Tab 1	**SB 54** by **Torres (CO-INTRODUCERS) Stewart, Bracy**; (Similar to CS/H 06517) Relief of Robert Allan Smith by Orange County

357842	A	S	RCS	JU, Torres	Delete L.66:	01/18 02:09 PM

Tab 2	**SB 522** by **Bean**; (Identical to H 00281) Incarcerated Parents

Tab 3	**CS/SB 618** by **CJ, Baxley (CO-INTRODUCERS) Steube, Book, Rouson, Mayfield**; (Similar to H 00581) Subpoenas in Investigations of Sexual Offenses

496336	A	S	RCS	JU, Baxley	Delete L.167:	01/18 02:09 PM
550372	T	S	RCS	JU, Baxley	In title, delete L.29:	01/18 02:09 PM

Tab 4	**SB 1048** by **Baxley (CO-INTRODUCERS) Stargel**; (Similar to H 01419) Firearms

Tab 5	**SB 660** by **Brandes**; (Similar to CS/H 01021) Florida Insurance Code Exemption for Nonprofit Religious Organizations

Tab 6	**SB 750** by **Perry**; (Identical to H 00273) Public Records

Tab 7	**SB 1120** by **Perry (CO-INTRODUCERS) Passidomo**; (Similar to H 01063) Expert Witnesses

Tab 8	**SB 608** by **Passidomo**; Public Records/Identity Theft and Fraud Protection Act

Tab 9	**SB 26** by **Garcia**; (Identical to H 06543) Relief of Eric Scott Tenner by Miami-Dade County

Tab 10	**SB 48** by **Gibson**; (Identical to H 06523) Relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board

Tab 11	**SB 1242** by **Steube**; (Identical to H 00739) Carrying of Weapons and Firearms

387304	A	S		JU, Steube	Delete L.66:	01/17 10:02 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Steube, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Thursday, January 18, 2018
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Steube, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Bradley, Flores, Garcia, Gibson, Mayfield, Powell, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 54** Torres (Similar CS/H 6517)	Relief of Robert Allan Smith by Orange County; Providing for the relief of Robert Allan Smith by Orange County; providing for an appropriation to compensate Mr. Smith for injuries he sustained as a result of the negligence of an employee of Orange County, etc. SM JU 01/18/2018 Fav/CS GO RC	Fav/CS Yeas 10 Nays 0
2	**SB 522** Bean (Identical H 281)	Incarcerated Parents; Requiring the Department of Children and Families to obtain specified information from a facility where a parent is incarcerated under certain circumstances; requiring that a parent who is incarcerated be included in case planning and provided with a copy of the case plan; specifying that the incarcerated parent is responsible for complying with facility procedures and policies to access services or maintain contact with his or her children as provided in the case plan, etc. CF 12/04/2017 Favorable JU 01/18/2018 Favorable RC	Favorable Yeas 10 Nays 0
3	**CS/SB 618** Criminal Justice / Baxley (Similar H 581)	Subpoenas in Investigations of Sexual Offenses; Authorizing an investigative or law enforcement officer conducting an investigation into specified matters to subpoena certain persons or entities for the production of records, documents, or other tangible things and testimony; authorizing a subpoenaed person to petition a court for an order modifying or setting aside the subpoena or a prohibition on disclosure; authorizing a court to punish a person who does not comply with a subpoena as indirect criminal contempt, etc. CJ 01/09/2018 Fav/CS JU 01/18/2018 Fav/CS RC	Fav/CS Yeas 7 Nays 3

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1048** Baxley (Similar H 1419)	Firearms; Authorizing a church, a synagogue, or other religious institution to allow a concealed weapons or concealed firearms licensee to carry a firearm on the property of the church, synagogue, or religious institution for certain purposes, etc. JU 01/18/2018 Temporarily Postponed RC	Temporarily Postponed
5	**SB 660** Brandes (Identical H 1021)	Florida Insurance Code Exemption for Nonprofit Religious Organizations; Revising criteria under which a nonprofit religious organization that facilitates the sharing of contributions among its participants for financial or medical needs is exempt from requirements of the code, etc. BI 12/05/2017 Not Considered BI 01/10/2018 Favorable JU 01/18/2018 Favorable RC	Favorable Yeas 10 Nays 0
6	**SB 750** Perry (Identical H 273)	Public Records; Prohibiting an agency that receives a request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request, etc. GO 01/10/2018 Favorable JU 01/18/2018 Temporarily Postponed RC	Temporarily Postponed
7	**SB 1120** Perry (Similar H 1063)	Expert Witnesses; Requiring a court to pay reasonable fees to members of an examining committee for their evaluation and testimony regarding persons with disabilities; authorizing, rather than requiring, a court to appoint up to two additional experts to evaluate a defendant suspected of having an intellectual disability or autism under certain circumstances; authorizing a court to take less restrictive action than commitment if an expert finds a child incompetent, etc. JU 01/18/2018 Temporarily Postponed CJ AP	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 608** Passidomo	Public Records/Identity Theft and Fraud Protection Act; Citing this act as the “Identity Theft and Fraud Protection Act"; requiring an agency to review for information susceptible to use for purposes of identity theft or fraud before making postings to a publicly available website; requiring an agency to establish a policy providing for requests to remove an image or a copy of a public record containing information susceptible to use for purposes of identity theft and fraud, etc. GO 01/10/2018 Favorable JU 01/18/2018 Favorable RC	Favorable Yeas 9 Nays 1
9	**SB 26** Garcia (Identical H 6543)	Relief of Eric Scott Tenner by Miami-Dade County; Providing for the relief of the Estate of Eric Scott Tenner by Miami-Dade County; providing for an appropriation to compensate his estate for damages sustained as a result of the negligence of an employee of the Miami-Dade County Board of Commissioners, etc. SM JU 01/18/2018 Favorable GO RC	Favorable Yeas 10 Nays 0
10	**SB 48** Gibson (Identical H 6523)	Relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board; Providing for the relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board; providing for an appropriation to compensate Ashraf Kamel and Marguerite Dimitri for the wrongful death of their minor child, Jean A. Pierre Kamel, as a result of the negligence of the Palm Beach County School Board, etc. SM JU 01/18/2018 Favorable GO RC	Favorable Yeas 10 Nays 0
11	**SB 1242** Steube (Identical H 739)	Carrying of Weapons and Firearms; Providing that specified provisions relating to the carrying of weapons and firearms do not apply to persons engaged in, traveling to, or returning from certain outdoor activities or traveling to or returning from certain motor vehicles, residences, shelters, and other places, etc. JU 01/18/2018 Not Considered GO RC	Not Considered

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

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/12/18	SM	Favorable
1/18/18	JU	Fav/CS
	GO	
	RC	

January 12, 2018

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 54** – by Judiciary Committee and Senators Torres and Stewart
HB 6517 – by Representative Cortes
Relief of Robert Allan Smith by Orange County

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF $2,813,536 AGAINST ORANGE COUNTY FOR INJURIES AND DAMAGES SUFFERED BY MR. SMITH WHEN THE MOTORCYCLE HE WAS DRIVING WAS STRUCK BY AN ORANGE COUNTY VEHICLE ON SEPTEMBER 7, 2006.

FINDINGS OF FACT:

This claim arises out of a motor vehicle crash involving a motorcycle and a county-owned van which occurred on September 7, 2006, in Orlando, Florida, at the intersection of DePauw Avenue and Orlando Street. The intersection has a stop sign posted for vehicles traveling on Orlando Street. There is no stop sign on DePauw Avenue, which is a residential cross-street. The speed limit on both streets is 25 miles per hour.

The Accident

The accident occurred at approximately 1:43 p.m. Mr. Smith was driving his motorcycle from his residence on DePauw Avenue northbound toward Orlando Street. While at the same time, an Orange County employee, Mr. Godden, was traveling westbound on Orlando Street toward DePauw Avenue. Upon approaching DePauw Avenue, Mr. Godden stopped at the stop sign and looked to the left and to the right on DePauw

Avenue. Mr. Smith testified that he visibly saw the van slow down as it approached the stop sign and, therefore, believed that it was safe to travel through the intersection. Mr. Godden proceeded from the stop sign into the intersection and the front of the van collided with the right side of the motorcycle.

At the time of the accident there were two properly parked vehicles on DePauw Avenue; these cars may have obstructed the view of Mr. Godden and Mr. Smith, and possibly caused Mr. Smith to travel down the center of the lane on DePauw Avenue.

The crash was witnessed primarily by one individual, Mr. Dean. Mr. Dean was outside in close proximity to the accident, but his sight of the impact was obstructed by a large tree. Mr. Dean testified that he witnessed the motorcycle traveling northbound on DePauw Avenue and the van stopped on Orlando Street. Mr. Dean testified that he watched as the van proceeded straight into the intersection and witnessed Mr. Smith attempt to avoid the van by swerving into the left side of the road. While his vision was obstructed, Mr. Dean heard the sound of the impact.

The van hit Mr. Smith on the right side, causing his right leg to be partially torn from his body. On impact, Mr. Smith was not ejected from the motorcycle, but rather, remained on the motorcycle. The force of the impact shifted the motorcycle to the left, and the left peg of the motorcycle was damaged and the motorcycle continued forward until it made impact with a curb. Upon impact with the curb, Mr. Smith was ejected from the motorcycle and landed in the grass between the sidewalk and the curb.

Mr. Smith suffered extensive injuries including:

- A right leg above-the-knee amputation;
- A left leg dislocation and fracture;
- Lacerations on his face and right hand;
- A broken pelvis and sacrum; and
- Damage to his rectum and internal organs.

Mr. Smith has incurred over $550,000 in medical bills, along with the cost of purchasing and maintaining his prosthetic leg. He continues to suffer the effects of his injuries with recurring infections in his leg. Having no health insurance, Mr. Smith's medical bills have been paid by Medicaid or the Department

of Veteran Affairs. There are outstanding liens against any award Mr. Smith receives.[1]

At the time of the accident, Mr. Smith was a motorcycle mechanic at Harley Davidson. Since the accident, Mr. Smith received a bachelor's degree in computer design. In August of 2017, Mr. Smith obtained employment doing graphic design work.

Traffic Citation
Mr. Godden was cited with a violation of s. 316.123(2), F.S., for failure to yield at a stop sign. A violation of which is a noncriminal infraction, punishable as a moving violation. The citation, however, was subsequently dismissed.

Civil Suit
The case was first tried in November of 2011, but a mistrial was declared because of issues relating to the jury. The case was retried in July of 2012, and the jury returned a verdict in favor of Mr. Smith for damages totaling $4,814,785.37.

However, the jury found Mr. Smith to be comparatively negligent. Mr. Smith was found to be 33 percent at fault and Mr. Godden to be 67 percent at fault for the accident, so the damages were reduced accordingly. The verdict amount was also reduced due to collateral sources, which left a net verdict of $2,913,536.09.

Section 768.28, F.S., limits the amount of damages that can be collected from a local government as a result of its negligence or the negligence of its employees. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, Mr. Smith will not receive the full amount of the judgement unless the Legislature approves this claim bill authorizing the additional payment.

CLAIMANT'S ARGUMENTS:

Mr. Smith argues that Orange County is liable for the negligence of its employee, Mr. Godden, when he failed to yield at a stop sign in violation of s. 316.123(2), F.S.

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[1] The Department of Veteran Affairs has a lien in the amount of $181,560.04 and Medicaid has a lien in the amount of $42,147.35. Both of which would be satisfied from any award passed by the Legislature.

RESPONDENT'S ARGUMENTS:

Orange County argues that Mr. Smith was driving his motorcycle at speeds in excess of the posted speed limit. Therefore, Orange County argues that the claim bill should be denied because Mr. Smith's comparative fault for the accident was greater than Mr. Godden's.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether Orange County is liable in negligence for damages suffered by the Claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the Special Master prior to, during, and after the hearing.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence: duty, breach, causation, and damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

Mr. Godden, as an operator of a motor vehicle, had a reasonable duty of care to operate his vehicle at all times with proper care. A motorist's duty to use reasonable care includes a responsibility to enter intersections only upon a determination that it is safe to do so under the prevailing conditions. *Williams v. Davis*, 974 So. 2d 1052, 63 (Fla. 2007).

Section 316.23, F.S. requires drivers after having stopped at a stop sign to yield the right-of-way to any vehicle which is approaching so closely as to constitute an immediate hazard during the time when the driver is moving across or within the intersection. While a violation of a statute governing motor vehicles does not constitute negligence per se, it does constitute prima facie evidence of negligence. *Gudath v. Culp Lumber Co.*, 81 So. 2d 742, 53 (Fla. 1955).

Where a statute governing motor vehicles prohibits specific conduct that likely will cause harm to others and the same conduct is alleged in a civil action as negligent conduct causing injury to another, the statute becomes a minimum standard of care as to that conduct, and a violation of such constitutes some evidence of negligence. *Estate of Wallace v. Fisher*, 567 So. 2d 505 (Fla. 5th DCA 1990).

Mr. Godden was acting within the course and scope of his employment with Orange County at the time of the accident. Orange County, as the employer of Mr. Godden, is liable for

his negligent actions. *See Mercury Motors Express v. Smith*, 393 So. 2d 545, 549 (Fla. 1981).

Based on a preponderance of the evidence, it is established that Mr. Godden breached his duty to exercise reasonable care by failing to yield the right-of-way after having stopped at the stop sign in violation of s. 316.123(2), F.S. Mr. Godden by accelerating into the intersection before making sure it was safe to proceed breached his duty of care.

Mr. Smith's extensive injuries, including the loss of his right leg, were a natural and direct consequence of Mr. Godden's negligence. *See Railway Exp. Agency v. Brabham*, 62 So. 2d 713 (Fla. 1952). The accident would not have occurred but for Mr. Godden's negligence.

As a result of Mr. Godden's negligence, Mr. Smith suffered bodily injury and resulting pain and suffering, impairment, disability, mental anguish, and loss of earnings.

Collateral Sources
Under s. 768.76, F.S., damages owed by a tortfeasor can be reduced by the amount of collateral sources which have been paid to compensate the claimant. In this case, the jury's award was reduced by $55,638 due to past Social Security Disability Income benefits and by $325,865.58 due to amounts received by the Florida Department of Education, Medicaid, and the Veteran's Administration.

Comparative Negligence
Section 768.81, F.S., Florida's comparative negligence statute, applies to this case because both Mr. Godden and Mr. Smith were at fault in the accident.

Mr. Godden's Negligence
A stop sign that is established and maintained by lawful authority at an intersection of a street represents a proclamation of danger and imposes upon the motorist the duty to stop and look before proceeding into the intersection. *Tooley v. Marquilies*, 79 So. 2d 421, 22 (Fla. 1955).

The proximate cause of the accident was Mr. Godden's negligence in proceeding into the intersection in front of Mr. Smith's approaching motorcycle at such a time where it may have been impossible for Mr. Smith to avoid the collision.

Mr. Smith's Negligence
Mr. Smith as an operator of a motor vehicle also has the duty to exercise reasonable care. Such duty includes a responsibility to enter intersections only upon a determination that it is safe to do so under the prevailing conditions. *Williams v. Davis*, 974 So. 2d 1052, 63 (Fla. 2007).

The verdict amount after the reduction of collateral sources and the reduction of $84,720 in future medical expenses which was agreed to by the parties is $4,348,561.79. This adjusted verdict amount was further reduced due to the jury's assessment of comparative negligence against Mr. Smith. The jury in the civil suit found Mr. Godden 67 percent at fault and Mr. Smith 33 percent at fault. Therefore, the net verdict is $2,913,536.09.

Orange County has paid the $100,000 statutory cap on liability. Mr. Smith requests that the remaining sum of $2,813,536.09 be approved in this claim bill.

After consideration of all the facts presented in this case, I conclude that the amount of this claim bill is appropriate.

LEGISLATIVE HISTORY: A claim bill for the relief of Mr. Smith was first filed for the 2017 Legislative Session. The Senate Bill, CS/SB 300, died in the Senate Committee on Community Affairs, and the House Bill, CS/HB 6509, died in Messages.

ATTORNEY FEES: Mr. Smith's attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S.

FISCAL IMPACT: Orange County at the time of the accident maintained a self-insured retention in the amount of $1,000,000 with a $10,000,000 excess liability policy. Orange County has stated that if the county is required to pay out any amount of this claim bill, there will be adverse impacts to the county's financial position as the funds would come from charge backs to various departments and, thereby, restrict each department's ability to provide services and conduct programs.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 54 (2018) be reported FAVORABLY.

Respectfully submitted,

Ashley Istler
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The committee substitute reduces the amount of the claim to $750,000 from approximately $2.8 million.

357842

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/18/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Torres) recommended the following:

1 **Senate Amendment**

2

3 Delete line 66

4 and insert:

5 warrant in the sum of $750,000 payable to Robert Allan

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Vice Chair*
Appropriations Subcommittee on General Government
Ethics and Elections
Military and Veterans Affairs, Space, and Domestic Security

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR VICTOR M. TORRES, JR.
15th District

October 12, 2017

Senator Greg Steube
326 Senate Office Building
404 S Monroe St
Tallahassee, FL 32399-1100

Dear Chairman Steube:

Please accept this letter as a formal request to schedule SB 54, a claims bill for Relief of Robert Allan Smith by Orange County, for the next available meeting of the Judiciary Committee. Please let me know if you have any questions or need additional information. Thank you, in advance, for your favorable consideration of this request.

Respectfully,

Victor M. Torres, Jr.
State Senator
District 15

c: Tom Cibula, Staff Director, Judiciary Committee
Alex Blair, Legislative Assistant

REPLY TO:
☐ 101 Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (850) 410-4817
☐ 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 522

INTRODUCER: Senator Bean

SUBJECT: Incarcerated Parents

DATE: January 17, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Favorable**
2.	Tulloch	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 522 requires that the Department of Children and Families include incarcerated parents of dependent children in the case planning process. The case planning process is the statutory process requiring that DCF meet with and obtain input from all parties involved in a child dependency case in order to determine the ultimate goal for the child's permanent living arrangement (permanency goal) and the steps the parties must take (complete certain tasks or receive certain services) by certain dates to achieve the child's permanency goal. Based on input from all parties involved, DCF prepares a written document called a case plan reflecting the permanency goal and the steps to achieve the permanency goal.

Specifically, the bill requires that:

- DCF must develop case plans with incarcerated parents, giving consideration to limitations posed by the correctional facility where the parent is incarcerated;
- DCF must determine what services and resources may be available to incarcerated parents and, if reunification with a child is the goal, proactively assist the parent in arranging for services from within jail or prison. If reunification is not the goal, DCF must still attach a list of services available from within jail or prison to the parent's case plan; and
- DCF must amend case plans if appropriate when parents either become incarcerated or are released from incarceration.
- The incarcerated parent is responsible for complying with case plan requirements and the requirements of their correctional facilities.

II. Present Situation:

Overview

Although the number of children and youth placed in foster care nationally as a result of the incarceration of a parent is not clearly identified through current data collection systems,

estimates suggest that tens of thousands of children in foster care may have incarcerated parents.[1] In Florida, legal complications have arisen when an incarcerated parent's parental rights have been terminated for non-compliance with a case plan, even though he or she has been given no meaningful opportunity to participate in the case planning process. The result of these legal complications is a delay in the permanent placement of a child.

Harmonizing the Goals for Dependent Children with the Rights of Parents

The purpose of Florida's dependency system (foster care) is to protect children from abuse, neglect, and abandonment, while simultaneously working with parents to keep families intact when possible.[2] Once a child is deemed dependent and comes under the supervision of the Department of Children and Families, the goal is to achieve "permanency" or a stable living arrangement for the child (i.e., "permanency goal")[3] as soon as possible.[4] The preferred permanency goals for the child are either reunification with the parent(s) or adoption.[5] When removal of the child from the home is necessary, the permanency goal also aims to ensure the child is not "in foster care longer than 1 year."[6] The Florida Statutes affirm that "[t]ime is of the essence for permanency of children in the dependency system."[7]

For parents, courts recognize a constitutional, fundamental liberty interest in being a parent to a child which is not dependent on the parent's behavior (including criminal behavior leading to incarceration) or loss of custody of the child.[8] Although a parent's fundamental right to be a parent is not unlimited, the parent's rights are *not automatically terminated* if a parent is incarcerated and loses custody of a child.[9] In recognition of a parent's fundamental liberty

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[1] U.S. Department of Health and Human Services, Children's Bureau, Child Welfare Information Gateway: Child Welfare Practice With Families Affected by Parental Incarceration (Oct. 2015), https://www.childwelfare.gov/pubPDFs/parental_incarceration.pdf.

[2] Section 39.001(1)(a), (b), (e), (f), F.S.

[3] Section 39.01(53), F.S. (defining "permanency goal" as "the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child.").

[4] Section 39.001(1) (h), F.S.

[5] *Id.*

[6] Section 39.001(1)(f)-(h), F.S.

[7] Section 39.806(1)(e)1., F.S.

[8] *See Santosky v. Kramer,* 455 U.S. 745, 753, 787, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) ("The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs."); *S.M. v. Florida Dept. of Children & Families*, 202 So. 3d 769, 777–78 (Fla. 2016) ("Likewise, this fundamental right is equally as strong, if not stronger, under the Florida Constitution. This Court, in *Padgett,* explained: 'Florida courts have long recognized this fundamental parental right ... to enjoy the custody, fellowship and companionship of [their] offspring. This rule is older than the common law itself.'") (quoting *Dep't of Health and Rehab. Serv's v. Padgett,* 577 So. 2d 565, 570 (Fla. 1991), citing *Santosky,* 455 U.S. at 753, 102 S.Ct. 1388. 577 So.2d at 570)).

[9] *Id. See also* s. 39.806(d), F.S. (setting out circumstances when parental rights may be terminated due to incarceration: 1. Incarceration period is significant portion of child's minority; 2. Parent is a violent career criminal, habitual violent felony offender, committed a capitol felony, etc.; or 3. The court determines by clear and convincing evidence that relationship with incarcerated parent will harm the child considering several factors).

interest in being a parent, the strict procedures set forth in chapter 39, F.S., affording the parent due process must be followed before the parent's rights can be terminated without consent.[10]

Case Planning

Under both Florida and federal law, the tool DCF is required to use to determine the permanency goal for the child is the case plan.[11] DCF is required to develop a case plan in every dependency case in Florida with the input of all parties involved.[12] The ultimate goal of the case plan is to set out in writing the specific steps to be taken by all parties involved, including the parents, to reach the child's permanency goal.[13] If the permanency goal is reunification for example, the case plan must be designed with specific tasks to be completed and services to be rendered to the child or parent (such as counseling or rehabilitative services[14]) to ensure the child's safe return home. [15]

DCF is also required to follow certain procedures in the case planning process:

- Meet face-to-face with a parent to develop the case plan and determine the permanency goal for the child;[16]
- When a parent is not available or unable to participate, document these circumstances in the case plan, along with the efforts made to find or include the parent.[17]
- Ensure the case plan is written in clear language and signed by all parties (except that the child's signature may be waived).[18]
- Ensure that copies of the case plan are provided to all parties.[19]

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[10] *Id. See also Fahey v. Fahey*, 213 So. 3d 999, 1001 (Fla. 1st DCA 2016) ("Under Florida law, parental rights may only be terminated through adoption or the strict procedures set forth in chapter 39, Florida Statutes").

[11] Section 39.01(11), F.S. ("'Case plan' means a document, as described in s. 39.6011, prepared by the department with input from all parties."). Sections 39.6011 & .6012, F.S.; 42 U.S.C. s. 671(a)(16) (requiring development of case plan where child removed from home); 45 C.F.R. s. 1356.21(g)(2).

[12] Sections 39.01(11) and 39.6011, F.S.

[13] Section 39.01(53), F.S. ("The permanency goal is also the case plan goal.") *See also Case Planning to Support Family Change, 5-1. Purpose*, Family Assessment and Case Planning, Department of Children and Families Operating Procedure No. 170-9, Ch. 5, p. 5-1 (May 11, 2016), http://eww.dcf.state.fl.us/asg/pdf/r170-9c5.pdf .

[14] Section 39.01(68), F.S. ("'Reunification services' means social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, nonrelative placement, or foster parents of the child, for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services. The services shall promote the child's need for physical, developmental, mental, and emotional health and a safe, stable, living environment; shall promote family autonomy; and shall strengthen family life, whenever possible.").

[15] *Id.;* s. 39.6012(1)(a), F.S. *See also Case Planning to Support Family Change, 5-1. Purpose*, Family Assessment and Case Planning, Department of Children and Families Operating Procedure No. 170-9, Ch. 5, p. 5-1 (May 11, 2016), http://eww.dcf.state.fl.us/asg/pdf/r170-9c5.pdf.

[16] Section 39.6011(1)(a), F.S. This meeting may also include the guardian ad litem if appointed, and the custodian of the child and even the child if appropriate. *Id.* The parent may also receive assistance from any person, including an attorney or social service agency, in developing the case plan. s. 39.6011(1)(c), F.S.

[17] Section 39.6011(1)(d), F.S.

[18] Section 39.6011(2), F.S.

[19] *See* n. 16, *supra*.

Because incarcerated parents are *not* automatically unavailable nor are their rights automatically terminated by virtue of incarceration,[20] the procedural case planning requirements DCF must follow also apply to incarcerated parents.[21] In some cases, however, an incarcerated parent has been overlooked in the case planning process.

Legal Consequences of Overlooking the Incarcerated Parent in the Case Planning Process

Under chapter 39, F.S., when DCF seeks to terminate a parent's rights for substantial non-compliance with the parent's case plan, the parent's rights can be terminated only if DCF has made "reasonable efforts to reunify the parent and the child.[22] Likewise, several appellate court decisions have held that, in recognition of a parent's fundamental right to parent his or her child, when an incarcerated parent of a dependent child[23] has not been given any assistance by DCF or given a meaningful chance to participate in the case planning process from prison, the incarcerated parent's parental rights *cannot* later be terminated for case plan non-compliance without violating the parent's right of due process.[24] In those cases, the trial courts' decisions terminating the incarcerated parents' rights were reversed and presumably remanded so that the incarcerated parent could be given the opportunity to go through the case planning process.[25]

[20] "[A] parent's incarceration alone does not constitute abuse, neglect, or abandonment. Incarceration is merely a factor that the circuit court may consider in determining whether a child has been abandoned." *In re C.N.,* 51 So. 3d 1224, 1231–32 (Fla. 2d DCA 2011). *See also In re J.L.,* 15 So. 3d 866, 870 (Fla. 2d DCA 2009) (Altenbernd, J., concurring). ("[T]here sometimes seems to be a presumption in the trial courts that, merely because a parent is unlikely to become an adequate custodial parent, the parent's rights should be terminated[.]"). *See also* n. 9, *supra*.
[21] *See* Dep't of Children & Families, *Agency Legislative Bill Analysis* (Nov. 10, 2017).
[22] Section 39.806(1)(e)1.-3., F.S. (setting out circumstances when parental rights may be terminated for failure to substantially comply with a case plan: 1. Within 12 months if the child also continues to be abused, neglected, or abandoned, unless the parent did not have the financial resources or DCF failed to make reasonable reunification efforts; 2. The parent(s) have materially breached the case plan and DCF can show the parent(s) are unlikely or unable to substantially comply before the case plan expires; or 3. The child has been in foster care for any 12 of the last 22 months and parents have not substantially complied with the case plan so as to permit reunification unless the parent did not have the financial resources or DCF failed to make reasonable reunification efforts). In *J.L.*, although the trial court reasoned that the incarcerated parent breached his case plan under s. 39.806(1)(e)2., F.S., and that provision does not require DCF to have made a reasonable effort like subparagraph (1)(e)1. or subparagraph (1)(e)3., the Second District rejected this reasoning, concluding that "[g]iven [DCF's] failure to take any meaningful steps to assist the Father in complying with his case plan, we find [DCF] did not establish by clear and convincing evidence that the Father materially breached his case plan." 15 So. 3d at 869.
[23] Generally, a dependent child is a child under the supervision of DCF.
[24] "'Where a court is terminating parental rights based on a parent's failure to comply with a case plan or a performance agreement, it is axiomatic that the parent must have the substantial ability to comply with the plan or agreement.'" *In re J.L.,* 15 So. 3d at 868–69 (quoting *Hutson v. State,* 687 So. 2d 924, 925 (Fla. 2d DCA 1997) (holding that the father's rights could not be terminated because he had no meaningful opportunity to participate in the case plan; noting that the court was troubled by DCF's failure to make any effort to visit the father in jail to review the terms of the case plan with him, DCF's failure to respond to the father's letters or otherwise attempt to contact him, and DCF's admitted delay in sending the father information). *See also In re G.M., Jr.,* 71 So. 3d 924, 927 (Fla. 2d DCA 2011) (reversing termination of incarcerated father's parental rights where DCF failed to either send him a copy of his case plan or communicate with him about it, noting the signature space for the father on the case plan was left blank; DCF ignored father's written requests for assistance holding that incarcerated father; but the father attempted to improve himself by seeking a transfer to a facility to participating in parenting classes); *T.M. v. Department of Children and Families*, 905 So. 2d 993 (Fla. 4th DCA 2005) (holding that incarcerated father's parental rights could not be terminated for case plan non-compliance without DCF first showing reasonable efforts were made to help him secure the services needed to comply while in prison).
[25] "Accordingly, we reverse the final judgment terminating the Father's parental rights to his son and remand for further proceedings." *In re J.L.*, 15 So. 3d at 870.

The problem, however, is that affording the incarcerated parent his or her due process means delay for the dependent child's permanency goal. Notwithstanding that there is an expedited process for termination of parental rights cases in the courts,[26] by the time an appellate court reverses a trial court's determination to terminate the incarcerated parent's parental rights and DCF begins the case planning process anew with the incarcerated parent, the permanency and stability of the child in dependent care is further delayed. While the delay may be constitutionally necessary to preserve the parent's rights, it is also in tension with the public policy underlying Florida's dependency system, to bring stability to the child as soon as possible.[27]

Logistical Issues in Case Planning with Incarcerated Parents

Many of the tasks parents are asked to complete as part of the case planning process involve courses or counseling in parenting, substance abuse treatment, anger management, and the like. The Florida Department of Corrections (DOC), which has 148 facilities statewide that houses approximately 98,000 inmates, provides access for inmates to a range of educational and vocational services that may help an incarcerated parent meet some of his or her case plan goals, including substance abuse treatment, anger management programs, and parenting classes. Annually, the DOC publishes the list of services available at each facility in its annual report and on the facility's website.[28]

Similarly, county jail facilities also provide many of the same services to inmates. Generally, these services are listed in the county jail's "Inmate Handbook" which should be distributed to the inmate upon arrival. Some jail facilities have also published the Inmate Handbook on the jail's website.[29]

The primary problem is that many of these programs and services are provided on a first come, first serve basis, meaning some inmates may encounter problems completing case plan tasks within certain timeframes while incarcerated.[30] However, according to the DOC, they have been willing to approve transfers when appropriate for incarcerated parents to facilities that meet the inmate's programming needs, as well as allow the incarcerated parent to have routine visits with

[26] *See* Fl. R. App. P. 9.146.
[27] "Time is of the essence" in dependency cases. *See* n. 7, *supra*.
[28] Florida Department of Corrections, *Introduction to Information on Florida Prison Facilities*, http://www.dc.state.fl.us/facilities/ciindex.html (last visited Jan. 15, 2018). For example, Bay Correctional Facility offers substance abuse programs, including prevention/education and intensive outpatient. *See* Bay Correctional Facility page, Florida Department of Corrections, http://www.dc.state.fl.us/facilities/region1/112.html (last visited Jan. 15, 2018).
[29] *See, e.g.*, Leon County Sheriff's Office, *Leon County Detention Facility Inmate Handbook: Rules, Regulations and General Information*, "Programs, pp. 38-43 (Sept. 2017), http://www.leoncountyso.com/docs/default-source/jail-documents/jail-inmate-handbook-2017.pdf?sfvrsn=0 (noting that 16 educational programs are currently offered to inmates); Broward Sheriff's Office, *Department of Detention and Community Control Inmate Handbook,* "Programs, p. 17 (Rev. 2012), http://sheriff.org/DOD/Documents/Inmate_Handbook.pdf (noting that there are substance abuse, like skills, and mental health programs available to inmates).
[30] *See* n. 28, *Leon County* at p. 38 ("Most programs have a waiting list and new members are added on a first come, first serve basis. Maximum capacity for each program is 15 inmates per class. Inmates are to send one request per program you wish to attend. Attendance is expected and those missing two classes will be removed from the list to make way for those waiting."); *Broward* at 17 ("Inmates who volunteer for programs will be recruited by program staff as bed space is available. Whether participating voluntarily or by court order, your participation is contingent upon meeting classification criteria for placement into a program housing unit.").

his or her children, when appropriate. Additionally, the DOC cooperates with DCF by allowing DCF staff access to inmates for relevant meetings and interviews.[31] Likewise, in the county jails, the "Inmate Handbook" reflects that inmates may have visitors, including children.[32]

III. Effect of Proposed Changes:

Section 1 creates a new provision under chapter 39, F.S., (proceedings involving children) requiring that the Department of Children and Families include or make an effort to include an incarcerated parent in the statutory case planning process requiring that DCF meet with and obtain input from all parties involved in a child dependency case in order to determine the ultimate goal for the child's permanent living arrangement (permanency goal) and the steps the parties must take (complete certain tasks or receive certain services) by certain dates to achieve the child's permanency goal. An incarcerated parent must be included in case planning regardless of the ultimate permanency goal, *and* DCF must ensure that the incarcerated parent receives a copy of the written case plan.

The bill provides two levels of assistance DCF must provide during the case planning process to an incarcerated parent depending on the permanency goal:

- When reunification between the incarcerated parent and the child is the permanency goal, DCF must proactively obtain information from the parent's prison facility to determine how the parent may complete the case plan and receive services while in prison.
- However, if reunification is not the goal, DCF must only ensure that consideration is given to the available services and regulations at the parent's prison facility in developing the case plan, and attach a list of those services to the case plan.

The bill also addresses several other scenarios:

- If a parent becomes incarcerated *after the case plan is developed*, the parties must make a motion to modify the case plan if the parent's incarceration impacts the permanency goal.
- If an incarcerated parent *is released before expiration of the case plan*, the case plan must include a contingency plan of tasks and services to be completed or received outside the prison.
- If an incarcerated parent *does not participate* in the preparation of the case plan, DCF must document the circumstances and its efforts to include the incarcerated parent in the case plan.

The bill also contains several express caveats:

- DOC and its facilities have *no* new or additional obligations or duties to perform.
- The incarcerated parent is ultimately responsible to comply with the case plan while in prison.

Section 2 provides for an effective date of July 1, 2018.

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[31] Dep't of Corrections, *Agency Legislative Bill Analysis for HB 281* (Nov. 1, 2017) (identical to SB 522) (on file with Senate Judiciary Committee) ("FDC currently assists DCF by allowing DCF representatives access to inmates for interviews, meetings, etc.; by approving transfers, when appropriate, for incarcerated parents to facilities which meet the inmate's programming needs; and by allowing incarcerated parents to have routine visits with their children, when appropriate.").

[32] *See* n. 28, *Leon County*, "Visitation" at p. 38 (permitting inmates five (5) thirty minute visitation sessions each week not exceed 2.5 hours, and permitting children to visit with an adult); *Broward*, "Visitation" at 14 (permitting inmates up to two (2) hours visitation each week, and permitting children when accompanied by a parent of legal guardian).

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 will not likely have a fiscal impact to the state for several reasons. First, DCF currently includes incarcerated parents in case planning for dependent children. Second, the bill states that it is not the intent to require additional obligations to the Department of Corrections beyond what is currently provided to inmates who are parents. Services such as substance abuse treatment, anger management, and parenting classes are available to inmates; however, demand for these services exceeds their availability. During FY 2015-2016, for example, 12,234 inmates received institutional-based substance abuse treatment, which represents approximately 20 percent of the inmate population assessed as needing treatment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Children and Families is currently required to include incarcerated parents in the dependency case planning process. With the exception of specifically requiring the department to attach a list of services available at a correctional facility, all other provisions in the bill mirror provisions in current law.[33] The department is required to explain a parent's

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[33] Section 39.602, F.S.

nonparticipation in case planning and that could include an explanation that services are unavailable at the parent's correctional facility.

VIII. Statutes Affected:

This bill creates section 39.6021 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Bean

A bill to be entitled

An act relating to incarcerated parents; creating s. 39.6021, F.S.; requiring the Department of Children and Families to obtain specified information from a facility where a parent is incarcerated under certain circumstances; providing an exception; requiring that a parent who is incarcerated be included in case planning and provided with a copy of the case plan; providing requirements for case plans; specifying that the incarcerated parent is responsible for complying with facility procedures and policies to access services or maintain contact with his or her children as provided in the case plan; requiring the parties to the case plan to move to amend the case plan if a parent becomes incarcerated after a case plan has been developed and the parent's incarceration has an impact on permanency for the child; requiring that the case plan include certain information if the incarcerated parent is released before it expires; requiring the department to include certain information in the case plan if the incarcerated parent does not participate in its preparation; providing construction; providing an effective date.

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

Section 1. Section 39.6021, Florida Statutes, is created to read:

39.6021 Case planning when parents are incarcerated or

become incarcerated.—

(1) In a case in which the parent is incarcerated, the department shall obtain information from the facility where the parent is incarcerated to determine how the parent can participate in the preparation and completion of the case plan and receive the services that are available to the parent at the facility. This subsection does not apply if the department has determined that a case plan for reunification with the incarcerated parent will not be offered.

(2) A parent who is incarcerated must be included in case planning and must be provided a copy of any case plan that is developed.

(3) A case plan for a parent who is incarcerated must comply with ss. 39.6011 and 39.6012 to the extent possible, and must give consideration to the regulations of the facility where the parent is incarcerated and to services available at the facility. The department shall attach a list of services available at the facility to the case plan. If the facility does not have a list of available services, the department must note the unavailability of the list in the case plan.

(4) The incarcerated parent is responsible for complying with the facility's procedures and policies to access services or maintain contact with his or her children as provided in the case plan.

(5) If a parent becomes incarcerated after a case plan has been developed, the parties to the case plan must move to amend the case plan if the parent's incarceration has an impact on permanency for the child, including, but not limited to:

(a) Modification of provisions regarding visitation and

59 contact with the child;
60 (b) Identification of services within the facility; or
61 (c) Changing the permanency goal or establishing a
62 concurrent case plan goal.
63 (6) If an incarcerated parent is released before the case
64 plan expires, the case plan must include tasks that must be
65 completed by the parent and services that must be accessed by
66 the parent upon the parent's release.
67 (7) If the parent does not participate in preparation of
68 the case plan, the department must include in the case plan a
69 full explanation of the circumstances surrounding his or her
70 nonparticipation and must state the nature of the department's
71 efforts to secure the incarcerated parent's participation.
72 (8) This section does not prohibit the department or the
73 court from revising a permanency goal after a parent becomes
74 incarcerated or from determining that a case plan with a goal of
75 reunification may not be offered to a parent. This section may
76 not be interpreted as creating additional obligations for a
77 facility which do not exist in the statutes or regulations
78 governing that facility.
79 Section 2. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 11, 2018

I respectfully request that **Senate Bill #522**, relating to Incarcerated Parent, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-18-2018
Meeting Date

522
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Incarcerated Parents

Name: Dawn Steward

Job Title:

Address: 2130 Blossom Lane
Street

Winter Park Fl 32789
City State Zip

Phone:

Email:

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Florida PTA

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)

1-18-2018
Meeting Date

522
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Incarcerated Parents

Name Erin Choy

Job Title Immediate Past President

Address 404 E. Sixth Avenue
Street

Tallahassee — FL — 32303
City — *State* — *Zip*

Phone 5616354168

Email erin.choy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Junior Leagues of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/18
Meeting Date

522
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic INCARCERATED PARENTS

Name VICKI LOPEZ

Job Title CONSULTANT

Address 2101 BRICKELL AVE #809
Street

MIAMI FL 33129
City State Zip

Phone 305-216-7794

Email vickilopez117@icloud.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing JUNIOR LEAGUES 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)

1/18/18
Meeting Date

SB 522
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Incarcerated Parents

Name Alicia Carothers

Job Title Attorney

Address
Street

Phone

City State Zip

Email

Speaking: [X] For [ ] Against [ ] Information

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

Representing Junior League of Panama City

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] 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)

1/18/18
Meeting Date

522
Bill Number (if applicable)

Topic: Incarceration bill

Amendment Barcode (if applicable)

Name: ALAN ABRAMOWITZ

Job Title: Director GAL Program

Address: 600 Calhoun
Street

Tallahassee, FL 32301
City State Zip

Phone: 850-241-3312

Email

Speaking: [X] For [ ] Against [ ] Information

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

Representing

Appearing at request of Chair: [X] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 618

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Baxley and others

SUBJECT: Subpoenas in Investigations of Sexual Offenses

DATE: January 19, 2018 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 618 addresses the use of an investigatory subpoena to obtain a customer's information from an electronic communications or remote computing service in an investigation involving allegations of sexual abuse of a child or the suspected commission of certain sex crimes. Of particular significance, the bill extends the period of time in certain sex crime investigations during which notice of the existence of a subpoena to the customer may be delayed, but only if the subpoena is used to obtain the contents of a communication that has been in electronic storage for more than 180 days.

Specifically, the bill provides that in investigations involving sexual abuse of a child, an investigative or law enforcement officer may:

- Without notice to the subscriber or customer of a provider of an electronic communication service or remote computing service, use a subpoena to obtain information pertaining to the subscriber or customer, excluding contents of a communication; and
- With prior notice or delayed notice, use a subpoena to obtain contents of a communication that has been in electronic storage in an electronic communications system for more than 180 days.

An investigative or law enforcement officer may prohibit a subpoena recipient from disclosing to any person for 180 days the existence of the subpoena or delay required notification for 180 days, if the subpoena is accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result.

Limited disclosure of the subpoena, however, is authorized. A court may grant an extension of the nondisclosure period or the delay of notification.

The bill also: authorizes a petition to modify or set aside a subpoena or disclosure prohibition; permits the retention of subpoenaed information for specific uses; specifies what notice is required; specifies procedures for retention of records; provides for compensation of a subpoenaed witness and others; provides legal protections for subpoena compliance; and authorizes a court to compel compliance with a subpoena and to sanction refusal to comply.

II. Present Situation:

Subpoenas and Criminal Investigations

Subpoenas Generally

A "subpoena," which literally means "under penalty,"[1] is a "process or a writ of a judicial nature" used by a court or, when authorized, by an investigative or administrative body, to compel compliance in a proceeding, usually after the proceeding has been initiated.[2] There are two types of subpoenas used in both the civil and criminal context. The subpoena ad testificandum is used to compel the attendance and testimony of witnesses.[3] The subpoena duces tecum is used to compel production of documents, materials, or other tangible information.[4]

Subpoenas may generally be used by any party in a legal action as an investigative tool. For example, after a civil lawsuit alleging a breach of contract is filed, either side may obtain a subpoena to compel discovery of evidence pertaining to the alleged breach. In a criminal case, after the defendant is officially charged by an information or indicted, the defendant has a constitutional right to subpoena defense witnesses to testify during trial.[5]

Criminal Investigations Generally

A criminal investigation "begins when a victim, or one having knowledge of a crime, files a sworn statement . . . known as a complaint" with the proper authority.[6] "Once a complaint has been investigated, and the complaint is found to have probable cause, a crime can be charged either by information or indictment."[7] "An information is a sworn document signed by the prosecuting authority . . . which charges a person with [a] violation of the law."[8] In Florida,

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[1] Webster's New World College Dictionary, 5th Ed. (2014).
[2] Op. Att'y Gen. Fla. 81-65 (1981) (citations omitted), available at http://www.myfloridalegal.com/ago.nsf/Opinions/6515E4FA246990B085256587004F3F07 (last visited on Jan. 12, 2018).
[3] "What is a Subpoena?," FindLaw, available at http://litigation.findlaw.com/going-to-court/what-is-a-subpoena.html (last visited on Jan. 12, 2018).
[4] *Id.* Information may include data, such as "non-content information, connected to our Internet transactions (e.g., websites visited, to/from and time/date stamps on emails)." Richard M. Thompson II & Jared P. Cole, *Stored Communications Act: Reform of the Electronic Communications Privacy Act (ECPA)*, CRS Report 44036 (May 19, 2015) p. 2 (summary), Congressional Research Service (on file with the Senate Committee on the Judiciary).
[5] Trial Handbook for Florida Lawyers, s. 12:7 *Subpoena duces tecum* (3d ed.).
[6] Florida Office of the Attorney General, Office of Statewide Prosecution, *A Guide for Victims*, http://myfloridalegal.com/pages.nsf/Main/e99f7f48df3b5d7485256cca0052aa0f (last visited Jan. 18, 2018).
[7] *Id.*
[8] *Id.*

"[a]n information may charge any crime except a crime punishable by death."[9] On the other hand, "[a]n indictment is a charging document filed by a grand jury and may indict on any crime."[10] "A grand jury consists of 18 citizens who hear allegations and evidence brought before them by the prosecuting authority and decide who, if anyone, should be charged with what crime(s)."[11]

Investigative Subpoena Powers

An investigative subpoena is used by the proper authority to investigate a crime after a crime is reported or a complaint is filed. "The purpose of an investigative subpoena is to allow the State to obtain the information necessary to determine whether criminal activity has occurred or is occurring."[12] "[T]he State cannot be required to prove that a crime has occurred before it can issue an investigative subpoena because the entire purpose of the investigative subpoena is to determine whether a crime occurred."[13] "To require the State to prove that a crime occurred before it can issue an investigative subpoena puts the State in an impossible catch-22."[14]

Thus, to carry out its investigative duties, the State has "the authority to issue an investigative subpoena duces tecum."[15] As Florida courts have often recognized, the "the state attorney acts as a one-person grand jury in carrying out investigations into noncapital criminal conduct"[16] where the state attorney must investigate to determine if there is probable cause to charge someone with a crime, and then charge that person by information (the sworn document noted above). Because "the state attorney must be granted reasonable latitude" in its investigative role, "section 27.04, Florida Statutes . . . , allows the state attorney to issue subpoenas duces tecum for records as part of an ongoing investigation."[17]

Under s. 27.04, F.S. the state attorney's authority to "use the process of court" includes both compelling witness testimony and production of records and other information.[18] Section 16.56(3), F.S., provides the same authority to the statewide prosecutor. When the Department of Law Enforcement is involved in the investigation, the Department of Legal Affairs (Attorney General's Office) is the legal adviser and attorney to the department.[19]

"The decision to charge and prosecute criminal offenses is an executive responsibility over which the state attorney has complete discretion[.]"[20] "The State clearly has a strong interest in

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[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).
[13] *Id.*
[14] *Id.*
[15] *State v. Investigation*, 802 So. 2d 1141, 1143–44 (Fla. 2d DCA 2001).
[16] *Id.* at 144 (citing *Doe v. State*, 634 So. 2d 613, 615 (Fla. 1994); *Imparato v. Spicola*, 238 So. 2d 503, 506 (Fla. 2d DCA 1970); *State v. Nat'l Research Sys., Inc.*, 459 So.2d 1134, 1135 (Fla. 3d DCA 1984); Op. Att'y Gen. Fla. 94-86 (1994)). *See also State v. Gibson*, 935 So. 2d 611, 613 (Fla. 3d DCA 2006).
[17] *Id.*
[18] *State v. Jett*, 358 So.2d 875, 876-77 (Fla. 3d DCA 1978).
[19] Section 943.03(8), F.S.
[20] *Gibson*, 935 So. 2d at 613 (quoting *State v. Bloom,* 497 So. 2d 2, 3 (Fla.1986) (internal quotations omitted)).

gathering information relevant to an initial inquiry into suspected criminal activity[.]"[21] However, the State's investigative powers are not unlimited. Rather, "[a] judicial limit to this discretion arises where constitutional constraints are implicated."[22]

Investigative Subpoenas and the Fourth Amendment

Under both the United States and Florida Constitution, people have a right to be free from *unreasonable* searches and seizures.[23] The United States Supreme Court has explained that "'[t]he Fourth Amendment protects people, not places,' . . . and wherever an individual may harbor a reasonable 'expectation of privacy,' . . . he is entitled to be free from unreasonable governmental intrusion."[24] "Of course, the specific content and incidents of this right must be shaped by the context in which it is asserted."[25] "For 'what the Constitution forbids is not all searches and seizures, but *unreasonable* searches and seizures.'"[26]

In applying the foregoing Fourth Amendment principles to investigative subpoenas in *State v. Tsavaris*, the Florida Supreme Court held that "a properly limited" investigative subpoena "does not constitute an unreasonable search and seizure" so long as it is "not overly broad" but "properly limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome. [27] The Florida Supreme Court has also explained that "[s]ubpoenas duces tecum are different from search warrants and are indisputably less intrusive" in two major ways:

> [1] While there is no opportunity to challenge a search warrant, a subpoena duces tecum is subject to a motion to quash *prior to the production* of the requested materials. [2] While a search warrant may involve the police rummaging through one's belongings and may involve the threat or actual use of force, a subpoena duces tecum requires the subpoenaed person to *bring the materials sought* at a time and place described in the subpoena. [28]

Thus, while "[a]n investigative subpoena has the potential to violate the Constitution of the United States or the Florida Constitution,"[29] a properly limited subpoena does not give rise to Fourth Amendment concerns. And when there is some concern over an investigative subpoena, a motion may be filed so that a court can "determine the reasonableness of the subpoena"[30] and ensure that "an unlawful warrantless search and seizure" is not "sanctioned under the guise of a subpoena duces tecum."[31]

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[21] *Id.* (quoting *Doe v. State,* 634 So.2d 613, 615 (Fla.1994) (internal quotations omitted)).
[22] *State v. J.M.,* 718 So.2d 316, 317 (Fla. 2d DCA 1998).
[23] *Terry v. Ohio*, 392 U.S. 1, 8 (1968) ("The Fourth Amendment provides that 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.'").
[24] *Id.* (quoting *Elkins v. United States*, 364 U.S. 206, 222 (1960), accord *Katz v. United States*, 389 U.S. 347, 351, 361 (1967)).
[25] *Id.*
[26] *Id.* (emphasis added).
[27] *State v. Tsavaris*, 394 So. 2d 418, 426–27 (Fla. 1981) (receded from by *Dean v. State*, 478 So. 2d 38, 41 (Fla. 1985), on other grounds (standing issue)).
[28] *Id.* (emphasis added).
[29] *State v. Investigation*, 802 So. 2d at 1146.
[30] *Id.* (citations omitted).
[31] *Dean v. State*, 478 So. 2d 38, 41 (Fla. 1985).

While the court acts as a gatekeeper on the back end, some of the proper limitations of an investigatory subpoena are determined on the front end by statutes aimed at protecting the privacy of individuals. The federal Stored Communications Act, for example, limits what information an investigative body may obtain from a remote computing service or an electronic communication service. These services generally maintain information generated by a person's use of a computer service or an electronic device, such as a cell phone. For instance, an electronic communication service providing cell phone service maintains business records on subscribers for billing purposes which may be pertinent to a criminal investigation.[32]

As explained in more detail below, the federal Stored Communications Act delineates when an investigative subpoena may be used and when a search warrant or a court order must be obtained based on the type of information sought.

Section 92.605, F.S., and the Stored Communications Act

The provisions of s. 92.605, F.S., apply to a search warrant, court order, or subpoena issued in compliance with the federal Stored Communications Act (SCA).[33] Section 92.605, F.S., allows a search for records that are in the actual or constructive possession of an out-of-state corporation that provides electronic communication services or remote computing services to the public, when those records would reveal:

- The identity of the customers using those services;
- Data stored by, or on behalf of, the customers;
- The customers' usage of those services; or
- The recipients or destinations of communications sent to or from those customers.[34]

Under s. 92.605, F.S., when an out-of-state corporation subject to this section is properly served[35] by an applicant[36] for the subpoena, court order, or search warrant, the out-of-state-corporation must provide to the applicant all records sought pursuant to the process within 20 business days after receipt, or the date indicated within the subpoena, if later, including those records maintained or located outside the state.[37] If the records cannot be produced within the 20-day time period, the out-of-state corporation must notify the applicant within the 20-day time

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[32] The "Stored Communications Act" is a term used to describe Title II of the Electronic Communications Privacy Act of 1986 (ECPA), Pub. L. No. 99-508, 100 Stat. 1848 (1986), though the term "appears nowhere in the language of the statute." *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations* (July 2009), p. 115, n. 1, U.S. Department of Justice, available at http://www.justice.gov/criminal/cybercrime/docs/ssmanual2009.pdf (last visited on Jan. 13, 2018). Title II of the ECPA is codified at 18 U.S.C. ss. 2701-2712.

[33] *Id.*

[34] Section 92.605(2), F.S.

[35] "'Properly served' means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity properly registered to do business in any state. In order for an out-of-state corporation to be properly served, the service must be effected on the corporation's registered agent." Section 92.605(1)(h), F.S.

[36] " 'Applicant' means a law enforcement officer who is seeking a court order or subpoena under s. 16.56, [F.S.], s. 27.04, [F.S.], s. 905.185, [F.S.], or s. 914.04, [F.S.,] or who is issued a search warrant under s. 933.01, [F.S.], or anyone who is authorized to issue a subpoena under the Florida Rules of Criminal Procedure." Section 92.605(1)(b), F.S.

[37] Section 92.605(2)(b), F.S. In any criminal case, the content of any electronic communication may be obtained under s. 92.605, F.S., only by court order or by the issuance of a search warrant, unless otherwise provided under the ECPA or other provision of law. Section 92.605(9), F.S.

period and agree to produce the documents at the earliest possible time. The applicant must pay the out-of-state corporation the reasonable expenses associated with compliance.[38]

When the applicant makes a showing and the court finds that failure to produce records within 20 business days would cause an adverse result, the subpoena, court order, or warrant may require production of records within less than 20 business days. A court may reasonably extend the time required for production of the records upon finding that the out-of-state corporation needs the extension and that the extension would not cause an adverse result.[39]

Additionally, s. 92.605, F.S.:

- Requires that an out-of-state corporation seeking to quash or object to the subpoena, court order, or warrant seek relief from the court issuing such subpoena, court order, or warrant in accordance with s. 92.605, F.S.;[40]
- Requires verification of the authenticity of produced records upon written request from the applicant or if ordered by the court;[41]
- Provides that a cause of action does not arise against any out-of-state corporation or Florida business for providing records, information, facilities, or assistance in accordance with the terms of a subpoena, court order, or warrant subject to s. 92.605, F.S.;[42] and
- Provides for admissibility in evidence in a criminal proceeding of records produced in compliance with s. 92.605, F.S.[43]

Section 934.23, F.S., and the Stored Communications Act

Major Features of Section 934.23, F.S.

Section 934.23, F.S., is patterned after the federal SCA. It closely tracks 18 U.S.C. s. 2703. "The SCA protects communications held by two defined classes of network service providers[.]"[44] Those classes are electronic communication service (ECS) providers and remote computing service (RCS) providers.[45]

Section 934.23, F.S., specifies how an investigative or law enforcement officer may obtain the content of a wire or electronic communication that has been in electronic storage in an electronic communications system, a wire or electronic communication held or maintained on a remote computing service, and a record or other information pertaining to a subscriber or customer of such service, not including the contents of a communication.

[38] Section 92.605(2)(b), F.S.
[39] Section 92.605(2)(c), F.S. Section 92.605(1)(a), F.S., contains a definition of "adverse result" that is identical to the definitions of that term in s. 934.25(2) and (6), F.S. See, *infra*, n. 46.
[40] Section 92.605(2)(d), F.S.
[41] Section 92.605(2)(e), F.S.
[42] Section 92.605(4), F.S.
[43] Section 92.605(5)-(8), F.S A Florida electronic communication service provider or remote computing service provider is required to produce the same records previously described when served with a subpoena, court order, or warrant issued by another state. Section 92.605(3), F.S.
[44] *Supra*, n. 9, at p. 117.
[45] *Id.*

Section 934.23, F.S., also provides procedures for retention of records and other evidence pending issuance of process[46] and provides legal protections[47] and reasonable compensation for those providing assistance.[48]

Terminology Relevant to Section 934.23, F.S.

Essential to an understanding of s. 934.23, F.S., is an understanding of the following terminology used in the section, most of which is patterned on terminology used in the SCA:

- "Contents," when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.[49]
- "Electronic communication" means the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce. The definition does not include: any wire or oral communication; any communication made through a tone-only paging device; any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.[50]
- "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.[51]
- "Electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.[52]
- "Electronic storage" means any temporary intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof, and any storage of a wire or electronic communication by an electronic communication service for purposes of backup protection of such communication.[53]

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[46] An ECS provider or RCS provider, upon the request of an investigative or law enforcement officer, must take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process. The records must be retained for a period of 90 days, which is extended for an additional 90 days upon a renewed request by such officer. Section 934.23(7), F.S.

[47] No cause of action lies in any court against an ECS provider, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under ss. 934.21-934.28, F.S. Section 934.23(6), F.S. Further, an ECS provider, RCS provider, or any other person who furnished assistance pursuant to s. 934.23, F.S., is held harmless from any claim and civil liability resulting from the disclosure of information pursuant to that section. Section 934.23(8), F.S.

[48] An ECS provider, RCS provider, or any other person who furnished assistance pursuant to s. 934.23, F.S., must be reasonably compensated for reasonable expenses incurred in providing such assistance. Section 934.23(8), F.S.

[49] Section 934.02(7), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(8). "The contents of a network account are the actual files (including email) stored in the account…. For example, stored emails or voice mails are 'contents,' as are word processing files stored in employee network accounts. The subject lines of emails are also contents." *Supra*, n. 9, at p. 122-123.

[50] Section 934.02(12), F.S. This definition is very similar to the definition in 18 U.S.C. s. 2510(12).

[51] Section 934.02(15), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(15).

[52] Section 934.02(14), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(14). Telephone companies and electronic mail companies are examples of "electronic communications service" providers. *Supra*, n. 9, at p. 117.

[53] Section 934.02(17), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(17). According to the U.S Department of Justice (DOJ), "'electronic storage' refers only to temporary storage made in the course of transmission by a service provider and to backups of such intermediate communications made by the service provider to ensure system

- "Investigative or law enforcement officer" means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct on behalf of the Government investigations of, or to make arrests for, offenses enumerated in this chapter or similar federal offenses, any attorney authorized by law to prosecute or participate in the prosecution of such offenses, or any other attorney representing the state or political subdivision thereof in any civil, regulatory, disciplinary, or forfeiture action relating to, based upon, or derived from such offenses.[54]
- "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.[55]
- "Subpoena" means any administrative subpoena authorized by federal or Florida law, federal or Florida grand jury subpoena, or any criminal investigative subpoena as authorized by Florida statute which may be utilized on behalf of the government by an investigative or law enforcement officer.[56]
- "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce.[57]

Disclosure of Records or Information under Section 934.23, F.S.

The SCA (specifically, 18 U.S.C. s. 2703) "provides for different means of obtaining evidence, and different levels of privacy protection, depending on the type of evidence sought and the type of provider possessing it."[58] Section 934.23, F.S., mirrors this approach. The types of evidence obtainable by different means are discussed in detail below.[59]

No Process – Consent of the Subscriber or Customer

An investigative or law enforcement officer may require an ECS provider or RCS provider to disclose a record or other information pertaining to a subscriber or customer of such service, not

integrity. It does not include post-transmission storage of communications." *Supra*, n. 9, at p. 123. Under the DOJ interpretation, an e-mail is only in "electronic storage" if not accessed by the recipient. *Id.* However, the federal Ninth Circuit in *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004), rejected this interpretation and "held that email messages were in 'electronic storage' regardless of whether they had been previously accessed[.]" *Supra*, n. 9, at p. 124-25, citing *Theofel*, 359 F.3d at 1075-77.

[54] Section 934.02(6), F.S. The definition in 18 U.S.C. 2510(7) refers to federal law enforcement officers and prosecutors.

[55] Section 934.02(19), F.S. This definition is identical to the definition in 18 U.S.C. s. 2711(2). "Roughly speaking, a remote computing service is provided by an off-site computer that stores or processes data for a customer." *Supra*, n. 9, at p. 119.

[56] Section 934.02(23), F.S.

[57] Section 934.02(1), F.S. This definition is very similar to the definition in 18 U.S.C. s. 2510(1).

[58] *Matter of Search Warrant for [redacted].com*, 248 F.Supp. 3d 970, 975 (C.D. Cal. 2017). "The structure of the SCA reflects a series of classifications that indicate the drafters' judgments about what kinds of information implicate greater or lesser privacy interests." *Supra*, n. 9, at p. 115. "Some information can be obtained from providers with a subpoena, other information requires a special court order; and still other information requires a search warrant. In addition, some types of legal process require notice to the subscriber, while other types do not." *Id.* at 116.

[59] This analysis follows the format provided by the DOJ in its discussion of the SCA. *Supra*, n. 9.

including the contents of a communication, if the officer has the consent of the subscriber or customer to such disclosure.[60]

Subpoena

An investigative or law enforcement officer who obtains a subpoena may obtain from the ECS provider or RCS provider basic information, including session information, regarding a subscriber or customer of the provider.[61] This information includes:

- Name and address;
- Local and long-distance telephone connection records or records of session times or durations;
- Length of service, including the starting date of service;
- Types of services used;
- Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- Means and source of payment, including any credit card or bank account number of a subscriber to or customer.[62]

Subpoena with Prior Notice to the Subscriber or Customer

An investigative or law enforcement officer who obtains a subpoena and provides prior notice to the subscriber or customer or with delayed notice pursuant to s. 934.25, F.S., may obtain:

- Whatever can be obtained by subpoena without prior notice;
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for more than 180 days;63
- An electronic communication that is held or maintained on a RCS:
  - On behalf of a subscriber or customer of the RCS and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service; and
  - Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.[64]

[60] Section 934.23(4)(a)3., F.S. (similar to 18 U.S.C. s. 2703(c)(1)(C)).
[61] Section 934.23(4)(a)4. and (4)(b), F.S.
[62] Section 934.23(4)(b), F.S. (similar to 18 U.S.C s. 2703(c)(2)). "In general, the items in this list relate to the identity of a subscriber, his relationship with his service provider, and his basic session connection records. In the Internet context, 'any temporarily assigned network address' includes the IP address used by a customer for a particular session. For example, for a webmail service, the IP address used by a customer accessing her email account constitutes a 'temporarily assigned network address.' This list does not include other, more extensive transaction-related records, such as logging information revealing the email addresses of persons with whom a customer corresponded." *Supra*, n. 9, at p. 121.
[63] Section 934.23(1) and (2)(b)1., F.S. (similar to 18 U.S.C. s. 2703(a) and (b)(1)(B)(i)).
[64] Section 934.23(2)(b)1. and (3), F.S. (similar to 18 U.S.C. s. 2703(b)(1)(B)(i) and (2)). According to the DOJ, "[o]utside the Ninth Circuit …, this third category will include opened and sent e-mail." *Supra*, n. 9, at p. 129.

Court Order for Disclosure without Prior Notice

Pursuant to s. 934.23(5), F.S., a court may issue an order for disclosure only if the investigative or law enforcement officer offers specific and articulable facts showing that there are reasonable grounds to believe the contents of a wire or electronic communication or the records of other information sought are relevant and material to an ongoing criminal investigation.[65]

An investigative or law enforcement officer who obtains a court order for disclosure may obtain:
- Whatever can be obtained by subpoena without prior notice; and
- From an ECS provider or RCS provider, a record or other information pertaining to the subscriber or customer of such service, not including contents of communications.[66]

Court Order for Disclosure with Prior Notice

An investigative or law enforcement officer who obtains a court order for disclosure without prior notice, and either gives prior notice to the subscriber or customer or complies with delayed notice provisions of s. 934.25, F.S., may obtain:
- Whatever can be obtained by a court order for disclosure;
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for more than 180 days;[67] and
- Contents of an electronic communication that is held or maintained on a RCS as described in s. 934.23(3), F.S.[68]

Search Warrant

An investigative or law enforcement officer who obtains a search warrant may obtain:
- Whatever can be obtained pursuant to a court order for disclosure with notice; and
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for 180 days or less.[69]

Section 934.25, F.S. (Delayed Notice)

Section 934.25, F.S., is also patterned after the SCA. It closely tracks 18 U.S.C. s. 2705. Pursuant to s. 934.25(1), F.S., if an investigative or law enforcement officer seeks to obtain evidence from an RCS provider under s. 934.23(2), F.S. (contents of communications in a RCS)

[65] According to the DOJ, the equivalent federal court order for disclosure (under 18 U.S.C. s. 2703(d)) is needed "to obtain most account logs and most transactional records." *Supra*, n. 9, at p. 130.

[66] Section 934.23(4)(a)2., F.S. (similar to 18 U.S.C. s. 2703(c)(1)(B)). "This is a catch-all category that includes all records that are not contents, including basic subscriber and session information…. As one court explained, 'a record means something stored or archived. The term information is synonymous with data.' *In re United States*, 509 F. Supp. 2d 76, 80 (D. Mass. 2007)." *Supra*, n. 9, at p. 122.

[67] Section 934.23(1), F.S. (similar to 18 U.S.C. s. 2703(a)).

[68] Section 934.23(2)(b)2. and (3), F.S. According to the DOJ, except in the federal Ninth Circuit, the federal government can obtain with a court order for disclosure with prior notice "the full contents of a subscriber's account except unopened email and voicemail that have been in the account for 180 days or less." *Supra*, n. 9, at p. 132.

[69] Section 934.23(1), F.S. (similar to 18 U.S.C. s. 2703(a)). "Investigators can obtain everything associated with an account with a search warrant. The SCA does not require the government to notify the customer or subscriber when it obtains information from a provider using a search warrant." *Supra*, n. 9, at p. 133.

pursuant to a court order for disclosure or subpoena, the officer may delay required notice under s. 934.23(2), F.S., for a period not exceeding 90 days as provided:

- Where a court order is sought, the officer includes in the application a request for an order delaying the notification for a period not to exceed 90 days, which request the court must grant if it determines that there is reason to believe that notification of the existence of the court order *may* have an "adverse result."[70]
- Where a subpoena is obtained, the officer may delay the notification for a period not to exceed 90 days upon the execution of a written certification of a supervisory official[71] that there is reason to believe that notification of the existence of the subpoena may have an "adverse result"[72] described in subsection (2).[73]

Section 934.25(4), F.S., provides that the 90-day period may be extended by court order, but only in 90-day increments and only in accordance with s. 934.25(6), F.S., which effectively requires the officer to demonstrate to the court or certify that there is reason to believe notification *will* result in any act specified in that subsection (acts identical to those acts that constitute an "adverse result"[74] under subsection (2)).[75]

Section 934.25(5), F.S., provides that, upon the expiration of the period of delay of notification under s. 934.25(1), F.S., or s. 934.25(4), F.S., the investigative or law enforcement officer must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request together with notice which:

- States with reasonable specificity the nature of the law enforcement inquiry, and
- Informs the subscriber or customer:
  - That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested;
  - That notification of such subscriber or customer was delayed;
  - What investigative or law enforcement officer or what court made the certification or determination pursuant to which that delay was made; and
  - Which provision of ss. 934.21-934.28, F.S., allowed such delay.[76]

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[70] Section 934.25(1)(a), F.S. (similar to 18 U.S.C. s. 2705(a)(1)(A)). An "adverse result" is defined in s. 934.25(2) and (6), F.S., as any of the following acts: endangering the life or physical safety of an individual; fleeing from prosecution; destroying or tampering with evidence; intimidating potential witnesses; or seriously jeopardizing an investigation or unduly delaying a trial. This definition is identical to the definition of the term in 18 U.S.C. s. 2705(a)(2).

[71] A "supervisory official" is "the person in charge of an investigating or law enforcement agency's or entity's headquarters or regional office; the state attorney of the circuit from which the subject subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification. Section 934.25(7), F.S. (similar to 18 U.S.C. s. 2705(a)(6)).

[72] *See* n. 46, *supra.*

[73] Section 934.25(1)(b), F.S. (similar to 18 U.S.C. s. 2705(a)(1)(B)). The investigative or law enforcement officer has to maintain a true copy of a certification obtained under paragraph (1)(b). Section 934.25(3), F.S. (similar to 18 U.S.C. s. 2705(a)(3)).

[74] *See* n. 46, *supra.*

[75] Similar to 18 U.S.C. s. 2705(a)(4).

[76] Similar to 18 U.S.C. s. 2705(a)(5) and (b).

Section 934.25(6), F.S., also authorizes an investigative or law enforcement officer acting under s. 934.23, F.S., when not required to notify the subscriber or customer under s. 934.23(2)(a), F.S. (warrant), or to the extent such notice may be delayed pursuant to s. 934.25(1), F.S. (subpoena or court order for disclosure), to apply to a court for an order commanding an ECS provider or RCS provider to whom a warrant, subpoena, or court order is directed not to notify any other person of the existence of the warrant, subpoena, or court order. The order of nondisclosure is "for such period as the court deems appropriate" and can only be entered if the court determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order *will* result in any act specified in that subsection (acts identical to those acts that constitute an "adverse result").[77]

III. Effect of Proposed Changes:

The bill creates s. 934.255, F.S., which relates to subpoenas obtained by an investigative or law enforcement officer conducting an investigation into allegations of the sexual abuse of a child or an individual's suspected commission of any of a list of specified sex crimes. Of particular significance, the bill enlarges the period of delayed notification to the customer of the existence of the subpoena from 90 days under ss. 934.23 and 934.25, F.S., to 180 days. This extension of delayed notification applies only when the subpoena is used to obtain the *contents* of a communication that has been in electronic storage for more than 180 days during the investigation of certain sex crimes.

Definitions

The bill provides the following definitions of terms relevant to the provisions of the bill:
- "Child" means a person under 18 years of age.
- "Deliver" is construed in accordance with completed delivery, as provided for in Rule 1.080(b) of the Florida Rules of Civil Procedure.
- "Sexual abuse of a child" means a criminal offense based on any conduct described in s. 39.01(71), F.S.
- "Supervisory official" means the person in charge of an investigating or law enforcement agency's or entity's headquarters or regional office; the state attorney of the circuit from which the subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification.

Investigative Subpoena for Records or Other Information

The bill authorizes use of a subpoena in an investigation into allegations of the sexual abuse of a child or an individual's suspected commission of any of a list of specified sex crimes[78] to compel the production of records, documents, or other tangible objects and the testimony of the subpoena recipient to authenticate such information. This investigative subpoena does not apply

[77] *See* n. 46, *supra*. Similar to 18 U.S.C. s. 2705(b).

[78] The crimes are listed in s. 943.0435(1)(h)1.a.(I), F.S., and include but are not limited to: various sex trafficking crimes under s. 787.06, F.S.; sexual battery offenses under ch. 794, F.S.; lewd offenses under ss. 800.04 and 825.1025, F.S.; sexual performance by a child under s. 827.071, F.S.; various computer pornography crimes under ch. 847, F.S.; and selling or buying a minor to engage in sexually explicit conduct under s. 847.0145, F.S.

to information held or maintained by an electronic communication service (ECS) provider or remote computing service (RCS) provider, which is addressed separately in the bill.

Investigative Subpoena Directed to ECS Provider or RCS Provider

In an investigation involving sexual abuse of a child, an investigative or law enforcement officer may, without notice to the subscriber or customer of an ECS provider or RCS provider, obtain records or other information pertaining to the subscriber or customer, not including the contents of a communication. This information consists of the basic subscriber identity and session information described in s. 934.23(4)(b), F.S.:

- Name and address;
- Local and long-distance telephone connection records, or records of session times or durations;
- Length of service, including the starting date of service;
- Types of services used;
- Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- Means and source of payment, including any credit card or bank account number of a subscriber to or customer.

In an investigation involving sexual abuse of a child, an investigative or law enforcement officer may, with notice to the subscriber or customer of a RCS provider or with delayed notice (see discussion, *infra*), obtain the contents of any wire or electronic communication that has been in electronic storage in an electronic communication system for more than 180 days. This information, which is the same information obtainable with a subpoena and prior notice as provided in s. 934.23(2)(b) and (3), F.S., consists of any electronic communication that is held or maintained on a remote computing service:

- On behalf of a subscriber or customer of such service and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service.
- Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.

Requirements Relating to Subpoena and Production of Subpoenaed Information

The bill requires that a subpoena describe the records, documents, or other tangible objects required to be produced, and prescribe a date by which such information must be produced.

Petition for an Order Modifying or Setting Aside a Subpoena or Disclosure Prohibition

At any time before the date prescribed in the subpoena by which records, documents, or other tangible objects must be produced, a person or entity receiving a subpoena may, before a judge of competent jurisdiction, petition for an order modifying or setting aside the subpoena or a prohibition of disclosure.

Retention of Subpoenaed Records or Other Information for Use in an Investigation

An investigative or law enforcement officer who uses a subpoena to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

Nondisclosure of the Existence of a Subpoena

The bill authorizes an investigative or law enforcement officer to prohibit a subpoena recipient from disclosing the existence of the subpoena to any person for 180 days if the subpoena is accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena *may* have an adverse result.[79] However, a subpoena recipient may disclose information otherwise subject to any applicable nondisclosure requirement to:

- Persons as is necessary to comply with the subpoena;
- An attorney in order to obtain legal advice or assistance regarding compliance with the subpoena; or
- Any other person as allowed and specifically authorized by the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification.

The subpoena recipient must notify any person to whom disclosure of the subpoena is made of the existence of, and length of time associated with, the nondisclosure requirement. A person to whom disclosure of the subpoena is made cannot disclose the existence of the subpoena during the nondisclosure period.

At the request of the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification, the subpoena recipient must identify to the officer or supervisory official, before or at the time of compliance with the subpoena, the name of any person to whom disclosure was made. If the officer or supervisory official makes such a request, the subpoena recipient has an ongoing duty to disclose the identity of any individuals notified of the subpoena's existence throughout the nondisclosure period.

Delay of Required Notification

For the contents of a communication that has been in electronic storage in an electronic communications system for more than 180 days, the bill authorizes an investigative or law enforcement officer to delay giving the notification required for a subpoena to obtain such content for 180 days, if the subpoena is accompanied by a written certification of a supervisory official stating that there is reason to believe that notification of the existence of the subpoena *may* have an adverse result. The investigator or law enforcement officer must maintain a true copy of the written certification.

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[79] The bill defines an "adverse result" in conformity with section 934.25(2) and (6), F.S., as any of the following acts by a subpoena recipient: endangering the life or physical safety of an individual; fleeing from prosecution; destroying or tampering with evidence; intimidating potential witnesses; or seriously jeopardizing an investigation or unduly delaying a trial.

Extension of the Nondisclosure Period or Delay of Notification

A court may grant extensions of the nondisclosure period or period of delay of notification for up to 90 days each. An extension must be consistent with another provision of the bill authorizing an investigative or law enforcement officer to apply to a court for an order prohibiting an ECS provider or RCS provider from notifying anyone of the existence of the subpoena for such period as the court deems appropriate. Under this provision, the court must enter the order if it determines that there is reason to believe that notification of the existence of the subpoena *will* result in an adverse result.

Compelling Compliance with a Subpoena and Sanctioning Noncompliance

In the case of contumacy[80] by a person served a subpoena, i.e., his or her refusal to comply with the subpoena, the investigative or law enforcement officer who sought the subpoena may petition a court of competent jurisdiction to compel compliance. The court may address the matter as indirect criminal contempt pursuant to Rule 3.840 of the Florida Rules of Criminal Procedure.

Any prohibited disclosure of a subpoena during an initial or extended period of prohibition of disclosure or delay of notification is in effect is punishable as provided in s. 934.43, F.S. As applicable to a subpoena, s. 934.43, F.S., provides that it is a third degree felony for a person having knowledge of a subpoena issued or obtained by an investigative or law enforcement officer to give notice or attempt to give notice of the subpoena with the intent to obstruct, impede or prevent:

- A criminal investigation or prosecution; or
- The officer from obtaining by the officer of the information or materials sought pursuant to the subpoena.

Records Retention by a Provider

An ECS provider or a RCS provider, upon the request of an investigative or law enforcement officer, must take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process. The records must be retained for a period of 90 days, which is extended for an additional 90 days upon a renewed request by an investigative or law enforcement officer.

Protection from Claims and Civil Liability

No cause of action lies in any court against a provider of wire or electronic communication service for providing information, facilities, or assistance in accordance with the terms of a subpoena. An ECS provider, a RCS provider, or any other person who furnished assistance with complying with a subpoena (as provided in the bill) is held harmless from any claim and civil liability resulting from the disclosure of information (as provided in the bill).

[80] Merriam-Webster's online dictionary defines "contumacy" as "stubborn resistance to authority; *specifically*: willful contempt of court." *See* https://www.merriam-webster.com/dictionary/contumacy (last visited on Jan. 13, 2018).

Compensation

An ECS provider, a RCS provider, or any other person who furnished assistance with complying with a subpoena (as provided in the bill) must be reasonably compensated for reasonable expenses incurred in providing such assistance.

A witness who is subpoenaed to appear and provide testimony to authenticate subpoenaed records or other information must be paid the same fees and mileage rate paid to a witness appearing before a court in this state.

Effective Date

The effective date of the bill is October 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:

The bill is substantially patterned after current law and does not appear to obligate the recipient of a subpoena to provide records or information beyond what the recipient is required to provide under current law. However, there may be some indeterminate litigation costs to the subpoena recipient if the recipient elects to challenge provisions of the bill in court.

C. Government Sector Impact:

The bill is substantially patterned after current law and does not appear to authorize an investigative or law enforcement officer to obtain records or information beyond what may be obtained under current law. However, there may be a workload impact in regard to preparing and submitting written certifications relevant to nondisclosure or delay of notification, but that impact, if any, is indeterminate. There may also be some

indeterminate litigation costs associated with defending provisions of the bill if challenged in court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 934.255 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on January 18, 2018:
The Committee Substitute:

- Corrects a grammatical error in the bill's title; and
- Removes wording in subsection (7) to clarify that the customer or subscriber, not the subpoena recipient, causes the enumerated adverse results.

CS by Criminal Justice on January 9, 2018:
The Committee Substitute:

- Makes technical changes to correct referencing errors and remove inapplicable language.
- Removes references and terminology relating to investigations involving a child sexual offender's failure to register as a sexual predator or sexual offender.
- Makes conforming changes to further model the bill after provisions of ss. 943.23 and 934.25, F.S., which include: authorizing multiple 90-day court-ordered extensions of delay of notification and the nondisclosure period; incorporating procedures for retention of records and other evidence pending issuance of a court order or other process; and providing legal protections and reasonable compensation for those providing assistance with subpoena compliance.
- Removes a provision relating to service of process.
- Removes a provision that states that a subpoena may not compel the production of a record, etc., that would otherwise be protected from production.

B. Amendments:

None.

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

496336

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/18/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Baxley) recommended the following:

1 **Senate Amendment**

2

3 Delete line 167

4 and insert:

5 (7) Any of the following acts

550372

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/18/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Baxley) recommended the following:

1 **Senate Amendment**
2
3 In title, delete line 29
4 and insert:
5 prohibiting certain entities from notifying any person
6 of the

By the Committee on Criminal Justice; and Senators Baxley, Steube, Book, Rouson, and Mayfield

591-01942-18 2018618c1

1 A bill to be entitled
2 An act relating to subpoenas in investigations of
3 sexual offenses; creating s. 934.255, F.S.; defining
4 terms; authorizing an investigative or law enforcement
5 officer conducting an investigation into specified
6 matters to subpoena certain persons or entities for
7 the production of records, documents, or other
8 tangible things and testimony; specifying requirements
9 for the issuance of a subpoena; authorizing a
10 subpoenaed person to petition a court for an order
11 modifying or setting aside the subpoena or a
12 prohibition on disclosure; authorizing an
13 investigative or law enforcement officer to retain
14 subpoenaed records, documents, or other tangible
15 objects under certain circumstances; prohibiting the
16 disclosure of a subpoena for a specified period if the
17 disclosure might result in an adverse result;
18 providing exceptions; specifying the acts that
19 constitute an adverse result; requiring the
20 investigative or law enforcement officer to maintain a
21 true copy of a written certification; authorizing a
22 court to grant extension of certain periods under
23 certain circumstances; requiring an investigative or
24 law enforcement officer to serve or deliver a copy of
25 the process along with specified information upon the
26 expiration of a nondisclosure period or delay of
27 notification; authorizing an investigative or law
28 enforcement officer to apply to a court for an order
29 prohibiting certain entities from notifying the

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30 existence of a subpoena under certain circumstances;
31 authorizing an investigative or law enforcement
32 officer to petition a court to compel compliance;
33 authorizing a court to punish a person who does not
34 comply with a subpoena as indirect criminal contempt;
35 providing criminal penalties; precluding a cause of
36 action against certain entities or persons for
37 providing information, facilities, or assistance in
38 accordance with terms of a subpoena; providing for
39 preservation of evidence pending issuance of process;
40 providing that certain entities or persons shall be
41 held harmless from any claim and civil liability
42 resulting from disclosure of specified information;
43 providing for reasonable compensation for reasonable
44 expenses incurred in providing assistance; requiring
45 that a subpoenaed witness be paid certain fees and
46 mileage; providing an effective date.
47
48 Be It Enacted by the Legislature of the State of Florida:
49
50 Section 1. Section 934.255, Florida Statutes, is created to
51 read:
52 934.255 Subpoenas in investigations of sexual offenses.—
53 (1) As used in this section, the term:
54 (a) "Child" means a person under 18 years of age.
55 (b) "Deliver" is construed in accordance with completed
56 delivery, as provided for in Rule 1.080(b) of the Florida Rules
57 of Civil Procedure.
58 (c) "Sexual abuse of a child" means a criminal offense

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59 based on any conduct described in s. 39.01(71).
60 (d) “Supervisory official” means the person in charge of an
61 investigating or law enforcement agency’s or entity’s
62 headquarters or regional office; the state attorney of the
63 circuit from which the subpoena has been issued; the statewide
64 prosecutor; or an assistant state attorney or assistant
65 statewide prosecutor specifically designated by the state
66 attorney or statewide prosecutor to make such written
67 certification.
68 (2) An investigative or law enforcement officer who is
69 conducting an investigation into:
70 (a) Allegations of the sexual abuse of a child or an
71 individual’s suspected commission of a crime listed in s.
72 943.0435(1)(h)1.a.(I) may use a subpoena to compel the
73 production of records, documents, or other tangible objects and
74 the testimony of the subpoena recipient concerning the
75 production and authenticity of such records, documents, or
76 objects, except as provided in paragraphs (b) and (c).
77 (b) Allegations of the sexual abuse of a child may use a
78 subpoena to require a provider of electronic communication
79 services or remote computing services to disclose a record or
80 other information pertaining to a subscriber or customer of such
81 service as described in 934.23(4)(b), not including the contents
82 of a communication. An investigative or law enforcement officer
83 who receives records or information from a provider of
84 electronic communication services or remote computing services
85 under this paragraph is not required to provide notice to a
86 subscriber or customer of that provider.
87 (c) Allegations of the sexual abuse of a child may use a

88 subpoena to require a provider of remote computing services to
89 disclose the contents of any wire or electronic communication
90 that has been in electronic storage in an electronic
91 communications system for more than 180 days and to which this
92 paragraph is made applicable by paragraph (d), with prior
93 notice, or with delayed notice pursuant to subsection (6), from
94 the investigative or law enforcement officer to the subscriber
95 or customer.
96 (d) Paragraph (c) applies to any electronic communication
97 that is held or maintained on a remote computing service:
98 1. On behalf of a subscriber or customer of such service
99 and received by means of electronic transmission from, or
100 created by means of computer processing of communications
101 received by means of electronic transmission from, a subscriber
102 or customer of such service.
103 2. Solely for the purposes of providing storage or computer
104 processing services to a subscriber or customer, if the provider
105 is not authorized to access the contents of any such
106 communication for purposes of providing any service other than
107 storage or computer processing.
108
109 A subpoena issued under this subsection must describe the
110 records, documents, or other tangible objects required to be
111 produced, and must prescribe a date by which such records,
112 documents, or other tangible objects must be produced.
113 (3) At any time before the date prescribed in the subpoena
114 by which records, documents, or other tangible objects must be
115 produced, a person or entity receiving a subpoena issued
116 pursuant to subsection (2) may, before a judge of competent

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117 jurisdiction, petition for an order modifying or setting aside
118 the subpoena or a prohibition of disclosure issued under
119 subsection (5) or subsection (9).
120 (4) An investigative or law enforcement officer who uses a
121 subpoena issued under subsection (2) to obtain any record,
122 document, or other tangible object may retain such items for use
123 in any ongoing criminal investigation or a closed investigation
124 with the intent that the investigation may later be reopened.
125 (5) If a subpoena issued under subsection (2) is served
126 upon a recipient and accompanied by a written certification of a
127 supervisory official that there is reason to believe that
128 notification of the existence of the subpoena may have an
129 adverse result, as described in subsection (7), the subpoena
130 recipient is prohibited from disclosing to any person for a
131 period of 180 days the existence of the subpoena.
132 (a) A recipient of a subpoena issued under subsection (2)
133 that is accompanied by a written certification issued pursuant
134 to this subsection is authorized to disclose information
135 otherwise subject to any applicable nondisclosure requirement to
136 persons as is necessary to comply with the subpoena, to an
137 attorney in order to obtain legal advice or assistance regarding
138 compliance with the subpoena, or to any other person as allowed
139 and specifically authorized by the investigative or law
140 enforcement officer who obtained the subpoena or the supervisory
141 official who issued the written certification. The subpoena
142 recipient shall notify any person to whom disclosure of the
143 subpoena is made pursuant to this paragraph of the existence of,
144 and length of time associated with, the nondisclosure
145 requirement.

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146 (b) A person to whom disclosure of the subpoena is made
147 under paragraph (a) is subject to the nondisclosure requirements
148 of this subsection in the same manner as the subpoena recipient.
149 (c) At the request of the investigative or law enforcement
150 officer who obtained the subpoena or the supervisory official
151 who issued the written certification, the subpoena recipient
152 shall identify to the investigative or law enforcement officer
153 or supervisory official, before or at the time of compliance
154 with the subpoena, the name of any person to whom disclosure was
155 made under paragraph (a). If the investigative or law
156 enforcement officer or supervisory official makes such a
157 request, the subpoena recipient has an ongoing duty to disclose
158 the identity of any individuals notified of the subpoena’s
159 existence throughout the nondisclosure period.
160 (6) An investigative or law enforcement officer who obtains
161 a subpoena pursuant to paragraph (2)(c) may delay the
162 notification required under that paragraph for a period not to
163 exceed 180 days upon the execution of a written certification of
164 a supervisory official that there is reason to believe that that
165 notification of the existence of the subpoena may have an
166 adverse result described in subsection (7).
167 (7) Any of the following acts by a subpoena recipient
168 constitute an adverse result:
169 (a) Endangering the life or physical safety of an
170 individual.
171 (b) Fleeing from prosecution.
172 (c) Destroying or tampering with evidence.
173 (d) Intimidating potential witnesses.
174 (e) Seriously jeopardizing an investigation or unduly

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175 delaying a trial.
176 (8) The investigative or law enforcement officer shall
177 maintain a true copy of a written certification obtained under
178 subsection (5) or subsection (6).
179 (9) The court may grant extensions of the nondisclosure
180 period provided in subsection (5) or the delay of notification
181 provided in subsection (6) of up to 90 days each upon
182 application by an investigative or law enforcement officer, but
183 only in accordance with subsection (11).
184 (10) Upon the expiration of the period of delay of
185 notification in subsection (6) or subsection (9), an
186 investigative or law enforcement officer who receives records or
187 information pursuant to a subpoena issued under paragraph (2)(c)
188 must serve upon or deliver by registered or first-class mail to
189 the subscriber or customer a copy of the process or request,
190 together with notice that:
191 (a) States with reasonable specificity the nature of the
192 law enforcement inquiry; and
193 (b) Informs the subscriber or customer of all of the
194 following:
195 1. That information maintained for such subscriber or
196 customer by the service provider named in the process or request
197 was supplied to or requested by the investigative or law
198 enforcement officer and the date on which such information was
199 so supplied or requested.
200 2. That notification of such subscriber or customer was
201 delayed.
202 3. What investigative or law enforcement officer or what
203 court made the written certification or determination pursuant

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204 to which that delay was made.
205 4. Which provision of ss. 934.21-934.28 allowed such a
206 delay.
207 (11) An investigative or law enforcement officer acting
208 under paragraph (2)(b), when not required to notify the
209 subscriber or customer, or to the extent that such notice may be
210 delayed pursuant to subsection (6), may apply to a court for an
211 order prohibiting a provider of electronic communication
212 services or remote computing services to whom the subpoena is
213 directed, for such period as the court deems appropriate, from
214 notifying any other person of the existence of such subpoena
215 except as specifically authorized in subsection (5). The court
216 shall enter such order if it determines that there is reason to
217 believe that notification of the existence of the subpoena will
218 result in an adverse result, as specified under subsection (7).
219 (12) In the case of contumacy by a person served a subpoena
220 issued under subsection (2), or his or her refusal to comply
221 with such a subpoena, the investigative or law enforcement
222 officer who sought the subpoena may petition a court of
223 competent jurisdiction to compel compliance. The court may
224 address the matter as indirect criminal contempt pursuant to
225 Rule 3.840 of the Florida Rules of Criminal Procedure. Any
226 prohibited disclosure of a subpoena issued under subsection (2)
227 for which a period of prohibition of disclosure provided in
228 subsection (5), a delay of notification in subsection (6), or an
229 extension thereof under subsection (9) is in effect is
230 punishable as provided in s. 934.43.
231 (13) No cause of action shall lie in any court against any
232 provider of wire or electronic communication service, its

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233 officers, employees, agents, or other specified persons for
234 providing information, facilities, or assistance in accordance
235 with the terms of a subpoena under this section.
236 (14)(a) A provider of wire or electronic communication
237 services or a remote computing service, upon the request of an
238 investigative or law enforcement officer, shall take all
239 necessary steps to preserve records and other evidence in its
240 possession pending the issuance of a court order or other
241 process.
242 (b) Records referred to in paragraph (a) shall be retained
243 for a period of 90 days, which shall be extended for an
244 additional 90 days upon a renewed request by an investigative or
245 law enforcement officer.
246 (15) A provider of electronic communication service, a
247 remote computing service, or any other person who furnished
248 assistance pursuant to this section shall be held harmless from
249 any claim and civil liability resulting from the disclosure of
250 information pursuant to this section and shall be reasonably
251 compensated for reasonable expenses incurred in providing such
252 assistance. A witness who is subpoenaed to appear to testify
253 under subsection (2) and who complies with the subpoena must be
254 paid the same fees and mileage rate paid to a witness appearing
255 before a court of competent jurisdiction in this state.
256 Section 2. This act shall take effect October 1, 2018.

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THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Agriculture
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

January 10, 2018

The Honorable Chairman Greg Steube
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Steube,

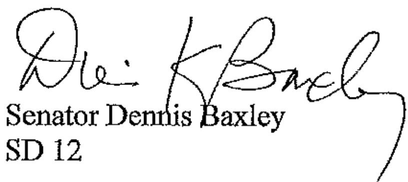
I respectfully request that you place SB 618 Subpoena Investigations of Sexual Offenses on your next available agenda.

This bill will assist law enforcement officers investigating sexual abuse on a child access to electronic communication services or remote computing services to disclose a record or other information pertaining to a subscriber or customer of such service. An investigative or law enforcement officer who receives records or information from a provider of electronic communication services or remote computing services is not required to provide notice to a subscriber or customer of that provider.

If a subpoena issued is served upon a recipient and accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result, the subpoena recipient is prohibited from disclosing to any person for a period of 180 days the existence of the subpoena.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley
SD 12

DKB/dd

cc: Tom Cibula, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/18
Meeting Date

618
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic 618

Name RON DRAA

Job Title EXTERNAL AFFAIRS DIRECTOR

Address 2331 PHILLIPS ROAD
Street

TALL FL 32309
City *State* *Zip*

Phone 850.410.7020

Email RONALDDRAA@FDLE.STATE.FL.US

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FDLE

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)

1/18/18
Meeting Date

618
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Subpoenas in Investigations of Sexual Offenses

Name: Kendra Briscoe

Job Title: Executive Assistant

Address: PO Box 14038
Street

Tallahassee (*City*) FL (*State*) 32317 (*Zip*)

Phone: 850-219-3631

Email: kbriscoe@fpca.com

Speaking: [x] For [ ] Against [ ] Information

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

Representing: The Florida Police Chiefs Association

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] 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)

1/18/18
Meeting Date

SB 618
Bill Number (if applicable)

Topic: Subpoenas in investigations Related to Sexual Offenses

Amendment Barcode (if applicable)

Name: Rob Vitaliano & Mike Spadafora

Job Title: Agents

Address: 340 Gus Hipp Blvd.
Street

Rockledge, FL 32955
City, State, Zip

Phone: 850-933-5994

Email:

Speaking: [X] For [ ] Against [ ] Information

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

Representing: Brevard Co. Sheriff's Office

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] 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)

1-18-18
Meeting Date

SB 618
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Investigative Subpoenas Related to Sexual offenses

Name: CJ Johnson

Job Title: General Counsel

Address: 2750 Center Place
Street

Melbourne, FL 32940
City, State, Zip

Phone: 321-501-9963

Email: cjohnson@cchampions.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Businesses against Child Exploitation / Community Champions

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)

1/18/18
Meeting Date

618
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic electronic privacy

Name John Sawicki

Job Title Forensic Computer Scientist

Address 541 E. Tennessee St., Suite 110
Street

Tallahassee FL 32308
City State Zip

Phone 850 688-9101

Email john@forensicdata.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1/18/16
Meeting Date

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

618
Bill Number (if applicable)

Topic Chapter 934 expansion

Amendment Barcode (if applicable)

Name Honorable Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th St.
Street

Phone (305) 545-1900

Miami FL 33125
City State Zip

Email cmartinez@

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: ______

Bill Number (if applicable): 618

Amendment Barcode (if applicable): ______

Topic: Supena

Name: Andrew Fay

Job Title: Special Counsel

Address: ______ Street

______ City ______ State ______ Zip

Phone: ______

Email: ______

Speaking: [x] For [ ] Against [ ] Information

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

Representing: Office of the Attorney General

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-18-18
Meeting Date

618
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Subpoenas Sexual offenders

Name Mike Spadafora

Job Title Agent

Address [illegible]
Street

Phone

Email

City State Zip

Speaking: [X] For [ ] Against [ ] Information

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

Representing Brevard County Sheriff's office

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1048

INTRODUCER: Senator Baxley

SUBJECT: Firearms

DATE: January 17, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Pre-meeting**
2.			RC	

I. Summary:

SB 1048 enables a church, synagogue, or other religious institution to authorize a person who has a license to carry a concealed weapon or firearm to carry a firearm on any property lawfully used by the religious institution, regardless of any other law. As such, if a congregation lawfully meets where possession of a firearm is statutorily prohibited for even a concealed carry licensee, the congregation nonetheless may authorize a licensee to carry a firearm in that place.

The current concealed carry licensing statute authorizes licensees to carry throughout the state, except into any of a list of places set forth in that statute. None of these places are the typical meeting places of churches or other religious institutions. However, many churches have schools on their property, and the possession of firearms is generally prohibited by law on school property. As such, though licensed concealed carry is legal in a typical building of worship, such carry may constitute a crime at given church's building or property merely because that church has established a school on its property.

The bill addresses this disparate application of firearms laws amongst religious congregations, enabling congregations that have schools on their property to authorize one or more licensees to carry a firearm on the congregation's property. Additionally, the bill enables a congregation that leases or rents meeting space where the possession of a firearm is normally prohibited to authorize any of its worshipers who has a concealed weapon license to carry a firearm to the congregation's meetings.

II. Present Situation:

Overview

A concealed weapon or firearm license authorizes a licensee to carry a concealed weapon or firearm throughout most of the state. Though the licensing statute expressly excludes several places from this authorization, none of these places are the typical meeting places of "churches,

synagogues, or other religious institutions." Nonetheless, some congregations meet at, or are even co-located with, places where the authority under a concealed carry license does not apply. These places might include "school facilities and administration buildings," or "college or university facilities." Moreover, another statute broadly prohibits virtually all people, including concealed weapon licensees, from possessing a firearm on public or private school property. As such, a licensee may generally carry a concealed handgun when he or she meets with his or her congregation, but apparently may not do so if the congregation gathers on the property of a public or private school.

Lawful Concealed Carry of Weapons and Firearms

Although the statutes generally prohibit a person from carrying a firearm or carrying a concealed weapon, these prohibitions are subject to several exceptions.[1]

The most significant exception to the prohibition on a person carrying a concealed weapon or firearm may be the licensed carry of these items. The license authorizes a licensee to carry a concealed firearm in most places in the state.[2] To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services, and the Department must grant the license to each applicant who:[3]

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance;
- Has not been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency in the use of a firearm;[4]
- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;

[1] Many of these exceptions are set forth in s. 790.25, F.S.
[2] As of December 31, 2017, 1,836,954 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited January 12, 2018).
[3] Section 790.06(2), F.S. However, the Department must *deny* a license to an applicant who meets any criterion set forth in s. 790.06(3), F.S, which also sets forth criteria for the mandatory revocation of a license.
[4] See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect which restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

Although the license generally authorizes a person to carry a concealed weapon or firearm throughout the state, a license "does not authorize" a person to carry a concealed firearm into several places, including any college or university facility, any career center, or any elementary or secondary school facility or administration building. A license also does not authorize a person to carry a concealed firearm into any school, college, or professional athletic event not related to firearms.[5] However, this list does *not* include the property of a church, synagogue or other religious institution, such as a typical church campus. So, a licensee generally may carry a concealed firearm when he or she goes to meet with his or her congregation, but not if they are meeting at a school facility or building, a college or university facility, or any other place at which even licensed carry is illegal.[6, 7]

While the licensing statute sets forth that the concealed carry license *does not authorize* carry into any school building or facility, another statute broadly *prohibits* the possession of a weapon or firearm on any public or private school property regardless of whether a person has a license.

Prohibited Possession of a Weapon or Firearm at a School or Related Location

In general, s. 790.115, F.S., prohibits a person from possessing any firearm, electric weapon or device, destructive device, or other weapon on the property of any school, school bus, or school bus stop. Although the word "school" is not defined in the statute authorizing the issuance of concealed weapon or firearm licenses, s. 790.115, F.S., expressly and broadly defines the term "school" as any preschool through postsecondary school, whether public or private.[8] The penalty for violating the ban on weapons varies depending on the weapon possessed and whether the violator has a concealed weapon or firearm license.[9] The limited exceptions in the statute

[5] See s. 790.06(12), F.S., for the list of the places that a license does not authorize a licensee to carry into.

[6] As used in the licensing statute, the terms referring to schools, colleges, and universities are not defined. As such, the statute makes no distinction between public and private schools.

[7] Additional exceptions to the prohibition against carrying a concealed firearm or openly carrying a firearm are created by s. 790.25(3), F.S. This statute authorizes an unlicensed individual to openly possess a firearm or to carry a concealed firearm in any of the manners described in the statute. The statute, for example, authorizes law enforcement officers to carry firearms while on duty. Additionally, the statute authorizes a person to carry a firearm while engaged in hunting, fishing, or camping or while traveling to and from these activities. A person may also possess a firearm at his or her home or place of business or in any of the other circumstances set forth in statute.

[8] It also means any career center. Section 790.115(2)(a), F.S.

[9] A non-licensee possessing a firearm or other weapon commits a third degree felony, punishable by up to 5 years in prison and a fine not to exceed $5,000. *See* ss. 790.115(b)-(c), 775.082(9)(a)3.d. and 775.083(1)(c), F.S. However, licensees who commit this crime are guilty of a lesser crime, a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed $500. *See*, ss. 790.115(2)(e), 790.06(12)(d), 775.082(4)(b), and 775.083(1)(e), F.S.

authorize the possession of weapons and firearms "in support of school-sanctioned activities," "in a case" to a firearms class if approved by school authorities, and in parked cars.

Federal Law

The federal Gun-Free School Zones Act prohibits the possession of a firearm that has moved in or otherwise affects interstate or foreign commerce at a place the individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.[10] However, this prohibition does not apply to a person who is licensed to carry a concealed weapon or firearm.[11]

Another federal law, the Gun-Free Schools Act, is more-narrowly focused on prohibiting *students* from possessing firearms at or near schools. This prohibition is also subject to exceptions.[12] The act expressly states that it does not apply to a firearm "that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety."[13]

Right to Exclude Anyone Possessing a Weapon or Firearm

The laws generally prohibiting the possession of weapons or firearms on school property are not the only legal means available to private schools that want to exclude persons who possess these items. The Florida Constitution declares that every person has the right to "acquire, possess, and protect property."[14] The right to exclude others is "one of the most essential sticks in the bundle of rights that are commonly characterized as property."[15]

A person who enters the property of another without authorization commits the crime of trespass to property. The elements of trespass are set forth in s. 810.08(1), F.S., which states:

> Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

Trespassing with a firearm is a third degree felony,[16] punishable by up to 5 years in prison,[17] 5 years of probation, and a fine not to exceed $5,000.[18]

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[10] 18 U.S.C. § 922(q)(2)(A).
[11] *See* 18 U.S.C. § 922(q)(2)(B)(ii).
[12] *See* 20 U.S.C. § 7961.
[13] 20 U.S.C. § 7961(g).
[14] FLA. CONST. art. I, s. 2.
[15] *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982)).
[16] Section 810.08(2)(c), F.S.
[17] Section 775.082(3)(e), F.S.
[18] Section 775.083(1)(c), F.S.

III. Effect of Proposed Changes:

Overview

Under the bill, a church, synagogue, or other religious institution may authorize a person who has a license to carry a concealed weapon or firearm to carry a firearm on any property lawfully used by the religious institution, regardless of any other law. As such, if a congregation meets in a place where possession of a firearm is prohibited, the congregation may nonetheless authorize a licensee to carry in that place.

The current concealed carry licensing statute authorizes licensees to carry throughout the state, except into any of a list of places set forth in that statute. None of these places are the typical meeting places of churches or other religious institutions. However, many churches have schools on their property, and the possession of firearms is generally prohibited by law on school property. As such, though licensed concealed carry is legal in a typical building of worship, such carry may constitute a crime at given church's building or property merely because that church has established a school on its property.

The bill addresses this disparate application of firearms laws amongst religious congregations, enabling congregations that have schools on their property to authorize one or more licensees to carry a firearm on the congregation's property. Additionally, the bill enables a congregation that leases or rents meeting space where the possession of a firearm is normally prohibited to authorize any of its worshipers who has a concealed weapon license to carry a firearm to the congregation's meetings.

Carrying a Weapon or Firearm at a School

Under current law, s. 790.115, F.S., prohibits carrying a weapon or firearm on any school property, subject to exceptions in the statute. This statute defines "school" to include preschools through colleges and universities, public or private, as well as career centers. Also, Florida's concealed weapon and firearm licensing statute lists elementary and secondary school facilities and administration buildings, college and university facilities, and career centers as places into which the license does not authorize a person to carry a concealed weapon or firearm.[19]

However, the bill enables churches, synagogues, and other religious institutions to authorize a licensee to carry a firearm at a school if the religious institution is lawfully using the property.

Right to Prohibit Firearm Possession on Public or Private Property

The bill does not purport to limit the property rights or contractual rights of any property owner to exclude a person who is carrying a firearm from the property. Accordingly, for example, a contract between a public school and a church for the use of the school's facilities could contractually prohibit the possession of firearms on school property.

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[19] Federal law generally prohibits the possession of a firearm at or within 1,000 feet of any school's property. However, one exception to this prohibition are persons who are licensed under state law to carry a firearm.

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.06 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Baxley

12-01094A-18 20181048__

A bill to be entitled

An act relating to firearms; amending s. 790.06, F.S.; authorizing a church, a synagogue, or other religious institution to allow a concealed weapons or concealed firearms licensee to carry a firearm on the property of the church, synagogue, or religious institution for certain purposes; providing an effective date.

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

Section 1. Subsection (12) of section 790.06, Florida Statutes, is amended to read:

790.06 License to carry concealed weapon or firearm.—

(12)(a) A license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm into:

1. Any place of nuisance as defined in s. 823.05;

2. Any police, sheriff, or highway patrol station;

3. Any detention facility, prison, or jail;

4. Any courthouse;

5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;

6. Any polling place;

7. Any meeting of the governing body of a county, public school district, municipality, or special district;

8. Any meeting of the Legislature or a committee thereof;

9. Any school, college, or professional athletic event not related to firearms;

Florida Senate - 2018 SB 1048

12-01094A-18 20181048__

10. Any elementary or secondary school facility or administration building;

11. Any career center;

12. Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;

13. Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;

14. The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or

15. Any place where the carrying of firearms is prohibited by federal law.

(b) A person licensed under this section may ~~shall~~ not be prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

(c) Notwithstanding any other law, for the purposes of safety, security, personal protection, or other lawful purposes, a church, a synagogue, or any other religious institution may authorize a person licensed under this section to carry a firearm on property owned, rented, leased, borrowed, or lawfully used by the church, synagogue, or religious institution.

(d) ~~(c)~~ This section does not modify the terms or conditions

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

12-01094A-18 20181048__

59 of s. 790.251(7).
60 (e) ~~(d)~~ Any person who knowingly and willfully violates any
61 provision of this subsection commits a misdemeanor of the second
62 degree, punishable as provided in s. 775.082 or s. 775.083.
63 Section 2. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Agriculture
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

December 15, 2017

The Honorable Senator Greg Steube
326 Senate Office Building
404 So Monroe Street
Tallahassee, FL 32399

Dear Chairman Steube,

I respectfully request SB 1048 Firearms (Church Protection) be placed on your next available agenda.

This bill for the purposes of safety, security, personal protection, or other lawful purposes, a church, a synagogue, or any other religious institution may authorize a person licensed under this section to carry a firearm on property owned, rented, leased, borrowed, or lawfully used by the church, synagogue, or religious institution.

I appreciate your favorable consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: Lauren Jones, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-18-18
Meeting Date

1048
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Property Rights

Name: Eric Friday

Job Title: General Counsel

Address: 118 W Adams St
Street

Jacksonville, FL 32202
City, State, Zip

Phone: 904-722-3333

Email: efriday@ericfriday.com

Speaking: [x] For [ ] Against [ ] Information

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

Representing: Florida Carry

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-18-18
Meeting Date

SB 1048
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Guns in Religious Institutions

Name: Kate Kite

Job Title: Volunteer

Address: 1564 Lee Avenue
Street

Tallahassee FL 32303
City *State* *Zip*

Phone: (850) 284 5521

Email: k8kite@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing: Moms Demand Action for Gun Sense

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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1-18-18
Meeting Date

1048
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Firearms & Church

Name Stephanie Owens

Job Title Legislative Advocate

Address 2507 Callaway Rd Ste 102A
Street

TAL 32303
City *State* *Zip*

Phone 727 6391243

Email LWVFADVOCACY@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing LEAGUE of Women Voters FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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1/18/18
Meeting Date

1048
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Name Amber Kelly

Job Title Director of Policy & Communications

Address 4853 S. Orange Ave, Suite C
Street

Phone (407) 418-0250

Orlando FL 32806
City State Zip

Email

Speaking: [x] For [ ] Against [ ] Information

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

Representing FL Family Action

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

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APPEARANCE RECORD

1-18-18
Meeting Date

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

1048
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Firearms

Name: Janet Lamoureux

Job Title:

Address: 1345 Turkey Trl
Street

Lakeland, Fl 33810
City, State, Zip

Phone: 863-688-7367

Email: janetL@tampabay.rr.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing: Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/18
Meeting Date

1048
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: FIREARMS

Name: BILL BUNKLEY

Job Title: PRESIDENT

Address: PO BOX 341644
Street

TAMPA — FL — 33694
City — State — Zip

Phone: 813.380.4044

Email:

Speaking: [x] For [ ] Against [ ] Information

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

Representing: FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/18
Meeting Date

SB 1048
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Church, Synagogue Carry

Name Jon Harris Maurer

Job Title Government Affairs Manager

Address 201 E Park Ave, Ste. 200
Street

Tallahassee FL 32301
City State Zip

Phone

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Equality Florida

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1/18/2018 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1048

Meeting Date — Bill Number (if applicable)

Topic FIREARMS (RELIGIOUS INSTITUTIONS)

Amendment Barcode (if applicable)

Name BRIAN LUPIANI

Job Title (RETIRED)

Address 607 MCDANIEL ST — Phone 850-273-1028

Street

TALLAHASSEE FL 32303 — Email BRIANLUPIANI@YAHOO.COM

City State Zip

Speaking: [ ] For [✓] Against [ ] Information

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

Representing SELF

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [ ] Yes [✓] No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/18
Meeting Date

1048
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Firearms

Name Doug Bell

Job Title

Address 119 S Monroe
Street

TLH FL
City State Zip

Phone 205-9000

Email doug.bell@mhdfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chapter American Academy of Pediatrics

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/2018
Meeting Date

SB-1048
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Firearms /Private Property Rights/Separation Church & State

Name: Marion P. Hammer

Job Title:

Address: PO Box 1387
Street

Tallahassee — FL — 32302
City — *State* — *Zip*

Phone: 850-222-9518

Email:

Speaking: ☑ For ☐ Against ☐ Information

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

Representing: National Rifle Association & Unified Sportsmen 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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 660

INTRODUCER: Senator Brandes

SUBJECT: Florida Insurance Code Exemption for Nonprofit Religious Organizations

DATE: January 17, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Favorable**
2.	Stallard	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 660 substantially conforms the statute that governs health care sharing ministries to model legislation of the American Legislative Exchange Council,[1] federal law, and the common practices of these ministries. A health care sharing ministry is an alternative to health insurance through which people of similar beliefs assist each other in paying for health care.

One area addressed by the bill is the list of requirements that a health care sharing ministry must meet to be exempt from the laws regulating insurers. New requirements are added to the list and other requirements in the list are modified. The additions require a ministry to:

- Have an annual, independent audit conducted according to generally accepted accounting principles; and
- Provide monthly statements to participants of the total dollar amount of qualified needs actually shared in the previous month in accordance with the ministry's criteria.

A revised requirement allows for flexibility in how medical costs may be shared among ministry participants. Current law requires participant-to-participant payment, but the bill also allows payments to be made from a common fund of participant-donated money.

Additionally, the bill removes language from the law that expressly states that a ministry may exclude participants who have pre-existing conditions. Finally, the bill requires a ministry to give much clearer notice to prospective participants that the ministry is not an insurer.

[1] *See* American Legislative Exchange Council, *Health Care Sharing Ministries Tax Parity Act*, https://www.alec.org/model-policy/health-care-sharing-ministries-tax-parity-act/ (last visited Jan. 16, 2018).

II. Present Situation:

Overview

A health care sharing ministry is an alternative to health insurance through which people of similar ethical or religious beliefs assist each other in paying for health care. Some health care sharing ministries act as a clearinghouse to allow one or more members to directly pay the medical expenses of another member. Other health care sharing ministries receive funds from members and use those funds to pay authorized medical expenses when members request payment. The first health care sharing ministry was established in 1981.[2]

The Florida Insurance Code will exempt a ministry, which it refers to as a "nonprofit religious organization,"[3] from the code's provisions governing health insurers if the ministry meets several criteria set forth in the code. These requirements for a ministry's exemption from the code also appear to serve as regulations for these organizations.

Florida Law

Since 2008, Florida law has expressly exempted health care sharing ministries that meet statutory criteria from being regulated as insurers. Specifically, a health care sharing ministry qualifies as a "nonprofit religious organization" that is exempt from the requirements of this state's insurance code if it:

- Qualifies under federal law as tax-exempt;
- Limits its participants to members of the same religion;
- Acts as an organizational clearinghouse for information between participants who have financial, physical, or medical needs and participants who have the ability to pay for the benefit of those participants who have financial, physical, or medical needs;
- Provides for the financial or medical needs of a participant through payments directly from one participant to another participant; and
- Suggests amounts that participants may voluntarily give with no assumption of risk or promise to pay among the participants or between the participants.[4]

Though the code exempts qualified ministries from its requirements of insurers, it nonetheless regulates these ministries in a limited sense. Particularly, the code requires each ministry to give prospective participants notice that it is not an insurer and that it is not subject to regulation under the insurance code.[5] Moreover, the code expressly states that it "does not prevent" an organization that meets the qualifying criteria from deciding which pre-existing conditions will disqualify a prospective participant or from canceling the membership of a participant who fails to make a payment for another participant for a period in excess of 60 days.

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[2] *See* Benjamin Boyd, *Health Care Sharing Ministries: Scam or Solution*, 26 J.L. & Health 219, 229 (2013).
[3] The more descriptive and widely used term "health care sharing ministry" will continue to be used generally throughout this analysis for continuity and to avoid confusion.
[4] *See* s. 624.1265(1), F.S.
[5] *See* s. 624.1265(3), F.S.

Federal Law

Federal law pertains to health care sharing ministries in two ways. As mentioned above, state law requires a ministry to qualify as tax exempt under federal tax law. Also, though federal law requires people to have health insurance or pay a penalty,[6] it exempts members of a health care sharing ministry, which it defines as an organization:

- Which is tax-exempt under federal law;
- Members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed;
- Members of which retain membership even after they develop a medical condition;
- Which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999; and
- Which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.[7]

III. Effect of Proposed Changes:

Overview

The bill substantially conforms the statute that governs health care sharing ministries to model legislation of the American Legislative Exchange Council, federal law, and the common practices of these ministries.

The bill changes the list of requirements that a ministry must meet to be exempt from regulation as an insurer. Additionally, the bill removes language from the law which expressly states that a ministry may exclude participants who have pre-existing conditions. Finally, the bill requires each ministry to give a much clearer notice to prospective participants that the ministry is not an insurer.

Requirements for a Health Care Sharing Ministry to be Exempt from the Insurance Code

The Florida Insurance Code regulates insurance organizations that operate in this state. To avoid being subject to regulation under the code as an insurer, a health care sharing ministry must meet each of a list of criteria set forth in the code. The bill amends several of these criteria.

Current law requires a nonprofit religious organization to limit participation to "members of the same religion." The bill modifies this language to require a ministry to limit participation to those who "share a common set of ethical or religious beliefs." This change allows a nonprofit religious organization to welcome persons of different religions, or even of no religion. Additionally, this change conforms the code to language in federal law.

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[6] This provision is known as the "individual mandate." The individual mandate was recently repealed, but the repeal is not effective until 2019. *See* Margot Sanger-Katz, *Requiem for the Individual Mandate,* N.Y. TIMES (Dec. 21, 2017), https://www.nytimes.com/2017/12/21/upshot/individual-health-insurance-mandate-end-impact.html.

[7] *See* 26 U.S.C. 5000A(d)(2)(B)(ii).

Further, the code currently requires a health care sharing ministry to act as an organizational clearinghouse for information between participants who have financial, physical, or medical needs and participants who have the ability to pay for the benefit of those participants. The bill replaces "organizational clearinghouse" with "facilitator" and provides that the nonprofit religious organization must act as a facilitator among participants who have financial or medical needs[8] to assist those with financial or medical needs in accordance with criteria established by the nonprofit religious organization. This change conforms the code to the model act.

The code currently requires a nonprofit religious organization to provide for financial or medical needs by direct payments from one participant to another. The bill allows direct payments to participants but does not require them. Thus, payments may pass through the organization or through a fund to a participant.

Under the bill, a health care sharing ministry must, on a monthly basis, provide the participants "the amount of qualified needs actually shared in the previous month in accordance with criteria established by the" health care sharing ministry. The code does not currently include this provision, which requires a ministry to be more transparent and more accountable to its participants.

Finally, the bill creates an annual audit requirement that does not exist in the code, but appears in the model act and federal law. Particularly, a health care sharing ministry must conduct an annual audit that is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles. Moreover, the audit must be made available to the public by providing a copy upon request or by posting it on the ministry's website.

Notice

One of several ways in which the bill increases consumer protection has to do with the notice that a health care sharing ministry is required to provide to prospective members. The notice required by the bill is more explicit and more thorough than that required in current law. Moreover, the bill requires this notice to read, "in substance":

> The organization facilitating the sharing of medical expenses is not an insurance company, and neither its guidelines nor plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant is compelled by law to contribute toward your medical bills. As such, participation in the organization or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payments for medical expenses or whether this organization continues to operate, you are always personally responsible for the payment of your own medical bills.

[8] Section 624.1265, F.S., uses "financial, physical, or medical" needs. The bill eliminates "physical" from the statute. It is not clear whether the removal "physical" from the statute is a substantive change. The model act and similar laws from other states do not include it.

Effective Date

The bill takes effect 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:

The fiscal impact on the private sector should be minimal, as the changes made by the bill are relatively minor and health care sharing ministries have been operating under the requirements set forth in the Insurance Code since 2008.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.1265 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Brandes

A bill to be entitled

An act relating to the Florida Insurance Code exemption for nonprofit religious organizations; amending s. 624.1265, F.S.; revising criteria under which a nonprofit religious organization that facilitates the sharing of contributions among its participants for financial or medical needs is exempt from requirements of the code; revising construction; revising requirements for a notice provided by the organization; providing an effective date.

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

Section 1. Section 624.1265, Florida Statutes, is amended to read:

624.1265 Nonprofit religious organization exemption; authority; notice.—

(1) A nonprofit religious organization is not subject to the requirements of the Florida Insurance Code if the nonprofit religious organization:

(a) Qualifies under Title 26, s. 501 of the Internal Revenue Code of 1986, as amended;

(b) Limits its participants to those members who share a common set of ethical or religious beliefs ~~of the same religion~~;

(c) Acts as a facilitator among ~~an organizational clearinghouse for information between~~ participants who have financial~~, physical,~~ or medical needs to assist those with financial or medical needs in accordance with criteria established by the nonprofit religious organization ~~and~~

~~participants who have the ability to pay for the benefit of those participants who have financial, physical, or medical needs~~;

(d) Provides for the financial or medical needs of a participant through contributions from other participants; ~~payments directly from one participant to another participant; and~~

(e) Provides amounts that participants may contribute, with no assumption of risk and no promise to pay:

1. Among the participants; or

2. By the nonprofit religious organization to the participants;

(f) Provides monthly to the participants the total dollar amount of qualified needs actually shared in the previous month in accordance with criteria established by the nonprofit religious organization; and

(g) Conducts an annual audit that is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and that is made available to the public by providing a copy upon request or by posting on the nonprofit religious organization's website ~~suggests amounts that participants may voluntarily give with no assumption of risk or promise to pay among the participants or between the participants~~.

(2) This section does not prevent:

(a) The organization described in subsection (1) from acting as a facilitator among participants who have financial or medical needs to assist those with financial or medical needs in accordance with criteria established by the organization;

59 ~~establishing qualifications of participation relating to the~~
60 ~~health of a prospective participant, does not prevent~~
61 (b) A participant from limiting the financial or medical
62 needs that may be eligible for payment; or~~, and does not prevent~~
63 (c) The organization from canceling the membership of a
64 participant when such participant indicates his or her
65 unwillingness to participate by failing to make a payment to
66 another participant for a period in excess of 60 days.
67 (3) The nonprofit religious organization described in
68 subsection (1) shall provide a written disclaimer on or
69 accompanying all applications and guideline materials
70 distributed by or on behalf of the nonprofit religious
71 organization. The disclaimer must read in substance: “Notice:
72 The organization facilitating the sharing of medical expenses is
73 not an insurance company, and neither its guidelines nor plan of
74 operation is an insurance policy. Whether anyone chooses to
75 assist you with your medical bills will be totally voluntary
76 because no other participant is compelled by law to contribute
77 toward your medical bills. As such, participation in the
78 organization or a subscription to any of its documents should
79 never be considered to be insurance. Regardless of whether you
80 receive any payments for medical expenses or whether this
81 organization continues to operate, you are always personally
82 responsible for the payment of your own medical bills.” ~~each~~
83 ~~prospective participant in the organizational clearinghouse~~
84 ~~written notice that the organization is not an insurance~~
85 ~~company, that membership is not offered through an insurance~~
86 ~~company, and that the organization is not subject to the~~
87 ~~regulatory requirements or consumer protections of the Florida~~

88 ~~Insurance Code.~~
89 Section 2. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 11, 2018

I respectfully request that **Senate Bill #660**, relating to **Florida Insurance Code Exemption for Nonprofit Religious Organizations**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/18
Meeting Date

660
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Name Amber Kelly

Job Title Director of Policy & Communications

Address 4853 S. Orange Avenue, Suite C
Street

Phone (407) 418-0250

Orlando, FL 32806
City, State, Zip

Email

Speaking: [x] For [ ] Against [ ] Information

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

Representing FL Family Action

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/18
Meeting Date

660
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: FLA INSURANCE CODE EXEMPTION

Name: BILL BUNKLEY

Job Title: PRESIDENT

Address: PO BOX 341644
Street

TAMPA FL 33694
City State Zip

Phone: 813-380-4044

Email:

Speaking: [x] For [ ] Against [ ] Information

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

Representing: FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

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

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 750

INTRODUCER: Senator Perry

SUBJECT: Public Records

DATE: January 17, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	**Favorable**
2.	Davis	Cibula	JU	**Pre-meeting**
3.			RC	

I. Summary:

SB 750 prohibits an agency, which includes a wide variety of state and local government entities, from responding to a request to inspect or copy a public record by filing a civil action against the individual or entity making the request.

II. Present Situation:

Public Records Law

The Florida Constitution

Under the Florida Constitution, the public is guaranteed the right of access to government records and meetings. Article I, s. 24(a) of the State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Florida Statutes

Similarly, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. Chapter 119, F.S., contains the main body of public records laws and is known as the Public Records Act.[1] Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency[2] to provide access to

[1] Additional public records laws are found throughout the Florida Statutes.
[2] Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

public records.[3] Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies.[4] The state's public records laws are construed liberally in favor of granting public access to public records.

Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records. A records custodian must permit records to be inspected and copied by any person,[5] at any reasonable time,[6] under reasonable conditions, and under supervision by the records custodian. Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.[7]

An agency is permitted to charge fees for the inspection or copying of records. These fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4)(d), F.S., provides that if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the request. The term "labor cost" includes the entire labor cost, including benefits in addition to wages or salary.[8] The service charge may be assessed, and payment may be required, by an agency before providing a response to the request.[9]

The Process for Making a Public Record Request

The statutes set out an orderly process for someone to request a public record.[10]

1. The requestor contacts the agency and asks to copy or inspect certain records.
2. The custodian or designee must acknowledge the request promptly and respond to the request in good faith.
3. The agency may then either:
    - Provide the record as it exists;
    - Provide the record after redactions are made if an exemption applies to a portion of a record; or

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[3] Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

[4] See s. 119.071, F.S., for a list of general exemptions contained in chapter 119, F.S.

[5] Section 119.07(1), F.S.

[6] There is no specific time limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request.

[7] *See Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

[8] *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

[9] Section 119.07(4), F.S.; *Morris Publishing Group, LLC v. State*, 154 So. 3d 528, 534 (Fla. 1st DCA 2015), *review denied*, 163 So. 3d 512 (Fla. 2015); *see also Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (stating that if a requestor identifies a record with sufficient specificity to permit an agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record).

[10] Section 119.07(1), F.S.

- Deny the request and state the basis for the exemption along with a statutory citation to the exemption. If the person seeking to inspect or copy the records requests, the custodian must state in writing and with particularity, the reasons the record is exempt or confidential.

If the request is denied, the requestor has the option to work with the agency in an effort to refine or alter its request so that the agency might disclose the information if the request is clarified, presented differently, or modified.

When all efforts by the requestor fail, the requestor may:
- File a civil lawsuit alleging that the agency's action is a violation of the public records law;
- File a complaint with the local state attorney; or
- Seek voluntary mediation of the dispute using the Attorney General's public records mediation program pursuant to s. 16.60, F.S., but the mediator does not impose a binding legal decision.[11]

Criminal and Noncriminal Penalties

Any public officer who *knowingly* violates the provisions governing the inspection and copying of records in his or her custody, s. 119.07(1), F.S., is subject to suspension and removal or impeachment and also commits a first degree misdemeanor.[12] A first degree misdemeanor is punishable by a sentence of up to 1 year in prison, a $1,000 fine, or both. Whoever violates any provision of chapter 119, F.S., commits a noncriminal infraction, punishable by a fine that does not exceed $500.[13]

Declaratory Judgments

When a person submits a request to an agency and the agency is uncertain if the document is a record that must be disclosed to the public or is otherwise protected from disclosure, the agency may seek guidance from a court by filing a complaint for declaratory judgment.[14] A declaratory judgment[15] is a binding adjudication in which the court establishes the rights of the parties without requiring enforcement of its decision. It is used to resolve legal uncertainties for the parties.

Regarding the issue of costs in a declaratory judgment action, s. 86.081, F.S., provides that the court may award costs as are equitable. This generally means that each party bears its own

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[11] According to a phone interview conducted with Pat Gleason, the mediator for the Attorney General's Office, the office mediates approximately 100 cases each year. This is a voluntary process and both sides agree in advance to use the process. All correspondence is conducted through email and no travel is involved. The process is free and non-binding on the parties. The parties generally agree to the outcome but are not required to. Telephone interview with Pat Gleason, Public Records Mediation Program, Office of the Attorney General, Tallahassee, FL (Jan. 14, 2018).
[12] Section 119.10(1)(b), F.S.
[13] Section 119.10(1)(a), F.S.
[14] See *Butler v. City of Hallandale Beach*, 68 So. 3d 278, 279 (Fla. 4th DCA 2011).
[15] BLACK'S LAW DICTIONARY (10th ed. 2014).

attorney fees and costs.[16] Therefore, if an agency seeks a declaratory judgment and names the requestor as a party, each side will be expected to pay its own attorney fees and costs.

Agencies of the state may use this tool to ask a court to determine whether a particular record is protected from disclosure or whether the record is available to the public for inspection or copying. It is not uncommon for an agency to ask the court whether certain material in their records meets the definition of a trade secret that is protected from public disclosure.[17] The Legislature has found that it is a public necessity that trade secret information be expressly made confidential and exempt from public records law.[18] In creating this exemption the Legislature noted:

> Thus, the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets.[19]

Attorney Fees and Costs

A court is generally required to award attorney fees and enforcement costs to the plaintiff[20] in an action to enforce public records laws if the court determines that:

- An agency unlawfully refused access to a public record, and
- The plaintiff provided written notice identifying the public records request to an agency records custodian at least 5 business day before filing the action.[21]

However, if the court determines that a plaintiff requested records or filed the enforcement action based on an improper purpose, the court must award reasonable costs and attorney fees against the plaintiff. An improper purpose is one in which a person requests records mainly to harass an agency, cause a violation of the public records law, or for a frivolous purpose.

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[16] In *Price v. Tyler*, 890 So. 2d 246 (Fla. 2004), the Florida Supreme Court held that attorney fees are not recoverable in declaratory relief actions unless there is an independent statutory or contractual basis authorizing recovery of those fees. The Court noted that it follows the 'American Rule,' whereby attorney fees may be awarded by a court only when authorized by statute or agreement of the parties.

[17] *Office of Insurance Regulation v. State Farm Florida Insurance Company*, 213 So. 3d 1104 (Fla. 1st DCA 2017). Chapter 65, Financial Institutions Generally, establishes how trade secret requests are to be handled for purposes of that chapter. If someone submits documents that are believed to be trade secrets, he or she must designate them as such and provide the name of a contact person. If the office then receives a public records request for that information, the office notifies the contact person of the request and states that he or she must file an action in circuit court within 30 days seeking a declaratory judgment that the document contains trade secrets and an order barring public disclosure of the document.

[18] See *Surterra Florida, LLC. v. Florida Department of Health*, 223 So. 3d 376 (Fla. 1st DCA 2017).

[19] Section 815.045, F.S.

[20] Section 119.12, F.S.

[21] The 5-day notice period excludes holidays and weekends. Advance written notice is not required if the agency does not prominently post contact information for its records custodian in the agency's primary administrative building in which public records are kept and on the agency's website, if the agency has a website.

Additional Litigation

If an agency is about to disclose information that someone believes is confidential and exempt and entitled to protection, a party might sue the agency to keep the information out of the public domain.[22]

The bill takes effect on July 1, 2018.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 119.07, F.S., and prohibits an agency, which includes a wide variety of state and local government entities, from responding to a request to inspect or copy a public record by filing a civil action against the individual or entity making the request.

Court cases have held, however, that the governmental agency claiming the benefit of a public record exemption bears the burden of proving its right to the exemption.[23] By prohibiting an agency from filing a "civil action" in response to a public records request, an agency would be prohibited from filing a declaratory judgment action with a court to determine whether the disclosure requirements of the public records law apply or whether the requested material is shielded from the disclosure requirements. If this option for a declaratory judgment action is removed from an agency when the duty to produce records is reasonably debatable, agencies may face additional lawsuits for refusing to provide access to public records and for producing records that are protected from public disclosure.

Section 2 of the bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[22] *Office of Insurance Regulation v. State Farm Florida Insurance Company*, 213 So. 3d 1104 (Fla. 1st DCA 2017).

[23] *Central Florida Regional Transp. Authority v. Post-Newsweek*, 157 So. 3d 401, 404 (Fla. 5th DCA 2015); *Barfield v. School Bd. Of Manatee County*, 135 So. 3d 560, 562 (Fla. 2d DCA 2014).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate positive impact on the private sector because individuals and entities that request public records would not be required to pay the legal costs and fees associated with being sued by a state or local government entity.

C. Government Sector Impact:

No agency bill analysis has been reported at this time projecting how this bill might affect an agency. However, removing an agency's ability to request a declaratory judgment and possibly avoid sanctions might result in more litigation filed against an agency. This could result in more litigation costs to the agency.

VI. Technical Deficiencies:

The phrase "civil action" is very broad and could prohibit an agency from filing any form of litigation, possibly even litigation to protect itself. Perhaps this phrase should be amended to state with greater specificity what legal actions are prohibited by the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.07 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Perry

8-00956-18 2018750__

1 A bill to be entitled
2 An act relating to public records; amending s. 119.07,
3 F.S.; prohibiting an agency that receives a request to
4 inspect or copy a record from responding to such
5 request by filing a civil action against the
6 individual or entity making the request; providing an
7 effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Paragraph (j) is added to subsection (1) of
12 section 119.07, Florida Statutes, to read:
13 119.07 Inspection and copying of records; photographing
14 public records; fees; exemptions.—
15 (1)
16 (j) An agency that receives a request to inspect or copy a
17 public record is prohibited from responding to such request by
18 filing a civil action against the individual or entity making
19 the request.
20 Section 2. This act shall take effect July 1, 2018.

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

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 10, 2018

I respectfully request that **Senate Bill #750**, relating to Public Records, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/18
Meeting Date

750
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Public Records

Name: Brian Sullivan

Job Title: Chief Legal Counsel

Address: 100 S Monroe Street (Street)

Tallahassee (City) FL (State) 32301 (Zip)

Phone: 810-335-0180

Email: bsullivan@flcounties.com

Speaking: [ ] For [x] Against [ ] Information

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

Representing: Florida Association of Counties

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1120

INTRODUCER: Senator Perry

SUBJECT: Expert Witnesses

DATE: January 17, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	**Pre-meeting**
2.			CJ	
3.			AP	

I. Summary:

SB 1120 amends several statutory provisions that require a trial court to appoint and pay for one of more expert witnesses out of the state court system's funds. The bill amends 13 separate statutory provisions, 11 of which are substantive, in an effort to clarify who pays the costs or to contain the state court system's costs associated with appointing expert witnesses.

Of the substantive changes, the bill:

- Permits the court to initially appoint only one expert in competency proceedings for adult criminal defendants, for adults who may be incompetent due to intellectual disability or autism, and for juvenile defendants who may be incompetent due to intellectual disability or autism. While the court may still be required to appoint and pay up to three experts, the bill provides that the parties may stipulate to the findings of the initial expert, thereby eliminating the need to appoint more experts.
- Shifts, from the court to the defendants, the cost of hiring a physician to evaluate defendants who seek to avoid sentencing for cause based on insanity or pregnancy.
- Provides that regardless of indigent status, the court must appoint and pay for two experts to evaluate a capital criminal defendant who seeks to avoid the death penalty due to intellectual disability.
- Provides that in guardianship proceedings and in civil proceedings to determine involuntary commitment of a person to a residential program based on developmental disabilities, the court will pay the statutorily required examining committee consisting of three experts.

II. Present Situation:

Overview of State Court Funding

The judicial branch is governed under article V of the State Constitution. In 1998, section 14 of article V, entitled “Funding,” was amended to “substantially and significantly revise[] judicial system funding, greatly reducing funding from local governments and placing the responsibility primarily on the state.”[1] As amended, article V, section 14 generally provides that the state court system will be funded as follows:[2]

- Funding for state court systems as well as state attorney’s offices, public defender’s offices, and court-appointed counsel is generally paid from “state revenues appropriated by general law.”[3]
- Funding for circuit and county court clerks’ offices is generated from the filing fees, services charges, and costs collected for performing the clerks’ court-related functions. However, where the clerks’ offices are constitutionally precluded from imposing fees (such as in the case of an indigent criminal defendant), the state must provide “supplement funding from state revenues appropriated by general law” as determined by the Legislature.[4]
- Generally, funding for the state courts system will *not* be required by a county or municipality.[5] However, the counties are responsible to fund certain types of court infrastructure and maintenance,[6] as well as “reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.”[7]

The 1998 amendment to Article V had to be implemented by July 1, 2004.[8] In order to implement the 1998 amendment, the Legislature responded “in stages, beginning with passage of SB 1212 in 2000 (Chapter 200-237, Laws of Florida), followed by additional changes to that law in 2001, and, finally in 2002, through the funding of a study to assist in the final phase of implementation.”[9] During the 2003 legislative session, the Legislature implemented the final stage, which included a substantial overhaul of chapter 29, F.S., entitled “Court System Funding.”[10]

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[1] *City of Fort Lauderdale v. Crowder*, 983 So.2d 37, 39 (Fla. 4th DCA 2008) (“In its Statement of Intent, the Constitution Revision Commission explained: ‘The state’s obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements *which are statewide in nature.*’ [e.s.] 26 Fla. Stat. Ann. (Supp.) 67.”).

[2] FLA. CONST. art. V, s. 14(d), Fla. Const. (“The judiciary shall have no power to fix appropriations”).

[3] FLA. CONST. art. V, s. 14(a).

[4] FLA. CONST. art. V, s. 14(b).

[5] FLA. CONST. art. V. s. 14(c). (“No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys’ offices, public defenders’ offices, court-appointed counsel or the offices of the clerks of the circuit and county courts for performing court-related functions.”).

[6] *Id.* (“Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders’ offices, state attorneys’ offices, and the offices of the clerks of the circuit and county courts performing court-related functions.”). *See also* s. 29.008, F.S. (“county funding of court-related functions”).

[7] *Id.*

[8] *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 530 (Fla. 3d DCA 2005).

[9] Florida Staff Analysis, H.B. 113A, 5/14/2003

[10] 2003 Fla. Sess. Law Serv. Ch. 2003-402 (H.B. 113–A). *See also City of Ft. Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008).

State Court Funding of Due Process Costs for Indigent Defendants

Under article V, section 14(c) of the State Constitution and chapter 29, F.S., the circuit and county court clerk's offices are entitled to supplemental funding from state revenues in order to pay the costs of providing constitutionally required representation to indigent[11] defendants in both civil and criminal proceedings, also generally referred to as "due process costs."[12] Under chapter 29, F.S., "due process costs" include the costs of:

- A public defender or a criminal conflict and civil regional counsel attorney ;[13]
- A private court-appointed attorney in case of conflict with the public defender or regional counsel attorney;[14]
- Creating a record (transcripts, depositions, court reporting, and, when necessary, interpreters or translators);[15]
- Securing witnesses, including expert witnesses;[16]
- Mental health professionals appointed under ss. 394.473 and 916.115(2), F.S.;[17]
- Transportation;[18]
- Travel expenses;[19]
- Reasonable library and electronic legal research;[20] and
- Reasonable pretrial consultation fees.[21]

State revenues generally pay for the foregoing due process costs.[22] In cases involving the appointment of a private attorney for an indigent defendant, the body generally responsible for developing contract forms and processing payments for due process costs is the Justice Administrative Commission (JAC).[23] The JAC processes payments for due process costs "in criminal cases and dependency cases involving [private] court-appointed or indigent for cost counsel or an indigent pro se defendant."[24]

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[11] BLACK'S LAW DICTIONARY (10th ed. 2014) ("indigent" means "**1.** A poor person. **2.** Someone who is found to be financially unable to pay filing fees and court costs and so is allowed to proceed *in forma pauperis.*").
[12] *See* Justice Administrative Commission, *What are Due Process Costs?*, available at https://www.justiceadmin.org/IFC/dueProcess/What%20are%20Due%20Process%20Costs.pdf (last visited January 14, 2018).
[13] Section 29.006(1), F.S.
[14] Section 29.007(1)-(2), F.S.
[15] Sections 29.006(2) and 29.007(3), F.S.
[16] Sections 29.006(3) and 29.007(4), F.S.
[17] Sections 29.006(4) and 29.007(5), F.S.
[18] Section 29.006(5), F.S.
[19] Sections 29.006(6) and 29.007(7), F.S.
[20] Section 29.006(7), F.S.
[21] Sections 29.006(8) and 29.007(6), F.S.
[22] Section 29.006, F.S. (providing that enumerated due process costs or "elements" of PD and RCC offices are paid out of state revenues appropriated by general law.
[23] Section 29.007(7), F.S.; s. 43.16(5), F.S.
[24] *See* Justice Administrative Commission, *Guide to Obtaining Due Process Costs*, p. 4 ("JAC's Role") available at https://www.justiceadmin.org/faq/Training%20Modules/GuidetoDueProcessCosts.pdf (last visited January 14, 2018).

State Court Funding for Court-Appointed Expert Witnesses

A trial court may be statutorily required to appoint an expert witness.[25] Before the implementation of the 1998 amendment to article V, section 14, "the counties paid for the costs of experts appointed by the trial courts out of their own budgets, whether the expert was appointed by the trial court because of a request by an indigent defendant or by the state attorney or by the trial court sua sponte."[26] Under current law, however, a *court-appointed* expert witness is paid "out of state revenues appropriated by general law" when "appointed by the court pursuant to an express grant of statutory authority."[27] As explained in *Office of State Attorney for Eleventh Judicial Circuit v. Polites,*

> [T]he party who requests the appointment of the expert must pay for the expert. It is true that court appointed experts historically have been deemed to be nonpartisan. . . .These court-appointed experts are necessary for the implementation of a fair system. . . . Furthermore, experts who are not requested by either party are supposed to be neutral experts. . . . Consequently, where neither party requests the appointment of a mental health expert, the state court system must pay for that expert. The construction of the statutes in any other manner would violate the doctrine of separation of powers.[28]

Proposed Cost Containment for Court-Appointed Expert Witnesses

In 2015, the Trial Court Budget Commission[29] and the Commission on Trial Court Performance and Accountability[30] formed the Due Process Workgroup to study the increasing costs associated with "due process contractual expenditures" in the state court budget.[31] The Workgroup determined that among the primary items increasing due process costs are the fees paid to expert witnesses, such as mental health professionals and physicians.[32]

"[I]n order to improve procedures for the appointment and payment of expert witnesses and the containment of due process costs[,]" the Workgroup identified and recommended changes to 13 separate statutory provisions categorized into seven subject areas that are "related to the appointment and payment of expert witnesses in the trial courts."[33] For two of the identified statutory provisions, the changes are technical and consist of conforming cross-references. [34] The other 11 statutory provisions fall within the following seven categories:

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[25] *See, e.g.,* s. 393.11, F.S., (requiring the court to appoint examining committee of at least three experts upon receiving petition for involuntary admission of a person with an intellectual disability or autism into a residential services program).
[26]*Polites*, 904 So. 2d at 530 (noting the Legislature had set aside funds for "due process costs" including court-appointed expert witnesses not requested by the parties).
[27] Section 29.004(6), F.S. *See also id.* at 532.
[28] 904 So. 2d at 532.
[29] Fla. R. Jud. A. 2.230 (establishing the Trial Court Budget Commission for the purpose of developing and overseeing administration of trial court budgets).
[30] Admin. Order No. AOSC16-39 (establishing the Commission on Trial Court Performance and Accountability "to propose policies and procedures on matters related to the efficient and effective functioning of Florida's trial courts").
[31] Florida Supreme Court and State Court Administrators, *White Paper, Judicial Branch 2018 Legislative Agenda*, "Expert Witnesses in Trial Courts," p. 21, (2018) (on filed with Senate Judiciary Committee).
[32] *Id.* at 21-25.
[33] *Id.* at 21.
[34] Sections 29.006 and 29.007, F.S.

(A) Adult Competency (ss. 916.115, 916.12, and 916.17, F.S.).
(B) Forensic Services for Intellectually Disabled or Autistic Defendants (ss. 916.301-304, F.S.).
(C) Sentencing Evaluation (ss. 921.09 and 921.12, F.S.).
(D) Death Penalty – Intellectual Disability (s. 921.137, F.S.).
(E) Juvenile Competency – Mental Illness and Intellectual Disability or Autism (s. 985.19, F.S.).
(F) Developmental Disabilities (s. 393.11, F.S.).
(G) Guardianship Examining Committee (s. 744.331, F.S.).[35]

For ease of comparing present law with the changes proposed by the bill, the categories above will be discussed in more detail in the Effect of Proposed Changes section of this analysis.

III. Effect of Proposed Changes:

Adult Competency (Sections 3-5)

Present Situation:

Section 916.115, F.S., provides for the appointment and payment of pre-trial competency evaluations for adult criminal defendants. The court is only permitted to pay for up to three court-appointed experts and only to the extent the expert is evaluating competency. If the expert is also evaluating the defendant's sanity, the defense is responsible for that portion of the expert's fees. Additionally, the court may only pay an expert whose evaluation and testimony explicitly addresses each of the factors and follows the procedures in chapter 916, F.S., and the Florida Rules of Criminal Procedure.

The requesting party will otherwise pay for the expert's evaluation and testimony as follows:
- The public defender will pay expert fees under section 29.006, F.S.
- The state attorney will pay expert fees under section 29.005, F.S.
- The Justice Administrative Commission will pay fees of experts retained by private court-appointed counsel, indigent pro se defendants (representing self) and partially represented "indigent for cost" defendants.

Section 916.12, F.S., provides criteria a mental health expert must follow in evaluating an adult criminal defendant's competency to stand trial. It also reflects the requirement of s. 916.115, F.S., that at least two experts evaluate the defendant's competency.

Section 916.17, F.S., generally provides procedures by which a court may approve the conditional release of a criminal defendant to outpatient care in lieu of involuntary commitment. Section 916.17(2), F.S. requires the court to hold a hearing upon the filing of an affidavit or statement that the defendant's conditional release essentially needs be readdressed, during which the court may modify the defendant's release conditions or return the defendant to involuntary custody "after the appointment and report of experts."

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[35] *See* n. 2, *supra.*

Effect of Proposed Changes:

Section 3: The bill eliminates the requirement in **s. 916.115, F.S.**, that the court immediately appoint two mental health experts, providing instead that the court may initially appoint only one mental health expert to conduct the competency evaluation. The parties may then decide whether to stipulate to the single expert's findings. Based on the single expert's findings, the court may:

- Take less restrictive action than commitment; or
- Commit the defendant if the parties also stipulate to commitment.

Otherwise, if the parties do not stipulate to the single expert's findings and commitment, the court must appoint at least one additional expert but no more than two additional experts to evaluate the defendant before committing him or her based on incompetency. Additionally, if the initial single expert finds the defendant competent to proceed, the party disputing the competency finding may request up to two additional evaluations at the party's expense.

The bill adds that the court is authorized to determine and pay reasonable fees for court-appointed expert *testimony*, but that the requesting party (state or defendant) is responsible to pay for party-requested expert *testimony*.

Section 4: The bill eliminates the requirement in **s. 916.12(2), F.S.**, that the defendant be evaluated by at least two mental health experts when determining the defendant's competency to stand trial.

Section 5: For **s. 916.17(2)**, **F.S.,** the bill adds that the court must determine and pay reasonable fees for the evaluation and testimony of appointed experts for purposes of clarity and consistency with article V, section 14 of the State Constitution.

Forensic Services for Intellectually Disabled or Autistic Defendants (Sections 6 & 7)

Present Situation:

Section 916.301(2), F.S., provides that when a criminal defendant's competency to proceed is in question based on intellectual disability or autism, the court must:

- Appoint at least one expert to evaluate the defendant, or at a party's request appoint two experts to evaluate the defendant;[36] and
- Appoint both a qualified psychologist and a social service professional with experience in intellectual disability and autism to evaluate the defendant.[37]

Section 916.301(4), F.S., provides that the court shall pay the foregoing experts a reasonable fee for serving as an evaluator and witness so long as the experts' reports and testimonies "explicitly address each of the factors and follow the procedures set out in [chapter 916, F.S.,] and in the Florida Rules of Criminal Procedure."

Section 916.304, F.S., concerns the conditional release of a criminal defendant to a training program when found to be incompetent by virtue of intellectual disability or autism. Section

[36] Section 916.301(2)(a), F.S.
[37] Section 916.301(2)(b), F.S.

916.304(2), F.S. requires the court to hold a hearing upon the filing of an affidavit or statement that the defendant's conditional release essentially needs be readdressed, during which the court may order placement of the defendant into a more appropriate release program "after the appointment and report of experts."

Effect of Proposed Changes:

Section 6: The bill eliminates the *requirement* in **s. 916.301(4), F.S.**, that the court initially appoint at least one expert to evaluate the defendant, or at a party's request appoint two experts to evaluate the defendant, in addition to a psychologist and social services worker. Rather, the bill permits the court to appoint up to two experts at the party's request if the parties do not stipulate to the psychologist and social worker's findings of incompetence. Regarding payment, the bill authorizes the court to pay the first additional expert and requires the requesting party to pay for any other additional experts.

Section 7: For **s. 916.304(2)**, **F.S.,** the bill adds that the court must determine and pay reasonable fees for the evaluation and testimony of appointed experts for purposes of clarity and consistency with article V, section 14 of the State Constitution.

Sentencing Evaluation (Sections 8 &9)

Present Situation:

Sections 921.09 and 921.12, F.S., pertain two types of convicted criminal defendants, respectively, claiming cause to not be sentenced: (1) a defendant alleging insanity at the time of sentencing, and (2) a defendant alleging pregnancy at the time of sentencing. For both, the court is required to appoint a physician to examine the defendant.[38] The court is also required to "allow" the examining physician a reasonable fee, which will be paid "by the county in which the indictment was found or the information or affidavit filed."[39]

Effect of Proposed Changes:

Sections 8 and 9: The bill substantially alters **ss. 921.09 and 921.12, F.S.**, to provide that a convicted defendant claiming insanity or claiming pregnancy as cause not to be sentenced, respectively, may be examined by one or more physicians at the defendant's own expense.

Death Penalty – Intellectual Disability (Section 10)

Present Situation:

Section 921.137, F.S., requires that a defendant in a death penalty case provide notice that he or she intends to claim during the penalty phase that imposition of the death penalty is barred due to his or her intellectual disability.[40] If the defendant provides notice, is convicted of a capital felony, and receives a death sentence recommendation by an advisory jury, the defendant may file a motion to determine if he or she is intellectually disabled prior to the final sentencing

[38] Sections 921.09 and 921.12, F.S.
[39] *Id.*
[40] Section 921.137(1)-(3), F.S.

hearing.[41] Upon receiving the motion, the court must appoint two experts in the field of intellectual disabilities, who, in turn, must evaluate the defendant and "report their findings prior to the final sentencing hearing."[42]

Effect of Proposed Changes:

Section 10: The bill amends **s. 921.137, F.S.**, to add that the court must determine and pay reasonable fees to the experts for their evaluations and testimonies concerning the defendant's intellectual disability regardless of whether the defendant is indigent.

Juvenile Competency – Mental Illness and Intellectual Disability or Autism (Section 11)

Present Situation:

Section 985.19, F.S., pertains to juvenile delinquency proceedings and provides that if the court has reason to believe the child is incompetent to proceed, the court on its own motion or by motion of one of the parties must stay all proceedings and order an evaluation of the child's mental condition.[43] In evaluating the child's mental health, the court is required to base its competency findings on "not less than two nor more than three" mental health experts, each of which are must make a recommendation concerning whether residential or nonresidential treatment should be required. [44] Each expert is also "allowed reasonable fees for services rendered."[45]

When the potential source of the child's incompetency is related to an intellectual disability or autism, the court must order the Agency for Persons with Disabilities to examine the child.[46]

Section 985.19(7), F.S., also states that it will be implemented "only subject to specific appropriation."

Effect of Proposed Changes:

Section 11: The bill eliminates the requirement in **section 985.19, F.S.**, that the court immediately appoint two mental health experts providing instead that the court may initially appoint only one mental health expert to conduct the evaluation. The parties may then decide whether to stipulate to the single expert's findings. Based on the single expert's findings, the court may:

- Take less restrictive action than commitment; or
- Commit the child if the parties also stipulate to commitment.

Otherwise, if the parties' do not stipulate to commitment, the court must appoint at least two and no more than three experts to evaluate the child before committing the child.

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[41] Section 921.137(4), F.S.
[42] *Id.*
[43] Section 985.19(1), F.S.
[44] Section 985.19(1)(b), F.S.
[45] *Id.*
[46] Section 985.19(1)(e), F.S.

The bill also requires the court to determine and pay a reasonable fee to the experts for their evaluation and testimony rather than "allow" a reasonable fee. It appears the court will have greater control over determining an expert's fee rather than simply approving a fee request.

The bill also changes the requirement that the court order the Agency for Persons with Disabilities to directly evaluate a child with intellectual disabilities or autism, to requiring the court to order the Agency to select an expert to conduct the same evaluation.

The bill also the strikes the specific appropriation provision.

Developmental Disabilities (Section 1)

Present Situation:

Section 393.11, F.S., sets out the procedure for petitioning the court for the involuntary admission of a person with an intellectual disability or autism into a residential services program. Upon receiving a petition, a court must immediately appoint an examining committee consisting of "at least three disinterested experts" with expertise in the intellectual disabilities or autism to examine the person: one physician, one psychologist, and on professional with a master's degree in social work, special education, or vacation rehabilitation counseling.[47] The examining committee must prepare a report to submit to the court.[48]

The examining committee members are entitled to a reasonable fee. The fee is determined by the court but paid from the county's general revenue fund.[49]

Effect of Proposed Changes:

Section 1: The bill amends **s. 393.11, F.S.**, to provide that examining committee member fees will be paid by the court instead of the county's general revenue fund.

Guardianship Examining Committee (Section 2)

Section 744.331, F.S., sets out the procedures to petition to determine incapacity and appoint a guardian. Within five days after a petition is filed, the court must appoint a three-member examining committee consisting of one psychiatrist, one physician, and a third person (another psychiatrist, nurse, social worker, etc.) with appropriate training and expertise;[50] and at least one member must "have knowledge of the type of incapacity alleged in the petition."[51] Each committee member must conduct a comprehensive examination of the allegedly incapacitated

[47] Section 393.11(5)(a)-(b), F.S.
[48] Section 393.11(5)(e)-(f), F.S.
[49] Section 393.11(5)(g), F.S.
[50] Section 744.331(3)(a), F.S. ("The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion.").
[51] *Id.*

person and file a report for the court's consideration.[52] If the court finds the allegedly incapacitated person is incapacitated, the court will appoint a guardian.[53]

The members of the examining committee are entitled to reasonable fees.[54] The fees are either paid by the guardian out of the ward's property, or by the state for an indigent ward. If paid by the state, the state retains a creditor's claim against the guardianship property.[55]

Effect of Proposed Changes:

Section 2: The bill amends **s. 744.331, F.S.**, to provide that the court rather that the state will pay the fees to the members of the examining committee. However, the bill retains the language that the state will retain a creditor's claim for "any amounts paid under this section."[56]

Sections 29.006 and 29.007, F.S.

Present Situation:

As stated in the overview, ss. 29.006 and 29.007, F.S., provide the "due process costs" that must be paid on behalf of indigent defendants.[57]

Effect of Proposed Changes:

Sections 12 and 13 makes technical, conforming changes to ss. 29.006 and 29.007, F.S.

Effective Date

Section 14 provides the bill will take effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[52] Section 744.331(3)(e)-(g), F.S.
[53] Section 744.331(6), F.S.
[54] Section 744.331(7)(a), F.S.
[55] Section 744.331(7)(b), F.S.
[56] *Id.*
[57] *See* n. 11-24, *supra*.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will likely impact convicted criminal defendants seeking to avoid sentencing due to insanity or pregnancy by requiring the defendant to pay for a physician.

All the other provisions of the bill appear to have little fiscal impact. While the bill requires that the court initially appoint only one rather than two mental health experts to evaluate a defendant or child's competency to proceed, generally, the bill maintains the court's authority to appoint and pay for up to three mental health experts if the parties do not stipulate to the initial expert's findings.

C. Government Sector Impact:

The bill implements several cost containment measures that the Trial Court Budget Commission believes will have some impact in reducing the state court system's due process costs for expert witnesses.[58] As already noted under the private sector impact, *supra*, the bill shifts the costs of a medical expert's opinion from the state to the convicted criminal defendant seeking to avoid sentencing due to insanity or pregnancy. The bill also requires that trial courts initially appoint one rather than two mental health expert to criminal defendants or children when competency is an issue. If the parties stipulate to the findings of the one mental health expert, the courts will not have to appoint and pay another expert, thereby saving costs.

The Justice Administrative Commission notes that the bill will have limited policy impact and indeterminate fiscal impact.[59]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 29.006, 29.007, 393.11, 744.331, 916.115, 916.12, 916.17, 916.301, 916.304, 921.09, 921.12, 921.137, and 985.19 of the Florida Statues.

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[58] *See* n. 31, *supra*.
[59] Justice Administrative Commission, *Agency Analysis for HB 1063* (similar bill), January 12, 2018.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Perry

8-01041A-18 20181120__

1 A bill to be entitled
2 An act relating to expert witnesses; amending s.
3 393.11, F.S.; requiring a court to pay reasonable fees
4 to members of an examining committee for their
5 evaluation and testimony regarding persons with
6 disabilities; deleting a provision specifying the
7 source of the fees to be paid; amending s. 744.331,
8 F.S.; requiring a court, rather than the state, to pay
9 certain fees if a ward is indigent; amending s.
10 916.115, F.S.; authorizing a court to initially
11 appoint one expert under certain circumstances;
12 authorizing a court to take less restrictive action
13 than commitment if an expert finds a defendant
14 incompetent; requiring that a defendant be evaluated
15 by no fewer than two experts before a court commits
16 the defendant; providing an exception; authorizing a
17 court to pay for up to two additional experts
18 appointed by the court under certain circumstances;
19 requiring a court to pay for the first, rather than
20 any, expert that it appoints under certain
21 circumstances; authorizing a party disputing a
22 determination of competence to request up to two
23 additional expert evaluations at that party's expense;
24 providing for payments to experts for their testimony
25 under certain circumstances; amending s. 916.12, F.S.;
26 deleting provisions relating to the evaluation and
27 commitment of a defendant under certain circumstances;
28 amending s. 916.17, F.S.; requiring the court to pay
29 for the evaluation and testimony of an expert for a

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30 defendant on conditional release under certain
31 circumstances; amending s. 916.301, F.S.; authorizing,
32 rather than requiring, a court to appoint up to two
33 additional experts to evaluate a defendant suspected
34 of having an intellectual disability or autism under
35 certain circumstances; providing for the payment of
36 additional experts under certain circumstances;
37 amending s. 916.304, F.S.; requiring the court to pay
38 for the evaluation and testimony of an expert for a
39 defendant on conditional release under certain
40 circumstances; amending s. 921.09, F.S.; authorizing a
41 defendant who has alleged insanity to retain, at the
42 defense's expense rather than the county's, one or
43 more physicians for certain purposes; deleting a
44 provision requiring fees to be paid by the county;
45 amending s. 921.12, F.S.; authorizing a defendant who
46 has an alleged pregnancy to retain, at the defense's
47 expense rather than the county's, one or more
48 physicians for certain purposes; amending s. 921.137,
49 F.S.; requiring the court to pay for the evaluation
50 and testimony of an expert for a defendant who raises
51 intellectual disability as a bar to a death sentence
52 under certain circumstances; amending s. 985.19, F.S.;
53 authorizing a court to initially appoint one expert to
54 evaluate a child's mental condition, pending certain
55 determinations; authorizing a court to take less
56 restrictive action than commitment if an expert finds
57 a child incompetent; requiring that a child be
58 evaluated by no fewer than two experts before a court

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59 commits the child; providing an exception; authorizing
60 a court to appoint up to two additional experts under
61 certain circumstances; authorizing a court to require
62 a hearing with certain testimony before ordering the
63 commitment of a child; requiring the court to pay
64 reasonable fees to the experts for their evaluations
65 and testimony; requiring a court to order the Agency
66 for Persons with Disabilities to select an expert to
67 examine a child for intellectual disability or autism;
68 deleting a provision requiring a specific
69 appropriation before the implementation of specified
70 provisions; amending ss. 29.006 and 29.007, F.S.;
71 conforming cross-references; providing an effective
72 date.
73
74 Be It Enacted by the Legislature of the State of Florida:
75
76 Section 1. Paragraph (g) of subsection (5) of section
77 393.11, Florida Statutes, is amended to read:
78 393.11 Involuntary admission to residential services.—
79 (5) EXAMINING COMMITTEE.—
80 (g) The court ~~Members of the examining committee~~ shall pay
81 ~~receive a~~ reasonable fees, as ~~fee to be~~ determined by the court,
82 for the evaluation and testimony by members of the examining
83 committee. ~~The fees shall be paid from the general revenue fund~~
84 ~~of the county in which the person who has the intellectual~~
85 ~~disability or autism resided when the petition was filed.~~
86 Section 2. Paragraph (b) of subsection (7) of section
87 744.331, Florida Statutes, is amended, and paragraph (a) of that

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88 subsection is republished, to read:
89 744.331 Procedures to determine incapacity.—
90 (7) FEES.—
91 (a) The examining committee and any attorney appointed
92 under subsection (2) are entitled to reasonable fees to be
93 determined by the court.
94 (b) The fees awarded under paragraph (a) shall be paid by
95 the guardian from the property of the ward or, if the ward is
96 indigent, by the court ~~state~~. The state shall have a creditor’s
97 claim against the guardianship property for any amounts paid
98 under this section. The state may file its claim within 90 days
99 after the entry of an order awarding attorney ad litem fees. If
100 the state does not file its claim within the 90-day period, the
101 state is thereafter barred from asserting the claim. Upon
102 petition by the state for payment of the claim, the court shall
103 enter an order authorizing immediate payment out of the property
104 of the ward. The state shall keep a record of the payments.
105 Section 3. Section 916.115, Florida Statutes, is amended to
106 read:
107 916.115 Appointment of experts.—
108 (1) The court shall appoint no more than three experts to
109 determine the mental condition of a defendant in a criminal
110 case, including competency to proceed, insanity, involuntary
111 placement, and treatment. The court may initially appoint one
112 expert for the evaluation, pending a determination of the
113 defendant’s competency and the parties’ positions on stipulating
114 to the findings. The experts may evaluate the defendant in jail
115 or in another appropriate local facility or in a facility of the
116 Department of Corrections.

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(a) To the extent possible, the appointed experts shall have completed forensic evaluator training approved by the department, and each shall be a psychiatrist, licensed psychologist, or physician.

(b) The department shall maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.

(2) The court may take less restrictive action than commitment authorized by this chapter or the Florida Rules of Criminal Procedure if an expert determines that the defendant is incompetent to proceed. A defendant must be evaluated by no fewer than two experts before the court commits the defendant; however, the court may commit the defendant without further evaluation or hearing if one expert finds that the defendant is incompetent to proceed and the parties stipulate to that finding. If the parties do not stipulate to the finding of the expert that the defendant is incompetent, the court may appoint no more than two additional experts to evaluate the defendant. Notwithstanding any stipulation by the parties, the court may require a hearing with testimony from the experts before ordering the commitment of a defendant.

(3)(a) ~~(2)~~ The court shall pay for the first ~~any~~ expert that it appoints by court order, upon motion of counsel for the defendant or the state or upon its own motion, and up to two additional experts appointed by the court when the defendant is found incompetent and the parties do not stipulate to the findings.

(b) If the defense or the state retains an expert and waives the confidentiality of the expert's report, the court may

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pay for no more than two additional experts appointed by court order.

(c) If a first evaluation determines the defendant is competent to proceed and a party disputes the findings, the party disputing the determination may request up to two additional experts to perform evaluations at the party's expense.

(d) If an expert appointed by the court upon motion of counsel for the defendant specifically to evaluate the competence of the defendant to proceed also addresses issues related to sanity as an affirmative defense, the court shall pay only for that portion of the expert's fees relating to the evaluation on competency to proceed, and the balance of the fees shall be chargeable to the defense.

(e) If testimony from an expert is ordered by the court, the court shall pay reasonable fees, as determined by the court, to the expert. Testimony requested by the state or the defendant shall be paid by the requesting party.

(f) ~~(a)~~ Pursuant to s. 29.006, the office of the public defender shall pay for any expert retained by the office.

(g) ~~(b)~~ Pursuant to s. 29.005, the office of the state attorney shall pay for any expert retained by the office and for any expert whom the office retains and whom the office moves the court to appoint in order to ensure that the expert has access to the defendant.

(h) ~~(c)~~ An expert retained by the defendant who is represented by private counsel appointed under s. 27.5303 shall be paid by the Justice Administrative Commission.

(i) ~~(d)~~ An expert retained by a defendant who is indigent

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for costs as determined by the court and who is represented by private counsel, other than private counsel appointed under s. 27.5303, on a fee or pro bono basis, or who is representing himself or herself, shall be paid by the Justice Administrative Commission from funds specifically appropriated for these expenses.

(j) ~~(e)~~ State employees shall be reimbursed for expenses pursuant to s. 112.061.

(k) ~~(f)~~ The fees shall be taxed as costs in the case.

(l) ~~(g)~~ In order for an expert to be paid for the services rendered, the expert’s report and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 4. Subsection (2) of section 916.12, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

916.12 Mental competence to proceed.—

(1) A defendant is incompetent to proceed within the meaning of this chapter if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.

(2) Mental health experts appointed pursuant to s. 916.115 shall first determine whether the defendant has a mental illness and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed as described in subsection (1). ~~A defendant must be evaluated by no fewer than two experts before the court commits the defendant or~~

~~takes other action authorized by this chapter or the Florida Rules of Criminal Procedure, except if one expert finds that the defendant is incompetent to proceed and the parties stipulate to that finding, the court may commit the defendant or take other action authorized by this chapter or the rules without further evaluation or hearing, or the court may appoint no more than two additional experts to evaluate the defendant. Notwithstanding any stipulation by the state and the defendant, the court may require a hearing with testimony from the expert or experts before ordering the commitment of a defendant.~~

Section 5. Subsection (2) of section 916.17, Florida Statutes, is amended to read:

916.17 Conditional release.—

(2) Upon the filing of an affidavit or statement under oath by any person that the defendant has failed to comply with the conditions of release, that the defendant’s condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. After the hearing, the court may modify the release conditions. The court may also order that the defendant be returned to the department if it is found, after the appointment and report of experts, that the person meets the criteria for involuntary commitment under s. 916.13 or s. 916.15. The court shall pay reasonable fees, as determined by the court, for the evaluation and testimony of the expert.

Section 6. Subsection (2) of section 916.301, Florida Statutes, is amended to read:

916.301 Appointment of experts.—

233 (2) If a defendant's suspected mental condition is
234 intellectual disability or autism, the court ~~shall appoint the~~
235 ~~following~~:
236 (a) ~~At least one, or at the request of any party, two~~
237 ~~experts to evaluate whether the defendant meets the definition~~
238 ~~of intellectual disability or autism and, if so, whether the~~
239 ~~defendant is competent to proceed; and~~
240 ~~(b)~~ Shall appoint a psychologist selected by the agency who
241 is licensed or authorized by law to practice in this state, with
242 experience in evaluating persons suspected of having an
243 intellectual disability or autism, and a social service
244 professional, with experience in working with persons who have
245 an intellectual disability or autism.
246 1. The psychologist shall evaluate whether the defendant
247 meets the definition of intellectual disability or autism and,
248 if so, whether the defendant is incompetent to proceed due to
249 intellectual disability or autism.
250 2. The social service professional shall provide a social
251 and developmental history of the defendant; and
252 (b) May, at the request of any party that does not
253 stipulate to findings of incompetence, appoint up to two
254 additional experts to evaluate whether the defendant meets the
255 definition of intellectual disability or autism and, if so,
256 whether the defendant is competent to proceed. The first
257 additional expert shall be paid by the court and the second
258 additional expert shall be paid by the requesting party.
259 However, if the first evaluation determines the defendant is
260 competent to proceed and a party disputes the findings, that
261 party may request up to two additional experts to perform

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262 evaluations at the party's expense.
263 Section 7. Subsection (2) of section 916.304, Florida
264 Statutes, is amended to read:
265 916.304 Conditional release.—
266 (2) Upon the filing of an affidavit or statement under oath
267 by any person that the defendant has failed to comply with the
268 conditions of release, that the defendant's condition has
269 deteriorated, or that the release conditions should be modified,
270 the court shall hold a hearing within 7 days after receipt of
271 the affidavit or statement under oath. With notice to the court
272 and all parties, the agency may detain a defendant in a forensic
273 facility until the hearing occurs. After the hearing, the court
274 may modify the release conditions. The court may also order that
275 the defendant be placed into more appropriate programs for
276 further training or may order the defendant to be committed to a
277 forensic facility if it is found, after the appointment and
278 report of experts, that the defendant meets the criteria for
279 placement in a forensic facility. The court shall pay reasonable
280 fees, as determined by the court, for the evaluation and
281 testimony of the expert.
282 Section 8. Section 921.09, Florida Statutes, is amended to
283 read:
284 921.09 Fees of physicians who determine sanity at time of
285 sentence.~~—The court shall allow reasonable fees to physicians~~
286 ~~appointed by the court to determine the mental condition of~~ A
287 defendant who has alleged insanity as a cause for not
288 pronouncing sentence may, at the defense's expense, retain one
289 or more physicians to determine the mental condition of the
290 defendant. ~~The fees shall be paid by the county in which the~~

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~~indictment was found or the information or affidavit filed.~~

Section 9. Section 921.12, Florida Statutes, is amended to read:

921.12 Fees of physicians when pregnancy is alleged as cause for not pronouncing sentence.~~—The court shall allow reasonable fees to the physicians appointed to examine~~ A defendant who has alleged her pregnancy as a cause for not pronouncing sentence may, at the defense’s expense, retain one or more physicians to examine the defendant. ~~The fees shall be paid by the county in which the indictment was found or the information or affidavit filed.~~

Section 10. Subsection (4) of section 921.137, Florida Statutes, is amended to read:

921.137 Imposition of the death sentence upon an intellectually disabled defendant prohibited.—

(4) After a defendant who has given notice of his or her intention to raise intellectual disability as a bar to the death sentence is convicted of a capital felony and an advisory jury has returned a recommended sentence of death, the defendant may file a motion to determine whether the defendant is intellectually disabled. Upon receipt of the motion, the court shall appoint two experts in the field of intellectual disabilities who shall evaluate the defendant and report their findings to the court and all interested parties before ~~prior to~~ the final sentencing hearing. The court shall pay reasonable fees, as determined by the court, for the evaluation and testimony of the expert regardless of whether the defendant is indigent. Notwithstanding s. 921.141 or s. 921.142, the final sentencing hearing shall be held without a jury. At the final

sentencing hearing, the court shall consider the findings of the court-appointed experts and consider the findings of any other expert which is offered by the state or the defense on the issue of whether the defendant has an intellectual disability. If the court finds, by clear and convincing evidence, that the defendant has an intellectual disability as defined in subsection (1), the court may not impose a sentence of death and shall enter a written order that sets forth with specificity the findings in support of the determination.

Section 11. Paragraphs (b) and (e) of subsection (1) and subsection (7) of section 985.19, Florida Statutes, are amended to read:

985.19 Incompetency in juvenile delinquency cases.—

(1) If, at any time prior to or during a delinquency case, the court has reason to believe that the child named in the petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child’s attorney or state attorney must, stay all proceedings and order an evaluation of the child’s mental condition.

(b) All determinations of competency shall be made at a hearing, with findings of fact based on an evaluation of the child’s mental condition made by no ~~not less than two nor~~ more than three experts appointed by the court. The court may initially appoint one expert for the evaluation, pending a determination of the child’s competency and the parties’ positions on stipulating to the findings. The basis for the determination of incompetency must be specifically stated in the evaluation. In addition, a recommendation as to whether residential or nonresidential treatment or training is required

349 must be included in the evaluation. The court may take less
350 restrictive action than commitment authorized by this chapter or
351 the Florida Rules of Juvenile Procedure based on the
352 determination by one expert that the child is incompetent to
353 proceed. A child must be evaluated by no fewer than two experts
354 before the court commits the child; however, the court may
355 commit the child without further evaluation or hearing if one
356 expert finds that the child is incompetent to proceed and the
357 parties stipulate to that finding. If the parties do not
358 stipulate to the finding of the expert that the child is
359 incompetent, the court may appoint no more than two additional
360 experts to evaluate the child. Notwithstanding any stipulation
361 by the parties, the court may require a hearing with testimony
362 from one or more experts before ordering the commitment of a
363 child. ~~Experts appointed by~~ The court ~~to determine the mental~~
364 ~~condition of a child~~ shall pay ~~be allowed~~ reasonable fees, as
365 determined by the court, for the evaluation and testimony
366 provided by the experts ~~services rendered~~. State employees may
367 be paid expenses pursuant to s. 112.061. The fees shall be taxed
368 as costs in the case.
369 (e) For incompetency evaluations related to intellectual
370 disability or autism, the court shall order the Agency for
371 Persons with Disabilities to select the expert to examine the
372 child to determine if the child meets the definition of
373 "intellectual disability" or "autism" in s. 393.063 and, if so,
374 whether the child is competent to proceed with delinquency
375 proceedings.
376 ~~(7) The provisions of this section shall be implemented~~
377 ~~only subject to specific appropriation.~~

378 Section 12. Subsection (4) of section 29.006, Florida
379 Statutes, is amended to read:
380 29.006 Indigent defense costs.—For purposes of implementing
381 s. 14, Art. V of the State Constitution, the elements of the
382 public defenders' offices and criminal conflict and civil
383 regional counsel offices to be provided from state revenues
384 appropriated by general law are as follows:
385 (4) Mental health professionals appointed pursuant to s.
386 394.473 and required in a court hearing involving an indigent,
387 and mental health professionals appointed pursuant to s.
388 916.115(3) ~~s. 916.115(2)~~ and required in a court hearing
389 involving an indigent.
390 Section 13. Subsection (5) of section 29.007, Florida
391 Statutes, is amended to read:
392 29.007 Court-appointed counsel.—For purposes of
393 implementing s. 14, Art. V of the State Constitution, the
394 elements of court-appointed counsel to be provided from state
395 revenues appropriated by general law are as follows:
396 (5) Mental health professionals appointed pursuant to s.
397 394.473 and required in a court hearing involving an indigent,
398 mental health professionals appointed pursuant to s. 916.115(3)
399 ~~s. 916.115(2)~~ and required in a court hearing involving an
400 indigent, and any other mental health professionals required by
401 law for the full adjudication of any civil case involving an
402 indigent person.
403
404 Subsections (3), (4), (5), (6), and (7) apply when court-
405 appointed counsel is appointed; when the court determines that
406 the litigant is indigent for costs; or when the litigant is

407 acting pro se and the court determines that the litigant is
408 indigent for costs at the trial or appellate level. This section
409 applies in any situation in which the court appoints counsel to
410 protect a litigant’s due process rights. The Justice
411 Administrative Commission shall approve uniform contract forms
412 for use in processing payments for due process services under
413 this section. In each case in which a private attorney
414 represents a person determined by the court to be indigent for
415 costs, the attorney shall execute the commission’s contract for
416 private attorneys representing persons determined to be indigent
417 for costs.
418 Section 14. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: December 18, 2017

I respectfully request that **Senate Bill #1120**, relating to Expert Witnesses, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/18
Meeting Date

1120
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Expert Witnesses

Name Judge Margaret Steinbeck

Job Title Chair of the Trial Court Budget Commission, 20th Circuit judge

Address 1700 Monroe Street
Street

Ft. Myers FL 33901
City State Zip

Phone 239-533-9162

Email

Speaking: [X] For [ ] Against [ ] Information

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

Representing State Courts System

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 608

INTRODUCER: Senator Passidomo

SUBJECT: Public Records/Identity Theft and Fraud Protection Act

DATE: January 18, 2018 REVISED: __________ __________ __________ __________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	**Favorable**
2.	Farach	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 608 creates the Identity Theft and Fraud Protection Act and requires an agency to review information to determine if it is susceptible to use for purposes of identity theft or fraud before making postings to a publicly available website. The bill requires the Division of Library and Information Services of the Department of State to adopt rules establishing uniform standards for agencies in determining the types of information which qualify as information that is susceptible to use for purposes of identity theft or fraud.

The bill also requires an agency to establish a policy that allows a person to request removal of an image or a copy of a public record containing information susceptible to use for purposes of identity theft or fraud which is posted on an agency's publicly available website. Information that an agency may not post on a publicly available website, however, may be posted on a limited access area of the agency's website which is not available to the general public.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, or employee of the state, or of persons acting on their behalf.[1] This right to access public records includes records made or received by legislative, executive, and judicial branches of government.[2]
The statutes declare that agencies should strive to provide remote electronic access to public records to the extent feasible.[3] If an agency provides access to public records by remote electronic means, such access should be provided in the most cost-effective and efficient manner

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id.*
[3] Section 119.01(2)(e), F.S.

available to the agency providing the information.[4] Automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.[5]

Chapter 817, Fraudulent Practices

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices that are committed against individuals, corporations, and governments. Fraud is the willful act of misrepresenting the truth to someone or concealing an important fact from them for the purpose of inducing that person to act to his or her detriment.[6] Identity theft or fraud is the criminal use of an individual's personal identification information.[7] Identity thieves steal such information as a person's name, social security number, driver's license information, or bank and credit card accounts and use the information to establish credit, make purchases, apply for loans, or seek employment. According to the Federal Trade Commission, Florida ranked second in the nation for identity theft in 2017, with 38,384 reported complaints.[8]

Section 817.568, F.S., punishes criminal use of personal identification information.[9] For example, the statute makes it a third degree felony for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent. The statute provides enhanced penalties if:

- The pecuniary benefit exceeds specified amounts;
- The person fraudulently uses the information of more than a certain number of people;
- The person commits the offense for purposes of harassment; or
- The victim is younger than 18 years of age or 60 years of age or older.

---

[4] *Id.*
[5] Section 119.01(2)(a), F.S.
[6] BLACK'S LAW DICTIONARY (9th ed. 2009).
[7] Office of the Attorney General, *Identity Theft*, http://myfloridalegal.com/pages.nsf/Main/3C2A3BA3C2DA5C6F85256DBE006C1B30?OpenDocument (last visited Jan. 13, 2018).
[8] *Id.*
[9] Section 817.568(1)(f), F.S., defines "personal identification information" as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.

Exemption from Public Record Laws for Certain Sensitive Information

The Supreme Court has adopted rules to minimize the release of sensitive information from court files. Specifically, every pleading or other document filed with the court must comply with Florida Rules of Judicial Administration 2.420, Public Access to and Protection of Judicial Branch Records and 2.425, Minimization of the Filing of Sensitive Information.[10] Certain sensitive information that may be susceptible to use in identity theft or other fraudulent practices, such as social security, bank account, charge, debit, and credit card numbers must be maintained by the clerk of court as confidential.[11] Furthermore, the rules of Judicial Administration prohibit or restrict the inclusion of sensitive financial information such as social security numbers, bank account numbers, and driver license numbers on court filings..[12]

Secretary of State

The Secretary of State is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor.[13] The Secretary of State is the state's chief of elections, chief cultural officer and head of the Department of State.[14] The Secretary of State also performs functions conferred by the State Constitution upon the custodian of state records.[15] The Department of State is composed of the following divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration.[16]

III. Effect of Proposed Changes:

Section 1 provides that the bill may be cited as the "Identity Theft and Fraud Protection Act."

Section 2 amends section 119.021, F.S., to require a state agency[17] to review the information in order to determine if it is susceptible to use for purposes of identity theft or fraud before posting the information on a publicly available website. The state agency is prohibited from posting an image or a copy of, or information from, a public record on the agency's publicly available website or another publicly available website used by the agency if the public record contains information susceptible to use for purposes of identity theft or fraud.

The bill requires the Division of Library and Information Services of the Department of State to adopt rules to establish uniform standards for agencies in determining the types of information which qualify as information that is susceptible to use for purposes of identity theft or fraud.

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[10] Fla. R. Civ .P. 1.020.
[11] Rule. 2.424(d)(1)(B)(iii) Fla. R. Jud. Admin.; ss. 119.071(5)(a) And 119.0714(2), F.S.
[12] Rule 2.245 Fla. R. Jud. Admin.
[13] Section 20.10(1), F.S.
[14] See Florida Department of State, *About the Department*, http://dos.myflorida.com/about-the-department/ (last visited Jan. 13, 2018).
[15] Section 20.10(1), F.S.
[16] Section 20.10(2), F.S.
[17] Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

The bill also requires an agency to establish a policy that allows a person, or his or her attorney or legal guardian, to request that the agency remove an image or a copy of a public record containing information that is susceptible to use for purposes of identity theft or fraud which is posted on the agency's publicly available website or another publicly available website used by the agency to display such records. The request must specify which record contains the information that is susceptible to identity theft or fraud. Upon a valid request, the agency must remove the posting of the record containing such information as expeditiously as possible. The agency may not charge a fee to the person making the request.

Additionally, the bill does not prohibit an agency from posting images or copies of records not otherwise authorized under this section to a limited access area of the agency's website not made available to the general public. This provision does not authorize the disclosure of information or records that are otherwise exempted by law from public disclosure.

Section 3 provides a legislative finding that the bill fulfills an important state interest.

Section 4 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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:

The bill may reduce the financial losses caused or aided by the fraudulent use of public information that is readily available from an agency website.

C. Government Sector Impact:

Agencies will incur costs to comply with requests to remove information from their websites.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill is not a new public records exemption, but it creates a process for state agencies to consider what information they should post on publicly available websites.

VIII. Statutes Affected:

This bill substantially amends section 119.021 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Passidomo

28-00495-18 2018608__

1 A bill to be entitled
2 An act relating to public records; providing a short
3 title; amending s. 119.021, F.S.; requiring an agency
4 to review for information susceptible to use for
5 purposes of identity theft or fraud before making
6 postings to a publicly available website; prohibiting
7 an agency from posting to a publicly available website
8 an image or a copy of a public record containing
9 information susceptible to use for purposes of
10 identity theft or fraud; requiring the Division of
11 Library and Information Services of the Department of
12 State to adopt certain rules; requiring an agency to
13 establish a policy providing for requests to remove an
14 image or a copy of a public record containing
15 information susceptible to use for purposes of
16 identity theft and fraud; specifying requirements for
17 the policy; authorizing an agency to post images or
18 copies of records containing information which is not
19 otherwise exempt to portions of websites not
20 accessible to the general public; providing a finding
21 of an important state interest; providing an effective
22 date.
23
24 WHEREAS, according to the Federal Trade Commission, Florida
25 repeatedly has been ranked as one of the states with the highest
26 instances of reported identity theft and fraud complaints, and
27 WHEREAS, identity theft and fraud continues to be of great
28 concern to many Floridians, especially in light of many recent
29 security and data breaches that have compromised the security of

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

28-00495-18 2018608__

30 personal information, and
31 WHEREAS, while there is no general requirement that
32 agencies post public records on publicly available websites,
33 numerous agencies often post such records online for the
34 convenience to the agency and the public, and
35 WHEREAS, the Legislature acknowledges that the ease of
36 access to certain public records on websites can aid the public
37 and many business entities to obtain certain information quickly
38 and easily, but also recognizes that agencies should be required
39 to consider the impact of posting certain public records on
40 publicly available websites before taking such action, and
41 WHEREAS, in some cases, perpetrators of identity theft and
42 fraud have accessed information about individuals through public
43 records posted on the websites of agencies, and
44 WHEREAS, the Legislature finds that it is critical that it
45 take steps to protect information contained in public records
46 that is susceptible to use for purposes of identity theft and
47 fraud, while also respecting the state’s strong public policy in
48 favor of open government, NOW, THEREFORE,
49
50 Be It Enacted by the Legislature of the State of Florida:
51
52 Section 1. This act may be cited as the “Identity Theft and
53 Fraud Protection Act.”
54 Section 2. Subsection (5) is added to section 119.021,
55 Florida Statutes, to read:
56 119.021 Custodial requirements; maintenance, preservation,
57 and retention of public records.—
58 (5)(a) Before posting any information on a publicly

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

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59 available website, an agency must review the information to
60 determine if it is susceptible to use for purposes of identity
61 theft or fraud. An agency may not post an image or a copy of, or
62 information from, a public record on the agency's publicly
63 available website or another publicly available website used by
64 the agency if the public record contains information susceptible
65 to use for purposes of identity theft or fraud.
66 (b) The Division of Library and Information Services of the
67 Department of State shall adopt rules to establish uniform
68 standards for agencies in determining the types of information
69 which qualify as information that is susceptible to use for
70 purposes of identity theft or fraud.
71 (c) An agency must establish a policy that allows a person,
72 or his or her attorney or legal guardian, to request that the
73 agency remove an image or a copy of a public record containing
74 information that is susceptible to use for purposes of identity
75 theft or fraud which is posted on the agency's publicly
76 available website or another publicly available website used by
77 the agency to display such records. A request must specify which
78 record contains the information that is susceptible to identify
79 theft or fraud. Upon receipt of a valid request, the agency
80 shall remove the posting of the record containing such
81 information as expeditiously as possible. An agency may not
82 charge a fee to the person making such a request.
83 (d) This subsection does not prohibit an agency from
84 posting information or images or copies of records not otherwise
85 authorized under paragraph (a) to a limited access area of the
86 agency's website not made available to the general public. This
87 paragraph does not authorize the disclosure of information or

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88 records that are otherwise exempted by law from public
89 disclosure.
90 Section 3. The Legislature finds that a proper and
91 legitimate state purpose is served when protecting the
92 identifying information of the residents of this state in order
93 to reduce the risk of identity theft and fraud. Therefore, the
94 Legislature determines and declares that this act fulfills an
95 important state interest.
96 Section 4. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 10, 2018

I respectfully request that **Senate Bill #608**, relating to Public Records/Identity Theft and Fraud Protection Act, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Kathleen Passidomo
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/12/18	SM	Favorable
1/17/18	JU	**Favorable**
	GO	
	RC	

January 12, 2018

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26** – Senator Garcia
HB 6543 – Representative Perez
Relief of Eric Scott Tenner

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EXCESS JUDGEMENT CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $1.45 MILLION AGAINST MIAMI-DADE COUNTY FOR THE WRONGFUL DEATH OF ERIC SCOTT TENNER, WHICH WAS PARTIALLY CAUSED BY THE NEGLIGENT OPERATION OF A COUNTY BUS.

<u>FINDINGS OF FACT:</u>

On the morning of October 8, 2014, Mr. Tenner, was riding his bicycle on the US 1 Busway just south of SW 124th Street in Miami-Dade County when he was struck from behind by a Miami-Dade County bus driven by Jose Sequeria. At the time, Mr. Tenner was wearing all recommended safety equipment including a helmet, a head lamp on the front of his bicycle, and a flashing strobe light on the rear of his bicycle. A witness riding the bus that struck Mr. Tenner, Christopher Hanna, saw Mr. Tenner riding on his bicycle with blinking lights when the bus approached him from behind. Mr. Hanna also felt the impact of the collision between the bus and Mr. Tenner.

After striking Mr. Tenner, Jose Sequeria did not stop to provide assistance, but continued driving his route.[1] Miguel Mora, driver of a bus immediately behind Mr. Sequeria's bus, pulled over to assist Mr. Tenner. Mr. Tenner was taken to Kendall Regional Hospital where he died of his injuries on October 11, 2014.

On July 16, 2015, Maria Tenner, Mr. Tenner's wife, brought suit against Miami-Dade County as the personal representative of Mr. Tenner's estate under the Florida Wrongful Death Act.[2] Miami-Dade County responded to the suit asserting the defenses of assumed risk and comparative negligence. The County's strongest argument at trial would likely have been that Mr. Tenner was riding his bicycle on a roadway that was designated specifically for transit and emergency vehicles.

The plaintiffs hired Raffa Consulting Economists to prepare a statement of loss of dependent support that could be expected from Mr. Tenner's death. The report determined that the total economic loss from Mr. Tenner's death would be approximately $3.5 million. On June 14, 2017, the parties entered into mediation. It was successful and resulted in a settlement agreement signed on the same day. In the settlement the County agreed to pay a total of $1.75 million to Mr. Tenner's estate to settle all claims arising from the matter.[3] At the time of the settlement, the County paid $300,000 to the plaintiffs and the County also agreed to support a claim bill for the remaining $1.45 million.

CONCLUSIONS OF LAW:

Miami-Dade County owned and operated the bus that struck Mr. Tenner and the driver of the bus, Mr. Sequeria, was an employee of the county. Section 768.28, F.S., allows injured parties to sue the state or local governments for damages caused by the negligence of their employees. When demonstrating negligence, the elements that must be found are duty, breach, causation, and damages.[4] Additionally, s. 768.81, F.S., allows damages in a negligence case to be

[1] Mr. Sequeria was later arrested for leaving the scene of an accident involving serious bodily injury, but the charges were dropped because the state could not prove that Mr. Sequeria was aware that he had hit Mr. Tenner.
[2] Section 768.16, F.S.
[3] In testimony during the Special Master hearing, the attorney for the plaintiffs, Christopher Marlowe, testified that the plaintiffs agreed to Mr. Tenner's 50 percent comparative negligence when settling the case.
[4] *Charron v. Birge*, 37 So.3d 292, 296 (Fla. 5th DCA 2010).

apportioned among all responsible parties who contributed to an accident.

In general, the driver of a motor vehicle has a duty to use reasonable care, in light of the circumstances, to prevent injuring persons within the vehicle's path.[5] In this case, several witnesses riding Mr. Sequeria's bus, as well as the bus immediately behind Mr. Sequeria's, testified that they were able to see Mr. Tenner riding his bicycle as the bus approached him from the rear. Mr. Hanna, a witness riding Mr. Sequeria's bus, testified that he, at first, believed that Mr. Sequeria was attempting to turn to avoid the collision; but in the end did not turn and consequently struck and killed Mr. Tenner. Mr. Hanna's testimony shows that Mr. Sequeria was negligent in not using reasonable care and not taking appropriate action to avoid a collision with Mr. Tenner.

Mr. Tenner was also comparatively negligent for riding his bicycle on a roadway specifically designated for transit and emergency vehicles only. Although designated specifically for such traffic, the roadway where Mr. Tenner was riding his bicycle was often used by cyclists. Mr. Mora, the driver of a second bus, testified that bicyclists and pedestrians are constantly present and "there's a lot of accidents on the Busway." At trial, the portion of negligence would have been determined by the jury. However, during the special master hearing Christopher Marlowe, the attorney for the plaintiffs, testified that the plaintiffs agreed to accept 50 percent comparative negligence upon settlement of the case. This apportionment of fault is reasonable in light of the evidence.

According to the economic analysis done by the Raffa Consulting Economists, Mr. Tenner's estate suffered damages of approximately $3.5 million due to his premature death. This figure is reasonable based on the evidence. Due to Mr. Tenner's comparative negligence, stipulated at 50 percent, the damages that a court could assess to Mr. Sequeria's negligence are $1.75 million. Of these damages, $300,000 have been paid leaving $1.45 million outstanding.

ATTORNEYS FEES: Senate Bill 26 limits the total amount paid for attorney fees to 25 percent of the amount awarded. As such, the amount of

[5] *Gowdy v. Bell*, 993 So.2d 585, 586 (Fla. 1st DCA 2008).

attorney fees will be limited to $362,500 of the $1.45 million awarded under the bill.

<u>RECOMMENDATIONS:</u> The undersigned recommends that Senate Bill 26 be reported FAVORABLY.

Respectfully submitted,

Daniel Looke
Senate Special Master

cc: Secretary of the Senate

The Florida Senate

State Senator René García
36th District

Please reply to:

District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

January 11, 2017

The Honorable Greg Steube
Chair, Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Steube,

Please have this letter serve as my formal request to have **SB 26: Relief of Eric Scott Tenner by Miami-Dade County** be heard during the next scheduled Judiciary Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

State Senator René García
District 36

CC: Tom Cibula
Joyce Butler

Committees: Children, Families, and Elder Affairs, Chair, Appropriations Subcommittee on Finance and Tax, Vice Chair, Appropriations Subcommittee on the Environment and Natural Resources, Appropriations Subcommittee on General Government, Banking and Insurance, Judiciary, Joint Administrative Procedures Committee.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/12/18	SM	Favorable
1/17/18	JU	**Favorable**
	GO	
	RC	

January 12, 2018

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 48** – Senator Audrey Gibson
HB 6523 – Representative Raburn
Relief of Ashraf Kamel and Marguerite Dimitri

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EXCESS JUDGMENT CLAIM BASED ON A JURY VERDICT RENDERED AGAINST THE PALM BEACH COUNTY SCHOOL BOARD TO COMPENSATE ASHRAF KAMEL AND MARGUERITE DIMITRI FOR DAMAGES CAUSED BY THE NEGLIGENCE OF SCHOOL BOARD EMPLOYEES, WHICH RESULTED IN THE DEATH OF THEIR SON, JEAN PIERRE KAMEL. THE CLAIM WAS PREVIOUSLY CONTESTED BUT HAS BEEN SETTLED FOR $360,000.

CURRENT STATUS:

When a prior version of this claim bill was filed, it was heard by a Senate staff attorney who served as a Senate special master. The bill sought approximately $1.4 million from the Palm Beach County School Board. After the special master hearing, the special master issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably. The special master also recommended that the $1.4 million sought in the claim bill be reduced to $200,900.

For the 2018 claim bill, the parties were asked to provide the Legislature with an update on the status of the claimants and documentation of any significant developments that have

occurred since the claim bill hearing. Of note in the joint response from the claimants and the respondent, the parties state that they have agreed to settle the claim for $360,000.

The most recent special master report in this matter was prepared for SB 44 (2005). A copy of the report is attached.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/1/04	SM	Fav/1 amendment

December 1, 2004

The Honorable Tom Lee
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 44 (2005)** – Senator Mandy Dawson
Relief of Ashraf Kamel and Marguerite Dimitri

SPECIAL MASTER'S FINAL REPORT

THIS IS A VIGOROUSLY CONTESTED EXCESS JUDGMENT CLAIM FOR $1,402,400 BASED ON A JURY VERDICT RENDERED AGAINST THE PALM BEACH COUNTY SCHOOL BOARD TO COMPENSATE ASHRAF KAMEL AND MARGUERITE DIMITRI FOR DAMAGES SUSTAINED DUE TO THE NEGLIGENCE OF SCHOOL BOARD EMPLOYEES, WHICH RESULTED IN THE DEATH OF THEIR SON, JEAN PIERRE KAMEL.

FINDINGS OF FACT:

The Shooting

On the morning of Monday, January 27, 1997, Jean Pierre Kamel, a 13-year-old student at Conniston Middle School in West Palm Beach, arrived at school on his bike. At 8:40 a.m., while standing in front of the school on a 9-foot-wide sidewalk, he was shot to death by Tronneal Mangum, a 14-year-old classmate. The 5-foot portion of the sidewalk closest to the school was owned by the school board. The 4-foot portion of the sidewalk closest to the road was owned by the city. The two portions were visibly distinguishable. The two students were near the curb, and thus were on city property at the time of the shooting. School board personnel were near the area in question; however, the School Resource Officer who usually monitored that particular spot had just moved to the center of campus where the majority of students were at that

time. The officer's replacement was walking toward the scene and was approximately 40 feet away when the shots were fired.

Immediately after the shooting, Tronneal ran into the school. He went around bragging about what he had just done. He was arrested inside a classroom shortly thereafter. He was suspended from school for possession of a firearm on campus. He was subsequently tried as an adult and was sentenced to life without parole. Tronneal did not testify at his criminal trial. He has steadfastly refused, and still refuses to disclose where or how he obtained the handgun he used to kill Jean Pierre.

The Shooter

In 1997, Tronneal Mangum was 14 years of age, 6 feet 1 inch tall and weighed 150 pounds. He and Jean Pierre were in a seventh grade math class together. Their math teacher, who had 30 years of teaching experience, described Tronneal as a quiet, polite, yet below average student who did not cause problems in her class. She never saw Tronneal threaten or harm any student and no student had ever complained to her of threats or harassment from Tronneal. She herself never felt threatened by him. Tronneal's discipline record at school for that school year indicated several instances of disruptive behavior, with only one referral, for which he served a detention.

Events Leading Up to the Shooting

Months prior to the shooting, Jean Pierre asked that his seat in math class be moved away from Tronneal because they did not get along. The math teacher did so and afterward noted that Jean Pierre's performance in math class improved.

Jean Pierre and Tronneal had traded various items of personal property with each other; for example, a CD player for a bike. Two weeks before the shooting, Jean Pierre told the School Resource Officer that he had traded an expensive watch to Tronneal for a bike, but now wanted the watch back. The officer suggested that Jean Pierre tell his parents and talk to the school's administrators.

On the Thursday before the shooting, Tronneal kicked Jean Pierre in his prosthetic leg and was written up by a teacher. The Assistant Principal met with the two students in her office.

She noted that Tronneal had one previous detention but decided to use conflict resolution to solve the dispute. She concluded that the two boys were merely horseplaying, and gave Tronneal a detention to be served on Tuesday, January 28. All concerned agreed that Tronneal would bring the watch back to school on Monday and deliver it to one of the school's administrators from whom Jean Pierre would get it. Jean Pierre asked that his father not be notified because he didn't want his father to know that he had traded the watch.

On the Friday before the shooting, Jean Pierre told his math teacher, "Tronneal is after me." Tronneal was absent that day and the math teacher asked Jean Pierre several times if he wanted to talk to an assistant principal. Jean Pierre replied that he didn't. The math teacher did not interpret Jean Pierre's statements as indicating that he felt threatened. He was smiling when he spoke to her. He didn't seem scared or upset. She didn't report the conversation because Jean Pierre told her that the problem had been taken care of.

Jean Pierre's father, Ashraf Kamel, testified at the civil trial that his son had told him about being kicked, but had given a slightly different story about the watch; namely that Tronneal had stolen it. Jean Pierre told his father that he had been to school administration and would have his watch back on Friday. After school on Friday, Jean Pierre told his father that Tronneal was not at school that day and that he would instead get the watch on Monday. Mr. Kamel testified that he believed that the school administrators had handled the issue and thus did not go to the school to see about it.

The Victim
Jean Pierre was born without a tibia in his right leg which was amputated when he was a baby. Despite having a prosthetic leg, Jean Pierre was very athletic, and was named Swimmer of the Year in 1993 by the Boys and Girls Club.

Battle of the Experts
Claimants' expert was of the opinion that the school board employees were negligent by not preparing an incident report when Jean Pierre asked to be moved away from Tronneal in math class; for the assistant principal's use of conflict resolution rather than the school's discipline policy for what he described as an assault; and for the math teacher's failure to write a referral when Jean Pierre told her that Tronneal was

after him. Claimants' expert also testified that the shooting should have been foreseeable as there had been two previous incidents of gun possession at Conniston Middle School,[1] and that the school's security plan was lacking in that only one teacher was near the area where the shooting occurred.

Respondent's expert was of the opinion that Conniston Middle School was ahead of the security curve with a program that emphasized early intervention, looked for troubled students, and that monitored the campus. Conniston also had an armed, fully trained officer on campus when only 6 percent of schools nationally had a police officer on campus for more than 30 hours a week. He further opined that there were no warning signs that would have been predictive of homicide; that the school could not have deterred the murder; and that having an armed officer at that precise spot at the time of the shooting might have displaced the shooting until later, but would not have prevented it.

LEGAL PROCEEDINGS:

On May 21, 1999, Ashraf Kamel, on his own behalf and as personal representative of the estate of Jean Pierre Kamel, filed a wrongful death suit against the Palm Beach County School Board.

This case was tried to a jury in the Fifteenth Judicial Circuit between January 30 and February 8, 2002. The jury returned a comparative negligence verdict for a total of $2,003,000 in damages and found the Palm Beach County School Board 80 percent responsible for the death of Jean Pierre and found Jean Pierre 20 percent responsible for his own death. Tronneal Mangum was not included on the jury verdict form; thus, the jury had no opportunity to apportion any liability to the intentional criminal tortfeasor in accordance with §768.81(4)(b), F.S., and *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (1997).

The school board filed Motions for Directed Verdict and/or New Trial which were denied. The school board appealed to the Fourth District Court of Appeal. That court affirmed the case per curiam on February 12, 2003.[2]

CLAIMANT'S MAIN ARGUMENTS:

- There is a jury verdict that was reduced to Final Judgment in the sum of $1,602,400, based on a 20 percent comparative negligence offset. The Fourth District Court of Appeal affirmed the judgment. The Final Judgment should be given full effect by the Legislature.

- The school board had a duty to protect its students and this duty was breached when:
  - The math teacher failed to document Jean Pierre's request to have his seat moved and failed to report Jean Pierre's statement that Tronneal was after him.
  - The assistant principal failed to follow school board procedures after the kicking incident.
  - School personnel were not standing at the precise location of the shooting on the day in question.

- Prior gun possession incidents at Conniston made this shooting foreseeable.

RESPONDENT'S MAIN ARGUMENTS:

- The School Board didn't owe a duty to a student who was technically not on school grounds. This shooting took place on adjoining city property, not on school board property.

- The shooting was not foreseeable: there was no notice that Jean Pierre feared Tronneal; Tronneal was not a trouble-maker; there was no red flag in the conflict resolution process; there was no evidence that Tronneal had a gun; and there was no evidence of Tronneal's prior violent acts.

- The two prior reports of gun possession on campus were irrelevant because they did not involve these particular students, nor did they involve shootings; thus, these were not evidence of foreseeability for this shooting.

The source of funds for this claim bill is the general operating budget of the Palm Beach County School District. Payment would negatively impact the school district's ability to fund needed educational programs, particularly given the fact that the monies in the district's contingency fund were expended in order to repair damages from Hurricanes Frances and Jeanne.

CONCLUSIONS OF LAW:

Some see the Legislature's role in claim bills against government agencies as merely rubber-stamping and "passing through" for payment those jury verdicts that have been reduced to judgment and survived appeal, as this one has. Others perceive the Legislature's role to review, reevaluate, and reweigh the total circumstances and the character of the public entity's liability, and to consider the factors that might not have been perceived by or introduced to the jury or court.

At the Special Master's level every claim bill, whether based on a jury verdict or not, is required to be measured anew against the four standard elements of negligence and of course, with or without a Final Judgment, the enactment of a claim bill is generally acknowledged to be completely discretionary with the Legislature.[3]

Liability

Element 1 -- Duty: Florida law imposes on school officials a duty to supervise students' activities while at school.[4] This incident occurred during school hours on property that both school officials and students reasonably believed was school property.[5] Thus, the duty element is satisfied.

Element 2 -- Breach of Duty: I find that the only breach of duty that the jury might have reasonably found concerns the incident where Jean Pierre told his math teacher that Tronneal was after him. The evidence indicates that Tronneal was not in school the day the comment was made, that Jean Pierre did not appear frightened when making the comment, and that the math teacher repeatedly offered Jean Pierre, a normally functioning 13-year-old, an opportunity to see the assistant principal, which he rejected. Given these circumstances, reasonable jurors might have found the math teacher's actions sufficient; however, reasonable jurors also might have found that the teacher should have reported Jean Pierre's comment to the school's administration or have otherwise acted upon it, particularly given that Jean Pierre had told her earlier in the year that he and Tronneal did not get along.

Further, I find that it was not a breach of duty for Assistant Principal Rigola to have employed conflict resolution rather than School Conduct Code procedures for the horseplay and watch incidents. Ms. Rigola investigated, held an informal hearing on the incident and resolved the immediate problem.

Further, she provided for notice to Tronneal's parent(s) because an adult's signature was required in the referral.

Perhaps the procedure could have required parental notification, but Ms. Rigola's failure to have done so cannot constitute negligence because such failure could not have been the proximate cause of Jean Pierre's death. Jean Pierre's father testified at the civil trial that Jean Pierre had told him that Tronneal kicked him; that Tronneal stole his watch; that Tronneal would return the watch to the school's administrators; and that they would return it to Jean Pierre. Consequently, Jean Pierre's father had notice of essentially everything that Ms. Rigola could have told him.

Finally, I find that it was not a breach of duty for the school to not have a security officer or teacher monitoring the precise location of the shooting at the time it occurred. Schools do not have a duty to supervise all movements of pupils at all times.[6] Schools only have a duty to provide reasonable supervision of students. The evidence demonstrates that the duty was satisfied. The school had a reasonable system of monitoring the campus and the system was fully operational on the morning Jean Pierre was killed.

Element 3 -- Causation: I find the math teacher's failure to have reported or otherwise acted upon Jean Pierre's statement that Tronneal was after him could have reasonably been found by the jury to be one of several proximate causes of Jean Pierre's death.

Further, I find that the evidence of prior gun possessions is not persuasive on the foreseeability issue in this case. Neither of these prior incidents involved Jean Pierre or Tronneal. Neither incident involved discharge of a weapon. Moreover, one of the incidents involved a starter pistol, which could only be lethal in a freak accident. Notably, this shooting occurred before the Columbine shootings, which focused national attention on the possession of guns in schools.

Element 4 – Damages: The jury assessed a total of $2,003,000 in damages: (1) $500,000 for Mr. Kamel's past pain and suffering and $500,000 for his future pain and suffering; (2) $500,000 for the victims mother's past pain and suffering and $500,000 for her future pain and suffering; and (3) $3,000 for funeral expenses. The school board was

tagged for 80 percent. A Final Judgment was entered by the Circuit Court against the school board in the amount of $1,602,400 on February 22, 2002.

The school board has already paid $200,000 as follows: (a) $50,000 for attorney's fees; (b) $68,341.81 for costs; (c) $35,829.10 to Mr. Kamel; and (d) $35,829.09 to Ms. Dimitri, the victim's mother.

LEGISLATIVE HISTORY: During the 2004 Legislative Session, Senator Dawson filed SB 38. This bill provided for the relief of Jean Pierre's parents, Ashraf Kamel and Marguerite Dimitri. It was referred to the Senate Special Master on Claim Bills, the Senate Education Committee, and the Senate Finance and Taxation Committee. The undersigned Special Master recommended that the bill be amended to direct the school board to compensate Jean Pierre's parents in the total amount of $400,900, which is 30 percent of the total jury award minus the $200,000 already paid by the school board to the claimants. The Senate Education Committee passed the bill favorably without amendment. The bill was withdrawn from the Senate Finance and Taxation Committee and placed on the Senate calendar where it died. The bill's companion, HB 1353, was referred to the House of Representatives Claims and Judiciary Committees, but was never considered. No further Special Master hearings have been held in this claim. The parties were provided with the opportunity to supplement the record in this case and the material received was reviewed and considered.

ATTORNEYS FEES: The claimants' attorneys have provided documentation verifying that attorney fees are capped at 25 percent in accordance with §768.28, F.S.

GENERAL CONCLUSIONS: As discussed above, I find that a reasonable juror could have determined: that the school board had a duty to Jean Pierre Kamel; that an employee failed to comply with that duty; that such failure was one of several causes of Jean Pierre's death; and that Jean Pierre's parents are entitled to damages as a result of their son's death.

Further, I concur with the jury's assignment of 20 percent comparative liability to Jean Pierre. Evidence demonstrated that Jean Pierre: (a) told Officer McIsaac that he traded his watch for a bike; (b) told his father that Tronneal stole his

watch; and (c) told the assistant principal that he loaned the watch and did not want her to call his father because his father would be angry that he had given the watch away. Thus, it appears that Jean Pierre knowingly failed to notify his father and other school personnel that Tronneal was after him because he did not want to get in trouble over the watch.

Distinguishably, however, I do not find the jury's assignment of 80 percent liability for a $2,003,000 judgment to the school to be equitable and just. The evidence of school negligence in this case was speculative. The only incident that appears at all susceptible to a negligence finding is Jean Pierre's statement to his math teacher that Tronneal was after him and given the facts surrounding that statement, as discussed above, it is difficult to contemplate what other actions the math teacher should have taken in response to the statement. The jury, however, apparently believed that the teacher should have reported or otherwise reacted to the statement and out of deference to that finding, I recommend upholding the negligence verdict; but, due to the speculative nature of the negligence, I recommend reducing the sizeable assignment of 80 percent liability, i.e., $1,602,400 ($2,003,000 multiplied by 80 percent), to the school. The school board's single incident of negligence, only one of several proximate causes of harm to Jean Pierre Kamel does not, in my view, support assessment of 80 percent of the total fault and damages.

In past claim bill cases that, like this case, involved injury caused by an intentional criminal tortfeasor and a Special Master recommendation to reduce the assignment of liability to an unintentional tortfeasor, the Special Master has recommended the symbolic assignment of 50 percent liability to the intentional criminal tortfeasor.[7] I recommend following this precedent. Unequivocally, the person truly at fault for the tragedy in this case is Tronneal Mangum. The jury, however, never had the opportunity to assign any amount of liability to Tronneal.[8] As such, I view it as the Legislature's prerogative and obligation to do so and recommend allocation of responsibility (and thus liability) as follows:

Tronneal Mangum	50%
Palm Beach County School Board	30%
Jean Pierre Kamel	20%

RECOMMENDATIONS: I recommend that Senate Bill 44 be amended: (1) to remove "Whereas" clauses inconsistent with this report's findings and conclusions; and (2) to direct the school board to compensate Jean Pierre's parents in the total amount of $400,900, which is 30 percent of the total jury award minus the $200,000 already paid by the school board to the claimants.

Accordingly, I recommend that Senate Bill 44 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Kristina White
Senate Special Master

cc: Senator Mandy Dawson
Faye Blanton, Secretary of the Senate
House Claims Committee

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[1] During the previous 1995-1996 school year, two gun possession incidents had occurred at Conniston. The first was on February 14, 1996, when Officer McIsaac took a .22 caliber starter pistol away from a student on campus. The second was on May 22, 1996, when a student told Officer McIsaac that a part-time student had brought a gun to school. In response, Officer McIsaac called the West Palm Beach Police Department, and police then went to the student's home where, after a consensual search of the student's bedroom, they found a gun. Officer McIsaac never saw the student bring the gun to school; instead, he only had hearsay evidence that the gun had been on school grounds. A West Palm Beach Police Report indicated that the student was arrested for possession of a gun on school grounds.

[2] *Palm Beach County School Bd. v. Kamel*, 840 So.2d 253 (Fla. 4th DCA 2003), rehearing denied (Mar 20, 2003).

[3] *Fernandes v. Barrs*, 641 So.2d 1371, 1376 (Fla. 1st DCA 1994); *South Broward Topeekeegeeyugnee Park District v. Martin*, 564 So.2d 1265, 1267 (Fla. 4th DCA 1990), review denied mem., 576 So.2d 291 (Fla. 1991).

[4] *Rupp v. Bryant*, 417 So.2d 658, 666 (Fla. 1982).

[5] Conniston Middle School personnel routinely patrolled the entirety of the sidewalk beginning at 8:30 a.m. S*ee Broward County School Board v. Ruiz*, 493 So.2d 474 (Fla. 1986) (holding that school's adoption of a system of supervision and patrols was evidence on the issue of duty to provide supervision at time and place that student was assaulted).

[6] *Benton v. School Board of Broward County,* 386 So.2d 831 (Fla. 4th DCA 1980).

[7] *See* Special Master Final Report for Senate Bill 4 at pp. 12-14, November 25, 1998 (recommending reduction of the amount of liability assigned to the Department of Health and Rehabilitative Services by a jury and recommending the assignment of 50 percent of total liability to the intentional criminal tortfeasors).

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[8] Under Florida law, actions alleging that a property owner's negligence in failing to provide adequate security resulted in an intentional criminal assault by another are governed by joint and several liability, not comparative negligence. §768.81(4)(b), F.S.; *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (1997). Thus, the jury in this case was not permitted to consider Tronneal Mangum's liability when apportioning damages. The public policy behind this law is to preclude negligent tortfeasors from reducing their liability by shifting it to another tortfeasor whose intentional criminal conduct was a foreseeable result of their negligence. The Legislature, unlike the jury, however, is not prohibited from considering the criminal's liability in a claim bill case because claim bills are purely a matter of legislative grace. As indicated in *Gamble v. Wells,* 450 So.2d 850 (Fla.1984), it is the Legislature's prerogative in a claim bill case to: determine whether to allow compensation; decide the amount of compensation; and determine the conditions to be placed on the appropriation. Accordingly, for the reasons discussed in this report, I recommend that the Legislature exercise its discretion in this case and consider reduction of the amount of school board liability. There is little evidence demonstrating that school personnel could or should have foreseen the criminal danger that Tronneal posed and thus, as a matter of public policy, it appears unjust to impose 80 percent liability for a $2,003,000 judgment on the school.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Judiciary
Regulated Industries
Joint Legislative Auditing Committee

October 12, 2017

Senator Greg Steube, Chair
Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Steube:

I respectfully request that SB 48, a claims bill on behalf of John Pierre Kamel, relating to negligence by the Palm Beach County School Board, be placed on the next committee agenda. The claim arises from the wrongful death of John, due to the repeated bullying while in the care and custody of Palm Beach County School Board.

SB 48, requires $360,000.00 to be paid upon approval of the claims bill to the parents Ashraf Kamel and Marguerite Dimitri for the tragic death of their minor child on January 27, 1997.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904)359-2553
405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1242

INTRODUCER: Senator Steube

SUBJECT: Carrying of Weapons and Firearms

DATE: January 17, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Pre-meeting**
2.			GO	
3.			RC	

I. Summary:

SB 1242 adds two broad categories of persons to the statutory list of those who may carry a weapon or firearm without the need for further authorization, such as a concealed weapon or firearms license. One such category is that of persons "engaged in, traveling to, or returning from a lawful outdoor activity, including, but not limited to," the many activities listed in the bill. These activities range widely, from sporting activities such as cast netting, falconry, or riding an all-terrain vehicle, to leisure activities such as bird watching, picnicking, or dog walking. Additionally, the bill permits a person to carry a firearm or a concealed weapon when traveling to or returning from a motor vehicle, a residence, any place of shelter, or "any other place at which a firearm or weapon may be lawfully possessed."

II. Present Situation:

Overview

The Florida Statutes generally prohibit a person from carrying a firearm,[1] whether concealed or unconcealed, or from carrying a concealed weapon.[2] However, exceptions to these bans are set forth in two statutes. One of these statutes is s. 790.06, F.S., which authorizes a person who has a license to carry a concealed weapon or firearm to carry these items throughout the state, except for the few places listed in the statute, such as police stations, courthouses, prisons, and schools. Another statute, s. 790.25, F.S., sets forth other exceptions to the general bans on carrying a

---

[1] "Firearm" is defined at section 790.001(6), F.S., as, "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term 'firearm' does not include an antique firearm unless the antique firearm is used in the commission of a crime."

[2] A "weapon" is defined at section 790.001(13), F.S., as, "any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife."

firearm or concealed weapon. This statute authorizes several categories of persons to carry a firearm or concealed weapon without further authorization, such as a concealed carry license. These categories of persons include specified military and law enforcement personnel, certain persons whose occupations relate to firearms, and persons traveling to, engaged in, or returning from fishing, hunting, or camping.

General Prohibitions on Carrying a Firearm or Concealed Weapon

State law generally prohibits carrying a concealed firearm, openly carrying a firearm, or carrying a concealed weapon by classifying these acts as serious crimes. A person who openly carries a firearm[3] commits a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed $500.[4] A person who carries a concealed weapon commits a first degree misdemeanor, punishable by up to 1 year in jail and a fine not to exceed $1,000.[5] And a person who carries a concealed firearm commits a felony of the third degree, punishable by up to 5 years in prison and a fine not to exceed $5,000.[6]

Lawful Carrying of Firearms or Weapons

Lawful Unlicensed Carry

Section 790.25(3), F.S., sets forth a long and intricate list of persons who may lawfully carry concealed or unconcealed firearms or weapons regardless of whether they have a concealed weapon or firearms license.[7] Many of the persons on the list are specified military and law enforcement personnel, including:

- Members of the armed forces, organized reserves, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state; and
- On-duty investigators employed by public defenders' or state attorneys' offices, and who meet the other criteria set forth in statute.

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[3] "Electric weapon or device" means "any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury." Section 790.001(14), F.S.

[4] *See* ss. 790.053, 775.082(4)(b), and 775.083(1)(e), F.S.

[5] *See* ss. 790.01(1), 775.082(4)(a), and 775.083(1)(d), F.S.

[6] *See* ss. 790.01(2), 775.082(3)(e), and 775.083(1)(c), F.S. However, see s. 775.084, F.S., regarding the possibility of an additional prison term under certain circumstances, such as when the court finds that the criminal is a "violent career criminal."

[7] Although s. 790.25(3), F.S., is not perfectly clear that it authorizes the unlicensed concealed or unconcealed carry of a firearm, especially when read in light of s. 790.25(2), F.S., the courts have nonetheless stated that it does. *See, e.g., State v. Little*, 104 So. 3d 1263, (Fla. 4th DCA 2013) (holding that a union secretary carrying a concealed firearm at the union hall parking lot was exempt from the general ban on concealed carry in s. 790.01, F.S., by virtue of section 790.25(3)(n), F.S.); *Norman v. State*, 215 So. 3d 18, 22 (Fla. 2017) (stating that "pursuant to chapter 790, Florida law provides sixteen exceptions to Florida's Open Carry Law . . ." and that s. 790.25(3), F.S., provides "a list of sixteen statutory exceptions to the [law prohibiting the open carry of a firearm]."

Other persons on the list include those whose employment relates to firearms, such as:

- Guards or messengers of common carriers, armored car carriers, banks, and other specified organizations, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state; and
- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business.

Yet other persons on the list include those who are using firearms during outdoor recreation, such as:

- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition; and
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.

Finally, the list includes the following persons who are traveling or who are at their homes or places of business:

- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business; and
- A person possessing arms at his or her home or place of business.

Concealed Weapon or Firearm License

Beyond the authorization set forth in s. 790.25(3), F.S., a person may carry a concealed weapon or firearm if he or she has a concealed weapon or firearms license. The concealed weapon or firearms license authorizes a licensee to carry a concealed weapon or firearm throughout most of the state.[8] The license, however, does not authorize a person to carry a concealed firearm into several categories of places, such as school facilities, courthouses, legislative meetings, and bars.

To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services. And the Department must grant the license to each applicant who meets each of the long list of criteria set forth in statute. Under these criteria, an applicant must be 21 years, a legal resident of the United States, and able to use a firearm. Moreover, an applicant is disqualified under these criteria if he or she has a specified mental health issue, significant criminal history, or substance abuse problem.[9]

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[8] As of December 31, 2017, 1,836,954 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited January 12, 2018).

[9] *See* Section 790.06(2), F.S. However, the Department must *deny* a license to an applicant who meets any criterion set forth in s. 790.06(3), F.S, which also sets forth criteria for the mandatory revocation of a license.

III. Effect of Proposed Changes:

This bill adds two broad categories of persons to the statutory list of those who may carry a concealed or unconcealed firearm or a concealed weapon without the need for further authorization, such as a concealed weapon or firearms license.

One such category is a "person engaged in, traveling to, or returning from a lawful outdoor activity" including, but not limited to, the many activities listed in the bill. The enumerated activities range widely, from sporting activities such as cast netting, falconry, or riding an all-terrain vehicle, to leisure activities such as bird watching, picnicking, or dog walking.

Additionally, the bill permits a person to carry a firearm or concealed weapon when traveling to or returning from a motor vehicle, a residence, any place of shelter, or "any other place at which a firearm or weapon may be lawfully possessed." This quoted language may authorize a person to carry a weapon or firearm when traveling to or from most places in the state, given that the statutes set forth few places, such as schools, at which the mere "possession" of a weapon or firearm is illegal. As such, any place at which the possession of weapons or firearms is not statutorily banned may be deemed to be a place at which "a firearm or weapon may be lawfully possessed."

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section 790.25 of the Florida Statutes.

This bill conforms cross references in section 27.53 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

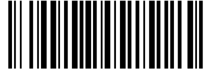
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

 387304

LEGISLATIVE ACTION

Senate	.	House
	.	
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	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

1 **Senate Amendment**

2

3 Delete line 66

4 and insert:

5 lawfully possessed or carried under this section;

By Senator Steube

1 A bill to be entitled
2 An act relating to the carrying of weapons and
3 firearms; amending s. 790.25, F.S.; providing that
4 specified provisions relating to the carrying of
5 weapons and firearms do not apply to persons engaged
6 in, traveling to, or returning from certain outdoor
7 activities or traveling to or returning from certain
8 motor vehicles, residences, shelters, and other
9 places; amending s. 27.53, F.S.; conforming cross-
10 references; providing an effective date.
11
12 WHEREAS, law-abiding citizens have the constitutional right
13 of self-protection and the constitutional right to keep and
14 bears arms for lawful purposes, and
15 WHEREAS, citizens have the right to protect themselves,
16 their families, and others when engaged in outdoor activities,
17 and
18 WHEREAS, citizens engaged in outdoor activities risk danger
19 from the presence of bears, boars, alligators, panthers, snakes,
20 and other wildlife predators, as well as human predators, NOW,
21 THEREFORE,
22
23 Be It Enacted by the Legislature of the State of Florida:
24
25 Section 1. Paragraphs (i) through (p) of subsection (3) of
26 section 790.25, Florida Statutes, are redesignated as paragraphs
27 (k) through (r), respectively, and new paragraphs (i) and (j)
28 are added to that subsection, to read:
29 790.25 Lawful ownership, possession, and use of firearms

30 and other weapons.—
31 (3) LAWFUL USES.—The provisions of ss. 790.053 and 790.06
32 do not apply in the following instances, and, despite such
33 sections, it is lawful for the following persons to own,
34 possess, and lawfully use firearms and other weapons,
35 ammunition, and supplies for lawful purposes:
36 (i) A person engaged in, traveling to, or returning from a
37 lawful outdoor expedition or activity, including, but not
38 limited to:
39 1. Crabbing, gigging, cast netting, lobstering, or any
40 other fishing activity;
41 2. Hiking, trekking, backpacking, cross-country running,
42 geocaching, or any other orienteering activity;
43 3. Trapping, falconry, or any other hunting activity;
44 4. Bicycling, mountain biking, trail riding, or any other
45 cycling activity;
46 5. All-terrain vehicle, dirt bike, four-wheeler, or any
47 other off-road vehicle riding activity;
48 6. Boating, canoeing, kayaking, rafting, or any other
49 maritime activity;
50 7. Dog walking, animal training, mushing, or any other
51 outdoor animal exercising activity;
52 8. Speleology, spelunking, or any other caving activity;
53 9. Horseback riding or any other equestrian activity;
54 10. Rock climbing, rappelling, or any other mountaineering
55 activity;
56 11. Nature photography, bird watching, astronomy, or any
57 other outdoor viewing activity; and
58 12. Picnicking, mushroom hunting, berry picking, metal

59 detecting, fossil hunting, or any other outdoor recreational,
60 training, scientific, or athletic activity;
61 (j) A person traveling to or returning from a motor
62 vehicle; a residence, dwelling, apartment, condominium,
63 townhouse, lodge, cabin, motor home, mobile home, recreational
64 vehicle, hotel, motel, or any other place of residence or
65 shelter; or any other place at which a firearm or weapon may be
66 lawfully possessed;
67 Section 2. Subsections (1) and (4) of section 27.53,
68 Florida Statutes, are amended to read:
69 27.53 Appointment of assistants and other staff; method of
70 payment.—
71 (1) The public defender of each judicial circuit is
72 authorized to employ and establish, in such numbers as
73 authorized by the General Appropriations Act, assistant public
74 defenders and other staff and personnel pursuant to s. 29.006,
75 who shall be paid from funds appropriated for that purpose.
76 Notwithstanding the provisions of s. 790.01, s. 790.02, or s.
77 790.25(2)(a), an investigator employed by a public defender,
78 while actually carrying out official duties, is authorized to
79 carry concealed weapons if the investigator complies with s.
80 790.25(3)(q) ~~790.25(3)(o)~~. However, such investigators are not
81 eligible for membership in the Special Risk Class of the Florida
82 Retirement System. The public defenders of all judicial circuits
83 shall jointly develop a coordinated classification and pay plan
84 which shall be submitted on or before January 1 of each year to
85 the Justice Administrative Commission, the office of the
86 President of the Senate, and the office of the Speaker of the
87 House of Representatives. Such plan shall be developed in

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

88 accordance with policies and procedures of the Executive Office
89 of the Governor established in s. 216.181. Each assistant public
90 defender appointed by a public defender under this section shall
91 serve at the pleasure of the public defender. Each investigator
92 employed by a public defender shall have full authority to serve
93 any witness subpoena or court order issued, by any court or
94 judge within the judicial circuit served by such public
95 defender, in a criminal case in which such public defender has
96 been appointed to represent the accused.
97 (4) The five criminal conflict and civil regional counsel
98 may employ and establish, in the numbers authorized by the
99 General Appropriations Act, assistant regional counsel and other
100 staff and personnel in each judicial district pursuant to s.
101 29.006, who shall be paid from funds appropriated for that
102 purpose. Notwithstanding s. 790.01, s. 790.02, or s.
103 790.25(2)(a), an investigator employed by an office of criminal
104 conflict and civil regional counsel, while actually carrying out
105 official duties, is authorized to carry concealed weapons if the
106 investigator complies with s. 790.25(3)(q) ~~790.25(3)(o)~~.
107 However, such investigators are not eligible for membership in
108 the Special Risk Class of the Florida Retirement System. The
109 five regional counsel shall jointly develop recommended
110 modifications to the classification plan and the salary and
111 benefits plan for the Justice Administrative Commission. The
112 recommendations shall be submitted to the commission, the office
113 of the President of the Senate, and the office of the Speaker of
114 the House of Representatives by September 15, 2007, for the
115 regional offices' initial establishment and before January 1 of
116 each year thereafter. Such recommendations shall be developed in

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

23-01601-18 20181242__

117 accordance with policies and procedures of the Executive Office
118 of the Governor established in s. 216.181. Each assistant
119 regional counsel appointed by the regional counsel under this
120 section shall serve at the pleasure of the regional counsel.
121 Each investigator employed by the regional counsel shall have
122 full authority to serve any witness subpoena or court order
123 issued by any court or judge in a criminal case in which the
124 regional counsel has been appointed to represent the accused.
125 Section 3. This act shall take effect July 1, 2018.

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-18-18
Meeting Date

1242
Bill Number (if applicable)

387304
Amendment Barcode (if applicable)

Topic: Carry During Outdoor Activities

Name: Eric Friday

Job Title: General Counsel

Address: 118 W Adams St
Street

Jacksonville, FL 32202
City, State, Zip

Phone: 904-722-3333

Email: efriday@ericfriday.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing: Florida Carry

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)

1/18/2018
Meeting Date

1242
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic ______________________________

Name Kathryn Grant

Job Title D.C. State Affairs

Address ______________________________ Phone ______________
Street

Email kathryn@keepgunsoffcampus.org

City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Campaign to Keep Guns off Campus

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)

11/13/2018
Meeting Date

1242
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Permitless Carry

Name: Jamie Ito

Job Title: Volunteer

Address: 911 Wilson Ave
Street

Tallahassee, FL 32303
City, State, Zip

Phone:

Email:

Speaking: [ ] For [X] Against [ ] Information

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

Representing: Moms Demand Action for Gun Sense in America

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/2018
Meeting Date

SB-1242
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Carrying Firearms in the Out-Doors for Protection

Name: Marion P. Hammer

Job Title:

Address: PO Box 1387
Street

Tallahassee, FL 32302
City, State, Zip

Phone: 850-222-9518

Email:

Speaking: ☑ For ☐ Against ☐ Information

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

Representing: National Rifle Association & Unified Sportsmen of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-18-18
Meeting Date

1242
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic permitless carry

Name Stephanie Owens

Job Title Legislative Advocate

Address
Street

City State Zip

Phone 727 639 1243

Email LWVFADVOCACY@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/18
Meeting Date

SB 1242
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Permitless Open Carry

Name: Jon Harris Maurer

Job Title: Government Affairs Manager,

Address: 201 E Park Ave., Ste. 200
Street

Tallahassee FL 32301
City State Zip

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Equality Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1/18/2018 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1242

Meeting Date | Bill Number (if applicable)

Topic CARRYING OF WEAPONS AND FIREARMS

Amendment Barcode (if applicable)

Name BRIAN LUPIANI

Job Title (RETIRED)

Address 607 McDANIEL ST

Street

TALLAHASSEE FL 32303

City State Zip

Phone 850-273-1028

Email BRIANLUPIANI@YAHOO.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)