

CS/SB 86 by **ED, Flores (CO-INTRODUCERS) Benacquisto**; (Similar to CS/CS/H 0113) Distribution of Materials Harmful to Minors

SB 148 by **Altman (CO-INTRODUCERS) Soto**; (Identical to H 0961) Sentencing In Capital Felonies

SB 400 by **Dean**; (Similar to CS/H 0611) False Reports to Law Enforcement Officers

373500	A	S	RCS	CJ, Dean	Delete L.14 - 23:	03/11 08:49 PM
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SB 540 by **Dean**; (Compare to H 0829) Mandatory Supervision of Specified Offenders by the Department of Corrections

838018	A	S	RCS	CJ, Dean	Delete L.20 - 26:	03/11 08:49 PM
616632	A	S	RCS	CJ, Dean	Delete L.451 - 502:	03/11 08:49 PM
703002	AA	S	RCS	CJ, Gibson	Delete L.8:	03/11 08:49 PM
712686	AA	S	WD	CJ, Gibson	Delete L.8:	03/11 08:49 PM
399584	A	S	RCS	CJ, Dean	Delete L.573:	03/11 08:49 PM
493376	A	S	RCS	CJ, Dean	Delete L.1004 - 1005:	03/11 08:49 PM
459410	A	S	RCS	CJ, Dean	Delete L.1318:	03/11 08:49 PM

SB 542 by **Braynon**; Public Records/Victim of Human Trafficking

398480	A	S	RCS	CJ, Smith	Delete L.36 - 43:	03/11 08:49 PM
579024	A	S	RCS	CJ, Smith	Delete L.75:	03/11 08:49 PM

SB 672 by **Evers**; (Similar to CS/H 4019) Youth Custody Officers

954052	D	S	RCS	CJ, Evers	Delete everything after	03/11 08:49 PM
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SB 678 by **Evers**; (Compare to CS/H 0353) Malicious Battery and Infliction of Cruel or Inhuman Treatment on a Juvenile Offender

159924	D	S	RCS	CJ, Evers	Delete everything after	03/11 08:49 PM
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SB 742 by **Evers**; (Similar to H 0685) Parole Interview Dates for Certain Inmates

SB 788 by **Abruzzo**; (Similar to H 0407) Criminal Gang Prevention

SB 1042 by **Abruzzo**; (Similar to CS/H 0361) Public Meetings/Criminal Justice Commissions

SB 1216 by **Bradley**; (Compare to H 1125) Wage Theft

411024	D	S		CJ, Bradley	Delete everything after	03/06 04:37 PM
901110	AA	S		CJ, Bradley	Delete L.45 - 49:	03/11 12:17 PM
459014	AA	S		CJ, Bradley	Delete L.63 - 70:	03/11 12:17 PM
841392	AA	S		CJ, Smith	Delete L.99 - 102:	03/11 12:18 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Smith, Vice Chair

MEETING DATE: Monday, March 11, 2013
TIME: 3:30 —6:00 p.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Evers, Chair; Senator Smith, Vice Chair; Senators Altman, Bradley, Dean, Gibson, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 86 Education / Flores (Similar CS/CS/H 113)	Distribution of Materials Harmful to Minors; Prohibiting an adult from knowingly distributing to a minor or posting on school property certain specified materials harmful to minors; providing an exception, etc. ED 02/19/2013 Fav/CS CJ 03/11/2013 Favorable ACJ AP	Favorable Yeas 6 Nays 0
2	SB 148 Altman (Identical H 961)	Sentencing In Capital Felonies; Requiring that an advisory sentence of death be made by a unanimous recommendation of the jury after a defendant's conviction or adjudication of guilt for a capital felony or capital drug-trafficking felony; requiring the court to instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist; requiring that the court provide a special verdict form for each aggravating circumstance found, etc. CJ 03/11/2013 Temporarily Postponed JU ACJ AP	Temporarily Postponed
3	SB 400 Dean (Similar CS/H 611)	False Reports to Law Enforcement Officers; Increasing criminal penalties for a second or subsequent conviction of providing false information to a law enforcement officer concerning the alleged commission of a crime, etc. CJ 03/04/2013 Not Considered CJ 03/11/2013 Fav/CS JU ACJ AP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 11, 2013, 3:30 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 540 Dean (Compare H 829)	Mandatory Supervision of Specified Offenders by the Department of Corrections; Requiring that persons convicted on or after a specified date of crimes in specified categories be released only under mandatory supervision; renaming the conditional release program as the "mandatory supervision program", etc. CJ 03/04/2013 Not Considered CJ 03/11/2013 Fav/CS JU ACJ AP	Fav/CS Yeas 6 Nays 0
5	SB 542 Braynon	Public Records/Victim of Human Trafficking; Creating an exemption from public records requirements for certain criminal intelligence information and criminal investigative information that might reveal the identity of a person who is a victim of human trafficking or a photograph, videotape, or image of any part of the body of the victim of human trafficking; prohibiting a public employee or officer who has access to identifying information of a person who is alleged to be the victim of human trafficking from willfully and knowingly disclosing the information to a person who is not assisting in the investigation or prosecution of the alleged offense, etc. CJ 03/11/2013 Fav/CS JU GO RC	Fav/CS Yeas 6 Nays 0
6	SB 672 Evers (Similar CS/H 4019)	Youth Custody Officers; Repealing provisions relating to the creation, duties, and qualifications of the youth custody officer position within the Department of Juvenile Justice, etc. CJ 03/04/2013 Not Considered CJ 03/11/2013 Fav/CS JU ACJ AP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 11, 2013, 3:30 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 678 Evers (Compare CS/H 353, CS/H 4019)	Malicious Battery and Infliction of Cruel or Inhuman Treatment on a Juvenile Offender; Providing that it is unlawful for an employee of the Department of Juvenile Justice to commit a battery or to inflict cruel or inhuman treatment on a juvenile offender; providing criminal penalties; providing that battery or the infliction of cruel or inhuman treatment on a juvenile offender constitutes sufficient cause to dismiss the employee from employment with the department and to prohibit such employee from being employed again in any capacity with the juvenile justice system, etc. CJ 03/04/2013 Not Considered CJ 03/11/2013 Fav/CS JU	Fav/CS Yeas 6 Nays 0
8	SB 742 Evers (Similar H 685)	Parole Interview Dates for Certain Inmates; Extending from 2 years to 7 years the period between parole interview dates for inmates convicted of committing certain specified crimes, etc. CJ 03/04/2013 Not Considered CJ 03/11/2013 Favorable JU ACJ AP	Favorable Yeas 6 Nays 0
9	SB 788 Abruzzo (Similar H 407)	Criminal Gang Prevention; Providing enhanced criminal penalties for certain trespassing offenses in school safety zones by a person convicted of certain gang-related offenses and for a person who intentionally causes, encourages, solicits, or recruits another person under a specified age to become a criminal gang member in certain circumstances; revising the criteria for application of the sentencing multiplier for offenses related to criminal gangs, etc. CJ 03/11/2013 Favorable CA ACJ AP	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 11, 2013, 3:30 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SB 1042 Abruzzo (Similar CS/H 361)	Public Meetings/Criminal Justice Commissions; Providing an exemption from public meeting requirements for that portion of a meeting of a duly constituted criminal justice commission at which specified members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the commission; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. CJ 03/11/2013 Favorable GO RC	Favorable Yeas 6 Nays 0
11	SB 1216 Bradley (Compare H 1125)	Wage Theft; Providing circumstances under which an employer commits wage theft; providing that a claim is governed by the Florida Small Claims Rules; requiring the claimant to prove wage theft by a preponderance of the evidence; authorizing the Attorney General to seek injunctive relief against an employer accused of wage theft; authorizing a county, municipality, or political subdivision to establish an administrative process to facilitate the collection of money owed to an employee, etc. CJ 03/11/2013 Not Considered JU CM AP	Not Considered

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 86

INTRODUCER: Education Committee and Senators Flores and Benacquisto

SUBJECT: Distribution of Materials Harmful to Minors

DATE: March 6, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	Fav/CS
2.	Clodfelter	Cannon	CJ	Favorable
3.	_____	_____	ACJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 86 provides that it is a third-degree felony for an adult to knowingly distribute material harmful to a minor or to post materials harmful to a minor on public and private school property. The bill defines school property as the grounds or facility of any public or private kindergarten, elementary school, middle school, junior high school, or secondary school.

The bill provides an effective date of October 1, 2013.

This bill amends section 847.012 of the Florida Statutes.

II. Present Situation:

Definition of “Harmful to Minors”

Currently, the law provides for a three-pronged test to determine whether material is harmful to minors. Florida law defines “harmful to minors” as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.¹

“Obscene Materials”

Chapter 847, F.S., addresses the regulation of obscenity and provides several definitions that are used in the chapter. An adult is defined as a person of at least 18 years of age.² A minor, likewise, is considered to be someone who is under the age of 18 years.³ The term “obscene” is defined as the status of materials which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct;⁴ and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.⁵

Currently, it is a first-degree misdemeanor⁶ for a person to knowingly distribute, sell, lend, give away, transmit, transmute, or show, certain obscene materials.⁷ It is a second-degree misdemeanor⁸ for a person to knowingly have certain obscene materials in one’s possession, custody, or control.⁹ Both offenses are elevated to third-degree felonies if a violation is based on materials that depict a minor engaged in any act or conduct that is harmful to minors.¹⁰

Selling or Distributing Harmful Materials to Minors

Current law provides that it is a third-degree felony to knowingly sell, rent, or loan for monetary consideration to a minor:¹¹

¹ s. 847.001(6), F.S.

² s. 847.001(1), F.S.

³ s. 847.001(8), F.S.

⁴ s. 847.001(16), F.S., defines “sexual conduct” as actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, public area, buttocks, or, if such a person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstances constitute “sexual conduct.”

⁵ s. 847.001(10), F.S.

⁶ A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year, and a fine not exceeding \$1,000 may be imposed. *See* ss. 775.082 and 775.083, F.S.

⁷ s. 847.011(1)(a), F.S.

⁸ A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, and a fine not exceeding \$500 may be imposed. *See* ss. 775.082 and 775.083, F.S.

⁹ s. 847.011(2), F.S.

¹⁰ s. 847.011(1)(c), F.S. A third-degree felony is punishable by a state prison sentence not exceeding five years, and a fine not exceeding \$5,000 may be imposed. *See* ss. 775.082 and 775.083, F.S.

¹¹ s. 847.012(3) & (5), F.S.

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.

The term “knowingly” is defined as having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- The character and content of any material (described above) which is reasonably susceptible of examination by the defendant; and
- The age of the minor.¹²

A person’s ignorance of a minor’s age, a minor’s misrepresentation of his or her age, a bona fide belief of a minor’s age, or a minor’s consent may not be raised as a defense in a prosecution for a violation of s. 847.012, F.S.¹³

III. Effect of Proposed Changes:

The bill makes it a third degree felony for an adult to knowingly distribute to a minor, or to post on school property, any of the materials described in current s. 847.012(3), F.S. This includes material harmful to minors in any format: pictures, photographs, drawings, sculptures, motion picture films, videocassettes, similar visual representations or images, books, pamphlets, magazines, printed matter however reproduced, or sound recordings. The bill creates an exception for instructional materials used in the instruction of a course by personnel defined in s. 1012.01, F.S. Sale of material harmful to minors to a minor at any location is already prohibited by s. 847.012(3), F.S.

The bill defines school property as the grounds or facility of any public or private kindergarten, elementary school, middle school, junior high school, or secondary school.

As a third degree felony, this new offense would be punishable by up to five years in prison and a \$5,000 fine.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹² s. 847.012(1), F.S.

¹³ s. 847.012(2), F.S.

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 creates an additional criminal offense. The Criminal Justice Impact Conference has determined that the bill would have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by the Education on February 19, 2013:

- Provides an exception for instructional materials used in the instruction of a course by approved personnel as defined in s. 1012.01, F.S.
- Removes the term “career center” from the list of school properties.
- Revises the bill by changing the types of schools covered and by creating an exception for instructional materials used by approved educational personnel.

B. Amendments:

None.

By the Committee on Education; and Senators Flores and Benacquisto

581-01707-13

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1 A bill to be entitled
 2 An act relating to the distribution of materials
 3 harmful to minors; amending s. 847.012, F.S.;
 4 prohibiting an adult from knowingly distributing to a
 5 minor or posting on school property certain specified
 6 materials harmful to minors; providing that it is a
 7 third-degree felony for any person to knowingly
 8 distribute to a minor or post on school property
 9 certain materials harmful to minors; defining the term
 10 "school property"; providing an exception; providing
 11 an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Present subsections (5) through (9) of section
 16 847.012, Florida Statutes, are renumbered as subsections (6)
 17 through (10), respectively, and a new subsection (5) is added to
 18 that section, to read:

19 847.012 Harmful materials; sale or distribution to minors
 20 or using minors in production prohibited; penalty.—

21 (5) An adult may not knowingly distribute to a minor on
 22 school property, or post on school property, any material
 23 described in subsection (3). As used in this subsection, the
 24 term "school property" means the grounds or facility of any
 25 kindergarten, elementary school, middle school, junior high
 26 school, or secondary school, whether public or nonpublic. This
 27 subsection does not apply to the distribution or posting of
 28 instructional materials that by design serve as a major tool for
 29 assisting in the instruction of a subject or course by school

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581-01707-13

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30 officers, instructional personnel, administrative personnel,
 31 school volunteers, educational support employees, or managers as
 32 those terms are defined in s. 1012.01.

33 Section 2. This act shall take effect October 1, 2013.

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The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 28, 2013

I respectfully request that **Senate Bill #86**, relating to Distribution of Materials Harmful to Minors , be placed on the:

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

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 37

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 148

INTRODUCER: Senators Altman and Soto

SUBJECT: Sentencing in Capital Felonies

DATE: March 7, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon/Cannon	Cannon	CJ	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	ACJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 148 makes four changes in the death sentencing law in Florida. The bill requires that:

- If the jury is going to recommend the death penalty, the jury must first find that sufficient aggravating circumstances exist that are not outweighed by mitigating evidence.
- The jury must agree by a unanimous vote on any aggravators which support the jury's death recommendation.
- The jury vote on the aggravating circumstances must be recorded on a special verdict form.
- The jury must also agree unanimously to recommend the death penalty. Currently a jury must agree by a simple majority to recommend a death sentence.

This bill substantially amends sections 921.141 and 921.142 of the Florida Statutes.

II. Present Situation:

Florida's Capital Sentencing Law

In Florida, after a guilty verdict in a capital case, the jury issues a sentencing recommendation – death or life imprisonment – unless the jury is waived.¹ During the sentencing phase the jury

¹ With the issue of guilt or innocence disposed of, the jury can then view the question of penalty as a separate and distinct issue. The fact that the defendant has committed the crime no longer determines automatically that he must die in the absence of a mercy recommendation. They must consider from the facts presented to them-facts in addition to those necessary to prove the commission of the crime-whether the crime was accompanied by aggravating circumstances sufficient to require death, or whether there were mitigating circumstances which require a lesser penalty. *State v. Dixon*, 283 So.2d 1(Fla. 1973).

hears evidence to establish statutory aggravating factors and statutory or nonstatutory mitigating circumstances.² The aggravating factors must be established beyond a reasonable doubt.³ The fact-finder must only be convinced by the greater weight of the evidence (a lower standard of proof than beyond a reasonable doubt) as to the existence of mitigating factors.⁴

If the jury finds one or more aggravating circumstances and determines that these circumstances are sufficient to recommend the death penalty, it must determine whether sufficient mitigating circumstances exist to outweigh the aggravating circumstances. Based upon these considerations, the jury must recommend whether the defendant should be sentenced to life imprisonment or death.⁵ However, even if the aggravating circumstances are found to outweigh the mitigating circumstances, the jury is never required to return a recommendation for death and must be so instructed.⁶

A simple majority of the jury is necessary for recommendation of the death penalty. It is not necessary for the jury to list on the verdict the aggravating and mitigating circumstances it finds or to disclose the number of jurors making such findings.⁷

² “An aggravating circumstance is a standard to guide the jury in making the choice between the alternative recommendations of life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance which increases the gravity of a crime or the harm to a victim.” Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases, Instr. 7.11.

³ “An aggravating circumstance must be proven beyond a reasonable doubt before it may be considered by you in arriving at your recommendation. In order to consider the death penalty as a possible penalty, you must determine that at least one aggravating circumstance has been proven.” ... “If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole.” *Id.*

⁴ “Should you find sufficient aggravating circumstances do exist to justify recommending the imposition of the death penalty, it will then be your duty to determine whether the mitigating circumstances outweigh the aggravating circumstances that you find to exist.

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant. In other words, a mitigating circumstance may include any aspect of the defendant’s character, background or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proved by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed.” *Id.*

⁵ “The process of weighing aggravating and mitigating factors to determine the proper punishment is not a mechanical process. The law contemplates that different factors may be given different weight or values by different jurors. In your decision-making process, you, and you alone, are to decide what weight is to be given to a particular factor.” *Id.*

⁶ “The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. If, after weighing the aggravating and mitigating circumstances, you determine that at least one aggravating circumstance is found to exist and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, you may recommend that a sentence of death be imposed rather than a sentence of life in prison without the possibility of parole. Regardless of your findings in this respect, however, you are neither compelled nor required to recommend a sentence of death. If, on the other hand, you determine that no aggravating circumstances are found to exist, or that the mitigating circumstances outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are not sufficient, you must recommend imposition of a sentence of life in prison without the possibility of parole rather than a sentence of death.” *Id.*

⁷ “If a majority of the jury, seven or more, determine that (defendant) should be sentenced to death, your advisory sentence will be:

A majority of the jury by a vote of _____, to _____ advise and recommend to the court that it impose the death penalty upon (defendant).

The aggravating and mitigating circumstances and the method by which they must be determined to apply for sentencing are set forth in s. 921.141, F.S., as follows:

(2) **ADVISORY SENTENCE BY THE JURY.**—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

- (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
- (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) **FINDINGS IN SUPPORT OF SENTENCE OF DEATH.**—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

- (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
- (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

(5) **AGGRAVATING CIRCUMSTANCES.**—Aggravating circumstances shall be limited to the following:

- (a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
- (b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- (c) The defendant knowingly created a great risk of death to many persons.
- (d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary;

On the other hand, if by six or more votes the jury determines that (defendant) should not be sentenced to death, your advisory sentence will be:

The jury advises and recommends to the court that it impose a sentence of life imprisonment upon (defendant) without possibility of parole.” *Id.*

kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.

(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.

(l) The victim of the capital felony was a person less than 12 years of age.

(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.

(n) The capital felony was committed by a criminal gang member, as defined in s. 874.03.

(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

(p) The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

(6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

(h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.⁸

After receiving the jury's recommendation the judge must then decide the appropriate sentence.⁹ The judge weighs the jury's recommendation and conducts his or her own analysis of the aggravating and mitigating factors. The recommendation of the jury must be given great weight in the judge's decision-making process on the sentence handed down.¹⁰ The judge may sentence a defendant in a different manner than the jury recommends – this is known as an “override.”

The sentence, and the reasons for it, must be reduced to writing so that the Florida Supreme Court can engage in a meaningful review.¹¹ The judgment of conviction and sentence of death is subject to automatic review by the Supreme Court of Florida.¹²

The Florida Supreme Court engages in proportionality review in all cases in which the death penalty is handed down. Proportionality review is the comparison of one case in which the defendant was sentenced to death with other similar death cases.

When the U.S. Supreme Court upheld Florida's current death penalty sentencing law in 1976, the court seemed to rely quite heavily on the Florida Supreme Court's promise to give each death case a meaningful review.¹³ The *Proffitt* court stated:

[T]he Florida statute has a provision designed to assure that the death penalty will not be imposed on a capriciously selected group of convicted defendants. The Supreme Court of Florida reviews each death sentence to ensure that similar results are reached in similar cases. ... In fact, it is apparent that the Florida court has undertaken responsibility to perform its function of death sentence review with a maximum of rationality and consistency. For example, it has several times compared the circumstances of a case under review with those of previous cases in which it has assessed the imposition of death sentences (citations omitted).¹⁴

⁸ Aggravating and mitigating circumstances appear in s. 921.142, F.S. which applies to Capital Drug Trafficking Felonies. Section 921.142, F.S., is also amended by this bill.

⁹ “The punishment for this crime is either death or life imprisonment without the possibility of parole. The final decision as to which punishment shall be imposed rests with the judge of this court; however, the law requires that you, the jury, render to the court an advisory sentence as to which punishment should be imposed upon the defendant.” Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases, Instr. 7.11.

¹⁰ What is referred to as the *Tedder* “Great Weight” Standard was announced by the Florida Supreme Court in *Tedder v. State*, 322 So.2d 908 (Fla. 1975). In that case, the court determined that “[a] jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ.” The same consideration by the sentencing judge is expected of a death recommendation as a life recommendation. *Grossman v. State*, 525 So.2d 833, 839, n.1 (Fla. 1988).

¹¹ *State v. Dixon*, 283 So.2d 1 (Fla. 1973).

¹² s. 921.141, F.S.

¹³ *Proffitt v. Florida*, 428 U.S. 242 (1976). It is important to note that *Proffitt* was decided on 8th and 14th Amendment grounds (cruel or unusual punishment and due process), not on 6th Amendment (right to a jury trial) grounds. (For an extensive discussion of the history of Florida's death penalty see: Eaton, *Stetson Law Review* Fall 2004, 34 *Stet.L.R.* 9).

¹⁴ *Id.*, 258-259.

To date, Florida's capital sentencing scheme has withstood challenges based on the 8th, 14th and 6th Amendments.¹⁵

Other States

Currently 33 states in the U.S. have a death penalty statute. In those states in which the jury has sole discretion in capital sentencing, the decision to sentence the defendant to death must be unanimous. Florida and Alabama are the only states that do not require a unanimous vote of the jury in order to impose the death penalty.

In Alabama, a 10-2 vote is sufficient for the jury to recommend a death sentence. The jury provides an advisory verdict that is not binding on the court. If the jury cannot reach an advisory verdict recommending a sentence, or for other manifest necessity, the court can declare a mistrial and another sentencing hearing can be conducted before another jury. The parties and the court can agree to waive the advisory verdict after one or more mistrials and the court will determine the sentence without a jury recommendation.¹⁶

State v. Steele

Although the U.S. Supreme Court issued rulings in two death penalty cases that indicated that aggravating factors operate as the “functional equivalent of an element of a greater offense,”¹⁷ and therefore must be decided by a jury, the Florida Supreme Court has not yet held that those decisions apply within the context of Florida's death penalty sentencing scheme.¹⁸

In *Steele*, Justice Cantero wrote for the majority:

Even if *Ring* did apply in Florida—an issue we have yet to conclusively decide—we read it as requiring only that the jury make the finding of “an element of a greater offense.” *Id.* That finding would be that at least one aggravator exists—not that a specific one does. But given the requirements of section 921.141 and the language of the standard jury instructions, such a finding already is implicit in a jury's recommendation of a sentence of death. Our interpretation of *Ring* is consistent with the United States Supreme Court's assessment of Florida's capital sentencing statute. In *Jones v. United States*, 526 U.S. 227, 250–51, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999), the Court noted that in its decision in *Hildwin v. Florida*, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728 (1989), in which it concluded that the Sixth Amendment does not require explicit jury findings on aggravating circumstances, “a jury made a sentencing recommendation of death, thus necessarily engaging in the factfinding required for imposition of a higher sentence, that is, the determination that at least one aggravating factor had been proved.” In requiring the jury to consider by majority vote each particular

¹⁵ Cruel or unusual punishment, due process and right to jury trial. *Proffitt v. Florida*, 428 U.S. 242 (1976); *Spaziano v. Florida*, 468 U.S. 447 (1984); *Hildwin v. Florida*, 490 U.S. 638 (1989).

¹⁶ Ala. Code § 13A-5-44-53.

¹⁷ See *Ring v. Arizona*, 536 U.S. 584, 609 (2002) (ruling that aggravating circumstances must be determined by the jury and established beyond a reasonable doubt; quoting *Apprendi v. New Jersey*, 530 U.S. 466 (2000)

¹⁸ *State v. Steele*, 921 So.2d 538 (Fla. 2005).

aggravator submitted rather than merely specifying whether one or more aggravators exist, the trial court in this case imposed a greater burden than the one the Supreme Court imposed in reviewing Arizona’s judge-only capital sentencing scheme in *Ring*.¹⁹

The *Steele* opinion contained “suggestions” from the court that “in light of developments in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury’s recommendations.”²⁰

The court set forth the death penalty sentencing requirements of the other 37 states (at the time of the opinion) and concluded that “Florida is now the only state in the country that allows a jury to decide that aggravators exist *and* to recommend a sentence of death by a mere majority vote.”²¹ Finally, Justice Cantero wrote: “Assuming that our system continues to withstand constitutional scrutiny, we ask the Legislature to revisit it to decide whether it wants Florida to remain the outlier state.”²²

Florida-Specific Statistical Information

Table 1 shows that under current law and practice only 20 percent of death cases over the last twelve years had unanimous jury verdicts. Based on this analysis it is impossible to predict with any degree of accuracy whether requiring a unanimous jury recommendation would result in a marked decline in death cases. It would appear from the current practice that a decline is likely if this bill becomes law, but the degree of the decline is uncertain.

TABLE 1
Distribution of Jury Votes in Death Cases
by Calendar Year of Disposition by Florida Supreme Courtⁱ
(N=296)

Original Jury Vote	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	Total	% ⁱⁱ	Cum %
7-5	6	1	4	4	0	3	0	2	4	1	3	2	2	32	11%	11%
8-4	4	6	2	6	2	0	3	0	2	9	2	1	5	42	14%	25%
9-3	4	4	3	6	2	2	11	3	5	6	6	9	5	66	22%	47%
10-2	3	12	4	3	3	3	2	2	2	5	11	1	3	54	18%	66%
11-1	2	8	5	5	3	1	1	2	1	5	5	1	3	42	14%	80%
12-0	9	6	8	4	2	3	6	7	6	0	1	6	2	60	20%	100%
Subtotal	28	37	26	28	12	12	23	16	20	26	28	20	20	296	100%	
Other ⁱⁱⁱ	3	1	2	3	4	2	0	0	1	4	3	1	0	24		
TOTAL	31	38	28	31	16	14	23	16	21	30	31	21	20	320		

Table 2 analyzes the degree to which a unanimous jury vote results in the case being more likely be to affirmed by the Florida Supreme Court on direct appeal. Sixty-three percent of the 12-0 cases were affirmed by the court compared to 53 percent of the 7-5 cases. It appears then that a unanimous jury vote is not as strongly correlated with an affirmed sentence as perhaps logically predicted.

¹⁹ *Id.*
²⁰ *Id.* at 548.
²¹ *Id.*
²² *Id.* at 549.

TABLE 2

Distribution of Jury Votes in Death Cases Disposed by the Florida Supreme Court on Direct Appeal from Calendar Year 2000 to 2012^{iv} (N=296)					
Original Jury Vote For Death	TOTAL	Death Sentence Affirmed	Percent Affirmed	Death Sentence Not Affirmed ^v	Percent Not Affirmed
7 to 5	32	17	53%	15	47%
8 to 4	42	31	74%	11	26%
9 to 3	66	48	73%	18	27%
10 to 2	54	39	72%	15	28%
11 to 1	42	37	88%	5	12%
12 to 0	60	38	63%	22	37%
TOTAL	296	210	71%	86	29%

In summary, both Tables 1 and 2 illustrate the wide variability in voting practices in these complex and emotionally charged death cases. Given this wide variability, it is difficult to predict the impact on future death cases and voting practices if SB 148 passes and becomes law.

Workload Study Commission

The Supreme Court Workload Study Commission was created as part of Chapter 2000-237, Laws of Florida. The task of the Commission was to “develop recommendations for addressing workload issues, including, but not limited to, the need for additional justices on the supreme court.” The discussion and testimony heard by the Commission included statistics and anecdotal evidence related to the death penalty caseload of the court.

Two recommendations of the Commission were related to the death penalty sentencing law. One of those recommendations was that the Legislature further study the potential to reduce the supreme court’s workload by requiring a super majority vote of the jury (of no less than 9 to 3) before a trial judge could impose the death penalty.²³

The Commission heard testimony that advocated requiring either a supermajority or unanimous jury recommendation in favor of the death penalty before the trial judge could impose the death penalty. Those witnesses argued that if the number of death sentences were reduced, the Court’s workload would be appreciably reduced. The Chief Justice said that requiring a supermajority jury verdict for imposition of the death penalty would appreciably reduce his workload as much as 30-40 percent.²⁴

The Commission heard testimony from representatives of the Attorney General’s Office and the Florida Prosecuting Attorney’s Association who were of the opinion that juries who believed the death penalty was the appropriate sentence in a case would reach the required vote - even a

²³ Minutes of the October 24, 2001 Meeting, Supreme Court Workload Study Commission; *2001 Final Report of the Supreme Court Workload Study Commission*, page 11.

²⁴ Minutes of the October 24, 2001 Meeting, Supreme Court Workload Study Commission; *2001 Final Report of the Supreme Court Workload Study Commission*, page 11.

supermajority vote - in order to issue that verdict, therefore the number of death penalty cases would not decrease if the statute were modified.²⁵

Recognizing that there are other policy issues involved, the Commission declined to recommend that the Legislature approve a supermajority vote. However, the Commission approved a finding that requiring a supermajority vote of the jury before a trial judge could impose the death penalty would reduce the workload of the court.

America Bar Association Report

In September of 2006, the American Bar Association (ABA) issued a report entitled “Evaluating Fairness and Accuracy in State Death Penalty Systems: The Florida Death Penalty Assessment Report.” The authors of the report acknowledged that the Florida Supreme Court has consistently rejected the claims under the U.S. Supreme Court’s decision in *Ring v. Arizona* that the jury must make a unanimous advisory sentence.²⁶ Despite this recognition and Florida’s practice of not requiring unanimity, the ABA report asserts that by not requiring a unanimous recommendation meaningful jury deliberation is lessened.²⁷ The ABA report cites to a survey of Florida capital jurors who were not required to reach a unanimous vote to recommend a death sentence.²⁸ The ABA report argues that these jurors were less likely to take longer than 3 hours to reach a sentencing decision and less likely to demonstrate emotional commitment to the punishment decision.²⁹

Multi-State Studies of Capital Case Juries

The chief criticisms of pure jury-driven sentencing comes from the belief that juries may be confused by the court’s instructions, may act out of passion rather than reason, or may not understand or accept their role in the sentencing structure. These issues were studied by The Capital Jury Project (CJP) a multi-state research effort, funded by the National Science Foundation.

In 1990, the CJP researchers began interviewing jurors who had served in capital cases. Analysis of the data began appearing as early as 1993, with the latest article being published in June, 2001. According to the Cornell Death Penalty Project, the CJP researcher interviewed 1,115 jurors who sat on 340 capital trials in fourteen different states.³⁰

²⁵ Minutes of the January 29, 2001 Meeting, Supreme Court Workload Study Commission; *2001 Final Report of the Supreme Court Workload Study Commission*, pages 11-12.

²⁶ “Evaluating Fairness and Accuracy in State Death Penalty Systems: The Florida Death Penalty Assessment Report”, American Bar Association, Death Penalty Moratorium Implementation Project (2006), pg. 287.

²⁷ *Id.* pg. 303.

²⁸ *Id.*

²⁹ *Id.* pg. 304.

³⁰ Cornell Death Penalty Project, Cornell Law School, www.lawschool.cornell.edu/lawlibrary/death/cjp.htm.

Juror Responsibility:

One article based on the data gathered by the Capital Jury Project examined juror responsibility.³¹

There are many ways in which a juror may shift sentencing responsibility, given all the “actors” in a capital case. This shifting of responsibility, according to some critics, leads to a capital sentencing law which makes death sentences unreliable and too easy to impose.³²

In attempting to examine whether capital sentencing jurors assume responsibility for the sentences they impose, the authors utilized data from interviews of 153 South Carolina jurors. It was found that most jurors accept responsibility for their capital sentencing decision (59%), as far as their role in the system is concerned, although a significant minority do not. The study found that the “average juror understands and accepts the key role he plays in determining the defendant’s sentencing; does not view the law as forcing him to reach a particular sentence; does not view a death decision as something that the courts will likely reverse; and finds his service on a capital jury emotionally upsetting. On the other hand, he does not think it very likely that any death sentence he imposes will actually ever be carried out.”³³

Juror Confusion:

One criticism of the capital jury’s involvement in sentencing is that the jury may not fully understand the mechanics of deciding between the death penalty and life imprisonment. One example of this potential for juror confusion is explored in the article *Correcting Deadly Confusion: Responding to Jury Inquiries in Capital Cases* which examines the Virginia case of Lonnie Weeks.³⁴ In that case, the jury was instructed in the law, but had a question about the instructions with regard to whether the jury was *required* to impose the death penalty under certain circumstances.³⁵ In answering the jury’s question, the trial court simply referred the jury’s attention back to the specific instruction about which it had the question.³⁶

In a 5-4 decision, the U.S. Supreme Court held that the *Weeks* jury was adequately instructed, and affirmed the conviction. The Court stated: “At best, petitioner has demonstrated only that there exists a slight possibility that the jury considered itself precluded from considering mitigating evidence. Such a demonstration is insufficient to prove a constitutional violation....”³⁷

In the *Correcting Deadly Confusion* study which was based on the facts of the *Weeks* case, a mock jury of 154 people was used to test jury confusion with regard to the instructions given in the *Weeks* trial. The study modified one variable in the jury instruction. The study showed that

³¹ *Jury Responsibility in Capital Sentencing: An Empirical Study*, by Theodore Eisenberg, Stephen P. Garvey, and Martin T. Wells (44 Buff.L.Rev. 339).

³² *Id.* pg. 340.

³³ *Id.* pg. 368

³⁴ Stephen P. Garvey, Sheri Lynn Johnson and Paul Marcus, 85 Cornell Law Review 627 (2000).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Weeks v. Angelone*, 528 U.S. 225, 236 (2000).

jurors who understood the instruction were more likely to vote for life compared to jurors who misunderstood it.³⁸

“Among jurors who understood that death was not required even if heinousness is proven, sixty-three percent voted for a life sentence, whereas the corresponding figure among those who believed death was required dropped to fifty-two percent. The results were similar for future dangerousness: sixty-two percent of the jurors who understood the rule voted for life, compared to fifty-three percent who did not.”³⁹

III. Effect of Proposed Changes:

The bill changes the capital case sentencing law in four ways.

First, rather than having the sentencing jury be able to render a recommendation for the death penalty by a simple majority vote, the bill requires a unanimous recommendation.

The bill also requires that the jury be provided with a special verdict form “for each aggravating circumstance found.”

The jury must unanimously vote for each aggravating circumstance it uses in support of a recommended sentence of death.

Finally, the jury must find that “sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist.” This is the opposite of current law that requires sufficient mitigators outweigh any aggravators found to exist.

Other Potential Implications:

Although the new sentencing provisions are effective for offenses committed on or after October 1, 2013, it cannot be ruled out that persons sentenced to death prior to the effective date will nonetheless raise the issue of the application of the provisions to their cases. This could result in a substantial number of appeals, and whether they are factually, facially, invalid claims, the appeals must be answered by the Attorney General.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁸ *Id.*

³⁹ *Id.*

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a fiscal impact to the Attorney General's Office and the court system that is a result of the potential appellate practice resulting from this bill. According to historical Supreme Court documents, legislation requiring a unanimous jury vote may have a notable workload reduction to the Supreme Court.⁴⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

ⁱ Thirteen years of data compiled by the Supreme Court Clerk's Office.

ⁱⁱ Calculated percentage excludes the "other" category.

ⁱⁱⁱ Includes: waiver of penalty phase, and judicial overrides from jury recommendation of life to judge imposing death.

^{iv} Source document: Supreme Court Death Penalty Direct Appeals Disposed- With Jury Votes, 2000 to 2012

^v Includes: reversal and remand for trial, reduced to life, dismissal, deceased defendant, and acquittal.

⁴⁰ Minutes of the October 24, 2001 Meeting, Supreme Court Workload Study Commission; *2001 Final Report of the Supreme Court Workload Study Commission*, page 11.

By Senator Altman

16-00200-13

2013148__

A bill to be entitled

An act relating to sentencing in capital felonies; amending ss. 921.141 and 921.142, F.S.; requiring that an advisory sentence of death be made by a unanimous recommendation of the jury after a defendant's conviction or adjudication of guilt for a capital felony or capital drug-trafficking felony; requiring the court to instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist; requiring the court to instruct the jury that each aggravating circumstance used to support the jury's recommendation of death be proven beyond a reasonable doubt by a unanimous vote; requiring that the court provide a special verdict form for each aggravating circumstance found; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 921.141, Florida Statutes, are amended to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as

Page 1 of 4

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

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enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

Effective for an offense committed on or after October 1, 2013, an advisory sentence of death must be made by a unanimous recommendation of the jury. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist. The court shall further instruct the jury that each aggravating circumstance used to support the jury's recommendation of death must be proven beyond a reasonable doubt by a unanimous vote. The court shall provide a special verdict form for each aggravating circumstance found.

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—

Notwithstanding the recommendation of a ~~majority~~ of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5); ~~7~~ and

(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

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

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59 In each case in which the court imposes the death sentence, the
60 determination of the court shall be supported by specific
61 written findings of fact based upon the circumstances in
62 subsections (5) and (6) and upon the records of the trial and
63 the sentencing proceedings. If the court does not make the
64 findings requiring the death sentence within 30 days after the
65 rendition of the judgment and sentence, the court shall impose
66 sentence of life imprisonment in accordance with s. 775.082.

67 Section 2. Subsections (3) and (4) of section 921.142,
68 Florida Statutes, are amended to read:

69 921.142 Sentence of death or life imprisonment for capital
70 drug trafficking felonies; further proceedings to determine
71 sentence.—

72 (3) ADVISORY SENTENCE BY THE JURY.—After hearing all the
73 evidence, the jury shall deliberate and render an advisory
74 sentence to the court, based upon the following matters:

75 (a) Whether sufficient aggravating circumstances exist as
76 enumerated in subsection (6);

77 (b) Whether sufficient mitigating circumstances exist which
78 outweigh the aggravating circumstances found to exist; and

79 (c) Based on these considerations, whether the defendant
80 should be sentenced to life imprisonment or death.

81
82 Effective for an offense committed on or after October 1, 2013,
83 an advisory sentence of death must be made by a unanimous
84 recommendation of the jury. The court shall instruct the jury
85 that, in order for the jury to recommend to the court that the
86 death penalty be imposed, the jury must find that sufficient
87 aggravating circumstances exist which outweigh any mitigating

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88 circumstances found to exist. The court shall further instruct
89 the jury that each aggravating circumstance used to support the
90 jury's recommendation of death must be proven beyond a
91 reasonable doubt by a unanimous vote. The court shall provide a
92 special verdict form for each aggravating circumstance found.

93 (4) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—

94 Notwithstanding the recommendation of ~~a majority of~~ the jury,
95 the court, after weighing the aggravating and mitigating
96 circumstances, shall enter a sentence of life imprisonment or
97 death, but if the court imposes a sentence of death, it shall
98 set forth in writing its findings upon which the sentence of
99 death is based as to the facts:

100 (a) That sufficient aggravating circumstances exist as
101 enumerated in subsection (6);^r and

102 (b) That there are insufficient mitigating circumstances to
103 outweigh the aggravating circumstances.

104
105 In each case in which the court imposes the death sentence, the
106 determination of the court shall be supported by specific
107 written findings of fact based upon the circumstances in
108 subsections (6) and (7) and upon the records of the trial and
109 the sentencing proceedings. If the court does not make the
110 findings requiring the death sentence within 30 days after the
111 rendition of the judgment and sentence, the court shall impose
112 sentence of life imprisonment in accordance with s. 775.082, and
113 ~~the defendant is that person shall be~~ ineligible for parole.

114 Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic _____ Bill Number SB 148
Name William Eddius (if applicable)
Job Title State Attorney 1st Cir, President of FPAA (if applicable)
Address 19 Gov. Center Phone 850 595 4761
Street Fls Fl 32501
City *State* *Zip* E-mail _____

Speaking: For Against Information

Representing FPAA

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 11, '13
Meeting Date

Topic Unanimous Verdict - Capital cases

Bill Number 148
(if applicable)

Name HARRY LEE ANSTEAD

Amendment Barcode _____
(if applicable)

Job Title RETIRED - FLA. SUP. CT.

Address 1128 COE LANDING RD.

Phone 576-6102

Tallahassee
City State Zip

E-mail theansteads@aol.com

Speaking: For Against Information

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/2013
Meeting Date

Topic Unruhinger Tony / death penalty Bill Number SB 148
Name MARK Schlakman Amendment Barcode _____ (if applicable)
Job Title senior program dir / FSU Center for the Advancement of Human Rights
Address 426 W. Jefferson St. Phone 644-4614
Tallahassee, FL 32301 E-mail mschlakman@admin.fsu.edu
City State Zip

Speaking: For Against Information

Representing _____

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/14/13
Meeting Date

Topic UNANIMOUS JURY/DEATH PENALTY

Bill Number SB 148
(if applicable)

Name GREGORY MILLER

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 823 SUMMERBROOK DR
Street

Phone 850 391 0001

TALLAHASSEE FL 32312
City State Zip

E-mail gm@beggslane.com

Speaking: For Against Information

Representing SPONSOR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 11 / 2013

Meeting Date

Topic _____

Bill Number 148
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11/13

Meeting Date

Topic Sentencing in Capital Felonies

Bill Number 148

(if applicable)

Name Ron Bilbao

Amendment Barcode

(if applicable)

Job Title SR. Legislative Assoc

Address 4500 Biscayne Blvd

Phone 919-923-7288

Street

Miami

FL

33137

City

State

Zip

E-mail Rbilbao@aclufl.org

Speaking: For Against Information

Representing ACLU of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/2013

Meeting Date

Topic UNANIMOUS JURY PROCT Bill Number 148
(if applicable)

Name REX DIMMICK Amendment Barcode _____
(if applicable)

Job Title PUBLIC DEFENDER 10th JUDICIAL CIR

Address 255 NORTH BROADWAY Phone 863.534.4250
Street

CARTER FL 33831
City State Zip

E-mail RDIMMICK@PD10.STATE.FL.US

Speaking: For, Against, Information

Representing FLORIDA PUBLIC DEFENDER ASSOC. INC

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

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

This form is part of the public record for this meeting

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Sentencing in Capital Cases Bill Number 148
(if applicable)

Name Bill Jennings Amendment Barcode _____
(if applicable)

Job Title CCRC - Middle

Address 3801 Corporate Park Dr., Suite 210 Phone (813) 740-3544
Street

Tampa FL 33619 E-mail _____
City State Zip

Speaking: For Against Information

Representing _____

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/13
Meeting Date

Topic Sentencing in Capital Felonies Bill Number SB 148
(if applicable)

Name Suzanne Ketter Amendment Barcode _____
(if applicable)

Job Title Chief Asst. CCRC - South

Address 1 East Broward Blvd. Ste 444 Phone 954/31284
Street

Fort Lauderdale FL 33301
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-13
Meeting Date

Topic Death Penalty Bill Number SB148
(if applicable)

Name BELVIN PERRY, JR Amendment Barcode _____
(if applicable)

Job Title CHIEF JUDGE 9th circuit

Address 425 N. Orange Ave Suite 2010 Phone 407-836-2008

Orlando FL 32801 E-mail _____
City State Zip

Speaking: For Against Information

Representing 9th circuit

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/13

Meeting Date

Topic Sentencing - Capital Felonies Bill Number 148
Name Sheila Hopkins Amendment Barcode _____ (if applicable)
Job Title Director
Address 201 W. Park Ave. Phone 205-6826
Street City State Zip E-mail shopkins@flacathconf.org

Speaking: For Against Information

Representing Fl. Conference of Catholic Bishops

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 400

INTRODUCER: Criminal Justice Committee and Senator Dean

SUBJECT: False Reports to Law Enforcement Officers

DATE: March 11, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			JU	
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 400 increases the offense degree for knowingly giving false information to a law enforcement officer from a first degree misdemeanor to a third degree felony if one of two circumstances applies. In the first circumstance, the information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by an audio recording or audio recording in a video of that information; a written or recorded statement made by the person who gave that information; or another person who was present when the person gave that information to the officer and heard that information. In the second circumstance, the information the person gave to the law enforcement officer was communicated in writing.

This bill substantially amends section 837.05, Florida Statutes.

II. Present Situation:

Recent Legislation Regarding False Information Reporting

The Senate Select Committee on Protecting Florida's Children was created on August 10, 2011, in the wake of the Casey Anthony verdict.¹ The committee was charged with examining the various policy options to further advance the protection of children and determine whether changes to current law were needed.

The committee identified the relevant laws on child abuse and providing false information in missing children investigations. The committee examined ch. 827, F.S., relating to the abuse of children, s. 406.12, F.S., relating to the duty to report a death, and s. 837.055, F.S., relating to knowingly giving false information to a law enforcement officer during a missing person investigation. Particular attention was given to ss. 827.03² and 837.055, F.S.,³ and their relationship to the circumstances in the Anthony case.

After reviewing these laws and receiving testimony from child abuse officials, law enforcement officials, prosecutors, and defense attorneys, the committee recommended amending s. 837.055, F.S., to make it a third degree felony to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation involving a child 16 years of age or younger with the intent to mislead the officer or impede the investigation and the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement, or death.⁴

The Legislature passed CS/HB 37,⁵ which enacted into law the changes to s. 837.055, F.S., recommended by the committee.

False Information Reporting Under Section 837.05, F.S.

Although the Legislature amended s. 837.055, F.S., the statute under which Casey Anthony was convicted of providing false information to a law enforcement officer, Anthony was initially charged (by information) by the State Attorney with providing false information to a law enforcement officer in violation of s. 837.05, F.S.⁶ This statute provides that it is a first degree

¹ A grand jury indicted Casey Anthony based on their determination of her alleged involvement in the death of her 2 year-old daughter, Caylee. Anthony was charged with first degree murder, aggravated child abuse, aggravated manslaughter of a child, and providing false information to a law enforcement. She pled not guilty. On July 5, 2011, a jury found Anthony not guilty of all of the charges except the four counts of providing false information to a law enforcement officer in violation of s. 893.055, F.S. Anthony received a sentence of one year in jail and a \$1,000 fine for each count. *See* Senate Analysis of SB 858, dated January 20, 2012 (available at <http://www.flsenate.gov/>). The Florida Fifth District Court of Appeal recently set aside two of Anthony's four convictions for providing false information because the court found those convictions violated double jeopardy principles. *See Anthony v. State*, 2013 WL 275533 (Fla. 5th DCA January 25, 2013).

² Section 827.03, F.S., punishes various acts of child abuse and neglect.

³ Section 837.055(1), F.S., which was not altered by the 2012 legislative changes to s. 837.055, F.S. (described in the text of this analysis), provides that it was a first degree misdemeanor to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.

⁴ Senate Analysis of SB 858, dated January 20, 2012, *supra*.

⁵ Chapter 2012-53, L.O.F.

⁶ Court documents on file with the Senate Committee on Criminal Justice.

misdeemeanor to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime.

Staff did not find any Florida appellate case relevant to application of s. 837.05, F.S., in the context of providing false information to a law enforcement officer who is conducting a missing person investigation. However, the Florida Third District Court of Appeal, in reviewing a case involving a defendant convicted for giving false statements to police at a police station during a homicide investigation, stated, in dicta, that if the defendant “is guilty of an offense involving false statements, it must be an offense provided for in Section 837.012⁷ or 837.05, Florida Statutes (1977).”⁸

III. Effect of Proposed Changes:

The bill amends s. 837.05, F.S., to increase the offense degree for knowingly giving false information to a law enforcement officer from a first degree misdemeanor⁹ to a third degree felony¹⁰ if one of two circumstances applies. In the first circumstance, the information the person gave to the law enforcement officer was communicated orally and the officer’s account of that information is corroborated by an audio recording or audio recording in a video of that information; a written or recorded statement made by the person who gave that information; or another person who was present when the person gave that information to the officer and heard that information. In the second circumstance, the information the person gave to the law enforcement officer was communicated in writing.

The effective date of the bill is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not impact municipalities and counties under the requirements of Article VII, Section 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The bill does not raise public records or open meetings issues under the requirements of Article I, Section 24(a) and (b), of the Florida Constitution.

⁷ Section 837.012(1), F.S., provides that it is a first degree misdemeanor for a person to make a false statement, which he or she does not believe to be true, under oath, not in an official proceeding, in regard to any material matter. Section 837.05, F.S., does not contain any ‘oath’ requirement.

⁸ *Schramm v. State*, 374 So.2d 1043, 1045 (Fla. 3rd DCA 1979) (footnotes omitted). The appellate court reversed Schramm’s conviction for a violation of s. 837.02, F.S. (perjury in an official proceeding).

⁹ A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

¹⁰ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S. The third degree felony created by the bill is not ranked in the offense severity ranking chart of the Criminal Punishment Code (s. 921.0022, F.S) and is, therefore, ranked based on its degree as a Level 1 offense (s. 921.0023, F.S.).

C. Trust Funds Restrictions:

The bill does not impact trust fund restrictions under the requirements of Article III, Section 19(f), of the Florida Constitution.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimated that the original bill would have an insignificant prison bed impact due to low volume and the creation of an unranked third degree felony. Although, CS/SB 400 differs substantially from the original bill it also creates an unranked third degree felony and is more narrowly drawn than the original bill in regard to how this offense may be committed.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

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

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

CS by Criminal Justice on March 11, 2013:

Increases the offense degree for knowingly giving false information to a law enforcement officer from a first degree misdemeanor to a third degree felony if one of two circumstances applies. In the first circumstance, the information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by an audio recording or audio recording in a video of that information; a written or recorded statement made by the person who gave that information; or another person who was present when the person gave that information to the officer and heard that information. In the second circumstance, the information the person gave to the law enforcement officer was communicated in writing.

B. Amendments:

None.

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



373500

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 14 - 23
and insert:

(1) (a) Except as provided in paragraph (b) or subsection (2), a person who ~~whoever~~ knowingly gives false information to a ~~any~~ law enforcement officer concerning the alleged commission of any crime, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who commits a violation of paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person has



373500

13 previously been convicted of a violation of paragraph (a) and
14 subparagraph 1. or 2. applies:

15 1. The information the person gave to the law enforcement
16 officer was communicated orally and the officer's account of
17 that information is corroborated by:

18 (a) An audio recording or audio recording in a video of
19 that information;

20 (b) A written or recorded statement made by the person who
21 gave that information; or

22 (c) Another person who was present when the person gave
23 that information to the officer and heard that information.

24 2. The information the person gave to the law enforcement
25 officer was communicated in writing.

26
27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete lines 3 - 7

31 and insert:

32 officers; amending s. 837.05, F.S.; providing that it
33 is a third degree felony to knowingly give false
34 information to a law enforcement officer concerning
35 the alleged commission of a crime if the defendant has
36 previously been convicted of this offense and the
37 information, if communicated orally, is corroborated
38 in a specified manner, or was communicated in writing;
39 providing an effective date.

By Senator Dean

5-00634-13

2013400__

1 A bill to be entitled
2 An act relating to false reports to law enforcement
3 officers; amending s. 837.05, F.S.; increasing
4 criminal penalties for a second or subsequent
5 conviction of providing false information to a law
6 enforcement officer concerning the alleged commission
7 of a crime; providing an effective date.

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

10
11 Section 1. Section 837.05, Florida Statutes, is amended to
12 read:

13 837.05 False reports to law enforcement authorities.—

14 (1) Except as provided in subsection (2), a person who
15 ~~whoever~~ knowingly gives false information to a ~~any~~ law
16 enforcement officer concerning the alleged commission of any
17 crime, commits:

18 (a) For a first offense resulting in conviction, a
19 misdemeanor of the first degree, punishable as provided in s.
20 775.082 or s. 775.083.

21 (b) For a second or subsequent offense resulting in
22 conviction, a felony of the third degree, punishable as provided
23 in s. 775.082, s. 775.083, or s. 775.084.

24 (2) A person who ~~whoever~~ knowingly gives false information
25 to a law enforcement officer concerning the alleged commission
26 of a capital felony, commits a felony of the third degree,
27 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

28 Section 2. This act shall take effect October 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

January 24, 2013

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

Dear Chairman Evers:

I respectfully request you place Senate Bill 400, relating to False Reports to Law Enforcement, on your Criminal Justice Committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Dean".

Charles S. Dean
State Senator District 5

cc: Amanda Cannon, Staff Director

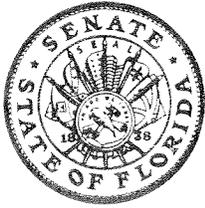
REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHARLES S. DEAN, SR.
5th District

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

March 11, 2013

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

Dear Chairman Evers:

Thank you for allowing Senate Bill 400, relating to False Reports to Law Enforcement Officers, and Senate Bill 540, relating to Mandatory Supervision of Specified Offenders by the Department of Corrections, to be placed on your agenda. Unfortunately, I will be unable to attend the Committee meeting and would like to request your permission to allow my aide, Chase Daniels, to present these bills in my place.

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

Sincerely,

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

Charles S. Dean
State Senator, District 5

Cc: Amanda Cannon, Staff Director

REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11/13

Meeting Date

Topic False Reports to Law Enforcement Officers Bill Number SB 400
(if applicable)

Name Taylor Hatch Amendment Barcode _____
(if applicable)

Job Title government consultant

Address 225 South Adams St. suite 250 Phone 850-294-0797

Tallahassee FL 32301
Street City State Zip

E-mail guy@guyspearman.com

Speaking: For Against Information

Representing Florida Sheriff's Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 540

INTRODUCER: Criminal Justice Committee and Senator Dean

SUBJECT: Mandatory Supervision of Specified Offenders by the Department of Corrections

DATE: March 11, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.			JU	
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 540 expands the scope of the conditional release program that requires post-release supervision of certain offenders who are released from prison after serving 85 percent of their sentence. Currently, conditional release supervision is required for an inmate who is serving a sentence for a designated violent offense and who has served at least one prior felony commitment in a state or federal prison. The bill removes the condition that the inmate have served a prior felony commitment.

The bill also renames conditional release supervision as “mandatory supervision.”

This bill substantially amends sections 944.291 and 947.1405 of the Florida Statutes. The bill also amends sections 216.136, 394.926, 394.927, 775.084, 775.16, 775.21, 775.261, 893.11, 943.0435, 943.325, 944.171, 944.28, 944.606, 944.607, 944.608, 944.70, 945.36, 947.071, 947.13, 947.141, 947.16, 947.22, 947.24, 948.09, 948.32, and 957.06 of the Florida Statutes for the purpose of changing the program name.

II. Present Situation:

Most inmates who are serving sentences in Florida prisons are eligible to have the length of their sentence reduced by application of gain time. Gain time is awarded by the Department of Corrections based upon an inmate’s institutional adjustment and participation in positive activities. An inmate’s sentence may be reduced by as much as 15 percent by reason of gain time.¹ In most cases, an inmate who is released early when his or her sentence expires due to application of gain time has completed the sentence and is no longer under the jurisdiction of the court or the department. The exceptions are when the sentencing court has ordered probation or community control following incarceration and when the inmate is required to be placed on conditional release.

Conditional release was created by the Legislature in 1988 to require post-release supervision of certain inmates who are released from incarceration early because of accrued gain time. Conditional releasees are supervised by Correctional Probation Officers of the Department of Corrections. The Parole Commission (commission) establishes the length of supervision, which cannot be any longer than the original sentence that was imposed by the court. The commission also sets the conditions of supervision, which include the mandatory conditions required by s. 947.1405, F.S., and any additional conditions that the commission determines to be appropriate. When appropriate, the commission can require conditional releasees to attend training or treatment such as drug rehabilitation programs.

The commission is responsible for conducting hearings regarding alleged violations of the conditions of supervision. The commission has several options if it finds that a violation occurred, including revoking supervision and returning the offender to prison to serve the remaining portion of his or her sentence. Conditional releasees who are returned to prison forfeit any gain time that was earned prior to their release.

Section 947.1405, F.S., requires conditional release for inmates who have been sentenced as a habitual or violent habitual offender, a violent career criminal, or a sexual predator. It also requires conditional release for inmates convicted of a crime which “is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993)” if the inmate had served at least one prior felony commitment in a state or federal correctional institution. The crimes that trigger the conditional release requirement for repeat felons are:

Violent Offenses Requiring Placement on Conditional Release	
Category 1: Murder, Manslaughter	<ul style="list-style-type: none"> • ch. 782, F.S. – Homicide (except s. 782.04(1)(a), F.S. – capital murder) • s. 316.193(3)(c)3., F.S. – DUI Manslaughter (automobile) • s. 327.351(2), F.S. – DUI Manslaughter (vessel) (repealed in 1996)

¹ Section 944.275(4)(b)3., F.S., provides that an offender cannot receive an amount of gain time that would result in serving less than 85 percent of the imposed sentence.

Violent Offenses Requiring Placement on Conditional Release	
Category 2: Sexual Offenses	<ul style="list-style-type: none"> • ch. 794, F.S. – Sexual Battery • ch. 800, F.S. – Lewdness; Indecent Exposure • s. 826.04, F.S. – Incest • s. 491.0112, F.S. – Sexual Misconduct by a Psychotherapist
Category 3: Robbery	<ul style="list-style-type: none"> • s. 812.13, F.S. – Robbery • s. 812.133, F.S. – Carjacking • s. 812.135, F.S. – Home Invasion Robbery
Category 4: Violent Personal Crimes	<ul style="list-style-type: none"> • ch. 784, F.S. – Assault, Battery • s. 836.05, F.S. – Threats, Extortion • s. 836.10, F.S. – Written Threats to Kill or Do Bodily Injury • s. 843.01, F.S. – Resisting Officer with Violence • s. 381.411(4), F.S. – Battery on HRS Employee (repealed effective April 27, 2012)

In fiscal year 2011-2012, 4799 offenders were placed on conditional release. Of this number, 2448 were violent offenders. The average conditional release sentence was approximately 17 months for all conditional releasees and approximately 6 months for those who were violent offenders sentenced under the 85 percent law. The median conditional release sentence for violent offenders was 3.7 months.² As of December 31, 2012, 2254 conditional releasees were being actively supervised by the department.³

III. Effect of Proposed Changes:

The bill amends a number of statutes to change the name “conditional release” to “mandatory supervision.” It also amends ss. 944.291 and 947.1405, F.S., to require mandatory supervision for all offenders who were released early by reason of gain time after serving a sentence for murder, sexual offenses, robbery, or other specified violent personal crimes. This removes the current stipulation that conditional release (now mandatory supervision) only applies to such offenders if they have also previously served at least one felony commitment in a state or federal correctional institution.

The bill applies prospectively to offenders who are imprisoned for offenses committed on or after October 1, 2013, so it would have a gradually increasing effect. The table below indicates

² “Conditional release sentence” is used to indicate the length of time between the actual time served by the offender and 100% of his or her sentence. Data for all conditional releasees is from Department of Corrections 2011-2012 Agency Statistics, Community Supervision Admissions, available at www.dc.state.fl.us/pub/annual/1112/stats/csa_month.html ; Specific data for violent offenders released on conditional release is included in an email dated January 18, 2013 from the Department of Corrections to the Office of Economic & Demographic Research and is on file with the Senate Committee on Criminal Justice.

³ Data concerning community supervision are from the Department of Corrections Monthly Status Report of Florida’s Community Supervision Population, January 2007.

the commission’s estimate of the number of offenders who would be placed on conditional release as a result of the bill:⁴

Florida Parole Commission Projection: Additional Offenders Admitted to Mandatory Supervision Under Provisions of Senate Bill 540		
Fiscal Year	Year After Effective Date	Number of Offenders Admitted
2013-2014	1	3
2014-2015	2	41
2015-2016	3	270
2016-2017	4	555
2017-2018	5	893
2022-2023	10	2542
2027-2028	15	2519
2032-2033	20	3265

The department calculates recidivism rates based upon return of an inmate to prison within three years of release. Using this definition, the overall recidivism rate for inmates released from 2003-2010 without supervision was 25 percent.⁵ All of these returned as the result of a new felony commitment. During that same period, 19.5 percent of inmates released on conditional release returned to prison as a result of a new felony commitment and another 31.1 percent returned to prison for a technical violation of conditional release (including non-criminal violations and commission of a misdemeanor).⁶ While these statistics are informative, these numbers do not lend themselves to definitive conclusions about the effectiveness of the program on different populations.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ The estimates are included in an email from commission staff dated December 7, 2012 and forwarded to Senate Criminal Justice Committee staff on December 10, 2012, which is on file with the Senate Criminal Justice Committee.

⁵ “2011 Florida Prison Recidivism Report: Releases from 2003-2010”, Florida Department of Corrections, April 2012, p. 12.

⁶ The data is included in an email from department staff dated January 30, 2013 and forwarded to Senate Criminal Justice Committee staff on February 6, 2013, which is on file with the Senate Criminal Justice Committee.

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

None.

B. Private Sector Impact:

Inmates who are placed on mandatory supervision after release from prison would be required to pay costs of supervision and restitution to victims if they are financially able to do so. Payment of restitution would be beneficial to victims. Payment of cost of supervision would negatively impact the released inmate.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet considered the impact of this bill on prison bed space. Based upon current recidivism rates, it is possible that fewer released offenders would return to prison for a new offense, but more would return for a technical violation of conditional release.

The commission indicates that the impact of the bill in the first three years will require it to employ an additional Parole Tech II at \$47,429. The commission also asserts that the bill will result in the commission of fewer crimes, which will reduce costs for the court system, law enforcement, and jails.⁷

The department indicates that the bill will have a fiscal impact for increased costs both for supervising inmates in the community and for housing them in prisons. The department estimates that this will have a cumulative impact of \$1,428,931 over three years. Over five years, the cumulative impact is estimated at \$5,267,311, with \$2,443,635 of that amount in the fifth year. In addition, the department estimates that it will incur one-time expenses of \$171,000 for computer programming changes that would be required by changing “conditional release” to “mandatory supervision” and \$50,000 for programming changes associated with the change in criteria.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁷ Florida Parole Commission, Proposal Analysis and Economic Impact of House Bill 829 and Senate Bill 540 (February 13, 2013).

⁸ Department of Corrections, 2013 Bill Analysis of Senate Bill 540 (revised).

VIII. Additional Information:

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

CS by Criminal Justice on March 11, 2013:

- Converts findings of fact to statement of legislative intent.
- Creates annual requirement to report the rate of mandatory supervision offenders returning to prison.
- Deletes bill section that inadvertently renamed DJJ conditional release program.
- Reinserts “conditional release” into the habitual felony offender and gain time forfeiture statutes to apply to those offenders who are on conditional release prior to the effective date of the bill.

- B. **Amendments:**

None.



838018

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 20 - 26
and insert:

Section 1. Legislative intent.- It is the intent of the Legislature to require intensive postrelease supervision of offenders who have been convicted of violent offenses, thereby assisting them in successfully transitioning from prison back to the community and reducing their rate of reoffending. It is also the intent of the Legislature that the renaming of conditional release supervision to mandatory supervision does not create a new program, but it is merely a name change to accurately



838018

13 reflect the nature of this non-discretionary release.

14

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

16 And the title is amended as follows:

17 Delete line 4

18 and insert:

19 legislative intent; amending s. 944.291, F.S.;



616632

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 451 - 502
and insert:

(13) The commission, in conjunction with the Department of Corrections, shall develop a report to track offenders placed on mandatory supervision to determine their rate of return to prison for a new crime. A report providing such information shall be submitted to the Speaker of the House of Representatives and the President of the Senate on or before July 1, 2017, and on or before July 1 every year thereafter.



616632

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

14 And the title is amended as follows:

15 Delete line 10

16 and insert:

17 creating a reporting requirement; amending ss.

18 216.136, 394.926, 394.927



703002

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (616632)

Delete line 8
and insert:
prison, indicating whether the offender returned to prison for a
new crime or for a technical violation of probation. A report
providing such information



712686

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/11/2013	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (616632)

Delete line 8
and insert:
prison. A report providing such information



399584

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 573
and insert:
mandatory supervision, conditional release, parole or court-



493376

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 1004 - 1005
and insert:
clemency, mandatory supervision as described in chapter 947,
conditional release as described in chapter 947 prior to July 1,
2013, probation or community control as described in



459410

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 1318

and insert:

(6) Whenever a mandatory supervision, conditional release,

1
2
3
4
5

By Senator Dean

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A bill to be entitled

An act relating to mandatory supervision of specified offenders by the Department of Corrections; providing legislative findings; amending s. 944.291, F.S.; requiring that persons convicted on or after a specified date of crimes in specified categories be released only under mandatory supervision; amending s. 947.1405, F.S.; renaming the conditional release program as the "mandatory supervision program"; amending ss. 20.316, 216.136, 394.926, 394.927, 775.084, 775.16, 775.21, 775.261, 893.11, 943.0435, 943.325, 944.171, 944.28, 944.606, 944.607, 944.608, 944.70, 945.36, 947.071, 947.13, 947.141, 947.16, 947.22, 947.24, 948.09, 948.32, and 957.06, F.S.; revising provisions to conform to changes made by the act; providing an effective date.

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

Section 1. Legislative findings.—The Legislature finds that an offender convicted of violent offenses and sentenced to incarceration is at a higher risk of continuing to perpetrate crimes after his or her release. The Legislature further finds that intensive postrelease supervision may assist these offenders in successfully transitioning from the prison system back into the community, reducing the rate of recidivism.

Section 2. Section 944.291, Florida Statutes, is amended to read:

944.291 Prisoner released by reason of gain-time allowances

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

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or attainment of provisional release date.—

(1) Notwithstanding any ~~other provision of law to the contrary,~~ a prisoner who has served his or her term or terms, less allowable gain-time deductions as provided by law, or who has attained his or her provisional release date shall, upon release, be placed under further supervision and control of the department. A ~~Any~~ released prisoner who is not under further supervision and control of the department or who is not subject to any statute relating to parole ~~is shall be~~ eligible, on a voluntary basis, for any assistance available to him or her through any parole or probation office under the department.

(2) A ~~Any~~ prisoner who is convicted of a crime committed on or after October 1, 1988, which crime is contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure, and who has served at least one prior felony commitment at a state or federal correctional institution, ~~is~~ is sentenced as a habitual or violent habitual offender pursuant to s. 775.084, or is convicted of a crime committed on or after October 1, 2013, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), may ~~only~~ be released only under mandatory conditional release supervision as described in chapter 947. At least ~~Not fewer than~~ 90 days ~~before prior to~~ the tentative release date or provisional release date, whichever is earlier, the department shall provide the commission with the name and inmate identification number for each eligible inmate.

Section 3. Section 947.1405, Florida Statutes, is amended to read:

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

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59 947.1405 Mandatory supervision ~~Conditional release~~
60 program.-

61 (1) This section and s. 947.141 may be cited as the
62 "Mandatory Supervision ~~Conditional Release~~ Program Act."

63 (2) ~~An~~ Any inmate who:

64 (a) Is convicted of a crime committed on or after October
65 1, 1988, and before January 1, 1994, and any inmate who is
66 convicted of a crime committed on or after January 1, 1994,
67 which crime is or was contained in category 1, category 2,
68 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida
69 Rules of Criminal Procedure (1993), and who has served at least
70 one prior felony commitment at a state or federal correctional
71 institution;

72 (b) Is sentenced as a habitual or violent habitual offender
73 or a violent career criminal pursuant to s. 775.084; ~~or~~

74 (c) Is found to be a sexual predator under s. 775.21 or
75 former s. 775.23; ~~or~~

76 (d) Is convicted of a crime committed on or after October
77 1, 2013, which crime is or was contained in category 1, category
78 2, category 3, or category 4 of Rule 3.701 and Rule 3.988,
79 Florida Rules of Criminal Procedure (1993),

80 shall, upon reaching the tentative release date or provisional
81 release date, whichever is earlier, as established by the
82 Department of Corrections, be released under supervision subject
83 to specified terms and conditions, including payment of the cost
84 of supervision pursuant to s. 948.09. Such supervision ~~is shall~~
85 ~~be~~ applicable to all sentences within the overall term of
86 sentences if an inmate's overall term of sentences includes one
87

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88 or more sentences that are eligible for mandatory ~~conditional~~
89 ~~release~~ supervision as provided herein. Effective July 1, 1994,
90 and applicable for offenses committed on or after that date, the
91 commission may require, as a condition of mandatory supervision
92 ~~conditional release~~, that the releasee make payment of the debt
93 due and owing to a county or municipal detention facility under
94 s. 951.032 for medical care, treatment, hospitalization, or
95 transportation received by the releasee while in that detention
96 facility. The commission, in determining whether to order such
97 repayment and the amount of such repayment, shall consider the
98 amount of the debt, whether there was any fault of the
99 institution for the medical expenses incurred, the financial
100 resources of the releasee, the present and potential future
101 financial needs and earning ability of the releasee, and
102 dependents, and other appropriate factors. If an ~~any~~ inmate
103 placed on mandatory ~~conditional release~~ supervision is also
104 subject to probation or community control, resulting from a
105 probationary or community control split sentence within the
106 overall term of sentences, the Department of Corrections shall
107 supervise such person according to the conditions imposed by the
108 court and the commission shall defer to such supervision. If the
109 court revokes probation or community control and resentsences the
110 offender to a term of incarceration, such revocation also
111 constitutes a sufficient basis for the revocation of the
112 mandatory ~~conditional release~~ supervision on any nonprobationary
113 or noncommunity control sentence without further hearing by the
114 commission. If any such supervision on any nonprobationary or
115 noncommunity control sentence is revoked, such revocation may
116 result in a forfeiture of all gain-time, and the commission may

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117 revoke the resulting deferred mandatory ~~conditional release~~
 118 supervision or take other action it considers appropriate. If
 119 the term of mandatory ~~conditional release~~ supervision exceeds
 120 that of the probation or community control, ~~then,~~ upon
 121 expiration of the probation or community control, authority for
 122 the supervision reverts ~~shall revert~~ to the commission and the
 123 supervision is ~~shall be~~ subject to the conditions imposed by the
 124 commission. A panel of no fewer than two commissioners shall
 125 establish the terms and conditions of any such release. If the
 126 offense was a controlled substance violation, the conditions
 127 shall include a requirement that the offender submit to random
 128 substance abuse testing intermittently throughout the term of
 129 mandatory ~~conditional release~~ supervision, upon the direction of
 130 the correctional probation officer as defined in s. 943.10(3).
 131 The commission shall also determine whether the terms and
 132 conditions of the ~~such~~ release have been violated and whether
 133 the ~~such~~ violation warrants revocation of the mandatory
 134 supervision ~~conditional release~~.

135 (3) As part of the mandatory supervision ~~conditional~~
 136 ~~release~~ process, the commission, through review and
 137 consideration of information provided by the department, shall
 138 determine:

- 139 (a) The amount of reparation or restitution.
 140 (b) The consequences of the offense as reported by the
 141 aggrieved party.
 142 (c) The aggrieved party's fear of the inmate or concerns
 143 about the release of the inmate.
 144 (4) The commission shall provide to the aggrieved party
 145 information regarding the manner in which notice of any

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146 developments concerning the status of the inmate during the term
 147 of mandatory supervision ~~conditional release~~ may be requested.

148 (5) Within 180 days before ~~prior to~~ the tentative release
 149 date or provisional release date, whichever is earlier, a
 150 representative of the department shall review the inmate's
 151 program participation, disciplinary record, psychological and
 152 medical records, criminal records, and any other information
 153 pertinent to the impending release. The department shall gather
 154 and compile information necessary for the commission to make the
 155 determinations set forth in subsection (3). A department
 156 representative shall conduct a personal interview with the
 157 inmate for the purpose of determining the details of the
 158 inmate's release plan, including the inmate's planned residence
 159 and employment. The department representative shall forward the
 160 inmate's release plan to the commission and recommend to the
 161 commission the terms and conditions of the mandatory supervision
 162 ~~conditional release~~.

163 (6) The commission shall review the recommendations of the
 164 department, and such other information as it deems relevant, and
 165 may conduct a review of the inmate's record for the purpose of
 166 establishing the terms and conditions of the mandatory
 167 supervision ~~conditional release~~. The commission may impose any
 168 special conditions it considers warranted from its review of the
 169 release plan and recommendation. If the commission determines
 170 that the inmate is eligible for release under this section, the
 171 commission shall enter an order establishing the length of
 172 supervision and the conditions attendant thereto. However, an
 173 inmate who has been convicted of a violation of chapter 794 or
 174 found by the court to be a sexual predator is subject to the

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175 maximum level of supervision provided, with the mandatory
 176 conditions as required in subsection (7), and that supervision
 177 shall continue through the end of the releasee's original court-
 178 imposed sentence. The length of supervision must not exceed the
 179 maximum penalty imposed by the court.

180 (7) (a) ~~An Any~~ inmate who is convicted of a crime committed
 181 on or after October 1, 1995, or who has been previously
 182 convicted of a crime committed on or after October 1, 1995, in
 183 violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5),
 184 or s. 847.0145, and is subject to mandatory conditional release
 185 supervision, shall have, in addition to any other conditions
 186 imposed, the following special conditions imposed by the
 187 commission:

188 1. A mandatory curfew from 10 p.m. to 6 a.m. The commission
 189 may designate another 8-hour period if the offender's employment
 190 precludes the above specified time, and such alternative is
 191 recommended by the Department of Corrections. If the commission
 192 determines that imposing a curfew would endanger the victim, the
 193 commission may consider alternative sanctions.

194 2. If the victim was under the age of 18, a prohibition on
 195 living within 1,000 feet of a school, child care facility, park,
 196 playground, designated public school bus stop, or other place
 197 where children regularly congregate. A releasee who is subject
 198 to this subparagraph may not relocate to a residence that is
 199 within 1,000 feet of a public school bus stop. Beginning October
 200 1, 2004, the commission or the department may not approve a
 201 residence that is located within 1,000 feet of a school, child
 202 care facility, park, playground, designated school bus stop, or
 203 other place where children regularly congregate for any releasee

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204 who is subject to this subparagraph. On October 1, 2004, the
 205 department shall notify each affected school district of the
 206 location of the residence of a releasee 30 days ~~before~~ prior to
 207 release and thereafter, if the releasee relocates to a new
 208 residence, shall notify any affected school district of the
 209 residence of the releasee within 30 days after relocation. If,
 210 on October 1, 2004, any public school bus stop is located within
 211 1,000 feet of the existing residence of such releasee, the
 212 district school board shall relocate that school bus stop.
 213 Beginning October 1, 2004, a district school board may not
 214 establish or relocate a public school bus stop within 1,000 feet
 215 of the residence of a releasee who is subject to this
 216 subparagraph. The failure of the district school board to comply
 217 with this subparagraph is not grounds for a finding of ~~shall not~~
 218 ~~result in~~ a violation of mandatory conditional release
 219 supervision. A releasee who is subject to this subparagraph may
 220 not be forced to relocate and does not violate his or her
 221 mandatory conditional release supervision if he or she is living
 222 in a residence that meets the requirements of this subparagraph
 223 and a school, child care facility, park, playground, designated
 224 public school bus stop, or other place where children regularly
 225 congregate is subsequently established within 1,000 feet of his
 226 or her residence.

227 3. Active participation in and successful completion of a
 228 sex offender treatment program with qualified practitioners
 229 specifically trained to treat sex offenders, at the releasee's
 230 own expense. If a qualified practitioner is not available within
 231 a 50-mile radius of the releasee's residence, the offender shall
 232 participate in other appropriate therapy.

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233 4. A prohibition on any contact with the victim, directly
234 or indirectly, including through a third person, unless approved
235 by the victim, a qualified practitioner in the sexual offender
236 treatment program, and the sentencing court.

237 5. If the victim was under the age of 18, a prohibition
238 against contact with children under the age of 18 without review
239 and approval by the commission. The commission may approve
240 supervised contact with a child under the age of 18 if the
241 approval is based upon a recommendation for contact issued by a
242 qualified practitioner who is basing the recommendation on a
243 risk assessment. Further, the sex offender must be currently
244 enrolled in or have successfully completed a sex offender
245 therapy program. The commission may not grant supervised contact
246 with a child if the contact is not recommended by a qualified
247 practitioner and may deny supervised contact with a child at any
248 time. When considering whether to approve supervised contact
249 with a child, the commission must review and consider the
250 following:

251 a. A risk assessment completed by a qualified practitioner.
252 The qualified practitioner must prepare a written report that
253 must include the findings of the assessment and address each of
254 the following components:

- 255 (I) The sex offender's current legal status;
- 256 (II) The sex offender's history of adult charges with
257 apparent sexual motivation;
- 258 (III) The sex offender's history of adult charges without
259 apparent sexual motivation;
- 260 (IV) The sex offender's history of juvenile charges,
261 whenever available;

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262 (V) The sex offender's offender treatment history,
263 including a consultation from the sex offender's treating, or
264 most recent treating, therapist;

265 (VI) The sex offender's current mental status;

266 (VII) The sex offender's mental health and substance abuse
267 history as provided by the Department of Corrections;

268 (VIII) The sex offender's personal, social, educational,
269 and work history;

270 (IX) The results of current psychological testing of the
271 sex offender if determined necessary by the qualified
272 practitioner;

273 (X) A description of the proposed contact, including the
274 location, frequency, duration, and supervisory arrangement;

275 (XI) The child's preference and relative comfort level with
276 the proposed contact, when age-appropriate;

277 (XII) The parent's or legal guardian's preference regarding
278 the proposed contact; and

279 (XIII) The qualified practitioner's opinion, along with the
280 basis for that opinion, as to whether the proposed contact would
281 likely pose significant risk of emotional or physical harm to
282 the child.

283
284 The written report of the assessment must be given to the
285 commission.

286 b. A recommendation made as a part of the risk-assessment
287 report as to whether supervised contact with the child should be
288 approved.†

289 c. A written consent signed by the child's parent or legal
290 guardian, if the parent or legal guardian is not the sex

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 291 offender, agreeing to the sex offender having supervised contact
 292 with the child after receiving full disclosure of the sex
 293 offender's present legal status, past criminal history, and the
 294 results of the risk assessment. The commission may not approve
 295 contact with the child if the parent or legal guardian refuses
 296 to give written consent for supervised contact.~~†~~

297 d. A safety plan prepared by the qualified practitioner,
 298 who provides treatment to the offender, in collaboration with
 299 the sex offender, the child's parent or legal guardian, and the
 300 child, when age appropriate, which details the acceptable
 301 conditions of contact between the sex offender and the child.
 302 The safety plan must be reviewed and approved by the Department
 303 of Corrections before being submitted to the commission.~~†~~ and

304 e. Evidence that the child's parent or legal guardian, if
 305 the parent or legal guardian is not the sex offender,
 306 understands the need for and agrees to the safety plan and has
 307 agreed to provide, or to designate another adult to provide,
 308 constant supervision any time the child is in contact with the
 309 offender.

310
 311 The commission may not appoint a person to conduct a risk
 312 assessment and may not accept a risk assessment from a person
 313 who has not demonstrated to the commission that he or she has
 314 met the requirements of a qualified practitioner as defined in
 315 this section.

316 6. If the victim was under age 18, a prohibition on working
 317 for pay or as a volunteer at any school, child care facility,
 318 park, playground, or other place where children regularly
 319 congregate, as prescribed by the commission.

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 320 7. Unless otherwise indicated in the treatment plan
 321 provided by a qualified practitioner in the sexual offender
 322 treatment program, a prohibition on viewing, owning, or
 323 possessing any obscene, pornographic, or sexually stimulating
 324 visual or auditory material, including telephone, electronic
 325 media, computer programs, or computer services that are relevant
 326 to the offender's deviant behavior pattern.

327 8. Effective for a releasee whose crime is committed on or
 328 after July 1, 2005, a prohibition on accessing the Internet or
 329 other computer services until a qualified practitioner in the
 330 offender's sex offender treatment program, after a risk
 331 assessment is completed, approves and implements a safety plan
 332 for the offender's accessing or using the Internet or other
 333 computer services.

334 9. A requirement that the releasee ~~must~~ submit two
 335 specimens of blood to the Department of Law Enforcement to be
 336 registered with the DNA database.

337 10. A requirement that the releasee make restitution to the
 338 victim, as determined by the sentencing court or the commission,
 339 for all necessary medical and related professional services
 340 relating to physical, psychiatric, and psychological care.

341 11. Submission to a warrantless search by the community
 342 control or probation officer of the probationer's or community
 343 controllee's person, residence, or vehicle.

344 (b) For a releasee whose crime was committed on or after
 345 October 1, 1997, in violation of chapter 794, s. 800.04, s.
 346 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to
 347 mandatory conditional release supervision, in addition to any
 348 other provision of this subsection, the commission shall impose

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349 the following additional conditions of mandatory conditional
350 ~~release~~ supervision:

351 1. As part of a treatment program, participation in a
352 minimum of one annual polygraph examination to obtain
353 information necessary for risk management and treatment and to
354 reduce the sex offender's denial mechanisms. The polygraph
355 examination must be conducted by a polygrapher who is a member
356 of a national or state polygraph association and who is
357 certified as a postconviction sex offender polygrapher, where
358 available, and at the expense of the releasee. The results of
359 the examination shall be provided to the releasee's probation
360 officer and qualified practitioner and may not be used as
361 evidence in a hearing to prove that a violation of supervision
362 has occurred.

363 2. Maintenance of a driving log and a prohibition against
364 driving a motor vehicle alone without the prior approval of the
365 supervising officer.

366 3. A prohibition against obtaining or using a post office
367 box without the prior approval of the supervising officer.

368 4. If there was sexual contact, a submission to, at the
369 releasee's expense, an HIV test with the results to be released
370 to the victim or the victim's parent or guardian.

371 5. Electronic monitoring of any form when ordered by the
372 commission. Any person who has been placed under supervision and
373 is electronically monitored by the department must pay the
374 department for the cost of the electronic monitoring service at
375 a rate that may not exceed the full cost of the monitoring
376 service. Funds collected under this subparagraph shall be
377 deposited into the General Revenue Fund. The department may

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378 exempt a person from the payment of all or any part of the
379 electronic monitoring service cost if the department finds that
380 any of the factors listed in s. 948.09(3) exist.

381 (8) It is the finding of the Legislature that the
382 population of offenders released from state prison into the
383 community who meet the mandatory supervision conditional release
384 criteria poses the greatest threat to the public safety of the
385 groups of offenders under community supervision. Therefore, the
386 Department of Corrections shall ~~is to~~ provide intensive
387 supervision by experienced correctional probation officers to
388 mandatory supervision conditional release offenders. Subject to
389 specific appropriation by the Legislature, caseloads may be
390 restricted to a maximum of 40 mandatory supervision conditional
391 ~~release~~ offenders per officer to provide for enhanced public
392 safety and to effectively monitor conditions of electronic
393 monitoring or curfews, if so ordered by the commission.

394 (9) The commission shall adopt rules pursuant to ss.
395 120.536(1) and 120.54 necessary to administer ~~implement the~~
396 ~~provisions of the~~ Mandatory Supervision Conditional Release
397 Program Act.

398 (10) Effective for a releasee whose crime was committed on
399 or after September 1, 2005, in violation of chapter 794, s.
400 800.04(4), (5), or (6), s. 827.071, or s. 847.0145, and the
401 unlawful activity involved a victim who was 15 years of age or
402 younger and the offender is 18 years of age or older or for a
403 releasee who is designated as a sexual predator pursuant to s.
404 775.21, in addition to any other provision of this section, the
405 commission must order electronic monitoring for the duration of
406 the releasee's supervision.

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407 (11) Effective for a releasee whose crime was committed on
 408 or after October 1, 2008, and who has been found to have
 409 committed the crime for the purpose of benefiting, promoting, or
 410 furthering the interests of a criminal gang, the commission
 411 shall, in addition to any other conditions imposed, impose a
 412 condition prohibiting the releasee from knowingly associating
 413 with other criminal gang members or associates, except as
 414 authorized by law enforcement officials, prosecutorial
 415 authorities, or the court, for the purpose of aiding in the
 416 investigation of criminal activity.

417 (12) In addition to all other conditions imposed, for a
 418 releasee who is subject to mandatory supervision ~~conditional~~
 419 ~~release~~ for a crime that was committed on or after May 26, 2010,
 420 and who has been convicted at any time of committing, or
 421 attempting, soliciting, or conspiring to commit, any of the
 422 criminal offenses listed in s. 943.0435(1)(a)1.a.(I), or a
 423 similar offense in another jurisdiction against a victim who was
 424 under 18 years of age at the time of the offense, if the
 425 releasee has not received a pardon for any felony or similar law
 426 of another jurisdiction necessary for the operation of this
 427 subsection, if a conviction of a felony or similar law of
 428 another jurisdiction necessary for the operation of this
 429 subsection has not been set aside in any postconviction
 430 proceeding, or if the releasee has not been removed from the
 431 requirement to register as a sexual offender or sexual predator
 432 pursuant to s. 943.04354, the commission must impose the
 433 following conditions:

434 (a) A prohibition on visiting schools, child care
 435 facilities, parks, and playgrounds without prior approval from

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436 the releasee's supervising officer. The commission may also
 437 designate additional prohibited locations to protect a victim.
 438 The prohibition ordered under this paragraph does not prohibit
 439 the releasee from visiting a school, child care facility, park,
 440 or playground for the sole purpose of attending a religious
 441 service as defined in s. 775.0861 or picking up or dropping off
 442 the releasee's child or grandchild at a child care facility or
 443 school.

444 (b) A prohibition on distributing candy or other items to
 445 children on Halloween; wearing a Santa Claus costume, or other
 446 costume to appeal to children, on or preceding Christmas;
 447 wearing an Easter Bunny costume, or other costume to appeal to
 448 children, on or preceding Easter; entertaining at children's
 449 parties; or wearing a clown costume without prior approval from
 450 the commission.

451 Section 4. Paragraph (c) of subsection (1) of section
 452 20.316, Florida Statutes, is amended to read:

453 20.316 Department of Juvenile Justice.—There is created a
 454 Department of Juvenile Justice.

455 (1) SECRETARY OF JUVENILE JUSTICE.—

456 (c) The Secretary of Juvenile Justice shall:

457 1. Ensure that juvenile justice continuum programs and
 458 services are implemented according to legislative intent; state
 459 and federal laws, rules, and regulations; statewide program
 460 standards; and performance objectives by reviewing and
 461 monitoring regional and circuit program operations and providing
 462 technical assistance to those programs.

463 2. Identify the need for and recommend the funding and
 464 implementation of an appropriate mix of programs and services

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- 465 within the juvenile justice continuum, including prevention,
 466 diversion, nonresidential and residential commitment programs,
 467 training schools, and mandatory supervision ~~conditional release~~
 468 programs and services, with an overlay of educational,
 469 vocational, alcohol, drug abuse, and mental health services
 470 where appropriate.
- 471 3. Provide for program research, development, and planning.
- 472 4. Develop staffing and workload standards and coordinate
 473 staff development and training.
- 474 5. Develop budget and resource allocation methodologies and
 475 strategies.
- 476 6. Establish program policies and rules and ensure that
 477 those policies and rules encourage cooperation, collaboration,
 478 and information sharing with community partners in the juvenile
 479 justice system to the extent authorized by law.
- 480 7. Develop funding sources external to state government.
- 481 8. Obtain, approve, monitor, and coordinate research and
 482 program development grants.
- 483 9. Enter into contracts.
- 484 10. Monitor all state-funded programs, grants,
 485 appropriations, or activities that are designed to prevent
 486 juvenile crime, delinquency, gang membership, or status offense
 487 behaviors and all state-funded programs, grants, appropriations,
 488 or activities that are designed to prevent a child from becoming
 489 a "child in need of services," as defined in chapter 984, in
 490 order to effect the goals and policies of the State
 491 Comprehensive Plan regarding children and regarding governmental
 492 efficiency, and in order to determine:
- 493 a. The number of youth served by such state-funded

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- 494 programs, grants, appropriations, or activities;
- 495 b. The number of youth who complete such state-funded
 496 programs, grants, appropriations, or activities;
- 497 c. The number and percentage of youth who are referred for
 498 delinquency while participating in such state-funded programs,
 499 grants, appropriations, or activities; and
- 500 d. The number and percentage of youth who are referred for
 501 delinquency within 6 months after completing such state-funded
 502 programs, grants, appropriations, or activities.
- 503 Section 5. Paragraph (c) of subsection (5) of section
 504 216.136, Florida Statutes, is amended to read:
- 505 216.136 Consensus estimating conferences; duties and
 506 principals.—
- 507 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.—The Criminal
 508 Justice Estimating Conference shall:
- 509 (c) Develop official information relating to the number of
 510 sexual offenders and sexual predators who are required by law to
 511 be placed on community control, probation, or mandatory
 512 supervision ~~conditional release~~ who are subject to electronic
 513 monitoring.
- 514 Section 6. Subsection (2) of section 394.926, Florida
 515 Statutes, is amended to read:
- 516 394.926 Notice to victims of release of persons committed
 517 as sexually violent predators; notice to Department of
 518 Corrections and Parole Commission.—
- 519 (2) If a sexually violent predator who has an active or
 520 pending term of probation, community control, parole, mandatory
 521 supervision ~~conditional release~~, or other court-ordered or
 522 postprison release supervision is released from custody, the

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523 department must immediately notify the Department of
 524 Corrections' Office of Community Corrections in Tallahassee. The
 525 Parole Commission must also be immediately notified of any
 526 releases of a sexually violent predator who has an active or
 527 pending term of parole, mandatory supervision ~~conditional~~
 528 ~~release~~, or other postprison release supervision that is
 529 administered by the Parole Commission.

530 Section 7. Subsection (2) of section 394.927, Florida
 531 Statutes, is amended to read:

532 394.927 Escape while in lawful custody; notice to victim;
 533 notice to the Department of Corrections and Parole Commission.-

534 (2) If a person who is held in custody pursuant to a
 535 finding of probable cause or commitment as a sexually violent
 536 predator escapes while in custody, the department shall
 537 immediately notify the victim in accordance with s. 394.926. The
 538 state attorney that filed the petition for civil commitment of
 539 the escapee must also be immediately notified by the department.
 540 If the escapee has an active or pending term of probation,
 541 community control, parole, mandatory supervision ~~conditional~~
 542 ~~release~~, or other court-ordered or postprison release
 543 supervision, the department shall also immediately notify the
 544 Department of Corrections' Office of Community Corrections in
 545 Tallahassee. The Parole Commission shall also be immediately
 546 notified of an escape if the escapee has an active or pending
 547 term of parole, mandatory supervision ~~conditional~~ ~~release~~, or
 548 other postprison release supervision that is administered by the
 549 Parole Commission.

550 Section 8. Paragraphs (a), (b), and (d) of subsection (1)
 551 of section 775.084, Florida Statutes, are amended to read:

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552 775.084 Violent career criminals; habitual felony offenders
 553 and habitual violent felony offenders; three-time violent felony
 554 offenders; definitions; procedure; enhanced penalties or
 555 mandatory minimum prison terms.-

556 (1) As used in this act:

557 (a) "Habitual felony offender" means a defendant for whom
 558 the court may impose an extended term of imprisonment, as
 559 provided in paragraph (4)(a), if it finds that:

560 1. The defendant has previously been convicted of any
 561 combination of two or more felonies in this state or other
 562 qualified offenses.

563 2. The felony for which the defendant is to be sentenced
 564 was committed:

565 a. While the defendant was serving a prison sentence or
 566 other sentence, or court-ordered or lawfully imposed supervision
 567 that is imposed as a result of a prior conviction for a felony
 568 or other qualified offense; or

569 b. Within 5 years of the date of the conviction of the
 570 defendant's last prior felony or other qualified offense, or
 571 within 5 years of the defendant's release from a prison
 572 sentence, probation, community control, control release,
 573 mandatory supervision ~~conditional~~ ~~release~~, parole or court-
 574 ordered or lawfully imposed supervision or other sentence that
 575 is imposed as a result of a prior conviction for a felony or
 576 other qualified offense, whichever is later.

577 3. The felony for which the defendant is to be sentenced,
 578 and one of the two prior felony convictions, is not a violation
 579 of s. 893.13 relating to the purchase or the possession of a
 580 controlled substance.

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581 4. The defendant has not received a pardon for any felony
582 or other qualified offense that is necessary for the operation
583 of this paragraph.

584 5. A conviction of a felony or other qualified offense
585 necessary to the operation of this paragraph has not been set
586 aside in any postconviction proceeding.

587 (b) "Habitual violent felony offender" means a defendant
588 for whom the court may impose an extended term of imprisonment,
589 as provided in paragraph (4) (b), if it finds that:

590 1. The defendant has previously been convicted of a felony
591 or an attempt or conspiracy to commit a felony and one or more
592 of such convictions was for:

- 593 a. Arson;
- 594 b. Sexual battery;
- 595 c. Robbery;
- 596 d. Kidnapping;
- 597 e. Aggravated child abuse;
- 598 f. Aggravated abuse of an elderly person or disabled adult;
- 599 g. Aggravated assault with a deadly weapon;
- 600 h. Murder;
- 601 i. Manslaughter;
- 602 j. Aggravated manslaughter of an elderly person or disabled
603 adult;
- 604 k. Aggravated manslaughter of a child;
- 605 l. Unlawful throwing, placing, or discharging of a
606 destructive device or bomb;
- 607 m. Armed burglary;
- 608 n. Aggravated battery; or
- 609 o. Aggravated stalking.

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610 2. The felony for which the defendant is to be sentenced
611 was committed:

612 a. While the defendant was serving a prison sentence or
613 other sentence, or court-ordered or lawfully imposed supervision
614 that is imposed as a result of a prior conviction for an
615 enumerated felony; or

616 b. Within 5 years of the date of the conviction of the last
617 prior enumerated felony, or within 5 years of the defendant's
618 release from a prison sentence, probation, community control,
619 control release, mandatory supervision ~~conditional release~~,
620 parole, or court-ordered or lawfully imposed supervision or
621 other sentence that is imposed as a result of a prior conviction
622 for an enumerated felony, whichever is later.

623 3. The defendant has not received a pardon on the ground of
624 innocence for any crime that is necessary for the operation of
625 this paragraph.

626 4. A conviction of a crime necessary to the operation of
627 this paragraph has not been set aside in any postconviction
628 proceeding.

629 (d) "Violent career criminal" means a defendant for whom
630 the court must impose imprisonment pursuant to paragraph (4) (d),
631 if it finds that:

632 1. The defendant has previously been convicted as an adult
633 three or more times for an offense in this state or other
634 qualified offense that is:

- 635 a. Any forcible felony, as described in s. 776.08;
- 636 b. Aggravated stalking, as described in s. 784.048(3) and
637 (4);
- 638 c. Aggravated child abuse, as described in s. 827.03(2) (a);

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639 d. Aggravated abuse of an elderly person or disabled adult,
640 as described in s. 825.102(2);

641 e. Lewd or lascivious battery, lewd or lascivious
642 molestation, lewd or lascivious conduct, or lewd or lascivious
643 exhibition, as described in s. 800.04 or s. 847.0135(5);

644 f. Escape, as described in s. 944.40; or

645 g. A felony violation of chapter 790 involving the use or
646 possession of a firearm.

647 2. The defendant has been incarcerated in a state prison or
648 a federal prison.

649 3. The primary felony offense for which the defendant is to
650 be sentenced is a felony enumerated in subparagraph 1. and was
651 committed on or after October 1, 1995, and:

652 a. While the defendant was serving a prison sentence or
653 other sentence, or court-ordered or lawfully imposed supervision
654 that is imposed as a result of a prior conviction for an
655 enumerated felony; or

656 b. Within 5 years after the conviction of the last prior
657 enumerated felony, or within 5 years after the defendant's
658 release from a prison sentence, probation, community control,
659 control release, mandatory supervision ~~conditional release~~,
660 parole, or court-ordered or lawfully imposed supervision or
661 other sentence that is imposed as a result of a prior conviction
662 for an enumerated felony, whichever is later.

663 4. The defendant has not received a pardon for any felony
664 or other qualified offense that is necessary for the operation
665 of this paragraph.

666 5. A conviction of a felony or other qualified offense
667 necessary to the operation of this paragraph has not been set

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668 aside in any postconviction proceeding.

669 Section 9. Section 775.16, Florida Statutes, is amended to
670 read:

671 775.16 Drug offenses; additional penalties.—In addition to
672 any other penalty provided by law, a person who has been
673 convicted of sale of or trafficking in, or conspiracy to sell or
674 traffic in, a controlled substance under chapter 893, if such
675 offense is a felony, or who has been convicted of an offense
676 under the laws of any state or country which, if committed in
677 this state, would constitute the felony of selling or
678 trafficking in, or conspiracy to sell or traffic in, a
679 controlled substance under chapter 893, is:

680 (1) Disqualified from applying for employment by any agency
681 of the state, unless:

682 (a) The person has completed all sentences of imprisonment
683 or supervisory sanctions imposed by the court, by the Parole
684 Commission, or by law; or

685 (b) The person has complied with the conditions of
686 subparagraphs 1. and 2. which shall be monitored by the
687 Department of Corrections while the person is under any
688 supervisory sanctions. The person under supervision may:

689 1. Seek evaluation and enrollment in, and once enrolled
690 maintain enrollment in until completion, a drug treatment and
691 rehabilitation program ~~that which~~ is approved by the Department
692 of Children and Family Services, unless it is deemed by the
693 program that the person does not have a substance abuse problem.
694 The treatment and rehabilitation program may be specified by:

695 a. The court, in the case of court-ordered supervisory
696 sanctions;

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697 b. The Parole Commission, in the case of parole, control
 698 release, or mandatory supervision ~~conditional release~~; or
 699 c. The Department of Corrections, in the case of
 700 imprisonment or any other supervision required by law.
 701 2. Submit to periodic urine drug testing pursuant to
 702 procedures prescribed by the Department of Corrections. If the
 703 person is indigent, the costs shall be paid by the Department of
 704 Corrections.
 705 (2) Disqualified from applying for a license, permit, or
 706 certificate required by any agency of the state to practice,
 707 pursue, or engage in any occupation, trade, vocation,
 708 profession, or business, unless:
 709 (a) The person has completed all sentences of imprisonment
 710 or supervisory sanctions imposed by the court, by the Parole
 711 Commission, or by law;
 712 (b) The person has complied with the conditions of
 713 subparagraphs 1. and 2. which shall be monitored by the
 714 Department of Corrections while the person is under any
 715 supervisory sanction. If the person fails to comply with
 716 provisions of these subparagraphs by either failing to maintain
 717 treatment or by testing positive for drug use, the department
 718 shall notify the licensing, permitting, or certifying agency,
 719 which may refuse to reissue or reinstate such license, permit,
 720 or certification. The licensee, permittee, or certificateholder
 721 under supervision may:
 722 1. Seek evaluation and enrollment in, and once enrolled
 723 maintain enrollment in until completion, a drug treatment and
 724 rehabilitation program which is approved or regulated by the
 725 Department of Children and Family Services, unless it is deemed

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726 by the program that the person does not have a substance abuse
 727 problem. The treatment and rehabilitation program may be
 728 specified by:
 729 a. The court, in the case of court-ordered supervisory
 730 sanctions;
 731 b. The Parole Commission, in the case of parole, control
 732 release, or mandatory supervision ~~conditional release~~; or
 733 c. The Department of Corrections, in the case of
 734 imprisonment or any other supervision required by law.
 735 2. Submit to periodic urine drug testing pursuant to
 736 procedures prescribed by the Department of Corrections. If the
 737 person is indigent, the costs shall be paid by the Department of
 738 Corrections; or
 739 (c) The person has successfully completed an appropriate
 740 program under the Correctional Education Program.
 741
 742 The provisions of this section do not apply to any of the taxes,
 743 fees, or permits regulated, controlled, or administered by the
 744 Department of Revenue in accordance with the provisions of s.
 745 213.05.
 746 Section 10. Paragraph (e) of subsection (2) of section
 747 775.21, Florida Statutes, is amended to read:
 748 775.21 The Florida Sexual Predators Act.—
 749 (2) DEFINITIONS.—As used in this section, the term:
 750 (e) "Conviction" means a determination of guilt which is
 751 the result of a trial or the entry of a plea of guilty or nolo
 752 contendere, regardless of whether adjudication is withheld. A
 753 conviction for a similar offense includes, but is not limited
 754 to, a conviction by a federal or military tribunal, including

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 755 courts-martial conducted by the Armed Forces of the United
 756 States, and includes a conviction or entry of a plea of guilty
 757 or nolo contendere resulting in a sanction in any state of the
 758 United States or other jurisdiction. A sanction includes, but is
 759 not limited to, a fine, probation, community control, parole,
 760 mandatory supervision ~~conditional release~~, control release, or
 761 incarceration in a state prison, federal prison, private
 762 correctional facility, or local detention facility.

763 Section 11. Paragraph (a) of subsection (3) of section
 764 775.261, Florida Statutes, is amended to read:

765 775.261 The Florida Career Offender Registration Act.—

766 (3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.—

767 (a) A career offender released on or after July 1, 2002,
 768 from a sanction imposed in this state must register as required
 769 under subsection (4) and is subject to community and public
 770 notification as provided under subsection (5). For purposes of
 771 this section, a sanction imposed in this state includes, but is
 772 not limited to, a fine, probation, community control, parole,
 773 mandatory supervision ~~conditional release~~, control release, or
 774 incarceration in a state prison, private correctional facility,
 775 or local detention facility, and:

776 1. The career offender has not received a pardon for any
 777 felony or other qualified offense that is necessary for the
 778 operation of this paragraph; or

779 2. A conviction of a felony or other qualified offense
 780 necessary to the operation of this paragraph has not been set
 781 aside in any postconviction proceeding.

782 Section 12. Section 893.11, Florida Statutes, is amended to
 783 read:

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 784 893.11 Suspension, revocation, and reinstatement of
 785 business and professional licenses.—For the purposes of s.
 786 120.60(6), any conviction in any court reported to the
 787 Comprehensive Case Information System of the Florida Association
 788 of Court Clerks and Comptrollers, Inc., for the sale of, or
 789 trafficking in, a controlled substance or for conspiracy to
 790 sell, or traffic in, a controlled substance constitutes an
 791 immediate serious danger to the public health, safety, or
 792 welfare, and is grounds for disciplinary action by the licensing
 793 state agency. A state agency shall initiate an immediate
 794 emergency suspension of an individual professional license
 795 issued by the agency, in compliance with the procedures for
 796 summary suspensions in s. 120.60(6), upon the agency's findings
 797 of the licensee's conviction in any court reported to the
 798 Comprehensive Case Information System of the Florida Association
 799 of Court Clerks and Comptrollers, Inc., for the sale of, or
 800 trafficking in, a controlled substance, or for conspiracy to
 801 sell, or traffic in, a controlled substance. Before renewing any
 802 professional license, a state agency that issues a professional
 803 license must use the Comprehensive Case Information System of
 804 the Florida Association of Court Clerks and Comptrollers, Inc.,
 805 to obtain information relating to any conviction for the sale
 806 of, or trafficking in, a controlled substance or for conspiracy
 807 to sell, or traffic in, a controlled substance. The clerk of
 808 court shall provide electronic access to each state agency at no
 809 cost and also provide certified copies of the judgment upon
 810 request to the agency. Upon a showing by any such convicted
 811 defendant whose professional license has been suspended or
 812 revoked pursuant to this section that his or her civil rights

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813 have been restored or upon a showing that the convicted
814 defendant meets the following criteria, the agency head may
815 reinstate or reactivate such license when:

816 (1) The person has complied with the conditions of
817 paragraphs (a) and (b) which shall be monitored by the
818 Department of Corrections while the person is under any
819 supervisory sanction. If the person fails to comply with
820 provisions of these paragraphs by either failing to maintain
821 treatment or by testing positive for drug use, the department
822 shall notify the licensing agency, which shall revoke the
823 license. The person under supervision may:

824 (a) Seek evaluation and enrollment in, and once enrolled
825 maintain enrollment in until completion, a drug treatment and
826 rehabilitation program that ~~which~~ is approved or regulated by
827 the Department of Children and Family Services. The treatment
828 and rehabilitation program shall be specified by:

829 1. The court, in the case of court-ordered supervisory
830 sanctions;

831 2. The Parole Commission, in the case of parole, control
832 release, or mandatory supervision ~~conditional release~~; or

833 3. The Department of Corrections, in the case of
834 imprisonment or any other supervision required by law.

835 (b) Submit to periodic urine drug testing pursuant to
836 procedures prescribed by the Department of Corrections. If the
837 person is indigent, the costs shall be paid by the Department of
838 Corrections; or

839 (2) The person has successfully completed an appropriate
840 program under the Correctional Education Program.

841 (3) As used in this section, the term "professional

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842 license" includes any license, permit, or certificate that
843 authorizes a person to practice his or her profession. However,
844 the term does not include any of the taxes, fees, or permits
845 regulated, controlled, or administered by the Department of
846 Revenue in accordance with s. 213.05.

847 Section 13. Paragraphs (a) and (b) of subsection (1) of
848 section 943.0435, Florida Statutes, are amended to read:

849 943.0435 Sexual offenders required to register with the
850 department; penalty.—

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

852 (a)1. "Sexual offender" means a person who meets the
853 criteria in sub-subparagraph a., sub-subparagraph b., sub-
854 subparagraph c., or sub-subparagraph d., as follows:

855 a.(I) Has been convicted of committing, or attempting,
856 soliciting, or conspiring to commit, any of the criminal
857 offenses proscribed in the following statutes in this state or
858 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
859 or s. 787.025(2)(c), where the victim is a minor and the
860 defendant is not the victim's parent or guardian; s.
861 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
862 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
863 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
864 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
865 or s. 985.701(1); or any similar offense committed in this state
866 which has been redesignated from a former statute number to one
867 of those listed in this sub-sub-subparagraph; and

868 (II) Has been released on or after October 1, 1997, from
869 the sanction imposed for any conviction of an offense described
870 in sub-sub-subparagraph (I). For purposes of sub-sub-

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871 subparagraph (I), a sanction imposed in this state or in any
 872 other jurisdiction includes, but is not limited to, a fine,
 873 probation, community control, parole, mandatory supervision
 874 ~~conditional release~~, control release, or incarceration in a
 875 state prison, federal prison, private correctional facility, or
 876 local detention facility;

877 b. Establishes or maintains a residence in this state and
 878 who has not been designated as a sexual predator by a court of
 879 this state but who has been designated as a sexual predator, as
 880 a sexually violent predator, or by another sexual offender
 881 designation in another state or jurisdiction and was, as a
 882 result of such designation, subjected to registration or
 883 community or public notification, or both, or would be if the
 884 person were a resident of that state or jurisdiction, without
 885 regard to whether the person otherwise meets the criteria for
 886 registration as a sexual offender;

887 c. Establishes or maintains a residence in this state who
 888 is in the custody or control of, or under the supervision of,
 889 any other state or jurisdiction as a result of a conviction for
 890 committing, or attempting, soliciting, or conspiring to commit,
 891 any of the criminal offenses proscribed in the following
 892 statutes or similar offense in another jurisdiction: s. 787.01,
 893 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 894 the defendant is not the victim's parent or guardian; s.
 895 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
 896 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 897 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 898 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 899 or s. 985.701(1); or any similar offense committed in this state

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900 which has been redesignated from a former statute number to one
 901 of those listed in this sub-subparagraph; or

902 d. On or after July 1, 2007, has been adjudicated
 903 delinquent for committing, or attempting, soliciting, or
 904 conspiring to commit, any of the criminal offenses proscribed in
 905 the following statutes in this state or similar offenses in
 906 another jurisdiction when the juvenile was 14 years of age or
 907 older at the time of the offense:

908 (I) Section 794.011, excluding s. 794.011(10);

909 (II) Section 800.04(4)(b) where the victim is under 12
 910 years of age or where the court finds sexual activity by the use
 911 of force or coercion;

912 (III) Section 800.04(5)(c)1. where the court finds
 913 molestation involving unclothed genitals; or

914 (IV) Section 800.04(5)(d) where the court finds the use of
 915 force or coercion and unclothed genitals.

916 2. For all qualifying offenses listed in sub-subparagraph
 917 (1)(a)1.d., the court shall make a written finding of the age of
 918 the offender at the time of the offense.

919
 920 For each violation of a qualifying offense listed in this
 921 subsection, the court shall make a written finding of the age of
 922 the victim at the time of the offense. For a violation of s.
 923 800.04(4), the court shall additionally make a written finding
 924 indicating that the offense did or did not involve sexual
 925 activity and indicating that the offense did or did not involve
 926 force or coercion. For a violation of s. 800.04(5), the court
 927 shall additionally make a written finding that the offense did
 928 or did not involve unclothed genitals or genital area and that

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929 the offense did or did not involve the use of force or coercion.

930 (b) "Convicted" means that there has been a determination
 931 of guilt as a result of a trial or the entry of a plea of guilty
 932 or nolo contendere, regardless of whether adjudication is
 933 withheld, and includes an adjudication of delinquency of a
 934 juvenile as specified in this section. Conviction of a similar
 935 offense includes, but is not limited to, a conviction by a
 936 federal or military tribunal, including courts-martial conducted
 937 by the Armed Forces of the United States, and includes a
 938 conviction or entry of a plea of guilty or nolo contendere
 939 resulting in a sanction in any state of the United States or
 940 other jurisdiction. A sanction includes, but is not limited to,
 941 a fine, probation, community control, parole, mandatory
 942 supervision ~~conditional release~~, control release, or
 943 incarceration in a state prison, federal prison, private
 944 correctional facility, or local detention facility.

945 Section 14. Paragraph (a) of subsection (7) of section
 946 943.325, Florida Statutes, is amended to read:
 947 943.325 DNA database.—

948 (7) COLLECTION OF DNA SAMPLES FROM OFFENDERS.—

949 (a) Any qualifying offender, who is:

- 950 1. Arrested in this state;
- 951 2. Incarcerated in this state; or
- 952 3. On probation, community control, parole, mandatory
 953 supervision ~~conditional release~~, control release, or any other
 954 type of court-ordered supervision in this state,

955 shall be required to submit a DNA sample to a department-
 956 designated facility.

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958 Section 15. Paragraph (a) of subsection (2) of section
 959 944.171, Florida Statutes, is amended to read:

960 944.171 Housing of inmates.—

961 (2) Notwithstanding s. 944.17, the department may enter
 962 into contracts with another state, a political subdivision of
 963 another state, or a correctional management services vendor in
 964 another state for the transfer and confinement in that state of
 965 inmates who have been committed to the custody of the
 966 department.

967 (a) Any such contract must include:

- 968 1. A termination date.
- 969 2. Provisions concerning the costs of inmate maintenance,
 970 extraordinary medical and dental expenses, and any participation
 971 in or receipt by inmates of rehabilitative or correctional
 972 services, facilities, programs, or treatment, including those
 973 costs not reasonably included as part of normal maintenance.
- 974 3. Provisions concerning participation in programs of
 975 inmate employment, if any, the disposition or crediting of any
 976 payments received by inmates on account of employment, and the
 977 crediting of proceeds or disposal of any products resulting from
 978 employment.
- 979 4. Provisions for the delivery and retaking of inmates.
- 980 5. A provision for a waiver of extradition by the parties
 981 to the contract.
- 982 6. Retention of jurisdiction of the inmates transferred by
 983 Florida.
- 984 7. Regular reporting procedures concerning Florida inmates
 985 by officials of the state, political subdivision, or
 986 correctional management services vendor with which the

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987 department is contracting.

988 8. Provisions concerning procedures for community
989 supervision, including probation, parole, mandatory supervision
990 ~~conditional release~~, and discharge.

991 9. The same standards of reasonable and humane care as the
992 inmates would receive in an appropriate institution in this
993 state.

994 10. Any other matters that are necessary and appropriate to
995 establish the obligations, responsibilities, and rights of
996 Florida and the state, political subdivision, or correctional
997 management services vendor with which the department is
998 contracting.

999 Section 16. Subsection (1) of section 944.28, Florida
1000 Statutes, is amended to read:

1001 944.28 Forfeiture of gain-time and the right to earn gain-
1002 time in the future.—

1003 (1) If a prisoner is convicted of escape, or if the
1004 clemency, mandatory supervision ~~conditional release~~ as described
1005 in chapter 947, probation or community control as described in
1006 chapter 948, provisional release as described in s. 944.277,
1007 parole, or control release as described in s. 947.146 granted to
1008 the prisoner is revoked, the department may, without notice or
1009 hearing, declare a forfeiture of all gain-time earned according
1010 to the provisions of law by such prisoner prior to such escape
1011 or his or her release under such clemency, mandatory supervision
1012 ~~conditional release~~, probation, community control, provisional
1013 release, control release, or parole.

1014 Section 17. Paragraph (a) of subsection (1) of section
1015 944.606, Florida Statutes, is amended to read:

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1016 944.606 Sexual offenders; notification upon release.—

1017 (1) As used in this section:

1018 (a) "Convicted" means there has been a determination of
1019 guilt as a result of a trial or the entry of a plea of guilty or
1020 nolo contendere, regardless of whether adjudication is withheld.
1021 A conviction for a similar offense includes, but is not limited
1022 to, a conviction by a federal or military tribunal, including
1023 courts-martial conducted by the Armed Forces of the United
1024 States, and includes a conviction or entry of a plea of guilty
1025 or nolo contendere resulting in a sanction in any state of the
1026 United States or other jurisdiction. A sanction includes, but is
1027 not limited to, a fine; probation; community control; parole;
1028 mandatory supervision ~~conditional release~~; control release; or
1029 incarceration in a state prison, federal prison, private
1030 correctional facility, or local detention facility.

1031 Section 18. Paragraph (b) of subsection (1) and subsection
1032 (6) of section 944.607, Florida Statutes, are amended to read:

1033 944.607 Notification to Department of Law Enforcement of
1034 information on sexual offenders.—

1035 (1) As used in this section, the term:

1036 (b) "Conviction" means a determination of guilt which is
1037 the result of a trial or the entry of a plea of guilty or nolo
1038 contendere, regardless of whether adjudication is withheld.
1039 Conviction of a similar offense includes, but is not limited to,
1040 a conviction by a federal or military tribunal, including
1041 courts-martial conducted by the Armed Forces of the United
1042 States, and includes a conviction or entry of a plea of guilty
1043 or nolo contendere resulting in a sanction in any state of the
1044 United States or other jurisdiction. A sanction includes, but is

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1045 not limited to, a fine; probation; community control; parole;
 1046 mandatory supervision conditional release; control release; or
 1047 incarceration in a state prison, federal prison, private
 1048 correctional facility, or local detention facility.

1049 (6) The information provided to the Department of Law
 1050 Enforcement must include:

1051 (a) The information obtained from the sexual offender under
 1052 subsection (4);

1053 (b) The sexual offender's most current address, place of
 1054 permanent, temporary, or transient residence within the state or
 1055 out of state, and address, location or description, and dates of
 1056 any current or known future temporary residence within the state
 1057 or out of state, while the sexual offender is under supervision
 1058 in this state, including the name of the county or municipality
 1059 in which the offender permanently or temporarily resides, or has
 1060 a transient residence, and address, location or description, and
 1061 dates of any current or known future temporary residence within
 1062 the state or out of state, and, if known, the intended place of
 1063 permanent, temporary, or transient residence, and address,
 1064 location or description, and dates of any current or known
 1065 future temporary residence within the state or out of state upon
 1066 satisfaction of all sanctions;

1067 (c) The legal status of the sexual offender and the
 1068 scheduled termination date of that legal status;

1069 (d) The location of, and local telephone number for, any
 1070 Department of Corrections' office that is responsible for
 1071 supervising the sexual offender;

1072 (e) An indication of whether the victim of the offense that
 1073 resulted in the offender's status as a sexual offender was a

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1074 minor;

1075 (f) The offense or offenses at conviction which resulted in
 1076 the determination of the offender's status as a sex offender;
 1077 and

1078 (g) A digitized photograph of the sexual offender which
 1079 must have been taken within 60 days before the offender is
 1080 released from the custody of the department or a private
 1081 correctional facility by expiration of sentence under s. 944.275
 1082 or must have been taken by January 1, 1998, or within 60 days
 1083 after the onset of the department's supervision of any sexual
 1084 offender who is on probation, community control, mandatory
 1085 supervision conditional release, parole, provisional release, or
 1086 control release or who is supervised by the department under the
 1087 Interstate Compact Agreement for Probationers and Parolees. If
 1088 the sexual offender is in the custody of a private correctional
 1089 facility, the facility shall take a digitized photograph of the
 1090 sexual offender within the time period provided in this
 1091 paragraph and shall provide the photograph to the department.

1092
 1093 If any information provided by the department changes during the
 1094 time the sexual offender is under the department's control,
 1095 custody, or supervision, including any change in the offender's
 1096 name by reason of marriage or other legal process, the
 1097 department shall, in a timely manner, update the information and
 1098 provide it to the Department of Law Enforcement in the manner
 1099 prescribed in subsection (2).

1100 Section 19. Subsection (5) of section 944.608, Florida
 1101 Statutes, is amended to read:

1102 944.608 Notification to Department of Law Enforcement of

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1103 information on career offenders.—

1104 (5) The information provided to the Department of Law

1105 Enforcement must include:

1106 (a) The information obtained from the career offender under

1107 subsection (3);

1108 (b) The career offender's most current address and place of

1109 permanent and temporary residence within the state or out of

1110 state while the career offender is under supervision in this

1111 state, including the name of the county or municipality in which

1112 the career offender permanently or temporarily resides and, if

1113 known, the intended place of permanent or temporary residence

1114 upon satisfaction of all sanctions;

1115 (c) The legal status of the career offender and the

1116 scheduled termination date of that legal status;

1117 (d) The location of, and local telephone number for, any

1118 Department of Corrections' office that is responsible for

1119 supervising the career offender; and

1120 (e) A digitized photograph of the career offender, which

1121 must have been taken within 60 days before the career offender

1122 is released from the custody of the department or a private

1123 correctional facility or within 60 days after the onset of the

1124 department's supervision of any career offender who is on

1125 probation, community control, mandatory supervision conditional

1126 ~~release~~, parole, provisional release, or control release. If the

1127 career offender is in the custody or control of, or under the

1128 supervision of, a private correctional facility, the facility

1129 shall take a digitized photograph of the career offender within

1130 the time period provided in this paragraph and shall provide the

1131 photograph to the department.

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1132 Section 20. Section 944.70, Florida Statutes, is amended to

1133 read:

1134 944.70 Conditions for release from incarceration.—

1135 (1) (a) A person who is convicted of a crime committed on or

1136 after October 1, 1983, but before January 1, 1994, may be

1137 released from incarceration only:

1138 1. Upon expiration of the person's sentence;

1139 2. Upon expiration of the person's sentence as reduced by

1140 accumulated gain-time;

1141 3. As directed by an executive order granting clemency;

1142 4. Upon attaining the provisional release date;

1143 5. Upon placement in a mandatory supervision conditional

1144 ~~release~~ program pursuant to s. 947.1405; or

1145 6. Upon the granting of control release pursuant to s.

1146 947.146.

1147 (b) A person who is convicted of a crime committed on or

1148 after January 1, 1994, may be released from incarceration only:

1149 1. Upon expiration of the person's sentence;

1150 2. Upon expiration of the person's sentence as reduced by

1151 accumulated meritorious or incentive gain-time;

1152 3. As directed by an executive order granting clemency;

1153 4. Upon placement in a mandatory supervision conditional

1154 ~~release~~ program pursuant to s. 947.1405 or a conditional medical

1155 release program pursuant to s. 947.149; or

1156 5. Upon the granting of control release, including

1157 emergency control release, pursuant to s. 947.146.

1158 (2) A person who is convicted of a crime committed on or

1159 after December 1, 1990, and who receives a control release date

1160 may not refuse to accept the terms or conditions of control

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1161 release.

1162 Section 21. Section 945.36, Florida Statutes, is amended to

1163 read:

1164 945.36 Exemption from health testing regulations for law

1165 enforcement personnel conducting drug tests on inmates and

1166 releasees.—

1167 (1) Any law enforcement officer, state or county probation

1168 officer, or employee of the Department of Corrections, who is

1169 certified by the Department of Corrections pursuant to

1170 subsection (2), is exempt from part I of chapter 483, for the

1171 limited purpose of administering a urine screen drug test to:

1172 (a) Persons during incarceration;

1173 (b) Persons released as a condition of probation for either

1174 a felony or misdemeanor;

1175 (c) Persons released as a condition of community control;

1176 (d) Persons released as a condition of mandatory

1177 supervision conditional release;

1178 (e) Persons released as a condition of parole;

1179 (f) Persons released as a condition of provisional release;

1180 (g) Persons released as a condition of pretrial release; or

1181 (h) Persons released as a condition of control release.

1182 (2) The Department of Corrections shall develop a procedure

1183 for certification of any law enforcement officer, state or

1184 county probation officer, or employee of the Department of

1185 Corrections to perform a urine screen drug test on the persons

1186 specified in subsection (1).

1187 Section 22. Section 947.071, Florida Statutes, is amended

1188 to read:

1189 947.071 Rulemaking procedures; indexing of orders.—

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1190 (1) It is the intent of the Legislature that all rulemaking

1191 procedures by the commission be conducted pursuant to the

1192 Administrative Procedure Act, chapter 120.

1193 (2) The only final orders of the commission which must

1194 ~~shall~~ be indexed pursuant to chapter 120 are:

1195 (a) Orders granting parole.

1196 (b) Orders revoking parole.

1197 (c) Orders restoring to supervision.

1198 (d) Orders releasing from custody and further supervision.

1199 (e) Early parole termination orders.

1200 (f) Orders granting mandatory supervision conditional

1201 release.

1202 (g) Orders revoking mandatory supervision conditional

1203 release.

1204 Section 23. Paragraph (f) of subsection (1) of section

1205 947.13, Florida Statutes, is amended to read:

1206 947.13 Powers and duties of commission.—

1207 (1) The commission shall have the powers and perform the

1208 duties of:

1209 (f) Establishing the terms and conditions of persons

1210 released on mandatory supervision conditional release under s.

1211 947.1405, and determining subsequent ineligibility for mandatory

1212 supervision conditional release due to a violation of the terms

1213 or conditions of mandatory supervision conditional release and

1214 taking action with respect to such a violation.

1215 Section 24. Section 947.141, Florida Statutes, is amended

1216 to read:

1217 947.141 Violations of mandatory supervision conditional

1218 release, control release, ~~or~~ conditional medical release, or

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1219 addiction-recovery supervision.-

1220 (1) If a member of the commission or a duly authorized
1221 representative of the commission has reasonable grounds to
1222 believe that an offender who is on release supervision under s.
1223 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated
1224 the terms and conditions of the release in a material respect,
1225 such member or representative may cause a warrant to be issued
1226 for the arrest of the releasee; if the offender was found to be
1227 a sexual predator, the warrant must be issued.

1228 (2) Upon the arrest on a felony charge of an offender who
1229 is on release supervision under s. 947.1405, s. 947.146, s.
1230 947.149, or s. 944.4731, the offender must be detained without
1231 bond until the initial appearance of the offender at which a
1232 judicial determination of probable cause is made. If the trial
1233 court judge determines that there was no probable cause for the
1234 arrest, the offender may be released. If the trial court judge
1235 determines that there was probable cause for the arrest, such
1236 determination also constitutes reasonable grounds to believe
1237 that the offender violated the conditions of the release. Within
1238 24 hours after the trial court judge's finding of probable
1239 cause, the detention facility administrator or designee shall
1240 notify the commission and the department of the finding and
1241 transmit to each a facsimile copy of the probable cause
1242 affidavit or the sworn offense report upon which the trial court
1243 judge's probable cause determination is based. The offender must
1244 continue to be detained without bond for a period not exceeding
1245 72 hours excluding weekends and holidays after the date of the
1246 probable cause determination, pending a decision by the
1247 commission whether to issue a warrant charging the offender with

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1248 violation of the conditions of release. Upon the issuance of the
1249 commission's warrant, the offender must continue to be held in
1250 custody pending a revocation hearing held in accordance with
1251 this section.

1252 (3) Within 45 days after notice to the Parole Commission of
1253 the arrest of a releasee charged with a violation of the terms
1254 and conditions of mandatory supervision ~~conditional release~~,
1255 control release, conditional medical release, or addiction-
1256 recovery supervision, the releasee must be afforded a hearing
1257 conducted by a commissioner or a duly authorized representative
1258 thereof. If the releasee elects to proceed with a hearing, the
1259 releasee must be informed orally and in writing of the
1260 following:

- 1261 (a) The alleged violation with which the releasee is
- 1262 charged.
- 1263 (b) The releasee's right to be represented by counsel.
- 1264 (c) The releasee's right to be heard in person.
- 1265 (d) The releasee's right to secure, present, and compel the
- 1266 attendance of witnesses relevant to the proceeding.
- 1267 (e) The releasee's right to produce documents on the
- 1268 releasee's own behalf.
- 1269 (f) The releasee's right of access to all evidence used
- 1270 against the releasee and to confront and cross-examine adverse
- 1271 witnesses.
- 1272 (g) The releasee's right to waive the hearing.
- 1273 (4) Within a reasonable time following the hearing, the
- 1274 commissioner or the commissioner's duly authorized
- 1275 representative who conducted the hearing shall make findings of
- 1276 fact in regard to the alleged violation. A panel of no fewer

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 1277 than two commissioners shall enter an order determining whether
 1278 the charge of violation of mandatory supervision conditional
 1279 ~~release~~, control release, conditional medical release, or
 1280 addiction-recovery supervision has been sustained based upon the
 1281 findings of fact presented by the hearing commissioner or
 1282 authorized representative. By such order, the panel may revoke
 1283 mandatory supervision conditional release, control release,
 1284 conditional medical release, or addiction-recovery supervision
 1285 and thereby return the releasee to prison to serve the sentence
 1286 imposed, reinstate the original order granting the release, or
 1287 enter such other order as it considers proper. Effective for
 1288 inmates whose offenses were committed on or after July 1, 1995,
 1289 the panel may order the placement of a releasee, upon a finding
 1290 of violation pursuant to this subsection, into a local detention
 1291 facility as a condition of supervision.

1292 (5) Effective for inmates whose offenses were committed on
 1293 or after July 1, 1995, notwithstanding the provisions of ss.
 1294 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and
 1295 951.23, or any other law to the contrary, by such order as
 1296 provided in subsection (4), the panel, upon a finding of guilt,
 1297 may, as a condition of continued supervision, place the releasee
 1298 in a local detention facility for a period of incarceration not
 1299 to exceed 22 months. Prior to the expiration of the term of
 1300 incarceration, or upon recommendation of the chief correctional
 1301 officer of that county, the commission shall cause inquiry into
 1302 the inmate's release plan and custody status in the detention
 1303 facility and consider whether to restore the inmate to
 1304 supervision, modify the conditions of supervision, or enter an
 1305 order of revocation, thereby causing the return of the inmate to

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 1306 prison to serve the sentence imposed. ~~The provisions of This~~
 1307 section does ~~de~~ not prohibit the panel from entering such other
 1308 order or conducting any investigation that it deems proper. The
 1309 commission may only place a person in a local detention facility
 1310 pursuant to this section only if there is a contractual
 1311 agreement between the chief correctional officer of that county
 1312 and the Department of Corrections. The agreement must provide
 1313 for a per diem reimbursement for each person placed under this
 1314 section, which is payable by the Department of Corrections for
 1315 the duration of the offender's placement in the facility. This
 1316 section does not limit the commission's ability to place a
 1317 person in a local detention facility for less than 1 year.

1318 (6) Whenever a mandatory supervision conditional release,
 1319 control release, conditional medical release, or addiction-
 1320 recovery supervision is revoked by a panel of no fewer than two
 1321 commissioners and the releasee is ordered to be returned to
 1322 prison, the releasee, by reason of the misconduct, shall be
 1323 deemed to have forfeited all gain-time or commutation of time
 1324 for good conduct, as provided for by law, earned up to the date
 1325 of release. However, if a conditional medical release is revoked
 1326 due to the improved medical or physical condition of the
 1327 releasee, the releasee does ~~shall~~ not forfeit gain-time accrued
 1328 before the date of conditional medical release. This subsection
 1329 does not deprive the prisoner of the right to gain-time or
 1330 commutation of time for good conduct, as provided by law, from
 1331 the date of return to prison.

1332 (7) If a law enforcement officer has probable cause to
 1333 believe that an offender who is on release supervision under s.
 1334 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated

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 1335 the terms and conditions of his or her release by committing a
 1336 felony offense, the officer shall arrest the offender without a
 1337 warrant, and a warrant need not be issued in the case.

1338 Section 25. Paragraphs (a) and (f) of subsection (2) of
 1339 section 947.16, Florida Statutes, are amended to read:

1340 947.16 Eligibility for parole; initial parole interviews;
 1341 powers and duties of commission.—

1342 (2) The following special types of cases shall have their
 1343 initial parole interview as follows:

1344 (a) An initial interview may be postponed for a period not
 1345 to exceed 90 days. Such postponement shall be for good cause,
 1346 which includes ~~shall include~~, but need not be limited to, the
 1347 need for the department to obtain a presentence or postsentence
 1348 investigation report or a probation or parole or mandatory
 1349 supervision ~~conditional release~~ violation report. The reason for
 1350 postponement shall be noted in writing and included in the
 1351 official record. No postponement for good cause shall result in
 1352 an initial interview being conducted later than 90 days after
 1353 the inmate's initially scheduled initial interview.

1354 (f) An initial interview may be held at the discretion of
 1355 the commission after the entry of a commission order to revoke
 1356 parole or mandatory supervision ~~conditional release~~.

1357 Section 26. Subsection (2) of section 947.22, Florida
 1358 Statutes, is amended to read:

1359 947.22 Authority to arrest parole violators with or without
 1360 warrant.—

1361 (2) Any parole and probation officer, when she or he has
 1362 reasonable ground to believe that a parolee, control releasee,
 1363 or mandatory supervision participant ~~conditional releasee~~ has

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 1364 violated the terms and conditions of her or his parole, control
 1365 release, or mandatory supervision ~~conditional release~~ in a
 1366 material respect, has the right to arrest the releasee or
 1367 parolee without warrant and bring her or him forthwith before
 1368 one or more commissioners or a duly authorized representative of
 1369 the Parole Commission or Control Release Authority; and
 1370 proceedings shall thereupon be had as provided herein when a
 1371 warrant has been issued by a member of the commission or
 1372 authority or a duly authorized representative of the commission
 1373 or authority.

1374 Section 27. Section 947.24, Florida Statutes, is amended to
 1375 read:

1376 947.24 Discharge from parole supervision or release
 1377 supervision.—

1378 (1) When a person is placed on parole, control release, or
 1379 mandatory supervision ~~conditional release~~, the commission shall
 1380 determine the period of time the person will be under parole
 1381 supervision or release supervision in the following manner:

1382 (a) If the person is being paroled or released under
 1383 supervision from a single or concurrent sentence, the period of
 1384 time the person will be under parole supervision or release
 1385 supervision may not exceed 2 years unless the commission
 1386 designates a longer period of time, in which case it must advise
 1387 the parolee or releasee in writing of the reasons for the
 1388 extended period. In any event, the period of parole supervision
 1389 or release supervision may not exceed the maximum period for
 1390 which the person has been sentenced.

1391 (b) If the person is being paroled or released under
 1392 supervision from a consecutive sentence or sentences, the period

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1393 of time the person will be under parole supervision or release
1394 supervision will be for the maximum period for which the person
1395 was sentenced.

1396 (2) The commission shall review the progress of each person
1397 who has been placed on parole, control release, or mandatory
1398 supervision ~~conditional release~~ after 2 years of supervision in
1399 the community and biennially thereafter. The department shall
1400 provide to the commission the information necessary to conduct
1401 such a review. Such review must include consideration of whether
1402 to modify the reporting schedule, thereby authorizing the person
1403 under parole supervision or release supervision to submit
1404 reports quarterly, semiannually, or annually. The commission,
1405 after having retained jurisdiction of a person for a sufficient
1406 length of time to evidence satisfactory rehabilitation and
1407 cooperation, may further modify the terms and conditions of the
1408 person's parole, control release, or mandatory supervision
1409 ~~conditional release~~, may discharge the person from parole
1410 supervision or release supervision, may relieve the person from
1411 making further reports, or may permit the person to leave the
1412 state or country, upon finding that such action is in the best
1413 interests of the person and society.

1414 (3) This section does not affect the rights of a parolee to
1415 request modification of the terms and conditions of parole under
1416 s. 947.19.

1417 Section 28. Paragraph (a) of subsection (1) and subsection
1418 (3) of section 948.09, Florida Statutes, are amended to read:

1419 948.09 Payment for cost of supervision and rehabilitation.—

1420 (1)(a)1. Any person ordered by the court, the Department of
1421 Corrections, or the parole commission to be placed on probation,

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1422 drug offender probation, community control, parole, control
1423 release, provisional release supervision, addiction-recovery
1424 supervision, or mandatory supervision ~~conditional release~~
1425 supervision under chapter 944, chapter 945, chapter 947, this
1426 chapter ~~948~~, or chapter 958, or in a pretrial intervention
1427 program, must, as a condition of any placement, pay the
1428 department a total sum of money equal to the total month or
1429 portion of a month of supervision times the court-ordered
1430 amount, but not to exceed the actual per diem cost of the
1431 supervision. The department shall adopt rules by which an
1432 offender who pays in full and in advance of regular termination
1433 of supervision may receive a reduction in the amount due. The
1434 rules shall incorporate provisions by which the offender's
1435 ability to pay is linked to an established written payment plan.
1436 Funds collected from felony offenders may be used to offset
1437 costs of the Department of Corrections associated with community
1438 supervision programs, subject to appropriation by the
1439 Legislature.

1440 2. In addition to any other contribution or surcharge
1441 imposed by this section, each felony offender assessed under
1442 this paragraph shall pay a \$2-per-month surcharge to the
1443 department. The surcharge shall be deemed to be paid only after
1444 the full amount of any monthly payment required by the
1445 established written payment plan has been collected by the
1446 department. These funds shall be used by the department to pay
1447 for correctional probation officers' training and equipment,
1448 including radios, and firearms training, firearms, and attendant
1449 equipment necessary to train and equip officers who choose to
1450 carry a concealed firearm while on duty. ~~Nothing in~~ This

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1451 subparagraph ~~does not shall be construed to~~ limit the
 1452 department's authority to determine who shall be authorized to
 1453 carry a concealed firearm while on duty, or ~~to~~ limit the right
 1454 of a correctional probation officer to carry a personal firearm
 1455 approved by the department.

1456 (3) Any failure to pay contribution as required under this
 1457 section may constitute a ground for the revocation of probation
 1458 by the court, the revocation of parole or mandatory supervision
 1459 ~~conditional release~~ by the Parole Commission, the revocation of
 1460 control release by the Control Release Authority, or removal
 1461 from the pretrial intervention program by the state attorney.
 1462 The Department of Corrections may exempt a person from the
 1463 payment of all or any part of the contribution if it finds any
 1464 of the following factors to exist:

1465 (a) The offender has diligently attempted, but has been
 1466 unable, to obtain employment that ~~which~~ provides him or her
 1467 sufficient income to make such payments.

1468 (b) The offender is a student in a school, college,
 1469 university, or course of career training designed to fit the
 1470 student for gainful employment. Certification of such student
 1471 status shall be supplied to the Secretary of Corrections by the
 1472 educational institution in which the offender is enrolled.

1473 (c) The offender has an employment handicap, as determined
 1474 by a physical, psychological, or psychiatric examination
 1475 acceptable to, or ordered by, the secretary.

1476 (d) The offender's age prevents him or her from obtaining
 1477 employment.

1478 (e) The offender is responsible for the support of
 1479 dependents, and the payment of such contribution constitutes an

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1480 undue hardship on the offender.

1481 (f) The offender has been transferred outside the state
 1482 under an interstate compact adopted pursuant to chapter 949.

1483 (g) There are other extenuating circumstances, as
 1484 determined by the secretary.

1485 Section 29. Section 948.32, Florida Statutes, is amended to
 1486 read:

1487 948.32 Requirements of law enforcement agency upon arrest
 1488 of persons for certain sex offenses.—

1489 (1) When any state or local law enforcement agency
 1490 investigates or arrests a person for committing, or attempting,
 1491 soliciting, or conspiring to commit, a violation of s.
 1492 787.025(2)(c), chapter 794, s. 796.03, s. 800.04, s. 827.071, s.
 1493 847.0133, s. 847.0135, or s. 847.0145, the law enforcement
 1494 agency shall contact the Department of Corrections to verify
 1495 whether the person under investigation or under arrest is on
 1496 probation, community control, parole, mandatory supervision
 1497 ~~conditional release~~, or control release.

1498 (2) If the law enforcement agency finds that the person
 1499 under investigation or under arrest is on probation, community
 1500 control, parole, mandatory supervision ~~conditional release~~, or
 1501 control release, the law enforcement agency shall immediately
 1502 notify the person's probation officer or release supervisor of
 1503 the investigation or the arrest.

1504 Section 30. Subsection (6) of section 957.06, Florida
 1505 Statutes, is amended to read:

1506 957.06 Powers and duties not delegable to contractor.—A
 1507 contract entered into under this chapter does not authorize,
 1508 allow, or imply a delegation of authority to the contractor to:

5-00116-13

2013540__

1509 (6) Make recommendations to the Parole Commission with
1510 respect to the denial or granting of parole, control release,
1511 mandatory supervision ~~conditional release~~, or conditional
1512 medical release. However, the contractor may submit written
1513 reports to the Parole Commission and must respond to a written
1514 request by the Parole Commission for information.

1515 Section 31. This act shall take effect July 1, 2013.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 540
INTRODUCER: Senator Dean
SUBJECT: Mandatory Supervision of Specified Offenders by the Department of Corrections
DATE: February 25, 2013 **REVISED:** _____

	ANALYST <i>SEC</i>	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon <i>aa</i>	CJ	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	ACJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 540 expands the scope of the conditional release program that requires post-release supervision of certain offenders who are released from prison after serving 85 percent of their sentence. Currently, conditional release supervision is required for an inmate who is serving a sentence for a designated violent offense and who has served at least one prior felony commitment in a state or federal prison. The bill removes the condition that the inmate have served a prior felony commitment.

The bill also renames conditional release supervision as “mandatory supervision.”

This bill substantially amends sections 944.291 and 947.1405 of the Florida Statutes. The bill also amends sections 20.316, 216.136, 394.926, 394.927, 775.084, 775.16, 775.21, 775.261, 893.11, 943.0435, 943.325, 944.171, 944.28, 944.606, 944.607, 944.608, 944.70, 945.36, 947.071, 947.13, 947.141, 947.16, 947.22, 947.24, 948.09, 948.32, and 957.06 of the Florida Statutes for the purpose of changing the program name.

II. Present Situation:

Most inmates who are serving sentences in Florida prisons are eligible to have the length of their sentence reduced by application of gain time. Gain time is awarded by the Department of Corrections based upon an inmate’s institutional adjustment and participation in positive activities. An inmate’s sentence may be reduced by as much as 15 percent by reason of gain

time.¹ In most cases, an inmate who is released early when his or her sentence expires due to application of gain time has completed the sentence and is no longer under the jurisdiction of the court or the department. The exceptions are when the sentencing court has ordered probation or community control following incarceration and when the inmate is required to be placed on conditional release.

Conditional release was created by the Legislature in 1988 to require post-release supervision of certain inmates who are released from incarceration early because of accrued gain time. Conditional releasees are supervised by Correctional Probation Officers of the Department of Corrections. The Parole Commission (commission) establishes the length of supervision, which cannot be any longer than the original sentence that was imposed by the court. The commission also sets the conditions of supervision, which include the mandatory conditions required by s. 947.1405, F.S., and any additional conditions that the commission determines to be appropriate. When appropriate, the commission can require conditional releasees to attend training or treatment such as drug rehabilitation programs.

The commission is responsible for conducting hearings regarding alleged violations of the conditions of supervision. The commission has several options if it finds that a violation occurred, including revoking supervision and returning the offender to prison to serve the remaining portion of his or her sentence. Conditional releasees who are returned to prison forfeit any gain time that was earned prior to their release.

Section 947.1405, F.S., requires conditional release for inmates who have been sentenced as a habitual or violent habitual offender, a violent career criminal, or a sexual predator. It also requires conditional release for inmates convicted of a crime which “is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993)” if the inmate had served at least one prior felony commitment in a state or federal correctional institution. The crimes that trigger the conditional release requirement for repeat felons are:

Violent Offenses Requiring Placement on Conditional Release	
Category 1: Murder, Manslaughter	<ul style="list-style-type: none"> • ch. 782, F.S. – Homicide (except s. 782.04(1)(a), F.S. – capital murder) • s. 316.193(3)(c)3., F.S. – DUI Manslaughter (automobile) • s. 327.351(2), F.S. – DUI Manslaughter (vessel) (repealed in 1996)
Category 2: Sexual Offenses	<ul style="list-style-type: none"> • ch. 794, F.S. – Sexual Battery • ch. 800, F.S. – Lewdness; Indecent Exposure • s. 826.04, F.S. – Incest • s. 491.0112, F.S. – Sexual Misconduct by a Psychotherapist

¹ Section 944.275(4)(b)3., F.S., provides that an offender cannot receive an amount of gain time that would result in serving less than 85 percent of the imposed sentence.

Violent Offenses Requiring Placement on Conditional Release	
Category 3: Robbery	<ul style="list-style-type: none"> • s. 812.13, F.S. – Robbery • s. 812.133, F.S. – Carjacking • s. 812.135, F.S. – Home Invasion Robbery
Category 4: Violent Personal Crimes	<ul style="list-style-type: none"> • ch. 784, F.S. – Assault, Battery • s. 836.05, F.S. – Threats, Extortion • s. 836.10, F.S. – Written Threats to Kill or Do Bodily Injury • s. 843.01, F.S. – Resisting Officer with Violence • s. 381.411(4), F.S. – Battery on HRS Employee (repealed effective April 27, 2012)

In fiscal year 2011-2012, 4799 offenders were placed on conditional release. Of this number, 2448 were violent offenders. The average conditional release sentence was approximately 17 months for all conditional releasees and approximately 6 months for those who were violent offenders sentenced under the 85 percent law. The median conditional release sentence for violent offenders was 3.7 months.² As of December 31, 2012, 2254 conditional releasees were being actively supervised by the department.³

III. Effect of Proposed Changes:

The bill amends a number of statutes to change the name “conditional release” to “mandatory supervision.” It also amends ss. 944.291 and 947.1405, F.S., to require mandatory supervision for all offenders who were released early by reason of gain time after serving a sentence for murder, sexual offenses, robbery, or other specified violent personal crimes. This removes the current stipulation that conditional release (now mandatory supervision) only applies to such offenders if they have also previously served at least one felony commitment in a state or federal correctional institution.

The bill applies prospectively to offenders who are imprisoned for offenses committed on or after July 1, 2013, so it would have a gradually increasing effect. The table below indicates the commission’s estimate of the number of offenders who would be placed on conditional release as a result of the bill:⁴

² “Conditional release sentence” is used to indicate the length of time between the actual time served by the offender and 100% of his or her sentence. Data for all conditional releasees is from Department of Corrections 2011-2012 Agency Statistics, Community Supervision Admissions, available at www.dc.state.fl.us/pub/annual/1112/stats/csa_month.html ; Specific data for violent offenders released on conditional release is included in an email dated January 18, 2013 from the Department of Corrections to the Office of Economic & Demographic Research and is on file with the Senate Committee on Criminal Justice.

³ Data concerning community supervision are from the Department of Corrections Monthly Status Report of Florida’s Community Supervision Population, January 2007.

⁴ The estimates are included in an email from commission staff dated December 7, 2012 and forwarded to Senate Criminal Justice Committee staff on December 10, 2012, which is on file with the Senate Criminal Justice Committee.

Florida Parole Commission Projection: Additional Offenders Admitted to Mandatory Supervision Under Provisions of Senate Bill 540		
Fiscal Year	Year After Effective Date	Number of Offenders Admitted
2013-2014	1	3
2014-2015	2	41
2015-2016	3	270
2016-2017	4	555
2017-2018	5	893
2022-2023	10	2542
2027-2028	15	2519
2032-2033	20	3265

The department calculates recidivism rates based upon return of an inmate to prison within three years of release. Using this definition, the overall recidivism rate for inmates released from 2003-2010 without supervision was 25 percent.⁵ All of these returned as the result of a new felony commitment. During that same period, 19.5 percent of inmates released on conditional release returned to prison as a result of a new felony commitment and another 31.1 percent returned to prison for a technical violation of conditional release (including non-criminal violations and commission of a misdemeanor).⁶ While these statistics are informative, these numbers do not lend themselves to definitive conclusions about the effectiveness of the program on different populations.

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.

⁵ "2011 Florida Prison Recidivism Report: Releases from 2003-2010", Florida Department of Corrections, April 2012, p. 12.

⁶ The data is included in an email from department staff dated January 30, 2013 and forwarded to Senate Criminal Justice Committee staff on February 6, 2013, which is on file with the Senate Criminal Justice Committee.

B. Private Sector Impact:

Inmates who are placed on mandatory supervision after release from prison would be required to pay costs of supervision and restitution to victims if they are financially able to do so. Payment of restitution would be beneficial to victims. Payment of cost of supervision would negatively impact the released inmate.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet considered the impact of this bill on prison bed space. Based upon current recidivism rates, it is possible that fewer released offenders would return to prison for a new offense, but more would return for a technical violation of conditional release.

The commission indicates that the impact of the bill in the first three years will require it to employ an additional Parole Tech II at \$47,429. The commission also asserts that the bill will result in commission of fewer crimes, which will reduce costs for the court system, law enforcement, and jails.

The department has not yet estimated the fiscal impact of the bill upon its operations. At some point, it would have to hire additional Correctional Probation Officers to supervise the offenders who will be placed on mandatory supervision as a result of the bill.

VI. Technical Deficiencies:

Section 1 of the bill unnecessarily includes legislative findings of fact. It is recommended that this be amended to a statement of legislative intent to reduce reoffense rates by requiring intensive postrelease supervision for violent offenders in order to assist them with successfully transitioning from prison back to the community.

On line 467, s. 20.316(1)(c)2., F.S., should not be amended to change "conditional release" to "mandatory supervision" because the statute refers to a conditional release program administered by the Department of Juvenile Justice.

VII. Related Issues:

None.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

February 6, 2013

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

Dear Chairman Evers:

I respectfully request you place Senate Bill 540, relating to Parole Commission, on your Criminal Justice Committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Dean".

Charles S. Dean
State Senator District 5

cc: Amanda Cannon, Staff Director

REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 11 / 2013

Meeting Date

Topic _____

Bill Number 540
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/2013

Meeting Date

Topic SB 540 - Mandatory Supervision

Bill Number SB 540
(if applicable)

Name Tena (Tina) Pate

Amendment Barcode _____
(if applicable)

Job Title Chair, FL Parole Commission

Address 4070 Esplanade Way
Street

Phone 850 487-1980

Tall FL 32399
City State Zip

E-mail tenapate@fpc.state.fl.us

Speaking: For Against Information

Representing FL Parole Commission

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 542

INTRODUCER: Criminal Justice Committee and Senator Braynon

SUBJECT: Public Records/Victim of Human Trafficking

DATE: March 11, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	GO	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 542 makes confidential and exempt from public records requirements certain criminal intelligence information and criminal investigative information that may reveal the identity of a person who is a child victim of human trafficking involving commercial sexual activity and child abuse or a photograph, videotape, or image of any part of the body of that victim.

The bill also exempts from public records requirements identifying information of an alleged victim of these human trafficking offenses by prohibiting a public employee or officer who has access to that information from willfully and knowingly disclosing it to a person who is not assisting in the investigation or prosecution of the alleged offense or other persons authorized to receive that information.

The bill specifies that the exemptions are subject to the Open Government Sunset Review Act and provides a statement of public necessity for the exemptions as required by the Florida Constitution. The bill specifies that the exemptions stand repealed October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates new public records exemptions, the bill requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends sections 119.071 and 794.024 of the Florida Statutes. The bill reenacts section 92.56(1)(a) of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, Section 24(a), of the Florida Constitution, provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Act,³ specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states that every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined to include 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.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate,

¹ Section 1390, 1391 F.S. (Rev. 1892).

² Article I, Section 24, of the Florida Constitution.

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), F.S., as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁵ Section 119.011(12), F.S.

communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions may be created by general law if approved by a two-thirds vote of the members present and voting in each house of the Legislature.⁹ The law must state with specificity the public necessity justifying the exemption and be no broader than necessary to accomplish the stated purpose of the law.¹⁰ A bill enacting an exemption¹¹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹²

There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency (the custodian of the record with the power to receive or communicate the record) to anyone other than to the persons or entities designated in the statute.¹³ If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances.¹⁴

The Open Government Sunset Review Act (Act)¹⁵ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law (public meetings).¹⁶ Each year, by June 1, the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁷ The Act requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸

The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁹ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

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

⁷ See generally *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁸ Article I, Section 24(c), of the Florida Constitution.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Under s. 119.15(4)(b), F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹² Article I, Section 24(c), of the Florida Constitution.

¹³ Attorney General Opinion 85-62.

¹⁴ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

¹⁵ Section 119.15, F.S.

¹⁶ Section 286.011, F.S.

¹⁷ Section 119.15(5)(a), F.S.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals, cause unwarranted damage to their good name or reputation, or would jeopardize their safety. (Only information that would identify such individuals may be exempted under this provision).
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.²⁰

The Act also requires, as part of the review process, that the Legislature consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?²¹

Public Records Exemptions: Identity and Images of Victims of Sexual Offenses

Section 119.071(2)(h), F.S., provides, in part, that the following criminal intelligence information²² or criminal investigative information²³ is confidential and exempt from s. 119.07(1), F.S., and Article I, Section 24(a), of the Florida Constitution²⁴:

- Any information which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery offenses),

²⁰ *Id.*

²¹ Section 119.15(6)(a), F.S.

²² “Criminal intelligence information” is information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Section 119.011(3)(a), F.S.

²³ “Criminal investigative information” is information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Section 119.011(3)(b), F.S.

²⁴ Criminal intelligence information and criminal investigative information do not include: (1) time, date, location, and nature of a reported crime; (2) name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.; (3) time, date, and location of the incident and of the arrest; (4) crime charged; (5) documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1), F.S., until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness and impair the ability of a state attorney to locate or prosecute a codefendant; and (6) informations and indictments except as provided in s. 905.26, F.S. Section 119.011(3)(c), F.S.

ch. 796, F.S. (prostitution and related offenses), ch. 800, F.S. (lewd or lascivious/child victim), ch. 827, F.S. (child abuse offenses), or ch. 847, F.S. (obscenity offenses, including computer pornography).²⁵

- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under ch. 794, F.S., ch. 796, F.S., ch. 800, F.S., s. 810.145, F.S. (video voyeurism), ch. 827, F.S., or ch. 847, F.S. The exemption applies regardless of whether the photograph, videotape, or image identifies the victim.²⁶

This information may be disclosed by a law enforcement agency if any of the following apply:

- In the furtherance of the law enforcement agency's official duties and responsibilities.
- For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
- To another governmental agency in the furtherance of the law enforcement agency's official duties and responsibilities.²⁷

This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.²⁸

Current s. 119.071(2)(h), F.S., is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and stands repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.²⁹

Section 92.56(1)(a), F.S., provides that the confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h), F.S., must be maintained in court records pursuant to s. 119.0714(1)(h), F.S., and in court proceedings, including testimony from witnesses.

Section 92.56(2), F.S., provides that a defendant charged with a crime described in ch. 794, F.S., or ch. 800, F.S., or with child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order under this section. Such identifying information concerning the victim may be released to the defendant or his or her attorney in order to prepare the defense. The confidential and exempt status of this information may not be construed to prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other

²⁵ Section 119.071(2)(h)1.b., F.S.

²⁶ Section 119.071(2)(h)1.c., F.S.

²⁷ Section 119.071(2)(h)2., F.S.

²⁸ Section 119.071(2)(h)3., F.S.

²⁹ Section 119.071(2)(h)4., F.S.

person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

Section 119.0714(1), F.S., provides that nothing in ch. 119, F.S., shall be construed to exempt from s. 119.07(1), F.S., a public record that was made part of a court file and that is not specifically closed by order of court, except for any of the records or information listed in that subsection. One of the exceptions, which is described in s. 119.0714(1)(h), F.S., is criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h), F.S.

Section 794.024, F.S., provides that it is a second degree misdemeanor for a public employee or officer who has access to the photograph, name, or address of a person who is alleged to be the victim of an offense described in this ch. 794, F.S., ch. 800, F.S., s. 827.03, F.S., s. 827.04, F.S., or s. 827.071, F.S., to willfully and knowingly disclose it to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in an order entered by the court having jurisdiction of the alleged offense, or organizations authorized to receive such information made exempt by s. 119.071(2)(h), F.S., or to a rape crisis center or sexual assault counselor, as defined in s. 90.5035(1)(b), F.S., who will be offering services to the victim.

Human Trafficking/Commercial Sexual Activity and Child Abuse

Section 787.06, F.S., in part, prohibits and punishes human trafficking involving commercial sexual activity.³⁰ Relevant to the bill, the statute provides that any person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking³¹:

- Using coercion³² for labor or services commits a first degree felony.³³
- Using coercion for commercial sexual activity of any individual who is an unauthorized alien commits a first degree felony.³⁴

³⁰ "Commercial sexual activity" means any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography.

³¹ "Human trafficking" means transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. Section 787.06(2)(d), F.S.

³² Section 787.06(2)(a), F.S., defines the term "coercion" as:

- Using or threatening to use physical force against any person;
- Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
- Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
- Causing or threatening to cause financial harm to any person;
- Enticing or luring any person by fraud or deceit; or
- Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.

³³ Section 787.06(3)(a), F.S. This offense can involve a minor or adult.

- Using coercion for commercial sexual activity who does so by the transfer or transport of any individual from outside this state to within the state commits a first degree felony.³⁵
- For commercial sexual activity in which any child under the age of 18 is involved commits a first degree felony, punishable by imprisonment for a term of years not exceeding life.³⁶
- For commercial sexual activity in which any child under the age of 15 is involved commits a life felony.³⁷

III. Effect of Proposed Changes:

The bill amends s. 119.071, F.S., to make confidential and exempt from public records requirements certain criminal intelligence information and criminal investigative information that:

- May reveal the identity of a person who is a victim of a violation of s. 787.06(3)(a), F.S., if the victim was under 18 years of age, or a sexual offense proscribed in s. 787.06(3)(d), (f), (g), or (h), F.S.
- Is a photograph, videotape, or image of any part of the body of the victim of a violation of s. 787.06(3)(a), F.S., if the victim was under 18 years of age, or a sexual offense proscribed in s. 787.06(3)(d), (f), (g), or (h), F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Section 787.06(3)(a), F.S., prohibits a person from knowingly, or in reckless disregard of the facts, engaging in, or attempting to engage in, or benefiting financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking using coercion for labor or services

Section 787.06(3)(d), F.S., prohibits a person from knowingly, or in reckless disregard of the facts, engaging in, or attempting to engage in, or benefiting financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking using coercion for commercial sexual activity of any individual who is an unauthorized alien.

Section 787.06(3)(f), F.S., prohibits a person from knowingly, or in reckless disregard of the facts, engaging in, or attempting to engage in, or benefiting financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking using coercion for commercial sexual activity who does so by the transfer or transport of any individual from outside this state to within the state commits a first degree felony.

Section 787.06(3)(g), F.S., prohibits a person from knowingly, or in reckless disregard of the facts, engaging in, or attempting to engage in, or benefiting financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for commercial sexual activity in which any child under the age of 18 is involved.

³⁴ Section 787.06(3)(d), F.S. This offense can involve a minor or adult.

³⁵ Section 787.06(3)(f), F.S. This offense can involve a minor or adult.

³⁶ Section 787.06(3)(g), F.S.

³⁷ Section 787.06(3)(h), F.S.

Section 787.06(3)(h), F.S., prohibits a person from knowingly, or in reckless disregard of the facts, engaging in, or attempting to engage in, or benefiting financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for commercial sexual activity in which any child under the age of 15 is involved.

The bill also amends s. 794.024, F.S., to make exempt from public records requirements identifying information of an alleged victim of these human trafficking offenses by prohibiting a public employee or officer who has access to that information from willfully and knowingly disclosing it to a person who is not assisting in the investigation or prosecution of the alleged offense or other persons authorized to receive that information.

The bill reenacts s. 92.56(1)(a), F.S., for the purpose of incorporating the amendment made by the bill to s. 119.071, F.S., in a reference to s. 119.071, F.S.

The bill specifies that the exemptions are subject to the Open Government Sunset Review Act and provides the following statement of public necessity for the exemptions as required by the Florida Constitution:

The Legislature finds that it is a public necessity that personal identifying information relating to an individual who is an alleged victim of human trafficking be made confidential and exempt from public records requirements. Present Florida law provides that the identities and any photographs of victims of sexual offenses are confidential. However, victims of human trafficking are not included in this protection. The Legislature finds that instituting confidentiality protections sought here for victims of human trafficking would be identical to those confidentiality provisions presently in law protecting the identity of victims of other sexual offenses. These amendments recognize that victims of human trafficking deserve the same protection as victims of sexual abuse.

The bill specifies that the exemptions stand repealed October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates new public records exemptions, the bill requires a two-thirds vote of each house of the Legislature for passage.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, Section 24(c), of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-

created public records exemption. Because the bill creates new public records exemptions, the bill requires a two-thirds vote of each house of the Legislature for passage.

Public Necessity Statement

Article I, Section 24(c), of the Florida Constitution requires a public necessity statement for a newly created public records exemption. Because this bill creates new public records exemptions, it includes a public necessity statement.

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. Additional Information:

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

CS by Criminal Justice on March 11, 2013:

- Adds additional human trafficking offenses involving child abuse and commercial sexual activity to a provision that makes confidential and exempt from public records requirements certain criminal intelligence information and criminal investigative information that may reveal the identity of a person who is a child victim of human trafficking involving commercial sexual activity or child abuse or a photograph, videotape, or image of any part of the body of that victim.

- Adds additional human trafficking offenses involving child abuse and commercial sexual activity to a provision that exempts from public records requirements identifying information of an alleged victim of specified human trafficking offenses by prohibiting a public employee or officer who has access to that information from willfully and knowingly disclosing it to a person who is not assisting in the investigation or prosecution of the alleged offense or other persons authorized to receive that information.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
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The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment

Delete lines 36 - 43
and insert:

of the crime of child abuse as defined by chapter 827 or
the victim of a violation of s. 787.06(3)(a), if the victim was
under 18 years of age.

b. Any information that ~~which~~ may reveal the identity of a
person who is a victim of any sexual offense, including a sexual
offense proscribed in s. 787.06(3)(d), (f), (g), or (h), chapter
794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the



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13 body of the victim of a violation of s. 787.06(3)(a), if the
14 victim was under 18 years of age, or the victim of a sexual
15 offense prohibited under s. 787.06(3)(d), (f), (g), or (h),
16 chapter 794, chapter 796, chapter



579024

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
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The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment

Delete line 75
and insert:
787.06(3)(a), if the victim was under 18 years of age, s.
787.06(3)(d), (f), (g), or (h), chapter 800, s. 827.03, s.

By Senator Braynon

36-00897-13

2013542__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; creating an exemption from public
 4 records requirements for certain criminal intelligence
 5 information and criminal investigative information
 6 that might reveal the identity of a person who is a
 7 victim of human trafficking or a photograph,
 8 videotape, or image of any part of the body of the
 9 victim of human trafficking; amending s. 794.024,
 10 F.S.; prohibiting a public employee or officer who has
 11 access to identifying information of a person who is
 12 alleged to be the victim of human trafficking from
 13 willfully and knowingly disclosing the information to
 14 a person who is not assisting in the investigation or
 15 prosecution of the alleged offense; reenacting s.
 16 92.56(1) (a), F.S., relating to judicial proceedings
 17 and court records involving sexual offenses, to
 18 incorporate the amendment made to s. 119.071, F.S., in
 19 a reference thereto; providing for review and repeal;
 20 providing a statement of public necessity; providing
 21 an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Paragraph (h) of subsection (2) of section
 26 119.071, Florida Statutes, is amended to read:
 27 119.071 General exemptions from inspection or copying of
 28 public records.-
 29 (2) AGENCY INVESTIGATIONS.-

Page 1 of 5

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

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30 (h)1. The following criminal intelligence information or
 31 criminal investigative information is confidential and exempt
 32 from s. 119.07(1) and s. 24(a), Art. I of the State
 33 Constitution:
 34 a. Any information, including the photograph, name,
 35 address, or other fact, which reveals the identity of the victim
 36 of the crime of child abuse as defined by chapter 827.
 37 b. Any information ~~that~~ which may reveal the identity of a
 38 person who is a victim of any sexual offense, including a sexual
 39 offense proscribed in s. 787.06(3) (g), s. 787.06(3) (h), chapter
 40 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 41 c. A photograph, videotape, or image of any part of the
 42 body of the victim of a sexual offense prohibited under s.
 43 787.06(3) (g), s. 787.06(3) (h), chapter 794, chapter 796, chapter
 44 800, s. 810.145, chapter 827, or chapter 847, regardless of
 45 whether the photograph, videotape, or image identifies the
 46 victim.
 47 2. Criminal investigative information and criminal
 48 intelligence information made confidential and exempt under this
 49 paragraph may be disclosed by a law enforcement agency:
 50 a. In the furtherance of its official duties and
 51 responsibilities.
 52 b. For print, publication, or broadcast if the law
 53 enforcement agency determines that such release would assist in
 54 locating or identifying a person that such agency believes to be
 55 missing or endangered. The information provided should be
 56 limited to that needed to identify or locate the victim and not
 57 include the sexual nature of the offense committed against the
 58 person.

Page 2 of 5

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

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59 c. To another governmental agency in the furtherance of its
60 official duties and responsibilities.

61 3. This exemption applies to such confidential and exempt
62 criminal intelligence information or criminal investigative
63 information held by a law enforcement agency before, on, or
64 after the effective date of the exemption.

65 4. This paragraph is subject to the Open Government Sunset
66 Review Act in accordance with s. 119.15, and shall stand
67 repealed on October 2, 2018 ~~2016~~, unless reviewed and saved from
68 repeal through reenactment by the Legislature.

69 Section 2. Section 794.024, Florida Statutes, is amended to
70 read:

71 794.024 Unlawful to disclose identifying information.—

72 (1) (a) A public employee or officer who has access to the
73 photograph, name, or address of a person who is alleged to be
74 the victim of an offense described in this chapter, s.
75 787.06(3) (g), s. 787.06(3) (h), chapter 800, s. 827.03, s.
76 827.04, or s. 827.071 may not willfully and knowingly disclose
77 it to a person who is not assisting in the investigation or
78 prosecution of the alleged offense or to any person other than
79 the defendant, the defendant's attorney, a person specified in
80 an order entered by the court having jurisdiction of the alleged
81 offense, or organizations authorized to receive such information
82 made exempt by s. 119.071(2) (h), or to a rape crisis center or
83 sexual assault counselor, as defined in s. 90.5035(1) (b), who
84 will be offering services to the victim.

85 (b) Paragraph (a) is subject to the Open Government Sunset
86 Review Act in accordance with s. 119.15 and shall stand repealed
87 on October 2, 2018, unless reviewed and saved from repeal

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88 through reenactment by the Legislature.

89 (2) A violation of subsection (1) constitutes a misdemeanor
90 of the second degree, punishable as provided in s. 775.082 or s.
91 775.083.

92 Section 3. For the purpose of incorporating the amendment
93 made by this act to section 119.071, Florida Statutes, in a
94 reference thereto, paragraph (a) of subsection (1) of section
95 92.56, Florida Statutes, is reenacted to read:

96 92.56 Judicial proceedings and court records involving
97 sexual offenses.—

98 (1) (a) The confidential and exempt status of criminal
99 intelligence information or criminal investigative information
100 made confidential and exempt pursuant to s. 119.071(2) (h) must
101 be maintained in court records pursuant to s. 119.0714(1) (h) and
102 in court proceedings, including testimony from witnesses.

103 Section 4. The Legislature finds that it is a public
104 necessity that personal identifying information relating to an
105 individual who is an alleged victim of human trafficking be made
106 confidential and exempt from public records requirements.
107 Present Florida law provides that the identities and any
108 photographs of victims of sexual offenses are confidential.
109 However, victims of human trafficking are not included in this
110 protection. The Legislature finds that instituting
111 confidentiality protections sought here for victims of human
112 trafficking would be identical to those confidentiality
113 provisions presently in law protecting the identity of victims
114 of other sexual offenses. These amendments recognize that
115 victims of human trafficking deserve the same protection as
116 victims of sexual abuse.

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117

Section 5. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic SB 542

Bill Number 542
(if applicable)

Name Frenda Mezick

Amendment Barcode _____
(if applicable)

Job Title Assistant State Attorney

Address 1350 NW 12th Ave

Phone 305-547-0749

Miami FL 33136
City State Zip

E-mail frendamezick@miamiso.com

Speaking: For Against Information

Representing Office of the State Attorney for Miami-Dade County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 672

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Juvenile Justice/Youth Custody Officers & Correctional Facility Tours

DATE: March 11, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			JU	
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 672 repeals s. 985.105, F.S., creating youth custody officers within the Department of Juvenile Justice (DJJ), because these positions no longer exist. Similarly, the bill deletes language in s. 121.0515, F.S., classifying these positions as special risk positions for purposes of the Florida Retirement System.

The bill also repeals s. 945.75, F.S., authorizing tours by juveniles of state and county correctional facilities so that the DJJ can continue receiving federal funds by remaining in compliance with the federal Juvenile Justice and Delinquency Prevention Act.

The bill repeals section 985.105 and section 945.75, Florida Statutes. The bill also substantially amends section 121.0515, Florida Statutes.

II. Present Situation:

Youth Custody Officers

Section 985.105, F.S., created the youth custody officer position within the Department of Juvenile Justice (DJJ). Youth custody officers were responsible for taking a youth into custody if the officer had probable cause to believe that the youth had:

- Violated the conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after being properly noticed.

These youth custody officers were also responsible for informing local law enforcement agencies when they took anyone into custody under this section.

Youth custody officers were required to meet the minimum qualifications for employment or appointment, become certified under ch. 943, F.S., and comply with the mandates for continued employment as provided by s. 943.135, F.S.¹ Additionally, s. 121.0515, F.S., designated youth custody officers as a “special risk class” for purposes of the Florida Retirement System.²

The DJJ states that the department eliminated these youth custody officer positions on July 1, 2010, as a way to cut its budget.³ The duties of the youth custody officers were either distributed among existing employees or were no longer performed by the DJJ.⁴

Jail and Prison Tours

Section 945.75, F.S., requires the Department of Corrections (DOC) to develop programs under which a judge may order juveniles who have committed delinquent acts to be allowed to tour state correctional facilities under the terms and conditions established by DOC. The statute requires counties to develop similar programs involving county jails. These tour programs are commonly referred to as “scared straight programs.”⁵ Scared straight programs generally involve adult inmates describing the conditions associated with jail or prison incarceration to delinquent at-risk youth in a secure setting.⁶ The goal of these programs is to modify the behavior of the juveniles by shocking, scaring, and thus deterring them from engaging in further delinquent activity.⁷

¹ Section 985.105(2), F.S.

² Section 121.0515, F.S., creates a “special risk class” of state employees for purposes of the Florida Retirement System that earn more retirement credit per year of service. This increased credit is in recognition that they may be unable to “enjoy the full career and retirement benefits enjoyed by other membership classes” as a result of the physically demanding and high risk functions required by their jobs.

³ See the 2013 Agency Proposal, Juvenile Justice Reform, by the Department of Juvenile Justice, which is on file with the Senate Criminal Justice Committee.

⁴ *Id.*

⁵ *Scared Straight Programs*, www.dcjs.virginia.gov/juvenile/compliance (last visited on February 27, 2013); *See also Scared Straight Programs: Jail and Detention Tours*, DJJ, www.djj.state.fl.us/docs/research2/scared_straight_booklet_version (last visited on February 27, 2013).

⁶ *Id.*

⁷ *Id.*

The DJJ reports that because the department complies with the Federal Juvenile Justice and Delinquency Prevention Act of 2002,⁸ it receives between two and eight million dollars in federal funding.⁹ The DJJ states that it will lose two-thirds of its federal funding because the scared straight tours violate several portions of the Juvenile Justice and Delinquency Prevention Act.¹⁰

III. Effect of Proposed Changes:

This bill repeals s. 985.105, F.S., which created youth custody officers within the DJJ. This section of law is no longer needed because these positions have been nonexistent since 2010. Likewise, the bill deletes language in s. 121.0515, F.S., classifying these positions as special risk positions for purposes of state retirement.

The bill also repeals s. 945.75, F.S., authorizing prison and jail tours, so that the DJJ can continue receiving federal funds by remaining in compliance with the federal Juvenile Justice and Delinquency Prevention Act.

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.

⁸ Pub. L. No 93-415 (1974).

⁹See the 2013 Agency Proposal, Juvenile Justice Reform, by the Department of Juvenile Justice, which is on file with the Senate Criminal Justice Committee.

¹⁰ *Id.* The specific portions of the federal act violated are the Deinstitutionalization of Status Offenders, the Sight and Sound Separation, and the Jail Removal Acts.

C. Government Sector Impact:

According to the DJJ, there is no fiscal impact as a result of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 11, 2013:

Adds a provision repealing the statute that authorizes jail and prison tours by juveniles so that the DJJ can remain in compliance with federal law and continue receiving federal prevention funds.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
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The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 945.75, Florida Statutes, is repealed.

Section 2. Section 985.105, Florida Statutes, is repealed.

Section 3. Paragraphs (h) through (k) of subsection (3) of section 121.0515, Florida Statutes, are redesignated as paragraphs (g) through (j) of that subsection, respectively, and paragraphs (e) through (i) of subsection (2), present paragraphs (g) and (k) of subsection (3), paragraph (b) of subsection (5),



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13 paragraph (d) of subsection (8), and paragraph (c) of subsection
14 (10) of that section are amended to read:

15 121.0515 Special Risk Class.—

16 (2) MEMBERSHIP.—

17 ~~(e) Effective July 1, 2001, "special risk member" includes~~
18 ~~any member who is employed as a youth custody officer by the~~
19 ~~Department of Juvenile Justice and meets the special criteria~~
20 ~~set forth in paragraph (3) (g).~~

21 (e) ~~(f)~~ Effective October 1, 2005, through June 30, 2008,
22 the member must be employed by a law enforcement agency or
23 medical examiner's office in a forensic discipline and meet the
24 special criteria set forth in paragraph (3) (g) ~~(3) (h)~~.

25 (f) ~~(g)~~ Effective July 1, 2008, the member must be employed
26 by the Department of Law Enforcement in the crime laboratory or
27 by the Division of State Fire Marshal in the forensic laboratory
28 and meet the special criteria set forth in paragraph (3) (h)
29 ~~(3) (i)~~.

30 (g) ~~(h)~~ Effective July 1, 2008, the member must be employed
31 by a local government law enforcement agency or medical
32 examiner's office and meet the special criteria set forth in
33 paragraph (3) (i) ~~(3) (j)~~.

34 (h) ~~(i)~~ Effective August 1, 2008, "special risk member"
35 includes any member who meets the special criteria for continued
36 membership set forth in paragraph (3) (j) ~~(3) (k)~~.

37 (3) CRITERIA.—A member, to be designated as a special risk
38 member, must meet the following criteria:

39 ~~(g) Effective July 1, 2001, the member must be employed as~~
40 ~~a youth custody officer and be certified, or required to be~~
41 ~~certified, in compliance with s. 943.1395. In addition, the~~



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42 ~~member's primary duties and responsibilities must be the~~
43 ~~supervised custody, surveillance, control, investigation,~~
44 ~~apprehension, arrest, and counseling of assigned juveniles~~
45 ~~within the community;~~

46 (j) ~~(k)~~ The member must have already qualified for and be
47 actively participating in special risk membership under
48 paragraph (a), paragraph (b), or paragraph (c), must have
49 suffered a qualifying injury as defined in this paragraph, must
50 not be receiving disability retirement benefits as provided in
51 s. 121.091(4), and must satisfy the requirements of this
52 paragraph.

53 1. The ability to qualify for the class of membership
54 defined in paragraph (2) (h) ~~(2) (i)~~ occurs when two licensed
55 medical physicians, one of whom is a primary treating physician
56 of the member, certify the existence of the physical injury and
57 medical condition that constitute a qualifying injury as defined
58 in this paragraph and that the member has reached maximum
59 medical improvement after August 1, 2008. The certifications
60 from the licensed medical physicians must include, at a minimum,
61 that the injury to the special risk member has resulted in a
62 physical loss, or loss of use, of at least two of the following:
63 left arm, right arm, left leg, or right leg; and:

64 a. That this physical loss or loss of use is total and
65 permanent, except in the event that the loss of use is due to a
66 physical injury to the member's brain, in which event the loss
67 of use is permanent with at least 75 percent loss of motor
68 function with respect to each arm or leg affected.

69 b. That this physical loss or loss of use renders the
70 member physically unable to perform the essential job functions



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71 of his or her special risk position.

72 c. That, notwithstanding this physical loss or loss of use,
73 the individual is able to perform the essential job functions
74 required by the member's new position, as provided in
75 subparagraph 3.

76 d. That use of artificial limbs is either not possible or
77 does not alter the member's ability to perform the essential job
78 functions of the member's position.

79 e. That the physical loss or loss of use is a direct result
80 of a physical injury and not a result of any mental,
81 psychological, or emotional injury.

82 2. For the purposes of this paragraph, "qualifying injury"
83 means an injury sustained in the line of duty, as certified by
84 the member's employing agency, by a special risk member that
85 does not result in total and permanent disability as defined in
86 s. 121.091(4)(b). An injury is a qualifying injury if the injury
87 is a physical injury to the member's physical body resulting in
88 a physical loss, or loss of use, of at least two of the
89 following: left arm, right arm, left leg, or right leg.
90 Notwithstanding any other provision of this section, an injury
91 that would otherwise qualify as a qualifying injury is not
92 considered a qualifying injury if and when the member ceases
93 employment with the employer for whom he or she was providing
94 special risk services on the date the injury occurred.

95 3. The new position, as described in sub-subparagraph 1.c.,
96 that is required for qualification as a special risk member
97 under this paragraph is not required to be a position with
98 essential job functions that entitle an individual to special
99 risk membership. Whether a new position as described in sub-



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100 subparagraph 1.c. exists and is available to the special risk
101 member is a decision to be made solely by the employer in
102 accordance with its hiring practices and applicable law.

103 4. This paragraph does not grant or create additional
104 rights for any individual to continued employment or to be hired
105 or rehired by his or her employer that are not already provided
106 within the Florida Statutes, the State Constitution, the
107 Americans with Disabilities Act, if applicable, or any other
108 applicable state or federal law.

109 (5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

110 (b) Any member who is a special risk member on July 1,
111 2008, and who became eligible to participate under paragraph
112 (3) (g) ~~(3) (h)~~ but fails to meet the criteria for Special Risk
113 Class membership established by paragraph (3) (h) ~~(3) (i)~~ or
114 paragraph (3) (i) ~~(3) (j)~~ shall have his or her special risk
115 designation removed and thereafter shall be a Regular Class
116 member and earn only Regular Class membership credit. The
117 department may review the special risk designation of members to
118 determine whether or not those members continue to meet the
119 criteria for Special Risk Class membership.

120 (8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

121 (d) Notwithstanding any other provision of this subsection,
122 this subsection does not apply to any special risk member who
123 qualifies for continued membership pursuant to paragraph (3) (j)
124 ~~(3) (k)~~.

125 (10) CREDIT FOR UPGRADED SERVICE.—

126 (c) Any member of the Special Risk Class who has earned
127 creditable service through June 30, 2008, in another membership
128 class of the Florida Retirement System in a position with the



954052

129 Department of Law Enforcement or the Division of State Fire
130 Marshal and became covered by the Special Risk Class as
131 described in paragraph (3) (h) ~~(3) (i)~~, or with a local government
132 law enforcement agency or medical examiner's office and became
133 covered by the Special Risk Class as described in paragraph
134 (3) (i) ~~(3) (j)~~, which service is within the purview of the
135 Special Risk Class, and is employed in such position on or after
136 July 1, 2008, may purchase additional retirement credit to
137 upgrade such service to Special Risk Class service, to the
138 extent of the percentages of the member's average final
139 compensation provided in s. 121.091(1)(a)2. The cost for such
140 credit must be an amount representing the actuarial accrued
141 liability for the difference in accrual value during the
142 affected period of service. The cost shall be calculated using
143 the discount rate and other relevant actuarial assumptions that
144 were used to value the Florida Retirement System Pension Plan
145 liabilities in the most recent actuarial valuation. The division
146 shall ensure that the transfer sum is prepared using a formula
147 and methodology certified by an enrolled actuary. The cost must
148 be paid immediately upon notification by the division. The local
149 government employer may purchase the upgraded service credit on
150 behalf of the member if the member has been employed by that
151 employer for at least 3 years.

152 Section 4. This act shall take effect July 1, 2013.

153
154 ===== T I T L E A M E N D M E N T =====

155 And the title is amended as follows:

156 Delete everything before the enacting clause
157 and insert:



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158 A bill to be entitled
159 An act relating to juvenile justice; repealing s.
160 945.75, F.S.; deleting a requirement that the
161 Department of Corrections and counties develop
162 programs under which a judge may order juveniles who
163 have committed delinquent acts to tour correctional
164 facilities; repealing s. 985.105, F.S., relating to
165 the creation, duties, and qualifications of the youth
166 custody officer position within the Department of
167 Juvenile Justice; amending s. 121.0515, F.S.;
168 conforming provisions to changes made by the act;
169 providing an effective date.

By Senator Evers

2-00886-13

2013672__

1 A bill to be entitled
 2 An act relating to youth custody officers; repealing
 3 s. 985.105, F.S., relating to the creation, duties,
 4 and qualifications of the youth custody officer
 5 position within the Department of Juvenile Justice;
 6 amending s. 121.0515, F.S.; conforming provisions to
 7 changes made by the act; providing an effective date.

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

10
 11 Section 1. Section 985.105, Florida Statutes, is repealed.
 12 Section 2. Present paragraphs (h) through (k) of subsection
 13 (3) of section 121.0515, Florida Statutes, are redesignated as
 14 paragraphs (g) through (j), respectively, and paragraphs (e)
 15 through (i) of subsection (2), present paragraphs (g) and (k) of
 16 subsection (3), paragraph (b) of subsection (5), paragraph (d)
 17 of subsection (8), and paragraph (c) of subsection (10) of that
 18 section are amended, to read:
 19 121.0515 Special Risk Class.—
 20 (2) MEMBERSHIP.—
 21 ~~(e) Effective July 1, 2001, "special risk member" includes~~
 22 ~~any member who is employed as a youth custody officer by the~~
 23 ~~Department of Juvenile Justice and meets the special criteria~~
 24 ~~set forth in paragraph (3)(g).~~
 25 (e)(f) Effective October 1, 2005, through June 30, 2008,
 26 the member must be employed by a law enforcement agency or
 27 medical examiner's office in a forensic discipline and meet the
 28 special criteria set forth in paragraph (3)(g) ~~(3)(h)~~.
 29 (f)(g) Effective July 1, 2008, the member must be employed

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30 by the Department of Law Enforcement in the crime laboratory or
 31 by the Division of State Fire Marshal in the forensic laboratory
 32 and meet the special criteria set forth in paragraph (3)(h)
 33 ~~(3)(i)~~.

34 (g)(h) Effective July 1, 2008, the member must be employed
 35 by a local government law enforcement agency or medical
 36 examiner's office and meet the special criteria set forth in
 37 paragraph (3)(i) ~~(3)(j)~~.

38 (h)(i) Effective August 1, 2008, "special risk member"
 39 includes any member who meets the special criteria for continued
 40 membership set forth in paragraph (3)(j) ~~(3)(k)~~.

41 (3) CRITERIA.—A member, to be designated as a special risk
 42 member, must meet the following criteria:

43 ~~(g) Effective July 1, 2001, the member must be employed as~~
 44 ~~a youth custody officer and be certified, or required to be~~
 45 ~~certified, in compliance with s. 943.1395. In addition, the~~
 46 ~~member's primary duties and responsibilities must be the~~
 47 ~~supervised custody, surveillance, control, investigation,~~
 48 ~~apprehension, arrest, and counseling of assigned juveniles~~
 49 ~~within the community.~~

50 (j)(k) The member must have already qualified for and be
 51 actively participating in special risk membership under
 52 paragraph (a), paragraph (b), or paragraph (c), must have
 53 suffered a qualifying injury as defined in this paragraph, must
 54 not be receiving disability retirement benefits as provided in
 55 s. 121.091(4), and must satisfy the requirements of this
 56 paragraph.

57 1. The ability to qualify for the class of membership
 58 defined in paragraph (2)(h) ~~(2)(i)~~ occurs when two licensed

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59 medical physicians, one of whom is a primary treating physician
 60 of the member, certify the existence of the physical injury and
 61 medical condition that constitute a qualifying injury as defined
 62 in this paragraph and that the member has reached maximum
 63 medical improvement after August 1, 2008. The certifications
 64 from the licensed medical physicians must include, at a minimum,
 65 that the injury to the special risk member has resulted in a
 66 physical loss, or loss of use, of at least two of the following:
 67 left arm, right arm, left leg, or right leg; and:

- 68 a. That this physical loss or loss of use is total and
 69 permanent, except in the event that the loss of use is due to a
 70 physical injury to the member's brain, in which event the loss
 71 of use is permanent with at least 75 percent loss of motor
 72 function with respect to each arm or leg affected.
- 73 b. That this physical loss or loss of use renders the
 74 member physically unable to perform the essential job functions
 75 of his or her special risk position.
- 76 c. That, notwithstanding this physical loss or loss of use,
 77 the individual is able to perform the essential job functions
 78 required by the member's new position, as provided in
 79 subparagraph 3.
- 80 d. That use of artificial limbs is either not possible or
 81 does not alter the member's ability to perform the essential job
 82 functions of the member's position.
- 83 e. That the physical loss or loss of use is a direct result
 84 of a physical injury and not a result of any mental,
 85 psychological, or emotional injury.
- 86 2. For the purposes of this paragraph, "qualifying injury"
 87 means an injury sustained in the line of duty, as certified by

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- 88 the member's employing agency, by a special risk member that
 89 does not result in total and permanent disability as defined in
 90 s. 121.091(4)(b). An injury is a qualifying injury if the injury
 91 is a physical injury to the member's physical body resulting in
 92 a physical loss, or loss of use, of at least two of the
 93 following: left arm, right arm, left leg, or right leg.
 94 Notwithstanding any other provision of this section, an injury
 95 that would otherwise qualify as a qualifying injury is not
 96 considered a qualifying injury if and when the member ceases
 97 employment with the employer for whom he or she was providing
 98 special risk services on the date the injury occurred.
- 99 3. The new position, as described in sub-subparagraph 1.c.,
 100 that is required for qualification as a special risk member
 101 under this paragraph is not required to be a position with
 102 essential job functions that entitle an individual to special
 103 risk membership. Whether a new position as described in sub-
 104 subparagraph 1.c. exists and is available to the special risk
 105 member is a decision to be made solely by the employer in
 106 accordance with its hiring practices and applicable law.
- 107 4. This paragraph does not grant or create additional
 108 rights for any individual to continued employment or to be hired
 109 or rehired by his or her employer that are not already provided
 110 within the Florida Statutes, the State Constitution, the
 111 Americans with Disabilities Act, if applicable, or any other
 112 applicable state or federal law.
- 113 (5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—
 114 (b) Any member who is a special risk member on July 1,
 115 2008, and who became eligible to participate under paragraph
 116 (3)(g) ~~(3)(h)~~ but fails to meet the criteria for Special Risk

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117 Class membership established by paragraph (3) (h) ~~(3) (i)~~ or
 118 paragraph (3) (i) ~~(3) (j)~~ shall have his or her special risk
 119 designation removed and thereafter shall be a Regular Class
 120 member and earn only Regular Class membership credit. The
 121 department may review the special risk designation of members to
 122 determine whether or not those members continue to meet the
 123 criteria for Special Risk Class membership.

124 (8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

125 (d) Notwithstanding any other provision of this subsection,
 126 this subsection does not apply to any special risk member who
 127 qualifies for continued membership pursuant to paragraph (3) (j)
 128 ~~(3) (k)~~.

129 (10) CREDIT FOR UPGRADED SERVICE.—

130 (c) Any member of the Special Risk Class who has earned
 131 creditable service through June 30, 2008, in another membership
 132 class of the Florida Retirement System in a position with the
 133 Department of Law Enforcement or the Division of State Fire
 134 Marshal and became covered by the Special Risk Class as
 135 described in paragraph (3) (h) ~~(3) (i)~~, or with a local government
 136 law enforcement agency or medical examiner's office and became
 137 covered by the Special Risk Class as described in paragraph
 138 (3) (i) ~~(3) (j)~~, which service is within the purview of the
 139 Special Risk Class, and is employed in such position on or after
 140 July 1, 2008, may purchase additional retirement credit to
 141 upgrade such service to Special Risk Class service, to the
 142 extent of the percentages of the member's average final
 143 compensation provided in s. 121.091(1)(a)2. The cost for such
 144 credit must be an amount representing the actuarial accrued
 145 liability for the difference in accrual value during the

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146 affected period of service. The cost shall be calculated using
 147 the discount rate and other relevant actuarial assumptions that
 148 were used to value the Florida Retirement System Pension Plan
 149 liabilities in the most recent actuarial valuation. The division
 150 shall ensure that the transfer sum is prepared using a formula
 151 and methodology certified by an enrolled actuary. The cost must
 152 be paid immediately upon notification by the division. The local
 153 government employer may purchase the upgraded service credit on
 154 behalf of the member if the member has been employed by that
 155 employer for at least 3 years.

156 Section 3. This act shall take effect July 1, 2013.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/2013
Meeting Date

Topic Youth Custody Officer

Bill Number SB 672
(if applicable)

Name Ana Sanchez

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Dir

Address 2737 Conterview Dr
Street

Phone 850-410-1097

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing DSS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 11 / 2013

Meeting Date

Topic _____ Bill Number 672
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 678

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Malicious Infliction of Cruel or Inhuman Treatment on a Juvenile Offender

DATE: March 11, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 678 creates s. 985.702, F.S., establishing a new criminal offense relating to malicious infliction of cruel or inhuman treatment on a juvenile offender by a Department of Juvenile Justice (DJJ) employee.

Under the bill, it becomes a first degree misdemeanor for a DJJ employee, with malicious intent, to inflict on a juvenile offender cruel or inhuman treatment by neglect or otherwise without causing great bodily harm, permanent disability, or permanent disfigurement. If such harm or disfigurement is inflicted on the juvenile offender, the employee commits a third degree felony.

The bill also creates reporting requirements for DJJ employees. Failure to comply with these new reporting requirements becomes a criminal act under the bill, resulting in first degree misdemeanor or third degree felony penalties.

Finally, the bill amends the definition of “juvenile offender” in the newly created statute to include a person of any age committed to the DJJ’s custody. It also provides a definition of “juvenile offender” in the sexual misconduct statute, s. 985.701, F.S.

This bill creates section 985.702 of the Florida Statutes. The bill amends section 985.701 of the Florida Statutes.

II. Present Situation:

Neglect of Youth Committed to the DJJ

Section 985.02, F.S., provides legislative intent for the general protections of children within the juvenile justice system, including protection from abuse, neglect, and exploitation.¹ However, there is no specific statute within ch. 985, F.S., that can be used to prosecute a DJJ employee for criminal neglect of a youth in the department's custody.² As a result, prosecutors have looked to other statutes to prosecute a DJJ employee alleged to have neglected a youth. One such statute is the child abuse statute, but it is not designed to prosecute neglect cases which arise within the unique framework of the juvenile justice environment, nor does it apply to youth in DJJ's custody who are 18 years of age or older.³

Sexual Misconduct by an Employee

Section 985.701, F.S., makes it a second degree felony⁴ for a DJJ employee⁵ to engage in sexual misconduct⁶ with juvenile offenders "detained or supervised by, or committed to the custody, of the department." The statute does not define the term "juvenile offender."

III. Effect of Proposed Changes:

Neglect of Youth Committed to the DJJ

The bill creates s. 985.702, F.S., establishing a new criminal offense relating to malicious infliction of cruel or inhuman treatment on a juvenile offender by a DJJ employee.

The bill makes it a first degree misdemeanor⁷ for a DJJ employee, with malicious intent, to inflict cruel or inhuman treatment by neglect or otherwise on a juvenile offender without causing great bodily harm, permanent disability, or permanent disfigurement. If the infliction does cause

¹ Section 985.02(1)(a), F.S.

² See the Palm Beach County Grand Jury Presentment Regarding the Death of Eric Perez While in the Custody of the Florida Department of Juvenile Justice, on file with the Senate Criminal Justice Committee. The grand jury recommended the creation of a criminal statute prohibiting the neglect of youths in the custody of the DJJ.

³ *Id.* Because Eric Perez had turned 18 a few days before his death in the detention center, he did not meet the definition of a "child" in s. 827.03, F.S., relating to child abuse, and as such, prosecutors were unable to charge the Palm Beach Regional Juvenile Detention facility officers with child neglect.

⁴ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁵ Section 985.701(1)(a)1.b., F.S., defines "employee" as paid staff members, volunteers, and interns who work in a department program or a program operated by a provider under a contract.

⁶ Section 985.701(1)(a)1.a., F.S., defines "sexual misconduct" as fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the department or an employee of a provider under contract with the department.

⁷ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a third degree felony.⁸

“Neglect of a juvenile offender” is defined under the bill as an employee’s:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender’s physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

The bill defines an “employee” as a “paid staff member, volunteer, or intern who works in a department program or a program operated by a provider under contract with the department.”⁹ It also defines a “juvenile offender” as “any person of any age who is detained, or committed to the custody of, the department.”

If the Public Employees Relations Commission determines that a DJJ employee violates the newly created section, such determination constitutes sufficient cause under s. 110.227, F.S.,¹⁰ for dismissal from employment with the DJJ, and prohibits the employee from being employed in any capacity in connection with the juvenile justice system.

The bill requires employees who witness the infliction of cruel or inhuman treatment against a juvenile offender to immediately report the incident to the DJJ’s incident hotline. The witness must also prepare an independent report specifically describing the nature of the incident, the location and time, and the persons involved. This report must be submitted to the witness’s supervisor or program director, who in turn must provide copies of the report to the inspector general and the circuit juvenile justice manager. The inspector general must immediately conduct an appropriate administrative investigation and, if there is probable cause to believe that a violation occurred, notify the state attorney in the circuit in which the incident occurred.

Failure to comply with these new reporting requirements becomes a criminal act under the bill, resulting in the following criminal penalties:

- Any person who knowingly or willfully fails to file a report or prevents another person from doing so commits a first degree misdemeanor;
- Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information on a report commits a first degree misdemeanor; and
- Any person who coerces or threatens another person with the intent to alter testimony or a written report commits a third degree felony.

⁸ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁹ This is the same definition as provided in s. 985.701(1)(a)1.b., F.S., relating to sexual misconduct by an employee.

¹⁰ Section 110.227, F.S., relates to the suspension and dismissal of career service employees.

Sexual Misconduct by an Employee

The bill amends s. 985.701, F.S., relating to sexual misconduct, to define “juvenile offender” as “a person of any age who is detained or supervised by, or committed to the custody of, the department.”

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

A DJJ employee who is prosecuted for the new first degree misdemeanor or third degree felony offenses under the bill could be subjected to fines up to \$1,000 for the misdemeanor offenses, and up to \$5,000 for the third degree felony offenses.

C. Government Sector Impact:

The bill creates two new third degree felony offenses, malicious infliction of cruel or inhuman treatment causing great bodily harm, and knowingly coercing another person with the intent to alter testimony or a written report. The Criminal Justice Impact Conference met on February 27, 2013 and determined that there will be an insignificant impact on prison beds as a result of this bill.

The bill also creates several new first degree misdemeanor offenses related to malicious battery on a juvenile offender and failure to comply with reporting requirements. To the extent that DJJ employees are prosecuted for any of the new misdemeanor offenses, it could negatively impact local jails.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 11, 2013:**

- Deletes the newly created first degree misdemeanor battery offense and replaces it with malicious infliction of cruel and inhuman treatment by neglect or otherwise on a juvenile offender without causing significant injury.
- Defines “juvenile offender” to include a juvenile of any age in the custody of the DJJ for purposes of the newly created offense.
- Adds a definition of “neglect” to the newly created statute.
- Adds a definition of “juvenile offender” to the sexual misconduct statute, s. 985.701, F.S.
- Removes the provision repealing the statute that authorizes jail and prison tours by juveniles.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 985.702, Florida Statutes, is created to read:

985.702 Malicious infliction of cruel or inhuman treatment prohibited; reporting required; penalties.-

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

(a) "Employee" means a paid staff member, volunteer, or intern who works in a department program or a program operated by a provider under a contract with the department.



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13 (b) "Juvenile offender" means any person of any age who is
14 detained, or committed to the custody of, the department.

15 (c) "Neglect of a juvenile offender" means:

16 1. An employee's failure or omission to provide a juvenile
17 offender with the proper level of care, supervision, and
18 services necessary to maintain the juvenile offender's physical
19 and mental health, including, but not limited to, adequate food,
20 nutrition, clothing, shelter, supervision, medicine, and medical
21 services; or

22 2. An employee's failure to make a reasonable effort to
23 protect a juvenile offender from abuse, neglect, or exploitation
24 by another person.

25 (2) (a) Any employee who, with malicious intent, inflicts
26 cruel or inhuman treatment by neglect or otherwise, without
27 causing great bodily harm, permanent disability, or permanent
28 disfigurement to a juvenile offender, commits a misdemeanor of
29 the first degree, punishable as provided in s. 775.082 or s.
30 775.083.

31 (b) Any employee who, with malicious intent, inflicts cruel
32 or inhuman treatment by neglect or otherwise, and in so doing
33 causes great bodily harm, permanent disability, or permanent
34 disfigurement to a juvenile offender, commits a felony of the
35 third degree, punishable as provided in s. 775.082, s. 775.083,
36 or s. 775.084.

37 (c) Notwithstanding prosecution, any violation of paragraph
38 (a) or paragraph (b), as determined by the Public Employees
39 Relations Commission, constitutes sufficient cause under s.
40 110.227 for dismissal from employment with the department, and
41 such person may not again be employed in any capacity in



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42 connection with the juvenile justice system.

43 (3) An employee who witnesses the infliction of cruel or
44 inhuman treatment committed against a juvenile offender shall
45 immediately report the incident to the department's incident
46 hotline and prepare, date, and sign an independent report that
47 specifically describes the nature of the incident, the location
48 and time of the incident, and the persons involved. The employee
49 shall deliver the report to the employee's supervisor or program
50 director, who must provide copies to the department's inspector
51 general and the circuit juvenile justice manager. The inspector
52 general shall immediately conduct an appropriate administrative
53 investigation, and, if there is probable cause to believe that a
54 violation of subsection (2) has occurred, the inspector general
55 shall notify the state attorney in the circuit in which the
56 incident occurred.

57 (4) (a) Any person who is required to prepare a report under
58 this section who knowingly or willfully fails to do so, or who
59 knowingly or willfully prevents another person from doing so,
60 commits a misdemeanor of the first degree, punishable as
61 provided in s. 775.082 or s. 775.083.

62 (b) Any person who knowingly or willfully submits
63 inaccurate, incomplete, or untruthful information with respect
64 to a report required under this section commits a misdemeanor of
65 the first degree, punishable as provided in s. 775.082 or s.
66 775.083.

67 (c) Any person who knowingly or willfully coerces or
68 threatens any other person with the intent to alter testimony or
69 a written report regarding an incident of the infliction of
70 cruel or inhuman treatment commits a felony of the third degree,



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71 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

72 Section 2. Paragraph (a) of subsection (1) of section
73 985.701, Florida Statutes, is amended to read:

74 985.701 Sexual misconduct prohibited; reporting required;
75 penalties.—

76 (1)(a)1. As used in this subsection, the term:

77 a. "Sexual misconduct" means fondling the genital area,
78 groin, inner thighs, buttocks, or breasts of a person; the oral,
79 anal, or vaginal penetration by or union with the sexual organ
80 of another; or the anal or vaginal penetration of another by any
81 other object. The term does not include an act done for a bona
82 fide medical purpose or an internal search conducted in the
83 lawful performance of duty by an employee of the department or
84 an employee of a provider under contract with the department.

85 b. "Employee" includes paid staff members, volunteers, and
86 interns who work in a department program or a program operated
87 by a provider under a contract.

88 c. "Juvenile offender" means a person of any age who is
89 detained or supervised by, or committed to the custody of, the
90 department.

91 2. An employee who engages in sexual misconduct with a
92 juvenile offender detained or supervised by, or committed to the
93 custody of, the department commits a felony of the second
94 degree, punishable as provided in s. 775.082, s. 775.083, or s.
95 775.084. An employee may be found guilty of violating this
96 subsection without having committed the crime of sexual battery.

97 3. The consent of the juvenile offender to any act of
98 sexual misconduct is not a defense to prosecution under this
99 subsection.



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100 4. This subsection does not apply to an employee of the
101 department, or an employee of a provider under contract with the
102 department, who:

103 a. Is legally married to a juvenile offender who is
104 detained or supervised by, or committed to the custody of, the
105 department.

106 b. Has no reason to believe that the person with whom the
107 employee engaged in sexual misconduct is a juvenile offender
108 detained or supervised by, or committed to the custody of, the
109 department.

110 Section 3. This act shall take effect upon becoming a law.

111

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

113 And the title is amended as follows:

114 Delete everything before the enacting clause
115 and insert:

116 A bill to be entitled
117 An act relating to juvenile justice; creating s.
118 985.702, F.S.; providing definitions; providing for
119 the imposition of criminal penalties against specified
120 employees who inflict cruel or inhuman treatment upon
121 juvenile offenders; providing enhanced penalties for
122 such treatment that results in great bodily harm,
123 permanent disability, or permanent disfigurement to a
124 juvenile offender; specifying that such conduct
125 constitutes sufficient cause for an employee's
126 dismissal from employment; prohibiting such employee
127 from future employment with the juvenile justice
128 system; providing incident reporting requirements;



159924

129 prohibiting an employee who witnesses such an incident
130 from knowingly or willfully failing to report;
131 prohibiting false reporting, preventing another from
132 reporting, or coercing another to alter testimony or
133 reports; providing penalties; amending s. 985.701,
134 F.S.; defining the term "juvenile offender" for
135 purposes of prohibiting sexual misconduct with
136 juvenile offenders; providing an effective date.

By Senator Evers

2-00885-13

2013678__

1 A bill to be entitled
 2 An act relating to malicious battery and infliction of
 3 cruel or inhuman treatment on a juvenile offender;
 4 creating s. 985.7015, F.S.; defining terms; providing
 5 that it is unlawful for an employee of the Department
 6 of Juvenile Justice to commit a battery or to inflict
 7 cruel or inhuman treatment on a juvenile offender;
 8 providing criminal penalties; providing that battery
 9 or the infliction of cruel or inhuman treatment on a
 10 juvenile offender constitutes sufficient cause to
 11 dismiss the employee from employment with the
 12 department and to prohibit such employee from being
 13 employed again in any capacity with the juvenile
 14 justice system; requiring each employee to immediately
 15 report such injurious behavior to the department's
 16 incident hotline and to deliver a report to his or her
 17 supervisor; providing criminal penalties for failing
 18 to report an incident to a supervisor, for knowingly
 19 or willfully submitting inaccurate, incomplete, or
 20 untruthful information, or for coercing or threatening
 21 another to alter testimony or the written report;
 22 repealing s. 945.75, F.S., relating to tours of state
 23 correctional facilities for juveniles; providing an
 24 effective date.

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

28 Section 1. Section 985.7015, Florida Statutes, is created
 29 to read:

Page 1 of 3

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

2-00885-13

2013678__

30 985.7015 Malicious battery; infliction of cruel or inhuman
 31 treatment prohibited; reporting required; penalties.-
 32 (1) As used in this section, the term:
 33 (a) "Employee" means a paid staff member, volunteer, or
 34 intern who works in a department program or a program operated
 35 by a provider under a contract with the department.
 36 (b) "Juvenile offender" means a person younger than 18
 37 years of age who is detained or supervised by, or committed to
 38 the custody of, the department.
 39 (2) An employee who, with malicious intent, commits a
 40 battery upon a juvenile offender, commits a misdemeanor of the
 41 first degree, punishable as provided in s. 775.082 or s.
 42 775.083.
 43 (3) An employee who, with malicious intent, commits a
 44 battery or inflicts cruel or inhuman treatment by neglect or
 45 otherwise, and in so doing causes great bodily harm, permanent
 46 disability, or permanent disfigurement to a juvenile offender,
 47 commits a felony of the third degree, punishable as provided in
 48 s. 775.082, s. 775.083, or s. 775.084.
 49 (4) Notwithstanding any other prosecution, a violation of
 50 subsection (2) or subsection (3), as determined by the Public
 51 Employees Relations Commission, constitutes sufficient cause
 52 under s. 110.227 for dismissal from employment with the
 53 department, and such person may not be employed again in any
 54 capacity in connection with the juvenile justice system.
 55 (5) An employee who witnesses malicious battery or the
 56 infliction of cruel or inhuman treatment against a juvenile
 57 offender shall immediately report the incident to the
 58 department's incident hotline and prepare, date, and sign an

Page 2 of 3

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2-00885-13

2013678_

59 independent report that specifically describes the nature of the
60 incident, the location and time of the incident, and the persons
61 involved. The employee shall deliver the report to his or her
62 supervisor or program director, and the supervisor or director
63 shall provide copies of the report to the department's inspector
64 general and the circuit juvenile justice manager. The inspector
65 general shall immediately conduct an appropriate administrative
66 investigation, and if there is probable cause to believe that a
67 violation of subsection (2) or subsection (3) has occurred, the
68 inspector general shall notify the state attorney in the circuit
69 in which the incident occurred.

70 (6) (a) A person who is required to prepare a report under
71 this section and who knowingly or willfully fails to do so, or
72 who knowingly or willfully prevents another person from doing
73 so, commits a misdemeanor of the first degree, punishable as
74 provided in s. 775.082 or s. 775.083.

75 (b) A person who knowingly or willfully submits inaccurate,
76 incomplete, or untruthful information with respect to a report
77 required under this section commits a misdemeanor of the first
78 degree, punishable as provided in s. 775.082 or s. 775.083.

79 (c) A person who knowingly or willfully coerces or
80 threatens any other person with the intent to alter testimony or
81 a written report regarding an incident of malicious battery or
82 the infliction of cruel or inhuman treatment commits a felony of
83 the third degree, punishable as provided in s. 775.082, s.
84 775.083, or s. 775.084.

85 Section 2. Section 945.75, Florida Statutes, is repealed.

86 Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 11 / 2013

Meeting Date

Topic _____

Bill Number 678
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

672
67R

3/11/2013
Meeting Date

Topic Malicious Battery

Bill Number SB 675
(if applicable)

Name Ana Sanchez

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Dir

Address 237 Centerville Dr
Street

Phone 850-410-6977

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing DJS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/13

Meeting Date

Topic Malicious Battery

Bill Number SB 678
(if applicable)

Name Ron Bilbao

Amendment Barcode _____
(if applicable)

Job Title SR. Legislative Assoc.

Address 4500 Biscayne Blvd

Phone 919-423-7288

Miami FL 33137
City State Zip

E-mail rbilbao@aclufl.org

Speaking: For Against Information

Representing ACLU of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 742

INTRODUCER: Senator Evers

SUBJECT: Parole Interview Dates for Certain Inmates

DATE: February 21, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	ACJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 742 permits the Florida Parole Commission to increase the interval between parole interviews to seven years for those inmates whose interviews are currently every two years.

This bill substantially amends the following sections of the Florida Statutes: 947.16, 947.174, and 947.1745.

II. Present Situation:

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (“the commission”). The only inmates who are eligible for parole consideration are those who committed capital sexual battery prior to October 1, 1995, capital sexual murder prior to October 1, 1994, or another crime prior to October 1, 1983. Approximately 5,200 Florida inmates are still eligible for parole consideration because parole applied to their offense at the time it was committed.¹

An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections. As of December 31, 2012, 350 offenders were actively supervised on parole from Florida sentences.²

¹ Florida Parole Commission Annual Report 2011-2012, p. 21.

² Community Supervision Population Monthly Status Report, December 2012, Florida Department of Corrections, p. 2.

The parole process begins with an initial interview that is the first step in setting the inmate's presumptive parole release date (PPRD). The date of the initial interview depends upon the length and character of the parole-eligible sentence. The PPRD is set by the commission after a parole examiner reviews the inmate's file, interviews the inmate, and makes an initial recommendation.

In many cases, the commission will establish a PPRD that does not result in release of the inmate within a short period of time. A release order by the commission may also be altered in two other ways before it is implemented: (1) it may be vacated pursuant to s. 947.16(4), F.S., by a sentencing court that has retained jurisdiction over the offender; or (2) it may be modified by the commission after considering the objections of a sentencing court that has not retained jurisdiction pursuant to s. 947.1745(6), F.S. In all three situations, the inmate is entitled to a subsequent reinterview. The time frame for holding a reinterview (and any further reinterviews) is determined by the inmate's criminal history:

- An inmate who was not convicted of murder or attempted murder, sexual battery or attempted sexual battery, or serving a 25-year minimum mandatory sentence under s. 775.082, F.S., must be reinterviewed within two years after the initial interview and every two years thereafter. Approximately 20 percent of inmates who are eligible for parole consideration fall into this category.
- An inmate who was convicted of one of the above offenses may have a reinterview scheduled within seven years after the initial interview and every seven years thereafter if the commission makes a written finding that it is not reasonable to expect that parole will be granted during the following years. Approximately 80 percent of inmates who are eligible for parole consideration fall into this category.

The commission considers the PPRD recommendation in a public hearing held after the initial interview and each reinterview. At this hearing, the commission considers the written recommendation of the parole examiner, documentary evidence, and any testimony presented on behalf of the victim or the inmate. Although the inmate is not entitled to appear at the hearing, he or she may be represented by an attorney. It is also common for the victim or victim's representative and law enforcement representatives to appear.

III. Effect of Proposed Changes:

The bill amends ss. 947.16, 947.174, and 947.1745, F.S., to extend the commission's authority to increase the interval between parole consideration re-interviews to include cases in which the offender was convicted of: (1) kidnapping or attempted kidnapping; or (2) a completed or attempted offense of robbery, burglary of a dwelling, burglary of a structure or conveyance, or breaking and entering, when a human being is present and a sexual act is completed or attempted. The interval may be increased from the standard two years to seven years if the commission makes a written finding that it is unlikely to grant parole to the offender.

The groups that would be most affected by this bill are victims and their families, parole-eligible inmates and their families, and the commission itself. For victims, reduction of the frequency of an opportunity for parole can be expected to lessen the stress associated with potential release of the offender. Because victims and families often attend the parole hearings, there is also a

potential financial savings. For offenders, the normally-scheduled interviews would be reduced if their record indicates that granting of parole is not likely. For the commission, there would be some reduction in workload and the opportunity to focus on the cases that are more frequently reviewed.

The bill has an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Although parole is a matter of grace and is not a right, alteration of parole-consideration procedures must be considered in light of the constitutional prohibition against ex post facto punishment. In *California Department of Corrections v. Morales*, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995), the United States Supreme Court held that a California statute increasing the interval between parole interviews did not violate the ex post facto clause. Subsequent cases have relied on *Morales* to uphold the constitutionality of current s. 947.174(1)(b), F.S., which permitted an increase of the interview interval from two to five years. See *Tuff v. State*, 732 So.2d 461 (Fla. 3d Dist. 1999); *Pennoyer v. Briggs*, 206 Fed.Appx. 962 (11th Cir. 2006). Because there is no legal distinction between increasing the interval from two to five years and increasing it from five to seven years, the bill's provisions do not violate the ex post facto clauses of the United States and Florida constitutions.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Holding parole hearings less frequently would reduce the costs incurred by persons who would attend the hearings. This could include victims and their families and representatives, victims advocacy groups, law enforcement agencies, and the families and representatives of inmates. The amount of reduction cannot be quantified because a

reduction of frequency would depend upon the individual merits of the inmate's case and the cost to attend hearings is variable depending upon individual circumstances.

C. Government Sector Impact:

Authorization to reduce the frequency of parole hearings has the potential to reduce the number of hearings conducted by the commission, which may result in cost savings or reallocation of resources to other cases. If the interview interval for an inmate is changed from two years to seven years, there would be five fewer hearings over a fourteen year period. The total amount of any savings cannot be determined until the commission considers individual cases and makes a decision on whether to apply its new authority to the case. The commission indicates that in Fiscal Year 2015-2016 the bill could result in 44 inmates having their next interview date set within seven years rather than within two years.³ However, the bill can have no fiscal impact before Fiscal Year 2015-2016 because it does not alter interview dates that are already scheduled at the time of the effective date.

There would be additional cost to incarcerate an inmate whose interview schedule is extended from two years to seven years if he or she is paroled at the seven year interview interval and would also have been paroled if the interview had been conducted earlier. The cost of incarcerating such an inmate would be approximately \$15,500 for each extra year of incarceration.⁴ However, it is anticipated that few inmates would fall into this category because the expanded interview interval applies only to those inmates whom the commission finds are unlikely to be granted parole.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³ Florida Parole Commission Proposal Analysis and Economic Impact of HB 685 and SB 742 (February 18, 2013), on file with the Senate Committee on Criminal Justice.

⁴ The average annual cost per inmate for adult male custody DOC facilities, except private facilities, is approximately \$15,500. Department of Corrections Budget Summary (Fiscal Year 2010-2011), available at <http://www.dc.state.fl.us/pub/annual/1011/budget.html> (last viewed on February 22, 2013).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial 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 Evers

2-00741-13

2013742__

A bill to be entitled

An act relating to parole interview dates for certain inmates; amending ss. 947.16, 947.174, and 947.1745, F.S.; extending from 2 years to 7 years the period between parole interview dates for inmates convicted of committing certain specified crimes; reenacting s. 947.165(1), F.S., relating to the development and implementation by the Parole Commission of objective parole guidelines to serve as the criteria upon which parole decisions are to be made, to incorporate the amendments made to s. 947.1745, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (g) of subsection (4) of section 947.16, Florida Statutes, is amended to read:

947.16 Eligibility for parole; initial parole interviews; powers and duties of commission.—

(4) A person who has become eligible for an initial parole interview and who may, according to the objective parole guidelines of the commission, be granted parole shall be placed on parole in accordance with the provisions of this law; except that, in any case of a person convicted of murder, robbery, burglary of a dwelling or burglary of a structure or conveyance in which a human being is present, aggravated assault, aggravated battery, kidnapping, sexual battery or attempted sexual battery, incest or attempted incest, an unnatural and lascivious act or an attempted unnatural and lascivious act,

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lewd and lascivious behavior, assault or aggravated assault when a sexual act is completed or attempted, battery or aggravated battery when a sexual act is completed or attempted, arson, or any felony involving the use of a firearm or other deadly weapon or the use of intentional violence, at the time of sentencing the judge may enter an order retaining jurisdiction over the offender for review of a commission release order. This jurisdiction of the trial court judge is limited to the first one-third of the maximum sentence imposed. When any person is convicted of two or more felonies and concurrent sentences are imposed, ~~then~~ the jurisdiction of the trial court judge ~~as provided herein~~ applies to the first one-third of the maximum sentence imposed for the highest felony of which the person was convicted. When any person is convicted of two or more felonies and consecutive sentences are imposed, then the jurisdiction of the trial court judge ~~as provided herein~~ applies to one-third of the total consecutive sentences imposed.

(g) The decision of the original sentencing judge or, in her or his absence, the chief judge of the circuit, to vacate any parole release order as provided in this section is not appealable. An ~~Each~~ inmate whose parole release order has been vacated by the court ~~must~~ shall be reinterviewed within 2 years after the date of receipt of the vacated release order and every 2 years thereafter, or earlier by order of the court retaining jurisdiction. However, an ~~each~~ inmate whose parole release order has been vacated by the court and who has been:

1. Convicted of murder or attempted murder;
2. Convicted of sexual battery or attempted sexual battery;

≠

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2013742

59 3. Convicted of kidnapping or attempted kidnapping;
 60 4. Convicted of robbery, burglary of a dwelling, burglary
 61 of a structure or conveyance, or breaking and entering, or the
 62 attempt of any of these crimes, in which a human being is
 63 present and a sexual act is attempted or completed; or
 64 ~~5.3-~~ Sentenced to a 25-year minimum mandatory sentence
 65 previously provided in s. 775.082,
 66
 67 shall be reinterviewed once within 7 years after the date of
 68 receipt of the vacated release order and once every 7 years
 69 thereafter, if the commission finds that it is not reasonable to
 70 expect that parole would be granted during the following years
 71 and states the bases for the finding in writing. For an any
 72 inmate who is within 7 years of his or her tentative release
 73 date, the commission may establish a reinterview date before
 74 ~~prior to~~ the 7-year schedule.
 75 Section 2. Paragraph (b) of subsection (1) of section
 76 947.174, Florida Statutes, is amended to read:
 77 947.174 Subsequent interviews.-
 78 (1)
 79 (b) For an any inmate convicted of murder, attempted
 80 murder, sexual battery, or attempted sexual battery, kidnapping
 81 or attempted kidnapping; or of robbery, burglary of a dwelling,
 82 burglary of a structure or conveyance, or breaking and entering
 83 or the attempt of any of these crimes, in which a human being is
 84 present and a sexual act is attempted or completed, or for an
 85 ~~any~~ inmate who has been sentenced to a 25-year minimum mandatory
 86 sentence previously provided in s. 775.082, and whose
 87 presumptive parole release date is more than 7 years after the

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88 date of the initial interview, a hearing examiner shall schedule
 89 an interview for review of the presumptive parole release date.
 90 The interview ~~must shall~~ take place once within 7 years after
 91 the initial interview and once every 7 years thereafter if the
 92 commission finds that it is not reasonable to expect that parole
 93 will be granted at a hearing during the following years and
 94 states the bases for the finding in writing. For an any inmate
 95 who is within 7 years of his or her tentative release date, the
 96 commission may establish an interview date before the 7-year
 97 schedule.
 98 Section 3. Subsection (6) of section 947.1745, Florida
 99 Statutes, is amended to read:
 100 947.1745 Establishment of effective parole release date.-If
 101 the inmate's institutional conduct has been satisfactory, the
 102 presumptive parole release date shall become the effective
 103 parole release date as follows:
 104 (6) Within 90 days before the effective parole release date
 105 interview, the commission shall send written notice to the
 106 sentencing judge of an any inmate who has been scheduled for an
 107 effective parole release date interview. If the sentencing judge
 108 is no longer serving, the notice must be sent to the chief judge
 109 of the circuit in which the offender was sentenced. The chief
 110 judge may designate any circuit judge within the circuit to act
 111 in the place of the sentencing judge. Within 30 days after
 112 receipt of the commission's notice, the sentencing judge, or the
 113 designee, shall send to the commission notice of objection to
 114 parole release, if the judge objects to the such release. If
 115 there is an objection by the judge, the such objection may
 116 constitute good cause in exceptional circumstances as described

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117 in s. 947.173, and the commission may schedule a subsequent
 118 review within 2 years, extending the presumptive parole release
 119 date beyond that time. However, for an inmate who has been:
 120 (a) Convicted of murder or attempted murder;
 121 (b) Convicted of sexual battery or attempted sexual
 122 battery; ~~or~~
 123 (c) Convicted of kidnapping or attempted kidnapping;
 124 (d) Convicted of robbery, burglary of a dwelling, burglary
 125 of a structure or conveyance, or breaking and entering, or the
 126 attempt of any of these crimes, in which a human being is
 127 present and a sexual act is attempted or completed; or
 128 (e) ~~(e)~~ Sentenced to a 25-year minimum mandatory sentence
 129 previously provided in s. 775.082,
 130
 131 the commission may schedule a subsequent review under this
 132 subsection once every 7 years, extending the presumptive parole
 133 release date beyond that time if the commission finds that it is
 134 not reasonable to expect that parole would be granted at a
 135 review during the following years and states the bases for the
 136 finding in writing. For an ~~any~~ inmate who is within 7 years of
 137 his or her release date, the commission may schedule a
 138 subsequent review before ~~prior to~~ the 7-year schedule. With any
 139 subsequent review the same procedure outlined above will be
 140 followed. If the judge remains silent with respect to parole
 141 release, the commission may authorize an effective parole
 142 release date. This subsection applies if the commission desires
 143 to consider the establishment of an effective release date
 144 without delivery of the effective parole release date interview.
 145 Notice of the effective release date must be sent to the

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146 sentencing judge, and either the judge's response to the notice
 147 must be received or the time period allowed for such response
 148 must elapse before the commission may authorize an effective
 149 release date.
 150 Section 4. For the purpose of incorporating the amendment
 151 made by this act to section 947.1745, Florida Statutes, in a
 152 reference thereto, subsection (1) of section 947.165, Florida
 153 Statutes, is reenacted to read:
 154 947.165 Objective parole guidelines.-
 155 (1) The commission shall develop and implement objective
 156 parole guidelines which shall be the criteria upon which parole
 157 decisions are made. The objective parole guidelines shall be
 158 developed according to an acceptable research method and shall
 159 be based on the seriousness of offense and the likelihood of
 160 favorable parole outcome. The guidelines shall require the
 161 commission to aggravate or aggregate each consecutive sentence
 162 in establishing the presumptive parole release date. Factors
 163 used in arriving at the salient factor score and the severity of
 164 offense behavior category shall not be applied as aggravating
 165 circumstances. If the sentencing judge files a written objection
 166 to the parole release of an inmate as provided for in s.
 167 947.1745(6), such objection may be used by the commission as a
 168 basis to extend the presumptive parole release date.
 169 Section 5. This act shall take effect July 1, 2013.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 11 / 2013

Meeting Date

Topic _____

Bill Number 742
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3/11/2013

Meeting Date

Topic SB 742 - Extended Interviews

Bill Number SB 742
(if applicable)

Name Tena (Tina) Pate

Amendment Barcode _____
(if applicable)

Job Title Chair, FPC

Address 4070 Esplanade Way

Phone FSD 487-1980

Street

Tall FL 32399

City

State

Zip

E-mail tenapate@fpc.state.fl.us

Speaking: For Against Information

Representing FL Parole Commission

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 788

INTRODUCER: Senator Abruzzo

SUBJECT: Criminal Gang Prevention

DATE: March 6, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.			CA	
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

SB 788 does the following to enhance criminal gang intervention and prevention:

- Increases the misdemeanor criminal penalties for specified trespassing offenses in school safety zones by a person convicted of gang-related offenses (becomes a first instead of a second degree misdemeanor);
- Increases the felony criminal penalties for intentionally causing, encouraging, soliciting, or recruiting a person under 13 years of age to become a gang member (becomes a second instead of a third degree felony, except if it is a second or subsequent recruiting conviction, it becomes a first degree felony);
- Authorizes a county or municipal detention facility to designate a person to be responsible for assessing whether an inmate is a criminal gang member or associate and if so, report it to the arresting law enforcement agency;
- Amends the criminal gang multiplier in s. 921.0024, F.S., so that the multiplier will be able to be applied with a finding by the judge (rather than the jury) that the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang in instances where the lowest permissible sentence does not exceed the statutory maximum sentence for the offense; and
- Makes technical and conforming changes.

This bill substantially amends the following sections of the Florida Statutes: 810.0975, 874.05, 951.23, and 921.0024. Sections 435.04 and 921.0022 are amended to conform to changes made by the bill.

II. Present Situation:

School Safety Zones

A “school safety zone” is defined as being in, on, or within 500 feet of real property owned by or leased to any public or private elementary, middle, or high school or school board which is used for elementary, middle, or high school education.¹ Principals are required to notify law enforcement to prohibit persons who have no legitimate business or any other authorization from loitering in a school safety zone.²

Section 810.0975, F.S., criminalizes trespassing within a school safety zone or remaining there with no legitimate business between a certain time period as a misdemeanor offense. It is a second degree misdemeanor,³ during the school session and one hour before and after the school session, for a person to trespass within a school safety zone or to remain there when the person does not have legitimate business to conduct or any other authorization to be in the school safety zone.⁴

It is also a second degree misdemeanor for a person, with no legitimate business to conduct or having no other authorization within a school safety zone, to willfully fail to leave when requested to do so by the principal who has a reasonable belief that the person is going to commit a crime or intimidate or harass students within the school safety zone.⁵

Criminal Gang Enforcement and Prevention

Chapter 874, F.S., governs criminal gang enforcement and prevention, including in part, statutes that do the following: set forth definitions of criminal gangs, criminal gang-related activities, criminal gang member, and criminal gang associate; establish a statewide criminal gang database within the Florida Department of Law Enforcement (FDLE)⁶; provide enhanced penalties for gang-related offenses; and proscribe encouraging, soliciting, or recruiting criminal gang membership.⁷

Currently, it is a third degree felony⁸ for committing a first offense of intentionally causing, encouraging, soliciting, or recruiting another person to become a gang member if membership is dependent upon the commission or continued commission of any crime.⁹ This offense is ranked

¹ Section 810.0975(1), F.S.

² Section 810.0975(2)(a), F.S.

³ A second degree misdemeanor is punishable by potentially serving up to 60 days in county jail and paying up to \$500 in fines. Sections 775.082 and 775.083, F.S.

⁴ Section 810.0975(2)(b), F.S.

⁵ Section 810.0975(2)(c), F.S.

⁶ Pursuant to s. 874.09, F.S., the Florida Department of Law Enforcement manages a statewide criminal gang database where gang intelligence information is shared among all law enforcement agencies statewide. Information is entered into the database by local law enforcement agencies who, after carrying out any arrest of any individual whom they believe is a member or associate of a criminal gang, may create or update that individual’s electronic file within the database.

⁷ Sections 874.03, 874.09, 874.04, and 874.05, F.S.

⁸ A third degree felony is punishable by potentially serving up to five years in prison and paying up to \$5,000 in fines. Sections 775.082 and 775.083, F.S.

⁹ Section 874.05(1), F.S.

in Level 4 (22 sentencing points) of the offense severity ranking chart (ranking chart).¹⁰ However, the commission of this crime a second or subsequent time results in a second degree felony penalty,¹¹ ranked in Level 5 (28 sentencing points) of the ranking chart.

County and Municipal Detention Facilities

Section 951.23, F.S., includes the following as it relates to county and municipal detention facilities: definitions; authorization for an inmate commissary and welfare fund; prohibitions against violating jail rules; and model standards and requirements for sheriffs and chief correctional officers operating county and municipal detention facilities.¹² There is currently no statutory provision addressing gang prevention in a county or municipal detention facility.

Criminal Gang Offenses and the Sentencing Multiplier

Criminal offenses are ranked in the ranking chart from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors such as: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. The Criminal Punishment Code worksheet, found in s. 921.0024, F.S., is used to compute a defendant's total sentence points.

The Criminal Punishment Code worksheet contains a variety of sentencing multipliers that act to multiply a defendant's sentencing points by a certain number, thereby increasing the defendant's lowest permissible sentence. The worksheet currently contains a criminal gang multiplier that multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang as prohibited under s. 874.04, F.S.

Section 874.04, F.S., provides that upon a finding by the factfinder that a defendant committed the charged offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang, the penalty for such offense can be enhanced. The statute specifies the extent to which such enhancement can be made and mandates each of the findings required as a basis for such enhancement to be found beyond a reasonable doubt.

As noted above, the criminal gang multiplier in the worksheet multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as prohibited under s. 874.04, F.S.* Section 874.04, F.S., requires the factfinder (i.e., the jury) to find that a defendant committed the offense for such

¹⁰ Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence.

¹¹ Section 874.05(2), F.S. A second degree felony is punishable by potentially serving up to 15 years in prison and paying up to \$10,000 in fines. Sections 775.082 and 775.083, F.S.

¹² Section 951.23(1), (4), (9), (10), F.S.

purposes. This limits the instances in which the criminal gang multiplier can be used to those instances in which the jury has made the required finding. If the reference to s. 874.04, F.S., were removed from the multiplier, a *judge* could make the required finding so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the charged offense.¹³

III. Effect of Proposed Changes:

School Safety Zones

The bill enhances criminal penalties from a second degree misdemeanor to a first degree misdemeanor¹⁴ if a person trespasses or remains with no legitimate business to conduct or willfully fails to leave when requested to do so by the principal within a school safety zone and such person has previously been convicted of a gang-related offense under s. 874, F.S.

Criminal Gang Enforcement and Prevention

The bill also enhances criminal penalties for intentionally causing, encouraging, soliciting, or recruiting a person younger than 13 years of age to become a gang member. The penalty goes from a third degree felony to a second degree felony,¹⁵ unless it is the second or subsequent violation. If it is a second or subsequent violation of recruiting a gang member, it becomes a first degree felony¹⁶ rather than a second degree felony under the bill.

County and Municipal Detention Facilities

The bill adds a subsection to s. 951.23, F.S., authorizing a county or municipal detention facility to designate a person to be responsible for assessing whether an inmate is a criminal gang member or associate by using the criteria found in s. 874.03, F.S. (The criteria defines a criminal gang member, a criminal gang associate, and criminal gang-related activity.) The bill also provides that such designated person should at least once every two weeks transmit information on inmates believed to be gang members or associates to the arresting law enforcement agency.

Criminal Gang-Related Offenses and Sentencing Multipliers

The bill amends the criminal gang multiplier in s. 921.0024, F.S., to specify that a defendant's sentence points are multiplied by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as defined in s. 874.03, F.S.* As a result, the multiplier will be able to be applied without a finding by the jury that the defendant committed the offense for the purposes of benefitting, promoting, or furthering the interests of a criminal gang so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the offense.

¹³ See *Mathew v. State*, 837 So.2d 1167 (Fla. 4th DCA 2003); *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

¹⁴ A first degree misdemeanor is punishable by potentially serving up to one year in jail and paying up to \$1,000 in fines. Sections 775.082 and 775.083, F.S.

¹⁵ See *supra* note 11.

¹⁶ A first degree felony is punishable by potentially serving up to 30 years in prison and paying up to \$10,000 in fines. Sections 775.082 and 775.083, F.S.

Miscellaneous

The bill also makes some technical and conforming changes by revising the level 2 screening standards in s. 435.04, F.S., and the Criminal Punishment Code in s. 921.0975, F.S.

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:

Persons who trespass or remain with no legitimate business within a school safety zone and have a prior conviction for a gang-related offense are subject to a first degree misdemeanor penalty (serving up to potentially one year in jail and paying up to \$1,000 in fines).

Persons who intentionally recruit someone younger than 13 to become a gang member are subject to a second degree felony (serving up to potentially 15 years in prison and paying up to \$10,000 in fines), unless it is a second or subsequent offense. If it is a second or subsequent offense, it becomes a first degree felony, punishable by serving up to potentially 30 years in prison and paying up to \$10,000 in fines.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on February 27, 2013 and found that this bill will have an insignificant impact on prison beds.

Enhancing the misdemeanor penalty from a second to a first degree misdemeanor may result in a fiscal impact upon local jails because of increased incarceration.

A local law enforcement agency choosing to designate a person within its county or municipal detention facility to assess gang members may incur some additional expenses, but the bill does not mandate this requirement on any agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial 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 Abruzzo

25-01301-13

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1 A bill to be entitled
 2 An act relating to criminal gang prevention; amending
 3 s. 810.0975, F.S.; providing enhanced criminal
 4 penalties for certain trespassing offenses in school
 5 safety zones by a person convicted of certain gang-
 6 related offenses; amending s. 874.05, F.S.; providing
 7 enhanced criminal penalties for a person who
 8 intentionally causes, encourages, solicits, or
 9 recruits another person under a specified age to
 10 become a criminal gang member in certain
 11 circumstances; amending s. 951.23, F.S.; authorizing
 12 county and municipal detention facilities to designate
 13 an individual to be responsible for assessing whether
 14 each inmate is a criminal gang member or associate;
 15 providing duties of such individuals; amending ss.
 16 435.04 and 921.0022, F.S.; conforming cross-references
 17 and assigning offense severity rankings for violations
 18 of s. 874.05, F.S.; amending s. 921.0024, F.S.;
 19 revising the criteria for application of the
 20 sentencing multiplier for offenses related to criminal
 21 gangs; limiting application of the multiplier if
 22 application would result in the lowest permissible
 23 sentence exceeding the statutory maximum sentence;
 24 providing an effective date.

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

27 Section 1. Section 810.0975, Florida Statutes, is amended
 28 to read:
 29

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30 810.0975 School safety zones; definition; trespass
 31 prohibited; penalty.-

32 (1) For the purposes of this section, the term "school
 33 safety zone" means in, on, or within 500 feet of any real
 34 property owned by or leased to any public or private elementary,
 35 middle, or high school or school board and used for elementary,
 36 middle, or high school education.

37 (2) (a) Each principal or designee of each public or private
 38 school in this state shall notify the appropriate law
 39 enforcement agency to prohibit any person from loitering in the
 40 school safety zone who does not have legitimate business in the
 41 school safety zone or any other authorization, or license to
 42 enter or remain in the school safety zone or does not otherwise
 43 have invitee status in the designated safety zone.

44 (b) 1. During the period from 1 hour prior to the start of a
 45 school session until 1 hour after the conclusion of a school
 46 session, it is unlawful for any person to enter the premises or
 47 trespass within a school safety zone or to remain on such
 48 premises or within such school safety zone when that person does
 49 not have legitimate business in the school safety zone or any
 50 other authorization, license, or invitation to enter or remain
 51 in the school safety zone.

52 2.a. Except as provided in sub-subparagraph b., a Any
 53 person who violates this subsection commits a misdemeanor of the
 54 second degree, punishable as provided in s. 775.082 or s.
 55 775.083.

56 b. A person who violates this subsection and who has been
 57 previously convicted of any offense contained in chapter 874
 58 commits a misdemeanor of the first degree, punishable as

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59 provided in s. 775.082 or s. 775.083.

60 (c)1. Except as provided in subparagraph 2., a Any person
61 who does not have legitimate business in the school safety zone
62 or any other authorization, license, or invitation to enter or
63 remain in the school safety zone who shall willfully fail to
64 remove himself or herself from the school safety zone after the
65 principal or designee, having a reasonable belief that he or she
66 will commit a crime or is engaged in harassment or intimidation
67 of students entering or leaving school property, requests him or
68 her to leave the school safety zone commits a misdemeanor of the
69 second degree, punishable as provided in s. 775.082 or s.
70 775.083.

71 2. A person who violates subparagraph 1. and who has been
72 previously convicted of any offense contained in chapter 874
73 commits a misdemeanor of the first degree, punishable as
74 provided in s. 775.082 or s. 775.083.

75 (3) Nothing in This section does not shall be construed to
76 abridge or infringe upon the right of any person to peaceably
77 assemble and protest.

78 (4)(3) This section does not apply to residents or persons
79 engaged in the operation of a licensed commercial business
80 within the school safety zone.

81 Section 2. Section 874.05, Florida Statutes, is amended to
82 read:

83 874.05 Causing, encouraging, soliciting, or recruiting
84 criminal gang membership.—

85 (1) (a) Except as provided in paragraph (b) subsection (2),
86 a person who intentionally causes, encourages, solicits, or
87 recruits another person to become a criminal gang member where a

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88 condition of membership or continued membership is the
89 commission of any crime commits a felony of the third degree,
90 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

91 (b)(2) A person who commits a second or subsequent
92 violation of this subsection commits a felony of the second
93 degree, punishable as provided in s. 775.082, s. 775.083, or s.
94 775.084.

95 (2) (a) Except as provided in paragraph (b), a person who
96 intentionally causes, encourages, solicits, or recruits another
97 person under 13 years of age to become a criminal gang member
98 where a condition of membership or continued membership is the
99 commission of any crime commits a felony of the second degree,
100 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

101 (b) A person who commits a second or subsequent violation
102 of this subsection commits a felony of the first degree,
103 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

104 Section 3. Subsection (11) is added to section 951.23,
105 Florida Statutes, to read:

106 951.23 County and municipal detention facilities;
107 definitions; administration; standards and requirements.—

108 (11) GANG STATUS OF INMATES.—A county or municipal
109 detention facility may designate an individual to be responsible
110 for assessing whether each current inmate is a criminal gang
111 member or associate using the criteria in s. 874.03. The
112 individual should at least once biweekly transmit information on
113 inmates believed to be criminal gang members or associates to
114 the arresting law enforcement agency.

115 Section 4. Paragraph (qq) of subsection (2) of section
116 435.04, Florida Statutes, is amended to read:

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117 435.04 Level 2 screening standards.-

118 (2) The security background investigations under this

119 section must ensure that no persons subject to the provisions of

120 this section have been arrested for and are awaiting final

121 disposition of, have been found guilty of, regardless of

122 adjudication, or entered a plea of nolo contendere or guilty to,

123 or have been adjudicated delinquent and the record has not been

124 sealed or expunged for, any offense prohibited under any of the

125 following provisions of state law or similar law of another

126 jurisdiction:

127 (qq) Section 874.05(~~1~~), relating to encouraging or

128 recruiting another to join a criminal gang.

129 Section 5. Paragraphs (d), (e), and (g) of subsection (3)

130 of section 921.0022, Florida Statutes, are amended to read:

131 921.0022 Criminal Punishment Code; offense severity ranking

132 chart.-

133 (3) OFFENSE SEVERITY RANKING CHART

134 (d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver pedigree

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138 papers.

139 499.0051(2) 3rd Failure to authenticate pedigree papers.

140 499.0051(6) 2nd Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.

141 517.07(1) 3rd Failure to register securities.

142 517.12(1) 3rd Failure of dealer, associated person, or issuer of securities to register.

143 784.07(2)(b) 3rd Battery of law enforcement officer, firefighter, etc.

144 784.074(1)(c) 3rd Battery of sexually violent predators facility staff.

145 784.075 3rd Battery on detention or commitment facility staff.

146 784.078 3rd Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.

147 784.08(2)(c) 3rd Battery on a person 65 years of age or older.

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 784.081(3) 3rd Battery on specified official or
 148 employee.
 784.082(3) 3rd Battery by detained person on visitor or
 149 other detainee.
 784.083(3) 3rd Battery on code inspector.
 150 784.085 3rd Battery of child by throwing, tossing,
 projecting, or expelling certain fluids
 151 or materials.
 787.03(1) 3rd Interference with custody; wrongly takes
 152 minor from appointed guardian.
 787.04(2) 3rd Take, entice, or remove child beyond
 state limits with criminal intent
 153 pending custody proceedings.
 787.04(3) 3rd Carrying child beyond state lines with
 criminal intent to avoid producing child
 154 at custody hearing or delivering to
 designated person.
 787.07 3rd Human smuggling.
 155 790.115(1) 3rd Exhibiting firearm or weapon within
 156 1,000 feet of a school.

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 790.115(2)(b) 3rd Possessing electric weapon or device,
 157 destructive device, or other weapon on
 school property.
 790.115(2)(c) 3rd Possessing firearm on school property.
 158 800.04(7)(c) 3rd Lewd or lascivious exhibition; offender
 less than 18 years.
 159 810.02(4)(a) 3rd Burglary, or attempted burglary, of an
 unoccupied structure; unarmed; no
 160 assault or battery.
 810.02(4)(b) 3rd Burglary, or attempted burglary, of an
 unoccupied conveyance; unarmed; no
 161 assault or battery.
 810.06 3rd Burglary; possession of tools.
 162 810.08(2)(c) 3rd Trespass on property, armed with firearm
 or dangerous weapon.
 163 812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000 or more
 but less than \$20,000.
 164 812.014 3rd Grand theft, 3rd degree, a will,
 (2)(c)4.-10. firearm, motor vehicle, livestock, etc.
 165 812.0195(2) 3rd Dealing in stolen property by use of the

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 166 Internet; property stolen \$300 or more.
 817.563(1) 3rd Sell or deliver substance other than
 167 controlled substance agreed upon,
 817.568(2)(a) 3rd Fraudulent use of personal
 168 identification information.
 817.625(2)(a) 3rd Fraudulent use of scanning device or
 169 reencoder.
 828.125(1) 2nd Kill, maim, or cause great bodily harm
 170 or permanent breeding disability to any
 837.02(1) 3rd Perjury in official proceedings.
 171 837.021(1) 3rd Make contradictory statements in
 172 official proceedings.
 838.022 3rd Official misconduct.
 173 839.13(2)(a) 3rd Falsifying records of an individual in
 174 the care and custody of a state agency.
 839.13(2)(c) 3rd Falsifying records of the Department of
 175 Children and Family Services.

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 843.021 3rd Possession of a concealed handcuff key
 176 by a person in custody.
 843.025 3rd Deprive law enforcement, correctional,
 177 or correctional probation officer of
 843.15(1)(a) 3rd Failure to appear while on bail for
 178 felony (bond estreatment or bond
 847.0135(5)(c) 3rd Lewd or lascivious exhibition using
 179 computer; offender less than 18 years.
 874.05(1)(a) 3rd Encouraging or recruiting another to
 180 join a criminal gang.
 893.13(2)(a)1. 2nd Purchase of cocaine (or other s.
 181 893.03(1)(a), (b), or (d), (2)(a),
 914.14(2) 3rd Witnesses accepting bribes.
 182 914.22(1) 3rd Force, threaten, etc., witness, victim,
 183 or informant.
 914.23(2) 3rd Retaliation against a witness, victim,
 184 or informant, no bodily injury.

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185	918.12	3rd	Tampering with jurors.
186	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
187	(e) LEVEL 5		
188	Florida	Felony	
	Statute	Degree	Description
189	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
190	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
191	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
192	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
193	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
194	379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another

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195			harvester.
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
196	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
197	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
198	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
199	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
200	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
201	790.01(2)	3rd	Carrying a concealed firearm.
202	790.162	2nd	Threat to throw or discharge destructive device.
203			

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	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
204			
	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
205			
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
206			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
207			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
208			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
209			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
210			
	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
211			
	812.019(1)	2nd	Stolen property; dealing in or

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			trafficking in.
212			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
213			
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
214			
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
215			
	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
216			
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
217			
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
218			
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.

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 825.1025(4) 3rd Lewd or lascivious exhibition in the
 presence of an elderly person or
 disabled adult.
 220 827.071(4) 2nd Possess with intent to promote any
 photographic material, motion picture,
 etc., which includes sexual conduct by
 a child.
 221 827.071(5) 3rd Possess, control, or intentionally view
 any photographic material, motion
 picture, etc., which includes sexual
 conduct by a child.
 222 839.13(2)(b) 2nd Falsifying records of an individual in
 the care and custody of a state agency
 involving great bodily harm or death.
 223 843.01 3rd Resist officer with violence to person;
 resist arrest with violence.
 224 847.0135(5)(b) 2nd Lewd or lascivious exhibition using
 computer; offender 18 years or older.
 225 847.0137 3rd Transmission of pornography by
 (2) & (3) electronic device or equipment.
 226 847.0138 3rd Transmission of material harmful to

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 (2) & (3) minors to a minor by electronic device
 or equipment.
 227 874.05(1)(b) 2nd Encouraging or recruiting another to
~~874.05(2)~~ join a criminal gang; second or
 subsequent offense.
 228 874.05(2)(a) 2nd Encouraging or recruiting a person
under 13 years of age to join a
criminal gang.
 229 893.13(1)(a)1. 2nd Sell, manufacture, or deliver cocaine
 (or other s. 893.03(1)(a), (1)(b),
 (1)(d), (2)(a), (2)(b), or (2)(c)4.
 drugs).
 230
 231 893.13(1)(c)2. 2nd Sell, manufacture, or deliver cannabis
 (or other s. 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 (2)(c)7., (2)(c)8., (2)(c)9., (3), or
 (4) drugs) within 1,000 feet of a child
 care facility, school, or state,
 county, or municipal park or publicly
 owned recreational facility or
 community center.
 232 893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine
 (or other s. 893.03(1)(a), (1)(b),

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(1) (d), (2) (a), (2) (b), or (2) (c) 4.
 drugs) within 1,000 feet of university.

233 893.13(1) (e)2. 2nd Sell, manufacture, or deliver cannabis
 or other drug prohibited under s.
 893.03(1) (c), (2) (c)1., (2) (c)2.,
 (2) (c)3., (2) (c)5., (2) (c)6., (2) (c)7.,
 (2) (c)8., (2) (c)9., (3), or (4) within
 1,000 feet of property used for
 religious services or a specified
 business site.

234 893.13(1) (f)1. 1st Sell, manufacture, or deliver cocaine
 (or other s. 893.03(1) (a), (1) (b),
 (1) (d), or (2) (a), (2) (b), or (2) (c) 4.
 drugs) within 1,000 feet of public
 housing facility.

235 893.13(4) (b) 2nd Deliver to minor cannabis (or other s.
 893.03(1) (c), (2) (c)1., (2) (c)2.,
 (2) (c)3., (2) (c)5., (2) (c)6., (2) (c)7.,
 (2) (c)8., (2) (c)9., (3), or (4) drugs).

236 893.1351(1) 3rd Ownership, lease, or rental for
 trafficking in or manufacturing of
 controlled substance.

237 (g) LEVEL 7

238

239

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Florida Statute	Felony Degree	Description
316.027(1) (b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3) (c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3) (c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2) (b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
409.920 (2) (b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.

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247 456.065(2) 3rd Practicing a health care profession
without a license.

248 456.065(2) 2nd Practicing a health care profession
without a license which results in
serious bodily injury.

249 458.327(1) 3rd Practicing medicine without a license.

250 459.013(1) 3rd Practicing osteopathic medicine without
a license.

251 460.411(1) 3rd Practicing chiropractic medicine
without a license.

252 461.012(1) 3rd Practicing podiatric medicine without a
license.

253 462.17 3rd Practicing naturopathy without a
license.

254 463.015(1) 3rd Practicing optometry without a license.

255 464.016(1) 3rd Practicing nursing without a license.

256 465.015(2) 3rd Practicing pharmacy without a license.

257 466.026(1) 3rd Practicing dentistry or dental hygiene

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258 without a license.

467.201 3rd Practicing midwifery without a license.

259 468.366 3rd Delivering respiratory care services
without a license.

260 483.828(1) 3rd Practicing as clinical laboratory
personnel without a license.

261 483.901(9) 3rd Practicing medical physics without a
license.

262 484.013(1)(c) 3rd Preparing or dispensing optical devices
without a prescription.

263 484.053 3rd Dispensing hearing aids without a
license.

264 494.0018(2) 1st Conviction of any violation of ss.
494.001-494.0077 in which the total
money and property unlawfully obtained
exceeded \$50,000 and there were five or
more victims.

265 560.123(8)(b)1. 3rd Failure to report currency or payment
instruments exceeding \$300 but less
than \$20,000 by a money services
business.

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266 560.125(5)(a) 3rd Money services business by unauthorized
person, currency or payment instruments
exceeding \$300 but less than \$20,000.

267 655.50(10)(b)1. 3rd Failure to report financial
transactions exceeding \$300 but less
than \$20,000 by financial institution.

268 775.21(10)(a) 3rd Sexual predator; failure to register;
failure to renew driver's license or
identification card; other registration
violations.

269 775.21(10)(b) 3rd Sexual predator working where children
regularly congregate.

270 775.21(10)(g) 3rd Failure to report or providing false
information about a sexual predator;
harbor or conceal a sexual predator.

271 782.051(3) 2nd Attempted felony murder of a person by
a person other than the perpetrator or
the perpetrator of an attempted felony.

272 782.07(1) 2nd Killing of a human being by the act,
procurement, or culpable negligence of
another (manslaughter).

273

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782.071 2nd Killing of a human being or viable
fetus by the operation of a motor
vehicle in a reckless manner (vehicular
homicide).

274 782.072 2nd Killing of a human being by the
operation of a vessel in a reckless
manner (vessel homicide).

275 784.045(1)(a)1. 2nd Aggravated battery; intentionally
causing great bodily harm or
disfigurement.

276 784.045(1)(a)2. 2nd Aggravated battery; using deadly
weapon.

277 784.045(1)(b) 2nd Aggravated battery; perpetrator aware
victim pregnant.

278 784.048(4) 3rd Aggravated stalking; violation of
injunction or court order.

279 784.048(7) 3rd Aggravated stalking; violation of court
order.

280 784.07(2)(d) 1st Aggravated battery on law enforcement
officer.

281 784.074(1)(a) 1st Aggravated battery on sexually violent

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 predators facility staff.
 282 784.08 (2) (a) 1st Aggravated battery on a person 65 years
 of age or older.
 283 784.081 (1) 1st Aggravated battery on specified
 official or employee.
 284 784.082 (1) 1st Aggravated battery by detained person
 on visitor or other detainee.
 285 784.083 (1) 1st Aggravated battery on code inspector.
 286 787.06 (3) (a) 1st Human trafficking using coercion for
 labor and services.
 287 787.06 (3) (e) 1st Human trafficking using coercion for
 labor and services by the transfer or
 transport of any individual from
 outside Florida to within the state.
 288 790.07 (4) 1st Specified weapons violation subsequent
 to previous conviction of s. 790.07 (1)
 or (2).
 289 790.16 (1) 1st Discharge of a machine gun under
 specified circumstances.
 290 790.165 (2) 2nd Manufacture, sell, possess, or deliver

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 hoax bomb.
 291 790.165 (3) 2nd Possessing, displaying, or threatening
 to use any hoax bomb while committing
 or attempting to commit a felony.
 292 790.166 (3) 2nd Possessing, selling, using, or
 attempting to use a hoax weapon of mass
 destruction.
 293 790.166 (4) 2nd Possessing, displaying, or threatening
 to use a hoax weapon of mass
 destruction while committing or
 attempting to commit a felony.
 294 790.23 1st,PBL Possession of a firearm by a person who
 qualifies for the penalty enhancements
 provided for in s. 874.04.
 295 794.08 (4) 3rd Female genital mutilation; consent by a
 parent, guardian, or a person in
 custodial authority to a victim younger
 than 18 years of age.
 296 796.03 2nd Procuring any person under 16 years for
 prostitution.
 297 800.04 (5) (c) 1. 2nd Lewd or lascivious molestation; victim
 less than 12 years of age; offender

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298 less than 18 years.

800.04 (5) (c) 2. 2nd Lewd or lascivious molestation; victim
12 years of age or older but less than
16 years; offender 18 years or older.

299 806.01 (2) 2nd Maliciously damage structure by fire or
explosive.

300 810.02 (3) (a) 2nd Burglary of occupied dwelling; unarmed;
no assault or battery.

301 810.02 (3) (b) 2nd Burglary of unoccupied dwelling;
unarmed; no assault or battery.

302 810.02 (3) (d) 2nd Burglary of occupied conveyance;
unarmed; no assault or battery.

303 810.02 (3) (e) 2nd Burglary of authorized emergency
vehicle.

304 812.014 (2) (a) 1. 1st Property stolen, valued at \$100,000 or
more or a semitrailer deployed by a law
enforcement officer; property stolen
while causing other property damage;
1st degree grand theft.

305 812.014 (2) (b) 2. 2nd Property stolen, cargo valued at less
than \$50,000, grand theft in 2nd

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306 degree.

812.014 (2) (b) 3. 2nd Property stolen, emergency medical
equipment; 2nd degree grand theft.

307 812.014 (2) (b) 4. 2nd Property stolen, law enforcement
equipment from authorized emergency
vehicle.

308 812.0145 (2) (a) 1st Theft from person 65 years of age or
older; \$50,000 or more.

309 812.019 (2) 1st Stolen property; initiates, organizes,
plans, etc., the theft of property and
traffics in stolen property.

310 812.131 (2) (a) 2nd Robbery by sudden snatching.

311 812.133 (2) (b) 1st Carjacking; no firearm, deadly weapon,
or other weapon.

312 817.234 (8) (a) 2nd Solicitation of motor vehicle accident
victims with intent to defraud.

313 817.234 (9) 2nd Organizing, planning, or participating
in an intentional motor vehicle
collision.

314 817.234 (11) (c) 1st Insurance fraud; property value

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 315 \$100,000 or more.
 817.2341 1st Making false entries of material fact
 (2) (b) & or false statements regarding property
 (3) (b) values relating to the solvency of an
 insuring entity which are a significant
 cause of the insolvency of that entity.
 316 825.102(3) (b) 2nd Neglecting an elderly person or
 disabled adult causing great bodily
 harm, disability, or disfigurement.
 317 825.103(2) (b) 2nd Exploiting an elderly person or
 disabled adult and property is valued
 at \$20,000 or more, but less than
 \$100,000.
 318 827.03(2) (b) 2nd Neglect of a child causing great bodily
 harm, disability, or disfigurement.
 319 827.04(3) 3rd Impregnation of a child under 16 years
 of age by person 21 years of age or
 older.
 320 837.05(2) 3rd Giving false information about alleged
 capital felony to a law enforcement
 officer.
 321 838.015 2nd Bribery.

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 322 838.016 2nd Unlawful compensation or reward for
 official behavior.
 323 838.021(3) (a) 2nd Unlawful harm to a public servant.
 324 838.22 2nd Bid tampering.
 325 847.0135(3) 3rd Solicitation of a child, via a computer
 service, to commit an unlawful sex act.
 326 847.0135(4) 2nd Traveling to meet a minor to commit an
 unlawful sex act.
 327 872.06 2nd Abuse of a dead human body.
 328 874.05(2) (b) 1st Encouraging or recruiting a person
under 13 years of age to join a
criminal gang; second or subsequent
offense.
 329 874.10 1st,PBL Knowingly initiates, organizes, plans,
 finances, directs, manages, or
 supervises criminal gang-related
 activity.
 330
 331 893.13(1) (c)1. 1st Sell, manufacture, or deliver cocaine
 (or other drug prohibited under s.

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893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4.) within 1,000 feet
of a child care facility, school, or
state, county, or municipal park or
publicly owned recreational facility or
community center.

332 893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine
or other drug prohibited under s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4., within 1,000 feet
of property used for religious services
or a specified business site.

333 893.13(4)(a) 1st Deliver to minor cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4. drugs).

334 893.135(1)(a)1. 1st Trafficking in cannabis, more than 25
lbs., less than 2,000 lbs.

335 893.135 1st Trafficking in cocaine, more than 28
(1)(b)1.a. grams, less than 200 grams.

336 893.135 1st Trafficking in illegal drugs, more than
(1)(c)1.a. 4 grams, less than 14 grams.

337 893.135(1)(d)1. 1st Trafficking in phencyclidine, more than
28 grams, less than 200 grams.

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338 893.135(1)(e)1. 1st Trafficking in methaqualone, more than
200 grams, less than 5 kilograms.

339 893.135(1)(f)1. 1st Trafficking in amphetamine, more than
14 grams, less than 28 grams.

340 893.135 1st Trafficking in flunitrazepam, 4 grams
(1)(g)1.a. or more, less than 14 grams.

341 893.135 1st Trafficking in gamma-hydroxybutyric
(1)(h)1.a. acid (GHB), 1 kilogram or more, less
than 5 kilograms.

342 893.135 1st Trafficking in 1,4-Butanediol, 1
(1)(j)1.a. kilogram or more, less than 5
kilograms.

343 893.135 1st Trafficking in Phenethylamines, 10
(1)(k)2.a. grams or more, less than 200 grams.

344 893.1351(2) 2nd Possession of place for trafficking in
or manufacturing of controlled
substance.

345 896.101(5)(a) 3rd Money laundering, financial
transactions exceeding \$300 but less
than \$20,000.

346

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 896.104(4)(a)1. 3rd Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
 347
 943.0435(4)(c) 2nd Sexual offender vacating permanent residence; failure to comply with reporting requirements.
 348
 943.0435(8) 2nd Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
 349
 943.0435(9)(a) 3rd Sexual offender; failure to comply with reporting requirements.
 350
 943.0435(13) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
 351
 943.0435(14) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.
 352
 944.607(9) 3rd Sexual offender; failure to comply with reporting requirements.
 353
 944.607(10)(a) 3rd Sexual offender; failure to submit to the taking of a digitized photograph.

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 354 944.607(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
 355
 944.607(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.
 356
 985.4815(10) 3rd Sexual offender; failure to submit to the taking of a digitized photograph.
 357
 985.4815(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
 358
 985.4815(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.
 359
 360
 361 Section 6. Paragraph (b) of subsection (1) of section
 362 921.0024, Florida Statutes, is amended to read:
 363 921.0024 Criminal Punishment Code; worksheet computations;
 364 scoresheets.—
 365 (1)
 366 (b) WORKSHEET KEY:
 367
 368 Legal status points are assessed when any form of legal status

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369 existed at the time the offender committed an offense before the
370 court for sentencing. Four (4) sentence points are assessed for
371 an offender's legal status.

372
373 Community sanction violation points are assessed when a
374 community sanction violation is before the court for sentencing.
375 Six (6) sentence points are assessed for each community sanction
376 violation and each successive community sanction violation,
377 unless any of the following apply:

378 1. If the community sanction violation includes a new
379 felony conviction before the sentencing court, twelve (12)
380 community sanction violation points are assessed for the
381 violation, and for each successive community sanction violation
382 involving a new felony conviction.

383 2. If the community sanction violation is committed by a
384 violent felony offender of special concern as defined in s.
385 948.06:

386 a. Twelve (12) community sanction violation points are
387 assessed for the violation and for each successive violation of
388 felony probation or community control where:

389 (I) The violation does not include a new felony conviction;
390 and

391 (II) The community sanction violation is not based solely
392 on the probationer or offender's failure to pay costs or fines
393 or make restitution payments.

394 b. Twenty-four (24) community sanction violation points are
395 assessed for the violation and for each successive violation of
396 felony probation or community control where the violation
397 includes a new felony conviction.

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398
399 Multiple counts of community sanction violations before the
400 sentencing court shall not be a basis for multiplying the
401 assessment of community sanction violation points.

402
403 Prior serious felony points: If the offender has a primary
404 offense or any additional offense ranked in level 8, level 9, or
405 level 10, and one or more prior serious felonies, a single
406 assessment of thirty (30) points shall be added. For purposes of
407 this section, a prior serious felony is an offense in the
408 offender's prior record that is ranked in level 8, level 9, or
409 level 10 under s. 921.0022 or s. 921.0023 and for which the
410 offender is serving a sentence of confinement, supervision, or
411 other sanction or for which the offender's date of release from
412 confinement, supervision, or other sanction, whichever is later,
413 is within 3 years before the date the primary offense or any
414 additional offense was committed.

415
416 Prior capital felony points: If the offender has one or more
417 prior capital felonies in the offender's criminal record, points
418 shall be added to the subtotal sentence points of the offender
419 equal to twice the number of points the offender receives for
420 the primary offense and any additional offense. A prior capital
421 felony in the offender's criminal record is a previous capital
422 felony offense for which the offender has entered a plea of nolo
423 contendere or guilty or has been found guilty; or a felony in
424 another jurisdiction which is a capital felony in that
425 jurisdiction, or would be a capital felony if the offense were
426 committed in this state.

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427 Possession of a firearm, semiautomatic firearm, or machine gun:
 428 If the offender is convicted of committing or attempting to
 429 commit any felony other than those enumerated in s. 775.087(2)
 430 while having in his or her possession: a firearm as defined in
 431 s. 790.001(6), an additional eighteen (18) sentence points are
 432 assessed; or if the offender is convicted of committing or
 433 attempting to commit any felony other than those enumerated in
 434 s. 775.087(3) while having in his or her possession a
 435 semiautomatic firearm as defined in s. 775.087(3) or a machine
 436 gun as defined in s. 790.001(9), an additional twenty-five (25)
 437 sentence points are assessed.
 438
 439 Sentencing multipliers:
 440
 441 Drug trafficking: If the primary offense is drug trafficking
 442 under s. 893.135, the subtotal sentence points are multiplied,
 443 at the discretion of the court, for a level 7 or level 8
 444 offense, by 1.5. The state attorney may move the sentencing
 445 court to reduce or suspend the sentence of a person convicted of
 446 a level 7 or level 8 offense, if the offender provides
 447 substantial assistance as described in s. 893.135(4).
 448
 449 Law enforcement protection: If the primary offense is a
 450 violation of the Law Enforcement Protection Act under s.
 451 775.0823(2), (3), or (4), the subtotal sentence points are
 452 multiplied by 2.5. If the primary offense is a violation of s.
 453 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
 454 are multiplied by 2.0. If the primary offense is a violation of
 455

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456 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
 457 Protection Act under s. 775.0823(10) or (11), the subtotal
 458 sentence points are multiplied by 1.5.
 459
 460 Grand theft of a motor vehicle: If the primary offense is grand
 461 theft of the third degree involving a motor vehicle and in the
 462 offender's prior record, there are three or more grand thefts of
 463 the third degree involving a motor vehicle, the subtotal
 464 sentence points are multiplied by 1.5.
 465
 466 Offense related to a criminal gang: If the offender is convicted
 467 of the primary offense and committed that offense for the
 468 purpose of benefiting, promoting, or furthering the interests of
 469 a criminal gang as defined in s. 874.03 ~~prohibited under s.~~
 470 ~~874.04~~, the subtotal sentence points are multiplied by 1.5. If
 471 applying the multiplier results in the lowest permissible
 472 sentence exceeding the statutory maximum sentence for the
 473 primary offense under chapter 775, the court may not apply the
 474 multiplier and must sentence the defendant to the statutory
 475 maximum sentence.
 476
 477 Domestic violence in the presence of a child: If the offender is
 478 convicted of the primary offense and the primary offense is a
 479 crime of domestic violence, as defined in s. 741.28, which was
 480 committed in the presence of a child under 16 years of age who
 481 is a family or household member as defined in s. 741.28(3) with
 482 the victim or perpetrator, the subtotal sentence points are
 483 multiplied by 1.5.
 484 Section 7. This act shall take effect July 1, 2013.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Vice Chair*
Environmental Preservation and
Conservation, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Finance and Tax
Communications, Energy, and Public Utilities
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO

25th District

February 26th, 2013

Senator Greg Evers
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Evers:

I respectfully request that Senate Bill 788, relating to Criminal Gang Prevention, be placed on the Criminal Justice agenda. This legislation is similar to legislation you have sponsored in the past to deter criminal gang activity.

Thank you for your consideration. Please let me know if I can provide further information.

Sincerely,

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

Senator Joseph Abruzzo

cc: Amanda Cannon, Staff Director

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1042

INTRODUCER: Senator Abruzzo

SUBJECT: Public Meetings/Criminal Justice Commissions

DATE: March 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.			GO	
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 1042 creates an exemption from public meetings requirements for that portion of a meeting of a duly constituted criminal justice commission (a local commission) at which public and private sector members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may, foreseeably come before the commission, provided that at any public meeting at which such matter is being considered the commission members publicly disclose the fact that the matter has been discussed.

The bill specifies that the exemption is subject to the Open Government Sunset Review Act and provides a statement of public necessity for the exemption as required by the Florida Constitution. The bill specifies that the exemption stands repealed October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public meetings exemption, the bill requires a two-thirds vote of each house of the Legislature for passage.

This bill creates a new, and as yet unnumbered, section of the Florida Statutes.

II. Present Situation:

Public Meetings Requirements

The Florida Constitution, in part, requires that all meetings of any local government at which official acts are to be taken or at which public business of such body is to be transacted or

discussed be open and noticed to the public.¹ Additionally, the Sunshine Law,² in part, requires all meetings of any board or commission of any local agency³ or authority at which official acts are to be taken to be noticed and open to the public.⁴

Only the Legislature may create an exemption to public meetings requirements.⁵ The Legislature may provide by general law passed by two-thirds vote of each chamber for the exemption of meetings from the requirements of Article I, Section 24, of the Florida Constitution, provided the exemption:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.⁶

The Open Government Sunset Review Act (Act)⁷ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law. Each year, by June 1, the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.⁸ The Act requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁹

The Act provides that a public meetings exemption may be created, revised, or maintained only if it serves an identifiable public purpose and is no broader than necessary to meet the public purpose it serves.¹⁰ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

¹ Article I, Section 24(b), of the Florida Constitution.

² Section 286.011, F.S. Section 286.011, F.S., has been construed to apply to any gathering, formal or informal, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by that board or commission. *See generally Hough v. Stembridge*, 278 So.2d 288 (Fla. 3rd DCA 1973).

³ Section 119.01(2), F.S., defines an ‘agency’ as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁴ Section 286.011(1)-(2), F.S. The intent of the Legislature is to “extend application of the ‘open meeting’ concept so as to bind every ‘board or commission’ of the state, or of any county or political subdivision over which it has dominion or control.” *City of Miami Beach v. Berns*, 245 So.2d 38, 40 (Fla. 1971).

⁵ Article I, Section 24(c), of the Florida Constitution.

⁶ *Id.*

⁷ Section 119.15, F.S.

⁸ Section 119.15(5)(a), F.S.

⁹ Section 119.15(3), F.S.

¹⁰ Section 119.15(6)(b), F.S.

- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals, cause unwarranted damage to their good name or reputation, or jeopardize their safety. (Only information that would identify such individuals may be exempted under this provision).
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.¹¹

The Act also requires, as part of the review process, that the Legislature consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?¹²

Criminal Justice Commissions

Staff is aware of only two counties in Florida that currently have a “criminal justice commission”: the Sarasota County Criminal Justice Commission and the Palm Beach County Criminal Justice Commission.¹³ Membership of these commissions is comprised of members of both the public¹⁴ and private sectors. These members collaborate to improve the criminal justice system in their community.¹⁵ The commissions discuss a multitude of issues relating to local criminal justice practices, policies, and program developments.¹⁶ Other issues discussed at commission meetings include jail population and overcrowding, tracking crimes in the community, and matters of general policing.¹⁷

Because a criminal justice commission is an appointed commission that is not specifically exempted, they are currently covered under the Sunshine Law. Therefore, any meetings of a commission are subject to the Sunshine Law. Consequently, discussions that occur among members of a commission, such as those involving a sheriff, a public defender, or a state attorney, which involve matters that may foreseeably come before or are currently being

¹¹ *Id.*

¹² Section 119.15(6)(a), F.S.

¹³ In 2004, the Board of County Commissioners of Sarasota County passed Resolution number 2004-251, creating the Sarasota County Criminal Justice Commission. The ordinance is available at: http://www.co.sarasota.fl.us/HumanServices/documents/Resolution_CJC_Revised_112004.pdf . In 1988, Palm Beach County enacted Ordinance No. 88-16, creating the Palm Beach County Criminal Justice Commission. The ordinance is available under the “CJC Directory” tab at <http://www.co.palm-beach.fl.us/criminaljustice/youth/>.

¹⁴ *Id.*

¹⁵ See <https://www.scgov.net/CJC/Pages/default.aspx> (Sarasota County) and <http://www.pbcgov.org/criminaljustice/aboutcjc>. (Palm Beach County).

¹⁶ *Id.*

¹⁷ *Id.*

considered by the commission, must be properly noticed and should be conducted as an open meeting in accordance with the Sunshine Law.¹⁸ Discussions among public officials on issues that do not require action by the commission do not violate the Sunshine Law.¹⁹

III. Effect of Proposed Changes:

The bill creates an exemption from public meetings requirements for that portion of a meeting of a duly constituted criminal justice commission (which is a local commission) at which public and private sector members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may, foreseeably come before the commission, provided that at any public meeting at which such matter is being considered the commission members publicly disclose the fact that the matter has been discussed.

The bill defines “duly constituted criminal justice commission” as an advisory commission created by municipal or county ordinance whose membership is comprised of private and public sector persons and whose purpose is to examine local criminal justice issues.

The terms “active,” “criminal intelligence information,” and “criminal investigative information” have the same meaning as provided in s. 119.011, F.S. This section defines these terms as follows:

- “Active” has the following meanings:
 - Criminal intelligence information is considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
 - Criminal investigative information is considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
 - In addition, criminal intelligence and criminal investigative information are considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.²⁰
- “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.²¹
- “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.²²
- “Criminal intelligence information” and “criminal investigative information” do not include:

¹⁸ Attorney General Opinion 93-41.

¹⁹ *Id.*

²⁰ Section 119.011(3)(d), F.S.

²¹ Section 119.011(3)(a), F.S.

²² Section 119.011(3)(b), F.S.

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1), F.S., until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness, and impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments except as provided in s. 905.26, F.S.²³

The extent to which such access may be provided to commission members is governed by s. 119.071, F.S. Generally, such information is exempt from public disclosure,²⁴ meaning that an agency (the custodian of the record with the power to receive or communicate the record) is not prohibited from disclosing the record in all circumstances.²⁵ Some of this information is confidential and exempt,²⁶ which means that this information may not be released by an agency to anyone other than to the persons or entities designated in the statute.²⁷

The bill specifies that the public meetings exemption is subject to the Open Government Sunset Review Act and provides the following statement of public necessity for the exemption as required by the Florida Constitution:

The Legislature finds that it is a public necessity that the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the criminal justice commission be made exempt from public meeting requirements. If the meetings at which exempt information is discussed were open to the public, the purpose of the exemption from public records requirements found in chapter 119, Florida Statutes, would be defeated. The members of a criminal justice commission must be able to hear and discuss exempt information freely in order to make sound recommendations regarding strategies and activities that are best suited to protect the welfare of the people of this state. The ability to conduct meetings at which members can freely discuss and fully understand the details of active criminal intelligence information and active criminal investigative information is critical to the ability of a criminal justice commission to operate effectively.

²³ Section 119.011(3)(c), F.S.

²⁴ Section 119.071(2)(c)1., F.S.

²⁵ See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

²⁶ Section 119.071(2)(h) and (j)2., F.S.

²⁷ Attorney General Opinion 85-62.

The bill specifies that the exemption stands repealed October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public meetings exemption, the bill requires a two-thirds vote of each house of the Legislature for passage.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, Section 24(c), of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created public meetings exemption. Because the bill creates a new public meetings exemption, the bill requires a two-thirds vote of each house of the Legislature for passage.

Public Necessity Statement

Article I, Section 24(c), of the Florida Constitution requires a public necessity statement for a newly created public meetings exemption. Because the bill creates a new public meetings exemption, it includes a public necessity statement.

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. Additional Information:

A. Committee Substitute – Statement of Substantial 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 Abruzzo

25-00858A-13

20131042__

A bill to be entitled

An act relating to public meetings; providing definitions; providing an exemption from public meeting requirements for that portion of a meeting of a duly constituted criminal justice commission at which specified members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the commission; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Criminal justice commissions; public meetings exemption.-

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

(a) "Active" has the same meaning as provided in s. 119.011, Florida Statutes.

(b) "Criminal intelligence information" has the same meaning as provided in s. 119.011, Florida Statutes.

(c) "Criminal investigative information" has the same meaning as provided in s. 119.011, Florida Statutes.

(d) "Duly constituted criminal justice commission" means an advisory commission created by municipal or county ordinance whose membership is comprised of private and public sector persons and whose purpose is to examine local criminal justice issues.

25-00858A-13

20131042__

(2) That portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission is exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution, provided that at any public meeting of the criminal justice commission at which such matter is being considered, the commission members publicly disclose the fact that the matter has been discussed.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the criminal justice commission be made exempt from public meeting requirements. If the meetings at which exempt information is discussed were open to the public, the purpose of the exemption from public records requirements found in chapter 119, Florida Statutes, would be defeated. The members of a criminal justice commission must be able to hear and discuss exempt information freely in order to make sound recommendations regarding strategies and activities that are best suited to protect the welfare of the people of this state. The ability to conduct meetings at which members can

25-00858A-13

20131042__

59 freely discuss and fully understand the details of active
60 criminal intelligence information and active criminal
61 investigative information is critical to the ability of a
62 criminal justice commission to operate effectively.

63 Section 3. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Vice Chair*
Environmental Preservation and
Conservation, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Finance and Tax
Communications, Energy, and Public Utilities
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO

25th District

February 26th, 2013

Senator Greg Evers
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Evers:

I respectfully request that Senate Bill 1042, relating to Criminal Justice Commissions, be placed on the Criminal Justice agenda. This legislation will protect the integrity of sensitive communications relative to active intelligence and/or investigations discussed by criminal justice commissions.

Thank you for your consideration. Please let me know if I can provide further information.

Sincerely,

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

Senator Joseph Abruzzo

cc: Amanda Cannon, Staff Director

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/2013

Meeting Date

Topic _____

Bill Number 1042
(if applicable)

Name REX DIMMIG

Amendment Barcode _____
(if applicable)

Job Title PUBLIC DEFENDER, 10TH CIRCUIT

Address 255 N. BROADWAY

Phone 863.534.4258

Street BARTOW State FL Zip _____
City

E-mail RDIMMIG@PD10.STATE FL. US.

Speaking: For Against Information

Representing FL. PUBLIC DEFENDER ASSOC. INC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S.001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 11 / 2013

Meeting Date

Topic _____

Bill Number 1042
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1216

INTRODUCER: Senator Bradley

SUBJECT: Wage Theft

DATE: March 6, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Pre-meeting
2.			JU	
3.			CM	
4.			AP	
5.				
6.				

I. Summary:

SB 1216 generally preempts local regulation of wage theft issues and provides a specific civil action in the court system for wage theft claims. Under the bill, “wage theft” is defined as an illegal or improper underpayment or nonpayment of an individual employee’s wages, salaries, commissions, or other similar form of compensation.

This bill substantially amends section 34.01 of the Florida Statutes. The bill creates sections 448.115 and 448.116 of the Florida Statutes.

II. Present Situation:

Wage Theft

“Wage theft” is a general term sometimes used to describe the failure of an employer to pay any portion of wages due to an employee. Wage theft encompasses a variety of employer violations of federal and state law resulting in lost income to an employee. Wage theft may occur if:

- An employee is paid below the state or federal minimum wage;
- An employee is paid partial wages or not paid at all;
- A non-exempt employee is not paid time and a half for overtime hours;
- An employee is required to work off the clock;
- An employee has their time card altered;
- An employee is misclassified as an independent contractor; or
- An employee does not receive a final paycheck after the termination of employment.

Employee Protection: Federal and State

A variety of federal and state laws protect employees from wage theft. Federal laws are administered by the United States Department of Labor, and may be enforced by federal authorities or by private lawsuits.¹ The Fair Labor Standards Act (FLSA)² is the federal law most often used to address wage theft. State court actions to recover unpaid wages can be brought under Florida's minimum wage laws or through a common law breach of contract claim.

Federal Protection of Employees: Fair Labor Standards Act

The FLSA establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States. Currently, the federal minimum wage is \$7.25 per hour.³ A state may set the rate higher than the federal minimum but not lower.⁴

The FLSA also requires employers to pay one and one-half times regular wages for any time worked in excess of 40 hours during a workweek.⁵ In addition, it establishes standards for recordkeeping and child labor. The FLSA applies to most classes of workers, but a major exception is that it does not apply to most employees of businesses that have less than \$500,000 in annual business.⁶

The FLSA provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;
- Criminal prosecutions by the United States Department of Justice; or
- Private lawsuits by employees or workers, which includes individual lawsuits and collective actions.

An employer who violates section 206 (minimum wage) or section 207 (maximum hours) of the FLSA is liable to the employee for the amount of the unpaid wages and liquidated damages equal to the amount of the unpaid wages. An employer who fails to pay according to law is also responsible for the employee's attorney's fees and costs.

State Protection of Employees

State law provides for protection of employees, including anti-discrimination,⁷ work safety,⁸ and a state minimum wage. Article X, s. 24(c) of the Florida Constitution provides that "Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida."

¹ Links to most federal laws and regulations that affect wage and hour issues are located at www.dol.gov/whd/reg-library.htm (last visited March 6, 2013).

² 29 U.S.C. ch. 8.

³ The U.S. Department of Labor Wage and Hour Division provides information about the minimum wage and minimum wage laws at <http://www.dol.gov/whd/minimumwage.htm> (last visited March 6, 2013).

⁴ 29 U.S.C. s. 218(a).

⁵ 29 U.S.C. s. 207(a)(1).

⁶ The U.S. Department of Labor provides an extensive list of types of employees covered under the FLSA at <http://www.dol.gov/compliance/guide/minwage.htm#who> (last visited March 6, 2013).

⁷ Section 760.10, F.S.

⁸ Sections 448.20-26 and 487.2011-2071, F.S.

If an employer does not pay the state minimum wage, the constitution provides that an employee may bring a civil action in a court of competent jurisdiction for the amount of the wages withheld. If the employee prevails, in addition to the unpaid wages, a court may also award the employee liquidated damages in the amount of the wages withheld and reasonable attorney's fees and costs. Further, any employer that willfully violates the minimum wage law is fined \$1,000 for each violation. The Attorney General is also empowered to bring a civil action to enforce the state's minimum wage laws.

The current state minimum wage is \$7.79 per hour, which is higher than the federal minimum wage.⁹ Federal law requires the payment of the higher of the federal or state minimum wage.¹⁰

Chapter 448, F.S., includes the State Minimum Wage Act, which implements the constitutional minimum wage requirements. Chapter 448, F.S., also prohibits an employer from retaliating against the employee for enforcing his or her rights, and it preserves the rights that an employee has under any collective bargaining agreement or employee contract.¹¹

In addition to remedies under state minimum wage laws, an employee may bring a common law breach of contract claim for unpaid wages. Section 448.08, F.S., allows the court to award attorney's fees and costs to the prevailing party in an action for unpaid wages.

Home Rule and Preemption

Article VIII, ss. 1 and 2, of the State Constitution establishes two types of local governments: counties¹² and municipalities. Local governments have wide authority to enact various ordinances to accomplish their local needs.¹³ Under home rule powers, a municipality or county may legislate concurrently with the Legislature on any subject that has not been preempted to the state.

Preemption essentially takes a topic or field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the state.¹⁴ Florida law recognizes two types of preemption: express and implied.¹⁵ Express preemption requires a specific legislative statement and cannot be implied or inferred.¹⁶ Express preemption requires that a statute contain specific language of preemption directed to the particular subject at issue.

The absence of express preemption does not bar a court from a finding of preemption by implication, though courts are careful when imputing intent on behalf of the Legislature to preclude a local government from using its home rule powers.¹⁷ Before finding that implied

⁹ See Department of Employment Opportunity website for information regarding the Florida minimum wage, <http://www.floridajobs.org/minimumwage/FloridaMinimumWageHistory2000-2013.pdf> (last visited March 6, 2013).

¹⁰ 29 U.S.C. §218(a).

¹¹ Section 448.105, F.S.

¹² Florida has both charter and non-charter counties.

¹³ Article VIII of the state constitution establishes the powers of charter counties, non-charter counties, and municipalities. Chapters 125 and 166, F.S., provide the additional powers and constraints of counties and municipalities.

¹⁴ *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

preemption exists, a court will first consider whether the legislative scheme is so pervasive as to evidence intent to preempt the particular area.¹⁸ Factors that point to a pervasive legislative scheme include the nature of the subject matter, the need for state uniformity, and the scope and purpose of the state legislation.¹⁹ Second, a court will consider whether strong public policy reasons exist for finding an area to be preempted by the Legislature.²⁰ An example of an area where the courts have found implied preemption is the regulation of public records.²¹

There is no apparent express preemption of wage laws to the federal or state government. It is unclear whether a court would find that the existing laws regarding employee wages are an implied preemption of the subject.

Local Regulation of Wage Theft

Florida's two most populous counties, Miami-Dade County and Broward County, have passed ordinances dealing with wage theft claims. In addition, Palm Beach County has passed a resolution condemning wage theft and has created a program for wage theft claimants to be represented by the Legal Aid Society of Palm Beach County. Alachua County commissioners are also considering whether to enact a wage theft ordinance.²²

Miami-Dade's ordinance,²³ passed in February 2010, was one of the first local wage theft ordinances in the United States. The ordinance is administered by the county's Department of Small Business Development (SBD) and provides a local process for employees to file claims for unpaid wages. The process cannot be used if the employee has made a claim under state or federal law; however, a claim under the ordinance does not preclude later claims under state or federal law. The ordinance only applies to claims for payment of more than \$60 in wages, and claims must be filed within one year after the last day the unpaid work was performed. Claims that are not resolved before the hearing are heard by a hearing examiner who is deemed to be qualified to hear wage theft matters. If the hearing officer determines by a preponderance of the evidence that back wages are owed, the employee must be awarded three times the amount of the wages found to be owed and the employer must pay the county's administrative processing costs and costs of the proceeding. If the employee is not successful, neither party reimburses the county's costs.

From the inception of the ordinance through January 6, 2012, the Department of Small Business Development reports that there have been a total of 1596 wage complaints, claims, or inquiries logged, resulting in a total of \$813,369.71 awarded to employees.²⁴

¹⁸ See *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984).

¹⁹ See *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

²⁰ *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).

²¹ See *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984).

²² Gainesville Sun, *Residents state their case for wage-theft ordinance*, published January 8, 2013, www.gainesville.com/article/20130108/ARTICLES/130109676 (last visited March 7, 2013).

²³ Miami Dade County, Fla., Code ch. 22.

²⁴ Department of Small Business Development, *Wage Theft Status Report* (Jan. 2012) (on file with the Senate Committee on Judiciary).

Broward County's ordinance took effect on January 2, 2013.²⁵ It provides a process that is similar to Miami-Dade County's ordinance, but that has some significant differences. These differences include:

- A claim cannot be considered unless the employee gave the employer written notice of the failure to pay wages within 60 days of the date the wages were due and the employer had a minimum of 15 days to pay or resolve the claim before it was filed.
- A successful claimant is awarded double the amount of unpaid wages, rather than triple wages as in the Miami-Dade County ordinance.
- In addition to paying the county's costs as is required by the Miami-Dade County ordinance, a losing employer is also required to reimburse the employee for reasonable costs and attorney's fees incurred in connection with the hearing.
- Like the Miami-Dade County ordinance, an unsuccessful claimant is not required to pay either the employer's or the county's costs. However, under the Palm Beach County ordinance the employee must be ordered to pay the employer's reasonable costs and attorney's fees and the county's costs if the hearing officer finds that the claim had no basis in law or fact.

Palm Beach County considered passing a wage theft ordinance since a proposed ordinance was brought before the commissioners in February 2011. Following that time, Palm Beach County supported a Wage Recovery Program administered by the Legal Aid Society of Palm Beach County. The Legal Aid Society program assists employees in collecting unpaid wages through existing civil or administrative remedies. As of November 16, 2012, the Wage Recovery Program had retained 168 clients and has been able to recover \$115,915 in unpaid wages for 59 of those clients.²⁶ On December 4, 2012, the commission passed a resolution condemning wage theft and providing \$100,000 to the Legal Aid Society to expand the Wage Recovery Program.²⁷

III. Effect of Proposed Changes:

The bill generally preempts local regulation of wage theft issues and provides a specific civil action in the court system for wage theft claims.

Section 1 of the bill amends s. 34.01, F.S., to expand the jurisdiction of county courts to include actions for collection of unpaid wages that are brought under the new process created in section 2 of the bill. The expanded jurisdiction includes an exception that allows the county court to have jurisdiction of these cases even if the amount in controversy exceeds \$15,000.

Section 2 of the bill creates s. 448.115, F.S., which provides a new civil claim for wage theft that is brought in the county court and governed by Florida Small Claims Rules. Under the new statute, wage theft is illegal or improper underpayment or nonpayment of an individual employee's wages, salaries, commissions, or similar compensation within a reasonable time from

²⁵ Broward County Code of Ordinances, s. 20½, Non-Payment of Earned Wages.

²⁶ See Legal Aid Society of Palm Beach County, Inc., *Wage Recovery Project November 16, 2012 Update*, included in Palm Beach County Board of County Commissioner Agenda Item Summary Packet for Agenda Item 4A-2 at December 4, 2012 meeting. The packet is available online at <http://www.ordinancewatch.com/files/72011/LocalGovernment79272.pdf>, (last visited March 7, 2013).

²⁷ *Id.*

when the employee should have been paid. If there is no established pay schedule, a reasonable time for payment is deemed to be 15 days from the date on which the work is performed.

A claim for wage theft under s. 448.115, F.S., must be brought in the county where the unpaid work was alleged to have been performed within one year of the last date of performance. Prior to filing a claim, the employee must give the employer written notice of the particulars of the allegations and of the intent to file a claim. The claim cannot be filed unless the employer fails to pay the amount of unpaid compensation or otherwise resolves the claim to the employee's satisfaction within 15 days of service of the notice.

The claim is generally governed by Florida Small Claims Rules. However, the amount claimed can exceed the small claims threshold of \$5000 and neither party has the right to a jury trial. If the employee proves the claim by a preponderance of the evidence, he or she is entitled to damages in the amount of the compensation that is due. The court cannot award any other damages, and the bill prohibits award of attorney fees or costs to a prevailing employee as otherwise permitted by s. 448.08, F.S. However, the court can award attorney fees and costs to the employer under s. 448.08, F.S., if the employee does not prove the claim.

Attorney General Civil Action: The bill also provides that the Attorney General can bring a civil action for wage theft. In such an action, the Attorney General can seek an injunction against the employer. The Attorney General can also seek imposition of a civil penalty of no more than \$1000 per violation against employers who have willfully engaged in wage theft.

Local Government Administrative Process: The bill allows local governments to establish an administrative program to help an employee recover unpaid wages. The process must give the parties an opportunity to negotiate a resolution of the claim, but it cannot include adjudication of the dispute or an award of damages. The program can provide for the payment of the filing fee for a county court action or assistance with filing an application for determination of civil indigent status under s. 57.082, F.S.

Preemption of Local Ordinances: With one exception, the bill preempts any local regulation addressing claims for unpaid compensation other than establishment of an administrative process as described above. The exception is that the Miami-Dade County wage theft ordinance, which can be applied if the employer from whom compensation is sought has an annual gross volume of sales or business transacted of less than \$500,000. This would allow employees who could not file an action under the FLSA because of their employer's size to file a claim under the ordinance.

Section 3 of the bill creates s. 448.116, F.S., which precludes local governments from adopting or enforcing a law governing a condition of employment or creating a process for resolving disputes regarding conditions of employment. "Condition of employment" is defined in the new statute to include preemployment screening, job classification, job responsibilities, hours of work, wages, payment of wages, leave, and employee benefits. There are two exceptions to this preemption: it does not include the local government's regulation of its own employees, and it does not apply to the extent it conflicts with the minimum wage law set forth in s. 218.077, F.S. The statewide preemption in this section appears to be in conflict with provisions included in Section 2 of the bill.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As noted in the discussion of the effects of the bill, the Florida Constitution sets forth certain requirements and remedies regarding minimum wage claims. This bill cannot be interpreted to preclude an employee from exercising those state constitutional rights, which are currently implemented in ch. 448, F.S.

The provision in section 2 of the bill providing that there is no right to a jury trial in actions brought under new s. 448.115, F.S., also raises constitutional concerns. Article I, Section 22 of the Florida Constitution provides: “The right of trial by jury shall be secure to all and remain inviolate. . . .” It has long been established that there is a right to trial by jury in legal actions, but no such right in equitable actions.²⁸ An action to recover unpaid wages could be legal (such as when the claim is based upon a contract) or equitable (such as when the claim is based upon unjust enrichment). Because the bill does not appear to create an exclusive remedy for wage theft claims, it may not be constitutionally impermissible to prohibit jury trials to the extent that the employee/plaintiff has an option to pursue another remedy that includes a right to trial by jury. However, the employer/defendant would not have such an option. A possible resolution of this concern would be to provide that the newly-created cause of action could only be utilized if the employer agrees to waive the right to trial by jury.

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

None.

B. Private Sector Impact:

This bill will have an impact on both employees seeking payment of allegedly unpaid compensation and employers who are sued for payment of unpaid wages. For employee/

²⁸ Although there is no longer a distinction between law and equity, courts consider the history of the type of action when determining the right to a trial by jury. *Cerrito v. Kovitch*, 457 So.2d 1021 (Fla. 1984). See also *B.J.Y. v. M.A.*, 617 So.2d 1061 (Fla. 1993); 5 Fla. Prac., Civil Practice s. 14:2 (2012 ed.).

claimants in Broward County and employees of large companies who work in Miami-Dade County, it would remove the option to seek payment under those counties' wage theft ordinances. Since those ordinances appear to require little cost to the employee, they would presumably incur greater costs under the new statute and their recovery would be limited to the actual amount of unpaid compensation.²⁹ Conversely, employers defending actions in those counties would not be faced with paying double or triple the amount of unpaid compensation or costs of the proceeding. It is reasonable to expect that the statute would have the net effect of reducing wage theft claims in Broward and Miami-Dade counties. However, it provides a new means of redress for employees in all other counties of the state, and would likely result in an increase in claims.

C. Government Sector Impact:

Because the bill creates a new civil action for redress of wage theft claims in county court, there will be an increase of costs to the judiciary to the extent that the new procedure is utilized by aggrieved employees who would not have otherwise pursued their claims in court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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.

²⁹ Filing an action in county court typically costs \$300, but the bill allows counties to create programs to pay this cost.



411024

LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 34.01, Florida Statutes, is amended to read:

34.01 Jurisdiction of county court.—

(1) County courts shall have original jurisdiction:

(a) In all misdemeanor cases not cognizable by the circuit courts. ~~†~~

(b) Of all violations of municipal and county ordinances. ~~†~~

(c) Of all actions at law in which the matter in



411024

13 controversy does not exceed the sum of \$15,000, exclusive of
14 interest, costs, and attorney's fees, except those within the
15 exclusive jurisdiction of the circuit courts. ~~;~~ and

16 (d) Of disputes occurring in the homeowners' associations
17 as described in s. 720.311(2)(a), which shall be concurrent with
18 jurisdiction of the circuit courts.

19 (e) Of actions for the collection of compensation under s.
20 448.115, notwithstanding the amount in controversy prescribed in
21 paragraph (c).

22 Section 2. Section 448.115, Florida Statutes, is created to
23 read:

24 448.115 Civil action for wage theft; notice; civil penalty;
25 preemption.-

26 (1) (a) As used in this section, the term "wage theft" means
27 an illegal or improper underpayment or nonpayment of an
28 individual employee's wage, salary, commission, or other similar
29 form of compensation within a reasonable time from the date on
30 which the employee performed the work to be compensated.

31 (b) A wage theft occurs when an employer fails to pay a
32 portion of wages, salary, commissions, or other similar form of
33 compensation due to an employee within a reasonable time from
34 the date on which the employee performed the work, according to
35 the already applicable rate and the pay schedule of the employer
36 established by policy or practice. In the absence of an
37 established pay schedule, a reasonable time from the date on
38 which the employee performed the work is 2 weeks.

39 (2) (a) If an employer commits wage theft as defined in
40 paragraph (1) (a), an aggrieved employee may initiate a civil
41 action as provided in this section.



411024

42 (b) County courts shall have original and exclusive
43 jurisdiction in all actions involving wage theft, as provided in
44 s. 34.01.

45 (c) The action shall:

46 1. Be brought in the county court in the county where the
47 employee performed the work;

48 2. Not include a right to a jury trial; and

49 3. Be governed by the Florida Small Claims Rules.

50 (3) (a) Before bringing an action, the claimant must notify
51 the employer who is alleged to have engaged in wage theft of an
52 intent to initiate a civil action in writing.

53 (b) The notice must identify the amount that the claimant
54 alleges is owed, the actual or estimated work dates and hours
55 for which compensation is sought, and the total amount of
56 compensation unpaid through the date of the notice.

57 (c) The employer has 15 days after the date of service of
58 the notice to pay the total amount of unpaid compensation or
59 otherwise resolve the action to the satisfaction of the
60 claimant.

61 (4) The action must be filed within 1 year after the last
62 date that the alleged unpaid work was performed by the employee.

63 (5) The claimant must prove wage theft by a preponderance
64 of the evidence. A prevailing claimant is entitled to damages
65 limited to the actual compensation due and owing.

66 (a) The court may only award economic damages expressly
67 authorized in this subsection.

68 (b) The court may not award noneconomic or punitive damages
69 or attorney fees or costs to a prevailing claimant,
70 notwithstanding s. 448.08.



411024

71 (6) The Attorney General may bring a civil action against
72 an employer for wage theft. The Attorney General may seek
73 injunctive relief. In addition to injunctive relief, or in lieu
74 of injunctive relief, for any employer found to have willfully
75 engaged in wage theft, the Attorney General may seek to impose a
76 civil penalty not to exceed \$1,000 per violation, payable to the
77 state. The clerk of court shall remit the penalty collected
78 under this subsection to the Department of Revenue for deposit
79 into the General Revenue Fund.

80 (7) (a) A county, municipality, or political subdivision may
81 establish an administrative, nonjudicial process under which an
82 assertion of unpaid compensation may be submitted by, or on
83 behalf of, an employee in order to assist in the collection of
84 compensation owed to the employee. Any such process, at a
85 minimum, shall afford the parties involved an opportunity to
86 negotiate a resolution regarding the compensation in question.
87 The county, municipality, or political subdivision may, as part
88 of the process, pay the filing fee under s. 34.041 on behalf of
89 the employee or assist the employee in completing an application
90 for a determination of civil indigent status under s. 57.082.
91 The process may not adjudicate a compensation dispute between an
92 employee and an employer nor award damages to the employee.

93 (b) A county, municipality, or political subdivision may
94 not adopt or maintain in effect any law, ordinance, or rule that
95 creates requirements or regulations for the purpose of
96 addressing unpaid compensation claims other than to establish
97 the administrative, nonjudicial process provided for in this
98 subsection.

99 (c) Notwithstanding paragraph (b), a local ordinance



411024

100 governing wage theft enacted before January 1, 2011, is not
101 preempted by this section. However, any local ordinance
102 governing wage theft enacted before January 1, 2011, may not
103 apply to an employer whose annual gross volume of sales or
104 business transacted is more than \$500,000, exclusive of sales
105 tax collected or excise taxes paid.

106 (d) Any other regulation, ordinance, or provision for the
107 recovery of unpaid compensation by a county, municipality, or
108 political subdivision is expressly prohibited and is preempted
109 to the state.

110 Section 3. This act shall take effect upon becoming a law

111
112 ===== T I T L E A M E N D M E N T =====

113 And the title is amended as follows:

114 Delete everything before the enacting clause
115 and insert:

116 A bill to be entitled
117 An act relating to employers and employees; amending
118 s. 34.01, F.S.; providing jurisdiction of county
119 courts over wage theft civil actions; creating s.
120 448.115, F.S.; providing a definition for the term
121 "wage theft"; creating a civil cause of action for
122 wage theft; providing the procedure for filing of a
123 civil action for wage theft; providing jurisdiction;
124 requiring a claimant to notify the employer of the
125 employee's intention to initiate a civil action;
126 allotting the employer a specific time to resolve the
127 action; providing a statute of limitations; requiring
128 a claimant to prove wage theft by a preponderance of



411024

129 the evidence; prohibiting certain damages; authorizing
130 the Attorney General to bring a civil action for wage
131 theft and seek injunctive relief; providing a civil
132 penalty; authorizing a county, municipality, or
133 political subdivision to establish a process by which
134 a claim may be filed; prohibiting a local government
135 from adopting or maintaining in effect a law,
136 ordinance, or rule for the purpose of addressing
137 unpaid wage claims; prohibiting the preemption of
138 certain local ordinances governing wage theft;
139 providing that any regulation, ordinance, or other
140 provision for recovery of unpaid wages by counties,
141 municipalities, or political subdivisions is
142 prohibited and preempted to the state; providing an
143 effective date.



901110

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (411024)

Delete lines 45 - 49

and insert:

(c) The action shall:

1. Be brought in the county court in the county where the employee performed the work; and

2. Be governed by the Florida Small Claims Rules.



459014

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (411024)

Delete lines 63 - 70
and insert:

(5) The claimant must prove wage theft by a preponderance of the evidence. A prevailing claimant is entitled to damages limited to the actual compensation due and owing. The court may only award economic damages expressly authorized in this subsection, and may not award noneconomic or punitive damages.



841392

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (411024)

Delete lines 99 - 102

and insert:

(c) Notwithstanding paragraphs (a) and (b), a local ordinance governing wage theft or recovery which is enacted or effective on or before January 2, 2013, is not preempted by this section. However, a local ordinance governing wage theft or recovery which is enacted or effective on or before January 2, 2013, may not

By Senator Bradley

7-00788-13

20131216__

1 A bill to be entitled
 2 An act relating to wage theft; amending s. 34.01,
 3 F.S.; granting county courts original jurisdiction
 4 over specified collection actions; creating s.
 5 448.115, F.S.; defining the term "wage theft";
 6 providing circumstances under which an employer
 7 commits wage theft; providing specific notice
 8 requirements; requiring a claim to be filed within a
 9 specified time; requiring an employer to pay or
 10 resolve the matter within a specified time; providing
 11 that a claim is governed by the Florida Small Claims
 12 Rules; providing procedural requirements; requiring
 13 the claimant to prove wage theft by a preponderance of
 14 the evidence; limiting damages to actual compensation
 15 owed; prohibiting attorney fees or other damage
 16 awards; authorizing the Attorney General to seek
 17 injunctive relief against an employer accused of wage
 18 theft; authorizing the Attorney General to seek money
 19 damages, up to a specified amount, in addition to
 20 injunctive relief under certain circumstances;
 21 authorizing a county, municipality, or political
 22 subdivision to establish an administrative process to
 23 facilitate the collection of money owed to an
 24 employee; requiring such process to include an
 25 opportunity for negotiation between parties;
 26 authorizing a county, municipality, or political
 27 subdivision to include in the process payment of
 28 certain fees and assistance with certain applications;
 29 prohibiting adjudication; prohibiting any law,

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20131216__

30 ordinance, or rule regarding unpaid compensation
 31 claims other than as authorized for the administrative
 32 process; grandfathering local ordinances that govern
 33 wage theft and that were enacted before a specified
 34 date; providing an exception; creating s. 448.116,
 35 F.S.; providing definitions; prohibiting a political
 36 subdivision from adopting or enforcing certain rules
 37 and ordinances and voiding such rules and ordinances;
 38 providing that this section does not limit the
 39 authority of a political subdivision to establish
 40 conditions of employment for certain persons or to
 41 establish a certain process or forum; providing that
 42 this section does not prohibit a certain tribal
 43 government from establishing conditions of employment
 44 for certain persons; providing an effective date.

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

48 Section 1. Subsection (1) of section 34.01, Florida
 49 Statutes, is amended to read:

50 34.01 Jurisdiction of county court.—

51 (1) County courts ~~shall~~ have original jurisdiction:

52 (a) In all misdemeanor cases not cognizable by the circuit
 53 courts;

54 (b) Of all violations of municipal and county ordinances;

55 (c) Of all actions at law in which the matter in
 56 controversy does not exceed the sum of \$15,000, exclusive of
 57 interest, costs, and attorney's fees, except those within the
 58 exclusive jurisdiction of the circuit courts; ~~and~~

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20131216__

59 (d) Of disputes occurring in the homeowners' associations
60 as described in s. 720.311(2) (a), which shall be concurrent with
61 jurisdiction of the circuit courts; and

62 (e) Of actions for the collection of compensation under s.
63 448.115, notwithstanding the amount in controversy prescribed in
64 paragraph (c).

65 Section 2. Section 448.115, Florida Statutes, is created to
66 read:

67 448.115 Civil claim for wage theft; notice; civil penalty;
68 preemption.-

69 (1) As used in this section, the term "wage theft" means an
70 illegal or improper underpayment or nonpayment of an individual
71 employee's wages, salaries, commissions, or other similar forms
72 of compensation, within a reasonable time from the date on which
73 the employee performs the work that is to be compensated.

74 (2) An employer commits wage theft if the employer fails to
75 pay a portion of wages, salaries, commissions, or other similar
76 forms of compensation due to an employee for the agreed upon
77 work within a reasonable time from the date on which the
78 employee performs the work, according to the already applicable
79 rate and the pay schedule of the employer which are established
80 by policy or practice. In the absence of an established pay
81 schedule, 2 weeks after the date on which the employee performs
82 the work shall be deemed a reasonable time.

83 (3) (a) An employee may bring a claim for wage theft against
84 an employer. However, before bringing a claim for wage theft
85 against an employer, an employee must notify the employer in
86 writing of his or her intent to initiate a claim. The notice
87 must identify the amount that the employee alleges he or she is

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20131216__

88 owed, the actual or estimated work dates and hours for which
89 compensation is sought, and the total amount of compensation
90 unpaid through the date of the notice.

91 (b) A claim under this section must be filed within 1 year
92 of the last date that the allegedly unpaid work is performed by
93 the employee.

94 (c) The employer shall pay the total amount of unpaid
95 compensation or otherwise resolve the matter to the satisfaction
96 of the employee within 15 days after the date of service of the
97 notice.

98 (4) (a) A county court has original jurisdiction, as
99 provided under s. 34.01, over a claim for wage theft. A claim
100 for wage theft has venue in the county where the employee
101 performs the work. A claim for wage theft does not include a
102 right to a jury trial and is governed by the Florida Small
103 Claims Rules.

104 (b) The claimant must prove wage theft by a preponderance
105 of the evidence. A prevailing claimant is entitled to damages,
106 limited to the actual compensation due and owing. A court may
107 not award economic damages other than those expressly authorized
108 in this section. A court may not award noneconomic or punitive
109 damages or attorney fees or costs to a prevailing claimant on a
110 claim under this section, notwithstanding s. 448.08.

111 (5) The Attorney General may bring a civil action against
112 an employer for wage theft. The Attorney General may seek
113 injunctive relief. For any employer found to have willfully
114 engaged in wage theft, the Attorney General may also seek to
115 impose a civil penalty not to exceed \$1,000 per violation,
116 payable to the state. The clerk of court shall remit the penalty

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20131216__

117 collected under this subsection to the Department of Revenue for
 118 deposit into the General Revenue Fund.

119 (6) (a) A county, municipality, or political subdivision may
 120 establish an administrative, nonjudicial process under which an
 121 assertion of unpaid compensation may be submitted by, or on
 122 behalf of, an employee to assist in the collection of
 123 compensation owed to the employee. Any such process, at a
 124 minimum, must afford the parties involved an opportunity to
 125 negotiate a resolution regarding the compensation in question.
 126 The county, municipality, or political subdivision may, as part
 127 of the process, pay the filing fee under s. 34.041 on behalf of
 128 the employee or assist the employee in completing an application
 129 for a determination of civil indigent status under s. 57.082.
 130 The process may not adjudicate a compensation dispute between an
 131 employee and an employer nor award damages to the employee.

132 (b) A county, municipality, or political subdivision may
 133 not adopt or maintain in effect any law, ordinance, or rule that
 134 creates requirements or regulations for the purpose of
 135 addressing unpaid compensation claims other than to establish
 136 the administrative, nonjudicial process provided for in this
 137 subsection.

138 (c) Notwithstanding paragraph (b), any local ordinance
 139 governing wage theft enacted before January 1, 2011, is not
 140 preempted by this section. Such local ordinance may not apply to
 141 an employer whose annual gross volume of sales or business
 142 transacted is more than \$500,000, exclusive of sales tax
 143 collected or excise taxes paid.

144 Section 3. Section 448.116, Florida Statutes, is created to
 145 read:

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20131216__

146 448.116 State retention of powers.-

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

148 (a) "Condition of employment" means those terms that form
 149 the basis of the relationship between an employer and a
 150 prospective or actual employee, including, but not limited to,
 151 preemployment screening, job classification, job
 152 responsibilities, hours of work, wages, payment of wages, leave,
 153 and employee benefits such as retirement and insurance.

154 (b) "Employee" means an individual employed in this state
 155 by an employer.

156 (c) "Employer" means a person engaging in any activity,
 157 enterprise, or business in this state employing at least one
 158 employee.

159 (d) "Political subdivision" means a county, municipality,
 160 department, commission, district, board, or other public body,
 161 whether corporate or otherwise, created by or under state law.

162 (2) Except as otherwise provided in subsection (3) or in s.
 163 218.077, a political subdivision may not adopt or enforce a rule
 164 or ordinance that governs a condition of employment or
 165 establishes a process or forum for the resolution of disputes
 166 involving a condition of employment, the regulation of such
 167 matters being expressly preempted to the state. Any such
 168 existing rule or ordinance is void.

169 (3) This section does not limit the authority of a
 170 political subdivision to establish conditions of employment for
 171 the employees of the political subdivision or to establish any
 172 process or forum for the resolution of disputes within that
 173 employment relationship.

174 (4) This section does not prohibit a federally authorized

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20131216__

175 and recognized tribal government from establishing conditions of
176 employment for persons employed within any territory over which
177 the tribe has jurisdiction.

178 Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 11, 2013
Meeting Date

Topic Wage Theft

Bill Number 841392
(if applicable)

Name Samantha Padgett

Amendment Barcode ~~411020~~
(if applicable)
(to 1216)

Job Title General Counsel

Address 227 South Adams St.
Street

Phone 222-4082

Tallahassee, FL 32301
City State Zip

E-mail samantha@frf.org

Speaking: For Against Information

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

Sen. Smith Amend.

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

841392

3/11/13

Meeting Date

Topic

Wage Theft

Bill Number

SB 1216

(if applicable)

Name

Richard Watson

Amendment Barcode

(if applicable)

Job Title

Legislative Counsel

Address

P.O. Box 10038

Phone

850 222-0000

Street

Jacksonville FL 32302

E-mail

rick.watson@senators.com

City

State

Zip

Speaking:

For

Against

Information

bill

Sen Smith amended

Representing

Associated Builders and Contractors of FL

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/13

Meeting Date

Topic Wage Theft

Bill Number 1216
(if applicable)

Name Maria McCluskey

Amendment Barcode _____
(if applicable)

Job Title _____

Address 12673 LK Cypress Cir
Street

Phone _____

Orlando FL 32828
City State Zip

E-mail mccluskey.maria@gmail.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

3-11-13

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

Meeting Date

Topic _____

Bill Number 1216
(if applicable)

Name JESS McCARTY

Amendment Barcode _____
(if applicable)

Job Title ASS'T COUNTY XITY

Address 111 NW 1st ST 2810

Phone 305-979-7110

Street
MIAMI FL 33138
City State Zip

E-mail JMM2@MIAMI006
GA

Speaking: For Against Information

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/13
Meeting Date

Topic WAGE THEFT

Bill Number 1216
(if applicable)

Name Arthur Rosenberg

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 3000 Biscayne BLVD, #102
Street
Miami FL 33137
City State Zip

Phone 850-569-2085

E-mail arthur@floridalegal.org

Speaking: For Against Information

Representing FLORIDA LEGAL SERVICES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/13
Meeting Date

Topic wage theft

Bill Number SB 1216
(if applicable)

Name Rick Templin

Amendment Barcode _____
(if applicable)

Job Title _____

Address 135 S. Monroe
Street

Phone _____

Killbucksee FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida AFL-CIO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/13

Meeting Date

Topic

Waye Brett

Bill Number

1216

(if applicable)

Name

Wendy Hurley

Amendment Barcode

(if applicable)

Job Title

Address

100 S. Monroe St.

Street

Phone

850.952.4300

City

State

Zip

E-mail

whurley@floridacounties.com

Speaking:

For

Against

Information

Representing

FL Assoc. of Counties

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-13
Meeting Date

Topic WAGE THEFT

Bill Number SB 78¹²¹⁶
(if applicable)

Name ANTHONY MARCIANO

Amendment Barcode _____
(if applicable)

Job Title SERGEANT (SHERIFF'S OFFICE)

Address 10221 DORCHESTER DR
Street

Phone 954 632 6878

BOCA RATON FL 33428
City State Zip

E-mail ANTHONY.MARCIANO@
FEDERATIONMEMBERS.ORG

Speaking: For Against Information

Representing MYSELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

03.11.13

Meeting Date

Topic Wage Theft Bill Number SB ~~023~~ 1216
Name JoAnne Alvarez Amendment Barcode _____ (if applicable)
Job Title Communications Operator / Dispatcher
Address 16659 SW 6 Street Phone 954 270 2939
Fembroke Pines FL 33027 E-mail Kajake@bellsouth.net
City State Zip

Speaking: For Against Information

Representing myself

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-13
Meeting Date

Topic Wage Theft

Bill Number ~~S B 70~~ SB 1216
(if applicable)

Name Rosa I Bauza

Amendment Barcode _____
(if applicable)

Job Title Bus Driver

Address 1935 s. Conway Rd E7
Street

Phone 407-394 6940

Orlando FL 32812
City State Zip

E-mail rosiebauza@me.com

Speaking: For Against Information

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-13
Meeting Date

Topic Wage theft

Bill Number SB ~~1216~~ 1216
(if applicable)

Name Christine Saint Louis

Amendment Barcode _____
(if applicable)

Job Title Bus Driver

Address 2319 Meadow oak Cir
Street

Phone 407-756-0334

Kissimmee FL 34746
City State Zip

E-mail byersgirl@hotmail.com

Speaking: For Against Information

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-13

Meeting Date

Topic WAGE THROTT

Bill Number ~~SB 1216~~ ~~SB 1216~~ ~~SB 1216~~ ~~SB 1216~~ ~~SB 1216~~ SB 1216
(if applicable)

Name EVELYN NAZARIO

Amendment Barcode _____
(if applicable)

Job Title Bus Operator

Address 19355 CONWAY Rd R-5

Phone (321) 946-9490

ORLANDO FL 32812
City State Zip

E-mail EVEE NAZARIO@yahoo.com

Speaking: For Against Information

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-13
Meeting Date

Topic Wage Theft

Bill Number SB 1216
(if applicable)

Name Stephanie Kunkel

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1143 Albritton Dr
Street

Phone 850-320-4208

Tallahassee FL 32301
City State Zip

E-mail stef.kunkel@gmail.com

Speaking: For Against Information

Representing Organize Now

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/13
Meeting Date

Topic Wage Theft

Bill Number 1216
(if applicable)

Name Karen Woodall

Amendment Barcode _____
(if applicable)

Job Title _____

Address 579 E. Call

Phone 850-321-9386

Tallahassee, FL 32301
City State Zip

E-mail kwtally@aol.com

Speaking: For Against Information

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-2013

Meeting Date

Topic Wage Theft Bill Number 1216
Name Edward G. Labrador Amendment Barcode 841392 (if applicable)
Job Title Director, Intergovernmental Affairs & Professional Standards (if applicable)
Address 115 S. Andrews, Suite 424 Phone (954) 357-7135
Street Fort Lauderdale FL 33 E-mail elabrador@broward.org
City State Zip

Speaking: For Against Information → Amendment # 841392

Representing Broward County

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/13

Meeting Date

Topic Wage Theft

Bill Number SB 1216
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title Senior VP, State and Federal Affairs

Address 516 N. Adams
Street

Phone 850-224-7173

Tallahassee FL 32301
City *State* *Zip*

E-mail bbevis@aif.com

Speaking: For Against Information

Representing Associated Industries 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

MARCH 11, 2013
Meeting Date

Topic Wage Theft

Bill Number SB 1214
(if applicable)

Name RICHARD TURNER

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 230 S. Adams

Phone (805) 879-2426

Tallahassee FL 32309
City State Zip

E-mail RTURNER@FRLA.ORG

Speaking: For Against Information

Representing Florida Restaurant & Lodging Assn.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

March 11, 2013
Meeting Date

Topic Wage Theft

Bill Number 1216
(if applicable)

Name Samantha Padgett

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 227 South Adams St.

Phone 222-4082

Tallahassee FL 32301
City State Zip

E-mail samantha@frf.org

Speaking: For Against Information

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

CS-001 (10/2011)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/13

Meeting Date

Topic Wage Theft Bill Number 1214
Name Carolyn Johnson Amendment Barcode _____
Job Title Payroll Director (if applicable)
Address 136 S Bronough St Phone _____
Street Tallahassee FL 32301 E-mail _____
City *State* *Zip*

Speaking: For Against Information

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/13
Meeting Date

Topic Wage Theft

Bill Number 1216
(if applicable)

Name Chris Scoonover

Amendment Barcode _____
(if applicable)

Job Title _____

Address 101 E. College Ave. Ste 303
Street

Phone 222-9075

Tallahassee FL 32301
City State Zip

E-mail cscoonover@
capcityconsult.com

Speaking: For Against Information

Representing Office Depot

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 /10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-13

Meeting Date

Topic

Wage Theft Ordinance

Bill Number

SB 1214

(if applicable)

Name

KARI HEBRANK

Amendment Barcode

(if applicable)

Job Title

Address

113 EAST COLLEGE AVE. #200

Phone

850-566-7824

Street

TALLAHASSEE FL 32301

E-mail

Khebrank@wilsonmgmt.com

City

State

Zip

Speaking:



For



Against



Information

Representing

FLORIDA HOME BUILDERS ASSOC

Appearing at request of Chair:

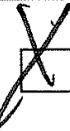


Yes



No

Lobbyist registered with Legislature:



Yes



No

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1216?

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-11-2013

Meeting Date

Topic Prohibit Pass Wage ↑ ^{Theft} Ordinances

Bill Number SB78
(if applicable)

Name Stephen Sarnoff

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2886 Catherine Dr

Phone (727) 798-5228

Street

Clearwater

FL

33759

City

State

Zip

E-mail cwa3179@gmail.com

Speaking: For Against Information

Representing Myself

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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SN01 (10/20/11)

1216?

THE FLORIDA SENATE

APPEARANCE RECORD

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

11 MARCH 2013

Meeting Date

Topic PROHIBIT PASS WAGE THEFT ORDINANCE

Bill Number SB 78 (if applicable)

Name JESSIE CROSKEY

Amendment Barcode (if applicable)

Job Title STREET SWEEPER OPERATOR

Address 2065 N. HIGHLAND AVENUE Street

Phone (727) 565-9248

CLEARWATER FLORIDA 33755 City State Zip

E-mail

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

Representing

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 is a public record for this meeting

CourtSmart Tag Report

Room: LL 37
Caption: Criminal Justice Committee

Case:
Judge:

Type:

Started: 3/11/2013 3:41:25 PM

Ends: 3/11/2013 6:00:26 PM

Length: 02:19:02

3:41:44 PM Meeting called to order
3:41:57 PM Roll Call
3:42:17 PM Tab 1 - SB 86 - (Senator Flores) Distribution of Materials Harmful to Minors
3:45:00 PM Brian Pitts, Justice-2-Jesus
3:48:34 PM Roll Call
3:49:07 PM Tab 9 - SB788 (Senator Abruzzo) - Criminal Gang Prevention
3:50:14 PM Roll Call
3:50:46 PM Tab 10 SB1042 (Senator Abruzzo) Public Meeting/Criminal Justice Commissions
3:51:55 PM Brian Pitts, Justice-2-Jesus
3:55:08 PM Roll Call
3:55:50 PM Tab 3 SB 400 (Senator Dean) Chase Daniels Presenting -False Reports to Law Enforcement Officers
3:56:34 PM Amendment 373500 offered by Sen. Altman
3:57:59 PM Roll Call
3:58:22 PM Tab 4 SB 540 (Senator Dean) Chase Daniels presenting - Mandatory Supervision by DOC
4:06:44 PM Brian Pitts, Justice-2-Jesus
4:09:48 PM Roll Call
4:10:30 PM Tab 5 SB 542 (Senator Braynon) Presented by Jennifer Rojo - Pub. Records/Victim of Human Trafficking
4:14:32 PM Roll Call
4:14:47 PM Tab 6 SB672 (Senator Evers) Youth Custody Officers
4:16:20 PM Brian Pitts, Justice-2-Jesus
4:17:54 PM Roll Call
4:18:07 PM Tab 7 SB 678 (Senator Evers) Malicious Bat. & Infliction of Cruel or Inhuman Treatment
4:19:09 PM Brian Pitts, Justice-2-Jesus
4:23:20 PM Roll Call
4:23:37 PM Tab 8 SB 742 (Senator Evers) Parole Interview Dates for Certain Inmates
4:25:03 PM Roll Call
4:25:34 PM Tab 2 SB 148 (Senator Altman) Sentencing in Capital Felonies
4:30:35 PM William Eddins, President of FPAA
4:44:07 PM Harry Shorstein, Attorney, Jacksonville, FL
4:57:41 PM Harry Lee Anstead, Retired - Florida Supreme Court
5:12:37 PM Mark Schlakman, Senior Program Director/FSU Ctr for AHR
5:13:24 PM Gregory Miller, Attorney
5:37:44 PM Brian Pitts, Justice-2-Jesus
5:41:27 PM Rex Dimmig, Public Defender, Florida Public Defender Assoc. Inc.
5:44:22 PM Bill Jennings, CCRC-Middle
5:45:43 PM Suzanne Keffer, Chief Asst. CCRC-South
5:51:16 PM Belvin Perry, Jr., 9th Circuit Court, Chief Judge
5:59:13 PM Meeting Adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHARLES S. DEAN, SR.
5th District

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

March 11, 2013

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

Dear Chairman Evers:

The purpose of this letter is to seek your permission to be excused from the scheduled Criminal Justice committee meeting scheduled for March 11, 2013 at 3:30 P.M. Due to unforeseen circumstances, I will not be able to attend.

Should you have any questions concerning this matter, please do not hesitate to contact me personally.

Sincerely,

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

Charles S. Dean
State Senator District 5

cc: Amanda Cannon, Staff Director

REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore