on Confinement

The DOC reports that the bill will likely have a negative indeterminate prison bed impact (i.e. an indeterminate decrease in prison beds). The DOC states that the number is indeterminate for several reasons, including not being able to quantify how many inmates will be interested in the program and of those inmates, how many can obtain proper housing placements to warrant release.⁵⁴

The current per diem rate for electronic monitoring is \$4.90 for inmates placed on electronic monitoring who are assigned to community release centers.⁵⁵ The current variable per diem rate is \$15.81, which is associated with the individual inmate care costs such as medical, food, inmate clothing, and personal care items.⁵⁶ The variable per diem rate applies across all institutions for inmate specific care.⁵⁷

Therefore, for inmates released on work release with an electronic monitoring device, the DOC will likely pay the electronic monitoring per diem in addition to the variable per diem, rather than the variable institution per diem.

Additionally, for inmates released to the Program on electronic monitoring, the DOC will likely pay the electronic monitoring per diem rate, rather than the variable per diem rate, for the 90 days with which the inmate is out in the community instead of housed in an institution.

⁵⁴ The DOC SB 1206 Analysis, p. 4.

⁵⁵ *Id.* at p. 4-6.

⁵⁶ Department of Corrections, *Annual Report Fiscal Year 2015-2016*, p. 8, available at http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf (last visited January 16, 2018).

⁵⁷ Electronic mail from Kim Banks, Chief Financial Officer, Department of Corrections, RE: Work release per diem (January 16, 2018) (on file with the Senate Criminal Justice Committee).

Unserviced Arrest Warrants

The Criminal Justice Impact Conference reviewed a similar bill, HB 1091 (2017), and determined the bill would have a negative indeterminate impact on the prison population.⁵⁸

Further, the bill requires the county, upon confirmation of an outstanding arrest warrant, to transport an inmate for hearings to resolve such warrants. To the extent that this increases the frequency of transports, county and state transportation costs may rise. Additionally, to the extent that the bill results in additional hearings, the workload of the court, public defenders, and state attorneys may be marginally increased.

Disposing of an unserved violation while an offender is already in custody will reduce the likelihood that the offender will be resentenced to a term of supervision upon disposition of the supervision violation warrant. The DOC anticipated that resolving prisoners' warrants will result in them being released from the criminal justice system more quickly, as more prisoners will begin serving concurrent sentences for probation violations.⁵⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.091 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 January 16, 2018:

The committee substitute:

- Amends s. 945.091, F.S., to:
 - Authorize the DOC to release a higher custody inmate, who would otherwise not be eligible, on work release with an electronic monitoring device;
 - Establish a Supervised Community Release Program that allows an inmate to be released for the last 90 days of his or her sentence on community control and an electronic monitoring device; and
 - Allow an officer to arrest an inmate who is on supervised community release if the inmate is not complying with the terms of the program.

⁵⁸ “Negative Indeterminate” means a reduction in the average daily prison population by an unquantifiable amount.

⁵⁹ The DOC HB 1091 (2017) Analysis.

- Creates s. 948.33, F.S., to:
 - Establish a process by which an inmate who has an unserved violation of probation or community control warrant can notify the issuing county for the purpose of initiating the resolution of such warrant; and
 - Require the inmate to be transported to the county in which an outstanding warrant is confirmed to exist for the initiation of proceedings to resolve such warrant.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (d) is added to, and paragraph (b) of
subsection (1) of section 945.091, Florida Statutes, is amended,
to read:

945.091 Extension of the limits of confinement; restitution
by employed inmates.—

(1) The department may adopt rules permitting the extension



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11 of the limits of the place of confinement of an inmate as to
12 whom there is reasonable cause to believe that the inmate will
13 honor his or her trust by authorizing the inmate, under
14 prescribed conditions and following investigation and approval
15 by the secretary, or the secretary's designee, who shall
16 maintain a written record of such action, to leave the confines
17 of that place unaccompanied by a custodial agent for a
18 prescribed period of time to:

19 (b) Work at paid employment, participate in an education or
20 a training program, or voluntarily serve a public or nonprofit
21 agency or faith-based service group in the community, while
22 continuing as an inmate of the institution or facility in which
23 the inmate is confined, except during the hours of his or her
24 employment, education, training, or service and traveling
25 thereto and therefrom. An inmate may travel to and from his or
26 her place of employment, education, or training only by means of
27 walking, bicycling, or using public transportation or
28 transportation that is provided by a family member or employer.
29 Contingent upon specific appropriations, the department may
30 transport an inmate in a state-owned vehicle if the inmate is
31 unable to obtain other means of travel to his or her place of
32 employment, education, or training.

33 1. An inmate may participate in paid employment only during
34 the last 36 months of his or her confinement, unless sooner
35 requested by the Florida Commission on Offender Review or the
36 Control Release Authority.

37 2. An inmate who may not otherwise be approved for release
38 under this paragraph due to a higher custody level or other risk
39 factor may be released and placed on an electronic monitoring



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40 device. The department must administer a risk assessment tool to
41 appropriately determine such inmate's ability to be released
42 with electronic monitoring for work, educational, or training
43 purposes.

44 32. While working at paid employment and residing in the
45 facility, an inmate may apply for placement at a contracted
46 substance abuse transition housing program. The transition
47 assistance specialist shall inform the inmate of program
48 availability and assess the inmate's need and suitability for
49 transition housing assistance. If an inmate is approved for
50 placement, the specialist shall assist the inmate. If an inmate
51 requests and is approved for placement in a contracted faith-
52 based substance abuse transition housing program, the specialist
53 must consult with the chaplain before such placement. The
54 department shall ensure that an inmate's faith orientation, or
55 lack thereof, will not be considered in determining admission to
56 a faith-based program and that the program does not attempt to
57 convert an inmate toward a particular faith or religious
58 preference.

59 (d) Participate in supervised community release as
60 prescribed by the department by rule. The inmate's participation
61 may begin 90 days before his or her provisional or tentative
62 release date. Such supervised community release must include
63 electronic monitoring and community control as defined in s.
64 948.001. The department must administer a risk assessment tool
65 to appropriately determine an inmate's ability to be released
66 pursuant to this paragraph.

67 1. If a participating inmate fails to comply with the
68 conditions prescribed by the department by rule for supervised



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69 community release, the department may terminate the inmate's
70 supervised community release and return him or her to the same
71 or another institution designated by the department. A law
72 enforcement officer or a probation officer may arrest the inmate
73 without a warrant in accordance with s. 948.06, if there are
74 reasonable grounds to believe he or she has violated the terms
75 and conditions of supervised community release. The law
76 enforcement officer or probation officer must report the
77 inmate's alleged violations to a correctional officer for
78 disposition of disciplinary charges as prescribed by the
79 department by rule.

80 2. Inmates participating in supervised community release
81 under this paragraph remain eligible to earn or lose gain-time
82 as prescribed by law and department rule, but may not be counted
83 in the population of the prison system, and the inmate's
84 approved community-based housing location may not be counted in
85 the capacity figures for the prison system.

86 Section 2. Section 948.33, Florida Statutes, is created to
87 read:

88 948.33 Prosecution for violation of probation and community
89 control arrest warrants of state prisoners.—A prisoner in a
90 state prison in this state who has an unserved violation of
91 probation or an unserved violation of community control warrant
92 for his or her arrest may file a state prisoner's notice of
93 unserved warrant in the circuit court of the judicial circuit in
94 which the unserved warrant was issued. The prisoner must also
95 serve notice on the state attorney of that circuit. The circuit
96 court shall schedule the notice for a status hearing within 90
97 days after receipt of the notice. The state prisoner may not be



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98 transported to the status hearing. At the status hearing, the
99 state attorney shall inform the court as to whether there is an
100 unserved violation of probation warrant or an unserved violation
101 of community control warrant for the arrest of the state
102 prisoner. If a warrant for either violation exists, the court
103 must enter an order within 30 days after the status hearing for
104 the transport of the state prisoner to the county jail of the
105 county that issued the warrant for prosecution of the violation,
106 and the court shall send the order to the county sheriff for
107 execution.

108 Section 3. This act shall take effect October 1, 2018.

109
110 ===== T I T L E A M E N D M E N T =====

111 And the title is amended as follows:

112 Delete everything before the enacting clause
113 and insert:

114 A bill to be entitled
115 An act relating to state inmates; amending s. 945.091,
116 F.S.; authorizing the Department of Corrections to
117 extend the limits of confinement to allow an inmate
118 that may not otherwise qualify for work release to be
119 released on electronic monitoring; requires the
120 department to utilize a risk assessment tool to
121 determine appropriateness for release on electronic
122 monitoring; authorizing the department to extend the
123 limits of confinement to allow an inmate to
124 participate in supervised community release, subject
125 to certain requirements, as prescribed by the
126 department by rule; requires the department to utilize



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127 a risk assessment tool to determine appropriateness
128 for release on electronic monitoring; authorizing the
129 department to terminate an inmate's participation
130 under certain circumstances; authorizing a law
131 enforcement or a probation officer to arrest an inmate
132 without warrant in accordance with authority granted
133 in s. 948.06, F.S.; requiring the law enforcement or
134 probation officer to report the alleged violations to
135 a correctional officer for disposition of disciplinary
136 charges as prescribed by the department by rule;
137 providing that participating inmates remain eligible
138 to earn or lose gain-time; providing that such inmates
139 may not be counted in the population of the prison
140 system and that their approved community-based housing
141 location may not be counted in the capacity figures
142 for the prison system; creating s. 948.33, F.S.;

143 authorizing a prisoner in a state prison who has an
144 unserved violation of probation or an unserved
145 violation of community control warrant to file a
146 notice of unserved warrant in the circuit court where
147 the warrant was issued; requiring the prisoner to
148 serve notice on the state attorney; requiring the
149 circuit court to schedule a status hearing within a
150 certain time after receiving notice; specifying
151 procedures and requirements for the status hearing;
152 providing for prosecution of the violation; requiring
153 the court to send the order to the county sheriff;
154 providing an effective date.

By Senator Brandes

24-00943C-18

20181206__

A bill to be entitled

An act relating to supervised community release; amending s. 945.091, F.S.; authorizing the Department of Corrections to extend the limits of confinement to allow an inmate to participate in supervised community release, subject to certain requirements, as prescribed by the department by rule; authorizing the department to terminate an inmate's participation under certain circumstances; authorizing a law enforcement officer to arrest, or a probation officer to arrest or request any county or municipal law enforcement officer to arrest, the inmate without warrant wherever he or she is found under certain circumstances; requiring the law enforcement or probation officer to report the alleged violations to a correctional officer for disposition of disciplinary charges as prescribed by the department by rule; providing that participating inmates remain eligible to earn or lose gain-time; providing that such inmates may not be counted in the population of the prison system and that their approved community-based housing location may not be counted in the capacity figures for the prison system; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (1) of section 945.091, Florida Statutes, to read:
945.091 Extension of the limits of confinement; restitution

Page 1 of 3

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

24-00943C-18

20181206__

by employed inmates.-

(1) The department may adopt rules permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe that the inmate will honor his or her trust by authorizing the inmate, under prescribed conditions and following investigation and approval by the secretary, or the secretary's designee, who shall maintain a written record of such action, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to:

(d) Participate in supervised community release as prescribed by the department by rule. The inmate's participation may begin 90 days before his or her provisional or tentative release date. Such supervised community release must include electronic monitoring and community control as defined in s. 948.001.

1. If a participating inmate fails to comply with the conditions prescribed by the department by rule for supervised community release, the department may terminate the inmate's supervised community release and return him or her to the same or another institution designated by the department. If there are reasonable grounds to believe a participating inmate has violated the terms and conditions of supervised community release in a material respect, a law enforcement officer who is aware of the inmate's supervised community release status may arrest, or a probation officer may arrest or request any county or municipal law enforcement officer to arrest, the inmate without warrant wherever he or she is found. The law enforcement or probation officer must report the inmate's alleged violations

Page 2 of 3

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

24-00943C-18

20181206__

59 to a correctional officer for disposition of disciplinary
60 charges as prescribed by the department by rule.

61 2. Inmates participating in supervised community release
62 under this paragraph remain eligible to earn or lose gain-time
63 as prescribed by law and department rule, but may not be counted
64 in the population of the prison system, and the inmate's
65 approved community-based housing location may not be counted in
66 the capacity figures for the prison system.

67 Section 2. This act shall take effect October 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Jan 16, 18
Meeting Date

1206
Bill Number (if applicable)

Topic Supervised Community Release

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone _____

Tall FL
City State Zip

Email _____

Speaking: For Against Information

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

Representing Fla. 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)

1/16/18

Meeting Date

SB 1206

Bill Number (if applicable)

Topic Supervised Community Release

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

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 Randolph Bracy
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 24, 2017

I respectfully request that **Senate Bill #1206**, relating to **Supervised Community Release**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1208

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Florida Correctional Operations Oversight Council

DATE: January 17, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1208 establishes the Florida Correctional Operations Oversight Council (Oversight Council) within the Office of the Chief Inspector General with the specific purpose of overseeing matters relating to the corrections and juvenile justice continuum with an emphasis on the safe and effective operations of major institutions and facilities under the purview of the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ).

The bill provides specified duties for the Oversight Council, including, in part:

- Evaluating, investigating, and overseeing the daily operations of correctional and juvenile facilities;
- Conducting announced and unannounced inspections of correctional and juvenile facilities; and
- Identifying and monitoring high-risk and problematic correctional or juvenile facilities.

The bill prohibits the Oversight Council from interfering with the day-to-day operations of the DOC or the DJJ.

The Oversight Council is comprised of nine members of whom the Governor, President of the Senate, and the Speaker of the House of Representatives are each authorized to appoint three members. The bill provides the initial appointments must be made by October 1, 2018, and designates the length of time for initial terms and subsequent terms of service. Members of the

Oversight Council will serve without compensation, but may receive reimbursement for per diem and travel expenses.

The bill enumerates specified criteria that must be met to be eligible for appointment to the Oversight Council, requires the members to represent the interests of the state in its entirety, and prohibits persons who have a specified conflict of interest from being appointed to the Oversight Council.

The bill provides a specific appropriation of \$168,074 recurring General Revenue funds and \$37,855 nonrecurring General Revenue funds, and creates one full-time equivalent position for the purpose of administering the Oversight Council at an authorized salary rate of \$70,000.

The bill is effective July 1, 2018.

II. Present Situation:

The Florida Corrections Commission

The Florida Corrections Commission (Commission) was established by the Legislature in 1994,¹ and abolished in 2006.² The Commission was housed within the DOC, but acted as an independent body.³ The Commission primarily focused on the DOC, but also looked at policies of the entire criminal justice system affecting corrections.⁴ The Commission consisted of nine members appointed by the Governor and subject to confirmation by the Senate.⁵ The membership of the Commission was required to equally represent all geographic areas of the state, and each member had to be a citizen and registered to vote. The term for each Commission member was four-years.⁶

The primary functions of the Commission included, but were not limited to:

- Recommending major correctional policies and assuring proper execution of approved policies and revisions;
- Periodically reviewing the status of the state correctional system and recommending improvements to the Legislature and the Governor;
- Monitoring the overall financial status of the DOC, including management of revenue and bond proceeds;
- Reviewing annual budget requests, the comprehensive correctional master plan, and the tentative construction program for compliance with laws and policies of the DOC; and
- Regularly evaluating the efficiency, productivity, and management of the DOC.⁷

¹ Chapter 94-117, L.O.F.

² Chapter 06-32, L.O.F.

³ Section 20.315(6)(a)3., F.S. (2005).

⁴ Section 20.315(6)(a)1., F.S. (2005).

⁵ Section 20.315(6)(a)2., F.S. (2005).

⁶ *Id.*

⁷ Section 20.315(6)(b), F.S. (2005).

The Commission was specifically prohibited from interfering with the day-to-day operations of the DOC.⁸

The Commission held regular meetings which were required to be noticed in accordance with Florida's public meetings laws.⁹ The Commission was also required to appoint an executive staff that served under the direction of the Commission.¹⁰

Office of the Inspector General

In 1994, the Florida Legislature created the Office of the Chief Inspector General and an Office of Inspector General in each state agency.¹¹ Every state agency has an inspector general who achieves their mission through conducting professional and independent investigations, audits, and reviews with the goal of enhancing the public trust in government.¹²

The Office of the Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the Executive Office of the Governor (EOG) and in agencies under the jurisdiction of the Governor.¹³ The Chief Inspector General serves as the Inspector General for the EOG and reports directly to the Governor.¹⁴ The duties of the Office of the Chief Inspector General include, in part, conducting audits, investigations, and other activities.¹⁵

Councils

Section 20.03(7), F.S., defines a "council" to mean an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Florida has established a number of councils that address a wide variety of public policy topics, such as the:

- Suicide Prevention Coordinating Council;¹⁶
- Statewide Council on Human Trafficking;¹⁷

⁸ Section 20.315(6)(c), F.S. (2005).

⁹ Article I, s. 24(b) of the Florida Constitution and s. 286.011, F.S., require all state, county, or municipal meetings to be open and noticed to the public.

¹⁰ Section 20.315(6)(e), F.S. (2005).

¹¹ Chapter 94-235, L.O.F.

¹² Florida Inspectors General, available at <http://www.floridaoig.com/default.htm> (last visited January 8, 2018).

¹³ Executive Office of the Governor (Chief Inspector General), *2016-2017 Annual Report*, available at http://www.floridaoig.com/library/Annual_rpts/2016-17-CIG-Annual-Report.pdf (last visited January 8, 2018).

¹⁴ Sections 14.32(4), F.S.

¹⁵ Section 14.32(2), F.S.

¹⁶ Section 14.20195, F.S., creates the council within the Executive Office of the Governor to develop strategies for preventing suicide. The council consists of 27 voting members and one nonvoting member: 13 members are from organizations enumerated in statute and appointed by the director of the Statewide Office for Suicide Prevention, ten members are state officials or their designees, and four are appointed by the Governor. Section 14.20195, F.S., provides, in part, specified term lengths for each class of members and requires at least quarterly meetings.

¹⁷ Section 16.617, F.S., creates the council within the Department of Legal Affairs for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to combat commercial sexual exploitation. The council consists of 11 enumerated entities or their designees, two members who are appointed by the

- Regional Planning Councils;¹⁸ and
- Council on Arts and Culture.¹⁹

Statutes that create councils at a minimum typically include provisions designating the specified number of members, procedures for appointing such members, and the purpose for and duties of the council.²⁰

III. Effect of Proposed Changes:

The bill establishes the Florida Correctional Operations Oversight Council (Oversight Council) within the Office of the Chief Inspector General. The Office of the Chief Inspector General must provide administrative support to the Oversight Council; however, the Oversight Council is not under the control, supervision, or direction of the Office of the Chief Inspector General in the performance of its duties.

The Oversight Council will operate as a council as such term is defined in s. 20.03, F.S., with the specific purpose of overseeing matters relating to the corrections and juvenile justice continuum with an emphasis on the safe and effective operations of major institutions and facilities under the purview of the DOC and the DJJ. The bill also requires the council to make recommendations and findings on the policies of other components of the criminal justice system if such policies affect corrections or the juvenile justice continuum.

The Oversight Council is comprised of nine members of whom the Governor, President of the Senate, and the Speaker of the House of Representatives are each authorized to appoint three members. All members must be initially appointed by October 1, 2018. The term length will be four-years; however, one appointee of each appointing entity must be appointed to an initial two-year term to achieve staggered terms. Members will serve without compensation, but may receive reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.²¹

Governor, and two that are appointed by the Attorney General. Section 16.617, F.S., in part, provides that each member is appointed to a four-year term and provides a process for appointing new members in the event there is a vacancy. The duties of the council are outlined, including to meet at least quarterly.

¹⁸ Section 186.504, F.S., creates a regional planning council in each of the several comprehensive planning districts of the state and specifies representatives that will have voting rights for each planning council and authorizes the Governor to appoint ex officio nonvoting members. Section 186.505, F.S., provides powers and duties to each of the regional planning councils, including, in part, to receive and expend monies for use by appropriate regional entities for planning purposes, conduct studies of the resources of the region, and act in an advisory capacity to the constituent local governments in regional, metropolitan, county, and municipal planning matters.

¹⁹ Section 265.285, F.S., creates the council within the Department of State as an advisory body to promote and advocate for arts and cultural activities in Florida. The council is comprised of 15 members, which are appointed by the Governor, President of the Senate, and Speaker of the House of Representatives. Requirements are provided for the composition of the council as well as other administrative provisions necessary for the council to conduct business.

²⁰ See *supra* notes 19-22.

²¹ Section 112.061, F.S., establishes standardized travel reimbursement rates, procedures, and limitations, with specified exceptions, that apply to all public officers, employees, and authorized persons whose travel is authorized and paid for by a public agency. Per diem and travel expenses cover costs such as lodging, meals, vehicle rental, gas, plane fare, tolls, or parking fees. Rates are dependent upon factors such as whether the business travel requires an overnight stay or day trip and the length of time away from official headquarters.

The bill requires that members are Florida residents and emphasizes, but does not require, that members have a background in prison operations, jail management, or the juvenile justice continuum of services. Appointments must be made in a manner that provides equitable representation to all geographic regions of the state. Members must provide representation to the state in its entirety and not conduct themselves in a manner that benefits a particular region.

A person is prohibited from being appointed as a member of the Oversight Council if he or she has:

- An immediate family member that is employed by the DOC or the DJJ;
- An immediate family member that is employed by a private institution, facility, or provider under contract with the DOC or the DJJ; or
- A direct or indirect interest in a contract, subcontract, franchise, privilege, or other benefit that can be awarded by either the DOC or the DJJ during the term of service.

The Oversight Council's primary duties include:

- Evaluating, investigating, and overseeing the daily operations of correctional and juvenile facilities.
- Conducting announced and unannounced inspections of correctional and juvenile facilities,²² including entering any facility housing prisoners, residents, or juveniles. Members must be provided immediate access to places requested and given the ability to communicate with any prisoner, resident, or juvenile privately with adequate security in place.
- Identifying and monitoring high-risk and problematic correctional or juvenile facilities and reporting findings and recommendations relating to these facilities.
- Providing technical assistance when appropriate.
- Submitting an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, that includes statutory, budgetary, and operational recommendations to the Legislature which address problems identified by the council.²³
- Conducting confidential interviews with staff, officers, inmates, juveniles, volunteers, and public officials relating to the operations and conditions of correctional and juvenile facilities.
- Developing and implementing a monitoring tool that will be used to assess the performance of each correctional and juvenile facility.
- Conducting regular on-site visits to correctional and juvenile facilities.

The Oversight Council is prohibited from interfering with the day-to-day operations of the DOC or the DJJ.

Additionally, the Oversight Council must appoint an executive director to serve under the direction of the members. The bill provides that the executive director position will be governed by the classification plan and salary and benefits plan approved by the EOG.

²² This provision applies to facilities operated by the state or a private contractor.

²³ If the bill becomes law, the first report is due by November 1, 2019.

The bill provides a specific appropriation of \$168,074 recurring General Revenue funds and \$37,855 nonrecurring General Revenue funds, and creates one full-time equivalent position for the purpose of administering the Oversight Council at an authorized salary rate of \$70,000.

The bill is effective July 1, 2018.

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:

The bill provides a specific appropriation of \$168,074 recurring General Revenue funds and \$37,855 nonrecurring General Revenue funds, and creates one full-time equivalent position for the purpose of administering the Oversight Council at an authorized salary rate of \$70,000.

Additionally, to the extent that creating the Oversight Council improves the corrections and juvenile justice continuum systems, the bill may result in cost savings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 14.32 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 January 16, 2018:

The committee substitute provides consistent language throughout the bill and ensures that the oversight duties of the Correctional Operations Oversight Council apply to both correctional and juvenile facilities.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 84 - 87
and insert:
the operations and conditions of correctional and juvenile facilities.

7. Developing and implementing a monitoring tool that will be used to assess the performance of each correctional and juvenile facility.

8. Conducting on-site visits to correctional and juvenile



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11 facilities on a regular

By Senator Brandes

24-01259-18

20181208__

A bill to be entitled

An act relating to the Florida Correctional Operations Oversight Council; amending s. 14.32, F.S.; creating the council within the Office of Chief Inspector General; specifying the purpose of the council; requiring the Office of Chief Inspector General to provide administrative support to the council; specifying the composition of the council; providing terms of office and requirements regarding the council's membership; prescribing the duties and responsibilities of the council; prohibiting the council from interfering with the operations of the Department of Corrections or the Department of Juvenile Justice; authorizing the council to appoint an executive director; authorizing reimbursement for per diem and travel expenses for members of the council; establishing certain restrictions applicable to members of the council and council staff; providing an appropriation; providing an effective date.

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

Section 1. Subsection (6) is added to section 14.32, Florida Statutes, to read:

14.32 Office of Chief Inspector General.—

(6) The Florida Correctional Operations Oversight Council, a council as defined in s. 20.03, is created within the Office of Chief Inspector General. The council is created for the purpose of overseeing matters relating to the corrections and

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

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juvenile justice continuum with an emphasis on the safe and effective operations of major institutions and facilities under the purview of the Department of Corrections and the Department of Juvenile Justice. However, in instances in which the policies of other components of the criminal justice system affect corrections or the juvenile justice continuum, the council shall advise and make recommendations. The Office of Chief Inspector General shall provide administrative support to the council. The council is not subject to control, supervision, or direction by the Chief Inspector General in the performance of its duties, but is governed by the classification plan and salary and benefits plan approved by the Executive Office of the Governor.

(a) The council is composed of the following members:

1. Three members appointed by the Governor.

2. Three members appointed by the President of the Senate.

3. Three members appointed by the Speaker of the House of Representatives.

The initial members of the council shall be appointed by October 1, 2018. Members of the council shall be appointed for terms of 4 years. However, to achieve staggered terms, one appointee of each of the appointing authorities shall be appointed for an initial 2-year term. Members must be appointed in a manner that ensures equitable representation of different geographic regions of the state, and members must be residents of this state. Members of the council must act on behalf of the state as a whole and may not subordinate the needs of the state to those of a particular region. The council's membership should, to the greatest extent possible, include persons with a background in

Page 2 of 4

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24-01259-18

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59 prison operations, jail management, or the juvenile justice
60 continuum of services.

61 (b) The council's primary duties and responsibilities
62 include:

63 1. Evaluating, investigating, and overseeing the daily
64 operations of correctional and juvenile facilities.

65 2. Conducting announced and unannounced inspections of
66 correctional and juvenile facilities, including facilities
67 operated by private contractors. Members of the council may
68 enter any facility where prisoners, residents, or juveniles are
69 kept. Members shall be immediately admitted to such places as
70 they request and may consult and confer with any prisoner,
71 resident, or juvenile privately with adequate security in place.

72 3. Identifying and monitoring high-risk and problematic
73 correctional or juvenile facilities, and reporting findings and
74 recommendations relating to such facilities.

75 4. Providing technical assistance when appropriate.

76 5. Submitting an annual report to the Governor, the
77 President of the Senate, and the Speaker of the House of
78 Representatives by each November 1, beginning in 2019. The
79 report must include statutory, budgetary, and operational
80 recommendations to the Legislature which address problems
81 identified by the council.

82 6. Conducting confidential interviews with staff, officers,
83 inmates, juveniles, volunteers, and public officials relating to
84 the operations and conditions of correctional facilities.

85 7. Developing and implementing a monitoring tool that will
86 be used to assess the performance of each facility.

87 8. Conducting on-site visits to institutions on a regular

24-01259-18

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88 basis.

89 (c) The council may not interfere with the day-to-day
90 operations of the Department of Corrections and the Department
91 of Juvenile Justice, but shall conduct investigations and
92 provide recommendations for improvement.

93 (d) The council shall appoint an executive director who
94 shall serve under the direction of the members of the council.

95 (e) Members of the council shall serve without compensation
96 but are entitled to receive reimbursement for per diem and
97 travel expenses as provided in s. 112.061.

98 (f) Members of the council or its staff may not have
99 immediate family members working for the Department of
100 Corrections, the Department of Juvenile Justice, or a private
101 institution, facility, or provider under contract with either
102 department. A member of the council may not have any direct or
103 indirect interest in a contract, subcontract, franchise,
104 privilege, or other benefit granted or awarded by either
105 department while serving as a member of the council.

106 Section 2. For the 2018-2019 fiscal year, the sums of
107 \$168,074 in recurring funds and \$37,855 in nonrecurring funds
108 are appropriated from the General Revenue Fund to the Executive
109 Office of the Governor, and one full-time equivalent position
110 with associated salary rate of 70,000 is authorized, for the
111 purpose of administering the Florida Correctional Operations
112 Oversight Council.

113 Section 3. This act shall take effect July 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/16/18

Meeting Date

SB 1208

Bill Number (if applicable)

Topic Florida Correctional Operations Oversight Council

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Street

Phone 850-521-3042

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

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)

Jan 16 18

Meeting Date

1208

Bill Number (if applicable)

Topic Correctional Operations Oversight Council

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Street

Phone _____

Tall

FL

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing Fla. 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

8 001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Randolph Bracy
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 24, 2017

I respectfully request that **Senate Bill #1208**, relating to **Florida Correctional Operations Oversight Council**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1220

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Custodial Interrogations

DATE: January 17, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1220 requires a law enforcement officer to electronically record the entire custodial interrogation if it:

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

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

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

The bill also:

- Defines other terms;
- Provides exceptions to the recording requirement;
- Requires a court to consider an officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a statement;

- Requires a law enforcement officer to write a report explaining why he or she did not record the custodial interrogation;
- Requires a law enforcement officer to write a report explaining why when he or she conducts a custodial interrogation at a place *other than a place of detention*;
- Allows a defendant to request, and receive a cautionary jury instruction when a statement is admitted into evidence and the statement was not recorded;
- Exempts a law enforcement agency that has adopted rules regarding the recording of custodial interrogations in a place of detention from civil liability; and
- Specifies that no cause of action is created against a law enforcement officer.

There is no reported fiscal impact resulting from the bill.

The bill is effective July 1, 2018.

II. Present Situation:

Constitutional Protections and Court Decisions Interpreting and Applying Those Protections

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

Custodial Interrogation

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

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

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

¹ U.S. Const. amend. V.

² No person shall be . . . compelled in any criminal matter to be a witness against himself. Article I, s. 9, Fla. Const.;

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

⁴ 596 So.2d 957, 965-966 (Fla. 1992).

⁵ *Traylor*, 596 So.2d 957, 966 at n. 16.

⁶ *Id.* at 966 at n. 17.

Waiver of the Right to Remain Silent

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

Admissibility of a Defendant's Statement as Evidence

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

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

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

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

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

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

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

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

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

¹⁰ *Supra* n. 8 at 667.

¹¹ *Supra* n. 5.

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

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

¹⁴ *Supra* n. 8 at 668.

Interrogation Recording in Florida

Law enforcement agencies in Florida are not currently required to record the custodial interrogation of a crime suspect, neither by audio, video, or a combination of means. Fifty-seven agencies in Florida are reported to voluntarily record custodial interrogations, at least to some extent.¹⁵

Other States

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

III. Effect of Proposed Changes:

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

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

- “Custodial interrogation” which means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency;
- “Electronic recording” which means an audio recording or an audio and video recording that accurately records a custodial interrogation;
- “Covered offense” which lists the following criminal offenses:

¹⁵ *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 36-37, August 2016, National Association of Criminal Defense Lawyers, available at <https://www.nacdl.org/electronicrecordingproject> (last visited January 8, 2018). See also *Electronic Recording of Suspect Interrogations*, Interim Report 2004-123, Florida Senate Committee on Criminal Justice, available at http://archive.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-123cj.pdf (last visited January 11, 2018).

¹⁶ *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 7-8, August 2016, National Association of Criminal Defense Lawyers, available at <https://www.nacdl.org/electronicrecordingproject> (last visited January 8, 2018).

¹⁷ See *Stephan v. State*, 711 P.2d 1156 (AK 1985); Ark. R. Crim. P. Rule 4.7 (2012); Cal Pen Code s. 859.5 (2016) and Cal Wel & Inst Code s. 626.8 (2014); C.R.S. 16-3-601 (2016); CT Gen. Stat. s. 54-1o (2011); D.C. Code s. 5-116.01 (2005); Hawaii was verified by the four departments that govern law enforcement in the state; 705 ILCS 405/5-401.5 (2016), 725 ILCS 5/103-2.1 (2017); Ind. R. Evid. 617 (2014); 25 M.R.S. s. 2803-B(1)(K) (2015); Md. CRIMINAL PROCEDURE Code Ann. ss. 2-401 – 2-402 (2008); MCLS ss. 763.7 – 763.9 (2013); *State v. Scales*, 518 N.W.2d 587 (MN 1994); MO Rev. Stat. s. 590.700 (2017); MT Code Ann. ss. 46-4-406 – 46-4-411 (2009); NE Rev. Stat. Ann. ss. 29-4501 – 29-4508 (2008); NJ Court Rules, R. 3:17 (2006); N.M. Stat. Ann. s. 29-1-16 (2006); N.C. Gen. Stat. s. 15A-211 (2011); OR Rev. Stat. s. 133.400 (2009); RIPAC, Accreditation Standards Manual, ch. 8, s. 8.10 (Rev. 2015); Utah R. Evid. Rule 616 (2016); 13 V.S.A. s. 5585 (2015); *State v. Jerrell C.J.*, 699 N.W.2d 110 (WI 2005); Wis. Stat. ss. 968.073 and 972.115 (2005); *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, August, 2016, National Association of Criminal Defense Lawyers, available at <https://www.nacdl.org/electronicrecordingproject> (last visited January 8, 2018).

- Arson.
- Sexual battery.
- Robbery.
- Kidnapping.
- Aggravated child abuse.
- Aggravated abuse of an elderly person or disabled adult.
- Aggravated assault with a deadly weapon.
- Murder.
- Manslaughter.
- Aggravated manslaughter of an elderly person or disabled adult.
- Aggravated manslaughter of a child.
- The unlawful throwing, placing, or discharging of a destructive device or bomb.
- Armed burglary.
- Aggravated battery.
- Aggravated stalking.
- Home-invasion robbery.
- Carjacking.
- “Place of detention” which means a police station, sheriff’s office, correctional facility, prisoner holding facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual; and
- “Statement” which means a communication that is oral, written, electronic, nonverbal, or in sign language.

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

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

If the custodial interrogation at the place of detention is not recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for the noncompliance. Additionally, the report must summarize the custodial interrogation process and the individual’s statements.

When a law enforcement officer conducts a custodial interrogation at a place other than a place of detention the officer must prepare a written report as soon as practicable. The report must explain the officer’s decision to conduct the interrogation in that place and the report must summarize the custodial interrogation process and the individual’s statements made at that place.

The general recording requirement does not apply under the following circumstances:

- If there is an unforeseen equipment malfunction that prevents recording the custodial interrogation in its entirety;
- If a suspect refuses to participate in a custodial interrogation if his or her statements are electronically recorded;
- Due to equipment operator error;

- If the statement is made spontaneously and not in response to a custodial interrogation question;
- If a statement is made after questioning that is routinely asked during the processing of the arrest of a suspect;
- If the custodial interrogation occurs when no law enforcement officer participating in the interrogation has knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;
- If the law enforcement officer conducting the custodial interrogation reasonably believes that electronic recording would jeopardize the safety of the officer, individual being interrogated, or others; or
- If the custodial interrogation is conducted outside of the state.

Unless a court finds that one or more of the enumerated exceptions applies, the court must consider the officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a defendant's statement made during the interrogation. If the court decides to admit the statement, the defendant may request and the court must give a cautionary jury instruction regarding the officer's failure to comply with the recording requirement.

Finally, if a law enforcement agency has enforced rules that are adopted pursuant to the bill and that are reasonably designed to comply with the bill's requirements, the agency is not subject to civil liability for damages arising from a violation of the bill's requirements. The bill does not create a cause of action against a law enforcement officer.

The bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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:

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

The Florida Department of Law Enforcement anticipates no fiscal impact to the department resulting from the bill.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 900.05 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 January 16, 2018:

The Committee Substitute:

- Corrects a scrivener's error in the wording of "Home-invasion robbery" to be consistent with the way the offense is listed in s. 812.135(1), F.S.
- Changes the definition of "place of detention" by removing language about a "fixed location under the control of law enforcement" and listing the locations instead. It also eliminates the language about the definition excluding a police vehicle from the definition of "place of detention" since all places of detention are now specified.

¹⁸ Florida Department of Law Enforcement, *2018 Legislative Bill Analysis, SB 1220* (December 14, 2017) (on file with the Senate Committee on Criminal Justice).

B. Amendments:

None.

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



580628

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 58 - 67
and insert:

16. Home-invasion robbery.

17. Carjacking.

(d) "Place of detention" means a police station, sheriff's office, correctional facility, prisoner holding facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed



580628

11 against the individual.

By Senator Brandes

24-00773-18

20181220__

A bill to be entitled

An act relating to custodial interrogations; creating s. 900.05, F.S.; defining terms and specifying covered offenses; requiring that a custodial interrogation at a place of detention be electronically recorded in its entirety in connection with certain offenses; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a place other than a place of detention to prepare a specified report; providing exceptions to the electronic recording requirement; requiring a court to consider a law enforcement officer's failure to comply with the electronic recording requirements in determining the admissibility of a statement unless an exception applies; requiring a court, upon the request of a defendant, to give cautionary instructions to a jury under certain circumstances; providing immunity from civil liability to law enforcement agencies that enforce certain rules; providing that no cause of action is created against a law enforcement officer; providing an effective date.

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

Section 1. Section 900.05, Florida Statutes, is created to read:
900.05 Recording of custodial interrogations for certain offenses.

Page 1 of 5

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

24-00773-18

20181220__

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

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

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

(c) "Covered offense" includes:

1. Arson.
2. Sexual battery.
3. Robbery.
4. Kidnapping.
5. Aggravated child abuse.
6. Aggravated abuse of an elderly person or disabled adult.
7. Aggravated assault with a deadly weapon.
8. Murder.
9. Manslaughter.
10. Aggravated manslaughter of an elderly person or disabled adult.
11. Aggravated manslaughter of a child.
12. The unlawful throwing, placing, or discharging of a destructive device or bomb.
13. Armed burglary.
14. Aggravated battery.
15. Aggravated stalking.
16. Home invasion or robbery.

Page 2 of 5

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

24-00773-18

20181220__

17. Carjacking.

(d) "Place of detention" means a fixed location under the control of a law enforcement agency where persons may be questioned in connection with suspected criminal offenses or where persons are detained temporarily in connection with criminal charges pending a potential arrest or citation, including, but not limited to, a police department or sheriff's office, a correctional facility, or a detention facility. The term does not include a police vehicle.

(e) "Statement" means a communication that is oral, written, electronic, nonverbal, or in sign language.

(2)(a) A custodial interrogation at a place of detention, including the giving of a required warning, the advisement of the rights of the individual being questioned, and the waiver of any rights by the individual, must be electronically recorded in its entirety if the interrogation is related to a covered offense.

(b) If a law enforcement officer conducts a custodial interrogation at a place of detention without electronically recording the interrogation, the officer shall prepare a written report explaining the reason for his or her noncompliance with this section and summarizing the custodial interrogation process and the individual's statements.

(c) As soon as practicable, a law enforcement officer who conducts a custodial interrogation at a place other than a place of detention shall prepare a written report explaining the decision to interrogate at that place and summarizing the custodial interrogation process and the individual's statements made at that place.

24-00773-18

20181220__

(d) Paragraph (a) does not apply:

1. If an unforeseen equipment malfunction prevents recording the custodial interrogation in its entirety;

2. If a suspect refuses to participate in a custodial interrogation if his or her statements are electronically recorded;

3. Due to equipment operator error;

4. If the statement is made spontaneously and not in response to a custodial interrogation question;

5. If a statement is made after questioning that is routinely asked during the processing of the arrest of a suspect;

6. If the custodial interrogation occurs when no law enforcement officer participating in the interrogation has knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;

7. If the law enforcement officer conducting the custodial interrogation reasonably believes that electronic recording would jeopardize the safety of the officer, individual being interrogated, or others; or

8. If the custodial interrogation is conducted outside of the state.

(3) Unless a court finds that one or more of the circumstances specified in paragraph (2)(d) apply, the court shall consider a law enforcement officer's failure to make an electronic recording of all or part of a custodial interrogation in determining whether a statement made during the interrogation is admissible. If the court admits into evidence a statement

24-00773-18

20181220__

117 made during a custodial interrogation that was not
118 electronically recorded as required under paragraph (2) (a), the
119 court must, upon request of the defendant, give cautionary
120 instructions to the jury regarding the law enforcement officer's
121 failure to comply.

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

128 Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/16/18
Meeting Date

1220
Bill Number (if applicable)

Topic Recording of Custodial Interrogations

580628
Amendment Barcode (if applicable)

Name Seth Miller

Job Title Executive Director, Innocence Project of Florida

Address 1100 E. Park Ave
Street

Phone 850-561-6767

Tallahassee FL 32301
City State Zip

Email smiller@floridainnocence.org

Speaking: For Against Information

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

Representing Innocence Project of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

This form is...

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/16/18

Meeting Date

1220

Bill Number (if applicable)

Topic Recording Custodial Interrogations

Amendment Barcode (if applicable)

Name Seth Miller

Job Title Executive Director - Innocence Project of Florida

Address 1100 E. Park Avenue
Street

Phone 850-561-6707

Tallahassee

City

FL

State

32301

Zip

Email smiller@florida
innocence.org

Speaking: For Against Information

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

Representing Innocence Project of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

1/16/18

Meeting Date

SB 1220

Bill Number (if applicable)

Topic Custodial Interrogations

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

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)

1/16/18

Meeting Date

1220

Bill Number (if applicable)

Topic Custodial Interrogations

Amendment Barcode (if applicable)

Name Honorable ~~Andy Thomas~~ CARLOS MARTINEZ

Job Title Public Defender, ^{11th} ~~2nd~~ Judicial Circuit

Address ~~301 S. Momroe St.~~ 1320 NW 14th St.

Phone 305-545-1900
(850) 606-1010

Street Tallahassee Miami Florida 33125 32301
City State Zip

Email ~~andy.thomas@flpd2.com~~ cmartinez@pdmiami.com

Speaking: For Against Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Jan 16, 18
Meeting Date

1220
Bill Number (if applicable)

Topic Custodial Interrogations

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone _____

Tall FL
City State Zip

Email _____

Speaking: For Against Information

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

Representing Fla. 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

Committee Agenda Request

To: Senator Randolph Bracy
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 24, 2017

I respectfully request that **Senate Bill #1220**, relating to **Custodial Interrogations**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 1/16/2018 1:35:49 PM

Ends: 1/16/2018 1:58:20 PM

Length: 00:22:32

1:35:49 PM Meeting called to order by Senator Rouson
1:35:54 PM Roll call by Administrative Assistant Sue Arnold
1:36:00 PM Quorum present
1:36:57 PM SB 936 Temporarily Postponed
1:37:12 PM SB 1004 presented by Senator Brandes
1:38:12 PM Question by Senator Bean
1:38:27 PM Response by Senator Brandes
1:39:10 PM Amendment 245102 presented by Senator Brandes
1:39:48 PM Amendment adopted
1:39:59 PM Speaker Scott McCoy
1:40:13 PM Barney Bishop waives in support
1:40:29 PM Senator Brandes waives closed
1:40:55 PM CS/SB 1004 Reported Favorably
1:41:23 PM Take up SB 1206; SB 1206 Amendment 211666 presented by Senator Brandes
1:43:09 PM Question by Senator Bradley
1:43:16 PM Reponse by Senator Brandes
1:43:52 PM Question by Chair Rouson
1:43:57 PM Response by Senator Brandes
1:44:30 PM Amendment 211666 adopted
1:44:42 PM Scott McCoy waives in support
1:44:48 PM Barney Bishop waives in support
1:45:04 PM Senator Brandes closes
1:46:06 PM CS/SB 1206 Reported Favorably
1:46:23 PM SB 1208 presented by Senator Brandes
1:48:29 PM Amendment 536786 presented
1:49:03 PM Amendment 536786 adopted
1:49:12 PM Scott McCoy waives in support
1:49:26 PM Barney Bishop waives in opposition
1:49:42 PM Senator Brandes closes
1:50:41 PM CS/SB 1208 Reported Favorably
1:51:13 PM SB 1220 presented by Senator Brandes
1:52:19 PM Amendment 580628 presented
1:53:11 PM Seth Miller waives in support
1:53:28 PM Senator Brandes waives close on amendment
1:53:31 PM Amendment adopted
1:53:43 PM Speaker Seth Miller
1:55:16 PM Scott McCoy waives in support
1:55:22 PM Carlos Martinez waives in support
1:55:31 PM Barney Bishop waives in support
1:55:45 PM Senator Brandes closes
1:56:43 PM Question
1:56:49 PM Response
1:57:07 PM CS/SB 1220 Reported Favorably
1:57:52 PM Senator Baxley votes favorably on 1004, 1206, 1208
1:58:05 PM Criminal Justice Committee Meeting Adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Banking and Insurance
Judiciary
Regulated Industries

SENATOR RANDOLPH BRACY

11th District

January 16, 2018

Senator Randolph Bracy, Chair
Criminal Justice Committee
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Committee Staff Directors:

Due to a transportation emergency while traveling back to Tallahassee, I am respectfully requesting an excused absence from the Committee on Criminal Justice on Tuesday, January 16, 2018.

Thanks so very much for excusing my absence.

Sincerely,

A handwritten signature in cursive script that reads "Randolph Bracy".

Randolph Bracy
Florida Senate, District 11

REPLY TO:

- 150 N. Lakeshore Drive, Ocoee, Florida 34761 (407) 656-6716
- 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore