

SB 328 by **Joyner**; (Identical to H 0247) Trafficking in Illegal Drugs

SB 548 by **Simmons**; (Identical to H 0451) Bullying

590212 A S RCS CJ, Evers Delete L.45 - 51: 02/10 06:09 PM

SPB 7030 by **CJ**; Community Reentry Programs

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Smith, Vice Chair

MEETING DATE: Monday, February 10, 2014
TIME: 4:00 —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	SB 328 Joyner (Identical H 247)	Trafficking in Illegal Drugs; Providing that a specified mandatory minimum term of imprisonment and a specified fine no longer apply upon a first conviction of a person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, a specified quantity of certain designated illegal drugs; providing that a specified mandatory minimum term of imprisonment and specified fine apply upon a second or subsequent conviction, etc. CJ 02/10/2014 Temporarily Postponed JU RC	Temporarily Postponed
2	SB 548 Simmons (Identical H 451)	Bullying; Providing that a person who willfully, maliciously, and repeatedly harasses or cyberbullies another person commits the offense of bullying, etc. CJ 02/10/2014 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 1
Consideration of proposed committee bill:			
3	SPB 7030	Community Reentry Programs; Requiring the Department of Corrections to develop an operational plan to implement a vocational work-release pilot program in specified counties; requiring that the operational plan describe the necessary facilities, staff, budget, and methods for selecting inmates to participate in the pilot program; providing examples of vocational training or certification; requiring inmates to be within a specified time period of their release dates to be considered for participation in the pilot program, etc.	Temporarily Postponed
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 328

INTRODUCER: Senator Joyner

SUBJECT: Trafficking in Illegal Drugs

DATE: February 6, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 328 precludes imposing the 3-year mandatory minimum term and mandatory fine for a first conviction for trafficking in cocaine, certain opiates or opioids, phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines, and lysergic acid diethylamide (LSD). Under current law, possession, sale, etc., of relatively small quantities of any of these substances triggers drug trafficking penalties.

The 3-year term and fine only apply if the defendant has previously been convicted of trafficking in the same controlled substance. For example, if the defendant is convicted of trafficking in cocaine and has previously been convicted of trafficking in cocaine, the 3-year term and fine apply.

II. Present Situation:

Drug Trafficking

Unlawful activities involving controlled substances (e.g., possession or sale of controlled substances) are punishable under s. 893.13, F.S. (prohibited acts involving controlled substances), and s. 893.135, F.S. (drug trafficking). “Drug trafficking” consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state, or knowingly being in actual or constructive possession¹ of, certain controlled substances in a statutorily-specified quantity.

Whether a person is charged with drug trafficking depends, in part, on the type of controlled substance possessed, sold, etc. Only a limited number of controlled substances are covered under

¹ One important and unique feature of the drug trafficking statute is that the prosecutor is not required to prove that the possession of the controlled substance was with the intent to sell, deliver, manufacture, etc., the substance.

s. 893.135, F.S. Relevant to the bill, s. 893.135, F.S., covers cocaine, certain opiates² or opioids,³ phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines,⁴ and lysergic acid diethylamide (LSD).

The quantity of a covered controlled substance must also meet a minimum weight threshold prescribed in s. 893.135, F.S. Most drug trafficking offenses are first degree felonies⁵ and are subject to mandatory minimum terms.⁶ Section 893.135, F.S., establishes escalating weight ranges. The mandatory minimum term applicable to a drug trafficking act depends upon which weight range is applicable to the quantity of the controlled substance possessed, sold, etc. In some cases, possession, sale, etc., of a relatively small quantity of a covered controlled substance will trigger drug trafficking penalties.

Relevant to the bill, the shortest mandatory minimum term available under s. 893.135, F.S., is a 3-year mandatory minimum term. Provided are the threshold weights that trigger drug trafficking penalties and the weight ranges applicable to a 3-year mandatory minimum term for a covered controlled substance.

Statutory Reference	Covered Substance	Threshold Weight	Weight Range Applicable to 3-Year Mandatory Minimum Term
s. 893.13(1)(a), F.S.	Cannabis	More than 25 pounds (may also be triggered by specified number of plants, regardless of weight)	More than 25 pounds but less than 2,000 pounds
s. 893.13(1)(b), F.S.	Cocaine	28 grams	28 grams or more but less than 200 grams
s. 893.13(1)(c), F.S.	Opiates and opioids	4 grams	4 grams or more but less than 14 grams
s. 893.13(1)(d), F.S.	Phencyclidine	28 grams	28 grams or more but less than 200 grams
s. 893.13(1)(e), F.S.	Methaqualone	200 grams	200 grams or more but less than 5 kilograms
s. 893.13(1)(f), F.S.	Amphetamines	14 grams	14 grams or more but less than 28 grams

² Examples of opiates are opium and morphine.

³ Examples of opioids are heroin, oxycodone, hydrocodone, and hydromorphone.

⁴ “Phenethylamines” is a ‘broad’ category of “psychoactive substances[.]” Sanders B., Lankenau S.E., Bloom J.J., Hathazi D. “Research chemicals’: tryptamine and phenethylamine use among high-risk youth. Substance Use & Misuse.” 2008; 43(3-4): 389–402. This article is available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last visited on January 16, 2014). Probably the most well-known phenethylamine is 3,4-Methylenedioxymethamphetamine (MDMA), which is often referred to by the street name “Ecstasy.”

⁵ A first degree felony is generally punishable by up to 30 years in state prison. Section 775.082, F.S. Repeat offender sanctions may be available under ss. 775.082 and 775.084, F.S.

⁶ Most drug offenses under s. 893.13, F.S., are not subject to mandatory minimum terms.

Statutory Reference	Covered Substance	Threshold Weight	Weight Range Applicable to 3-Year Mandatory Minimum Term
s. 893.13(1)(g), F.S.	Flunitrazepam	4 grams	4 grams or more but less than 14 grams
s. 893.13(1)(h), F.S.	Gamma-hydroxybutyric acid (GHB)	1 kilogram	1 kilogram or more but less 5 kilograms
s. 893.13(1)(i), F.S.	Gamma-butyrolactone (GBL)	1 kilogram	1 kilogram or more but less 5 kilograms
s. 893.13(1)(j), F.S.	1,4-Butanediol	1 kilogram	1 kilogram or more but less 5 kilograms
s. 893.13(1)(k), F.S.	Phenethylamines	10 grams	10 grams or more but less 200 grams
s. 893.13(1)(l), F.S.	Lysergic acid diethylamide (LSD)	1 gram	1 gram or more but less than 5 grams

The Criminal Punishment Code and Mandatory Minimum Terms

The Criminal Punishment Code (Code)⁷ is Florida’s framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense, additional offenses, and prior offenses. Points may be added or multiplied for other factors. For example, if the primary offense is drug trafficking, the subtotal sentence points are multiplied by 1.5, at the discretion of the court, for a Level 7 or Level 8 trafficking offense.⁸

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible sentence. The permissible sentencing range primary offense is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense. The court is permitted to impose sentences concurrently or consecutively.

The Code includes a list of ‘mitigating’ factors. If a mitigating factor is found by the sentencing court, the court may decrease an offender’s sentence below the lowest permissible sentence (a “downward departure”). However, a mandatory minimum term is not subject to these mitigating factors.⁹

⁷Sections 921.002-921.0027, F.S.

⁸ Section 921.0024(1)(b), F.S.

⁹ See *State v. Vanderhoff*, 14 So.3d 1185 (Fla. 5th DCA 2009).

Most of the mandatory minimum terms found in Florida law involve drug trafficking offenses. Mandatory minimum terms impact Code sentencing. “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.”¹⁰

A mandatory minimum sentence is often longer than a prison sentence scored as the lowest permissible sentence under the Code, so the sentencing range is narrowed. Further, with few exceptions, the sentencing court must impose the mandatory minimum term.¹¹

III. Effect of Proposed Changes:

The bill amends s. 893.135, F.S., to preclude imposing the 3-year mandatory minimum term and mandatory fine for a first conviction for trafficking in cocaine, certain opiates or opioids, phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines, and lysergic acid diethylamide (LSD). Under current law, possession, sale, etc., of relatively small quantities of any of these substances triggers drug trafficking penalties.

The 3-year term and fine only apply if the defendant has previously been convicted of trafficking in the same controlled substance. For example, if the defendant is convicted of trafficking in cocaine and has previously been convicted of trafficking in cocaine, the 3-year term and fine apply.

The bill only impacts the 3-year mandatory minimum term and fine for trafficking in any of the substances specified in the bill.

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ Rule 3.704(26) (“The Criminal Punishment Code”), Florida Rules of Criminal Procedure.

¹¹ Staff found only two circumstances in which a sentencing court is authorized by law to impose a sentence below the mandatory minimum term. The first circumstance is when the court sentences a defendant as a youthful offender. Section 958.04, F.S. See *Christian v. State*, 84 So.3d 437 (Fla. 5th DCA 2012). The second circumstance is when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant. Section 893.135(4), F.S.

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 estimates that the bill will result in 456 fewer prison beds by FY 2018-19 with a projected cost savings of \$11,003,567 in operating costs and \$20,512,926 in fixed capital outlay costs.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.135 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

¹² See 2014 Criminal Justice Impact Conference results at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (last viewed on February 6, 2014).

By Senator Joyner

19-00248A-14

2014328__

1 A bill to be entitled
 2 An act relating to trafficking in illegal drugs;
 3 amending s. 893.135, F.S.; providing that a specified
 4 mandatory minimum term of imprisonment and a specified
 5 fine no longer apply upon a first conviction of a
 6 person who knowingly sells, purchases, manufactures,
 7 delivers, or brings into this state, or who is
 8 knowingly in actual or constructive possession of, a
 9 specified quantity of certain designated illegal
 10 drugs; providing that a specified mandatory minimum
 11 term of imprisonment and specified fine apply upon a
 12 second or subsequent conviction; providing an
 13 effective date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Paragraphs (b), (c), (d), (f), (g), (k), and (l)
 18 of subsection (1) of section 893.135, Florida Statutes, are
 19 amended to read:
 20 893.135 Trafficking; mandatory sentences; suspension or
 21 reduction of sentences; conspiracy to engage in trafficking.—
 22 (1) Except as authorized in this chapter or in chapter 499
 23 and notwithstanding the provisions of s. 893.13:
 24 (b)1. Any person who knowingly sells, purchases,
 25 manufactures, delivers, or brings into this state, or who is
 26 knowingly in actual or constructive possession of, 28 grams or
 27 more of cocaine, as described in s. 893.03(2)(a)4., or of any
 28 mixture containing cocaine, but less than 150 kilograms of
 29 cocaine or any such mixture, commits a felony of the first

Page 1 of 12

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

19-00248A-14

2014328__

30 degree, which felony shall be known as "trafficking in cocaine,"
 31 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 32 If the quantity involved:
 33 a. Is 28 grams or more, but less than 200 grams, such
 34 person shall be sentenced, upon a second or subsequent
 35 conviction, to a mandatory minimum term of imprisonment of 3
 36 years, and the defendant shall be ordered to pay a fine of
 37 \$50,000.
 38 b. Is 200 grams or more, but less than 400 grams, such
 39 person shall be sentenced to a mandatory minimum term of
 40 imprisonment of 7 years, and the defendant shall be ordered to
 41 pay a fine of \$100,000.
 42 c. Is 400 grams or more, but less than 150 kilograms, such
 43 person shall be sentenced to a mandatory minimum term of
 44 imprisonment of 15 calendar years and pay a fine of \$250,000.
 45 2. Any person who knowingly sells, purchases, manufactures,
 46 delivers, or brings into this state, or who is knowingly in
 47 actual or constructive possession of, 150 kilograms or more of
 48 cocaine, as described in s. 893.03(2)(a)4., commits the first
 49 degree felony of trafficking in cocaine. A person who has been
 50 convicted of the first degree felony of trafficking in cocaine
 51 under this subparagraph shall be punished by life imprisonment
 52 and is ineligible for any form of discretionary early release
 53 except pardon or executive clemency or conditional medical
 54 release under s. 947.149. However, if the court determines that,
 55 in addition to committing any act specified in this paragraph:
 56 a. The person intentionally killed an individual or
 57 counseled, commanded, induced, procured, or caused the
 58 intentional killing of an individual and such killing was the

Page 2 of 12

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

19-00248A-14

2014328__

59 result; or

60 b. The person's conduct in committing that act led to a
61 natural, though not inevitable, lethal result,

62
63 such person commits the capital felony of trafficking in
64 cocaine, punishable as provided in ss. 775.082 and 921.142. Any
65 person sentenced for a capital felony under this paragraph shall
66 also be sentenced to pay the maximum fine provided under
67 subparagraph 1.

68 3. Any person who knowingly brings into this state 300
69 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,
70 and who knows that the probable result of such importation would
71 be the death of any person, commits capital importation of
72 cocaine, a capital felony punishable as provided in ss. 775.082
73 and 921.142. Any person sentenced for a capital felony under
74 this paragraph shall also be sentenced to pay the maximum fine
75 provided under subparagraph 1.

76 (c)1. Any person who knowingly sells, purchases,
77 manufactures, delivers, or brings into this state, or who is
78 knowingly in actual or constructive possession of, 4 grams or
79 more of any morphine, opium, oxycodone, hydrocodone,
80 hydromorphone, or any salt, derivative, isomer, or salt of an
81 isomer thereof, including heroin, as described in s.
82 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more
83 of any mixture containing any such substance, but less than 30
84 kilograms of such substance or mixture, commits a felony of the
85 first degree, which felony shall be known as "trafficking in
86 illegal drugs," punishable as provided in s. 775.082, s.
87 775.083, or s. 775.084. If the quantity involved:

Page 3 of 12

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

19-00248A-14

2014328__

88 a. Is 4 grams or more, but less than 14 grams, such person
89 shall be sentenced, upon a second or subsequent conviction, to a
90 mandatory minimum term of imprisonment of 3 years, and the
91 defendant shall be ordered to pay a fine of \$50,000.

92 b. Is 14 grams or more, but less than 28 grams, such person
93 shall be sentenced to a mandatory minimum term of imprisonment
94 of 15 years, and the defendant shall be ordered to pay a fine of
95 \$100,000.

96 c. Is 28 grams or more, but less than 30 kilograms, such
97 person shall be sentenced to a mandatory minimum term of
98 imprisonment of 25 calendar years and pay a fine of \$500,000.

99 2. Any person who knowingly sells, purchases, manufactures,
100 delivers, or brings into this state, or who is knowingly in
101 actual or constructive possession of, 30 kilograms or more of
102 any morphine, opium, oxycodone, hydrocodone, hydromorphone, or
103 any salt, derivative, isomer, or salt of an isomer thereof,
104 including heroin, as described in s. 893.03(1)(b), (2)(a),
105 (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture
106 containing any such substance, commits the first degree felony
107 of trafficking in illegal drugs. A person who has been convicted
108 of the first degree felony of trafficking in illegal drugs under
109 this subparagraph shall be punished by life imprisonment and is
110 ineligible for any form of discretionary early release except
111 pardon or executive clemency or conditional medical release
112 under s. 947.149. However, if the court determines that, in
113 addition to committing any act specified in this paragraph:

114 a. The person intentionally killed an individual or
115 counseled, commanded, induced, procured, or caused the
116 intentional killing of an individual and such killing was the

Page 4 of 12

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

19-00248A-14

2014328__

117 result; or

118 b. The person's conduct in committing that act led to a
119 natural, though not inevitable, lethal result,

120

121 such person commits the capital felony of trafficking in illegal
122 drugs, punishable as provided in ss. 775.082 and 921.142. Any
123 person sentenced for a capital felony under this paragraph shall
124 also be sentenced to pay the maximum fine provided under
125 subparagraph 1.

126 3. Any person who knowingly brings into this state 60
127 kilograms or more of any morphine, opium, oxycodone,
128 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
129 salt of an isomer thereof, including heroin, as described in s.
130 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or
131 more of any mixture containing any such substance, and who knows
132 that the probable result of such importation would be the death
133 of any person, commits capital importation of illegal drugs, a
134 capital felony punishable as provided in ss. 775.082 and
135 921.142. Any person sentenced for a capital felony under this
136 paragraph shall also be sentenced to pay the maximum fine
137 provided under subparagraph 1.

138 (d)1. Any person who knowingly sells, purchases,
139 manufactures, delivers, or brings into this state, or who is
140 knowingly in actual or constructive possession of, 28 grams or
141 more of phencyclidine or of any mixture containing
142 phencyclidine, as described in s. 893.03(2)(b), commits a felony
143 of the first degree, which felony shall be known as "trafficking
144 in phencyclidine," punishable as provided in s. 775.082, s.
145 775.083, or s. 775.084. If the quantity involved:

Page 5 of 12

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

19-00248A-14

2014328__

146 a. Is 28 grams or more, but less than 200 grams, such
147 person shall be sentenced, upon a second or subsequent
148 conviction, to a mandatory minimum term of imprisonment of 3
149 years, and the defendant shall be ordered to pay a fine of
150 \$50,000.

151 b. Is 200 grams or more, but less than 400 grams, such
152 person shall be sentenced to a mandatory minimum term of
153 imprisonment of 7 years, and the defendant shall be ordered to
154 pay a fine of \$100,000.

155 c. Is 400 grams or more, such person shall be sentenced to
156 a mandatory minimum term of imprisonment of 15 calendar years
157 and pay a fine of \$250,000.

158 2. Any person who knowingly brings into this state 800
159 grams or more of phencyclidine or of any mixture containing
160 phencyclidine, as described in s. 893.03(2)(b), and who knows
161 that the probable result of such importation would be the death
162 of any person commits capital importation of phencyclidine, a
163 capital felony punishable as provided in ss. 775.082 and
164 921.142. Any person sentenced for a capital felony under this
165 paragraph shall also be sentenced to pay the maximum fine
166 provided under subparagraph 1.

167 (f)1. Any person who knowingly sells, purchases,
168 manufactures, delivers, or brings into this state, or who is
169 knowingly in actual or constructive possession of, 14 grams or
170 more of amphetamine, as described in s. 893.03(2)(c)2., or
171 methamphetamine, as described in s. 893.03(2)(c)4., or of any
172 mixture containing amphetamine or methamphetamine, or
173 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine
174 in conjunction with other chemicals and equipment utilized in

Page 6 of 12

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

19-00248A-14 2014328__

175 the manufacture of amphetamine or methamphetamine, commits a
 176 felony of the first degree, which felony shall be known as
 177 "trafficking in amphetamine," punishable as provided in s.
 178 775.082, s. 775.083, or s. 775.084. If the quantity involved:
 179 a. Is 14 grams or more, but less than 28 grams, such person
 180 shall be sentenced, upon a second or subsequent conviction, to a
 181 mandatory minimum term of imprisonment of 3 years, and the
 182 defendant shall be ordered to pay a fine of \$50,000.
 183 b. Is 28 grams or more, but less than 200 grams, such
 184 person shall be sentenced to a mandatory minimum term of
 185 imprisonment of 7 years, and the defendant shall be ordered to
 186 pay a fine of \$100,000.
 187 c. Is 200 grams or more, such person shall be sentenced to
 188 a mandatory minimum term of imprisonment of 15 calendar years
 189 and pay a fine of \$250,000.
 190 2. Any person who knowingly manufactures or brings into
 191 this state 400 grams or more of amphetamine, as described in s.
 192 893.03(2)(c)2., or methamphetamine, as described in s.
 193 893.03(2)(c)4., or of any mixture containing amphetamine or
 194 methamphetamine, or phenylacetone, phenylacetic acid,
 195 pseudoephedrine, or ephedrine in conjunction with other
 196 chemicals and equipment used in the manufacture of amphetamine
 197 or methamphetamine, and who knows that the probable result of
 198 such manufacture or importation would be the death of any person
 199 commits capital manufacture or importation of amphetamine, a
 200 capital felony punishable as provided in ss. 775.082 and
 201 921.142. Any person sentenced for a capital felony under this
 202 paragraph shall also be sentenced to pay the maximum fine
 203 provided under subparagraph 1.

Page 7 of 12

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

19-00248A-14 2014328__

204 (g)1. Any person who knowingly sells, purchases,
 205 manufactures, delivers, or brings into this state, or who is
 206 knowingly in actual or constructive possession of, 4 grams or
 207 more of flunitrazepam or any mixture containing flunitrazepam as
 208 described in s. 893.03(1)(a) commits a felony of the first
 209 degree, which felony shall be known as "trafficking in
 210 flunitrazepam," punishable as provided in s. 775.082, s.
 211 775.083, or s. 775.084. If the quantity involved:
 212 a. Is 4 grams or more but less than 14 grams, such person
 213 shall be sentenced, upon a second or subsequent conviction, to a
 214 mandatory minimum term of imprisonment of 3 years, and the
 215 defendant shall be ordered to pay a fine of \$50,000.
 216 b. Is 14 grams or more but less than 28 grams, such person
 217 shall be sentenced to a mandatory minimum term of imprisonment
 218 of 7 years, and the defendant shall be ordered to pay a fine of
 219 \$100,000.
 220 c. Is 28 grams or more but less than 30 kilograms, such
 221 person shall be sentenced to a mandatory minimum term of
 222 imprisonment of 25 calendar years and pay a fine of \$500,000.
 223 2. Any person who knowingly sells, purchases, manufactures,
 224 delivers, or brings into this state or who is knowingly in
 225 actual or constructive possession of 30 kilograms or more of
 226 flunitrazepam or any mixture containing flunitrazepam as
 227 described in s. 893.03(1)(a) commits the first degree felony of
 228 trafficking in flunitrazepam. A person who has been convicted of
 229 the first degree felony of trafficking in flunitrazepam under
 230 this subparagraph shall be punished by life imprisonment and is
 231 ineligible for any form of discretionary early release except
 232 pardon or executive clemency or conditional medical release

Page 8 of 12

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

19-00248A-14

2014328__

233 under s. 947.149. However, if the court determines that, in
234 addition to committing any act specified in this paragraph:

235 a. The person intentionally killed an individual or
236 counseled, commanded, induced, procured, or caused the
237 intentional killing of an individual and such killing was the
238 result; or

239 b. The person's conduct in committing that act led to a
240 natural, though not inevitable, lethal result,

241
242 such person commits the capital felony of trafficking in
243 flunitrazepam, punishable as provided in ss. 775.082 and
244 921.142. Any person sentenced for a capital felony under this
245 paragraph shall also be sentenced to pay the maximum fine
246 provided under subparagraph 1.

247 (k)1. Any person who knowingly sells, purchases,
248 manufactures, delivers, or brings into this state, or who is
249 knowingly in actual or constructive possession of, 10 grams or
250 more of any of the following substances described in s.
251 893.03(1)(c):

- 252 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 253 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 254 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 255 d. 2,5-Dimethoxyamphetamine;
- 256 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 257 f. N-ethylamphetamine;
- 258 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 259 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 260 i. 4-methoxyamphetamine;
- 261 j. 4-methoxymethamphetamine;

Page 9 of 12

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

19-00248A-14

2014328__

- 262 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 263 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 264 m. 3,4-Methylenedioxyamphetamine;
- 265 n. N,N-dimethylamphetamine; or
- 266 o. 3,4,5-Trimethoxyamphetamine,
- 267

268 individually or in any combination of or any mixture containing
269 any substance listed in sub-subparagraphs a.-o., commits a
270 felony of the first degree, which felony shall be known as
271 "trafficking in Phenethylamines," punishable as provided in s.
272 775.082, s. 775.083, or s. 775.084.

273 2. If the quantity involved:

274 a. Is 10 grams or more but less than 200 grams, such person
275 shall be sentenced, upon a second or subsequent conviction, to a
276 mandatory minimum term of imprisonment of 3 years, and the
277 defendant shall be ordered to pay a fine of \$50,000.

278 b. Is 200 grams or more, but less than 400 grams, such
279 person shall be sentenced to a mandatory minimum term of
280 imprisonment of 7 years, and the defendant shall be ordered to
281 pay a fine of \$100,000.

282 c. Is 400 grams or more, such person shall be sentenced to
283 a mandatory minimum term of imprisonment of 15 calendar years
284 and pay a fine of \$250,000.

285 3. Any person who knowingly manufactures or brings into
286 this state 30 kilograms or more of any of the following
287 substances described in s. 893.03(1)(c):

- 288 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 289 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 290 c. 4-Bromo-2,5-dimethoxyphenethylamine;

Page 10 of 12

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

19-00248A-14

2014328__

291 d. 2,5-Dimethoxyamphetamine;
 292 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
 293 f. N-ethylamphetamine;
 294 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
 295 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
 296 i. 4-methoxyamphetamine;
 297 j. 4-methoxymethamphetamine;
 298 k. 4-Methyl-2,5-dimethoxyamphetamine;
 299 l. 3,4-Methylenedioxy-N-ethylamphetamine;
 300 m. 3,4-Methylenedioxyamphetamine;
 301 n. N,N-dimethylamphetamine; or
 302 o. 3,4,5-Trimethoxyamphetamine,
 303
 304 individually or in any combination of or any mixture containing
 305 any substance listed in sub-subparagraphs a.-o., and who knows
 306 that the probable result of such manufacture or importation
 307 would be the death of any person commits capital manufacture or
 308 importation of Phenethylamines, a capital felony punishable as
 309 provided in ss. 775.082 and 921.142. Any person sentenced for a
 310 capital felony under this paragraph shall also be sentenced to
 311 pay the maximum fine provided under subparagraph 1.
 312 (1)1. Any person who knowingly sells, purchases,
 313 manufactures, delivers, or brings into this state, or who is
 314 knowingly in actual or constructive possession of, 1 gram or
 315 more of lysergic acid diethylamide (LSD) as described in s.
 316 893.03(1)(c), or of any mixture containing lysergic acid
 317 diethylamide (LSD), commits a felony of the first degree, which
 318 felony shall be known as "trafficking in lysergic acid
 319 diethylamide (LSD)," punishable as provided in s. 775.082, s.

Page 11 of 12

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

19-00248A-14

2014328__

320 775.083, or s. 775.084. If the quantity involved:
 321 a. Is 1 gram or more, but less than 5 grams, such person
 322 shall be sentenced, upon a second or subsequent conviction, to a
 323 mandatory minimum term of imprisonment of 3 years, and the
 324 defendant shall be ordered to pay a fine of \$50,000.
 325 b. Is 5 grams or more, but less than 7 grams, such person
 326 shall be sentenced to a mandatory minimum term of imprisonment
 327 of 7 years, and the defendant shall be ordered to pay a fine of
 328 \$100,000.
 329 c. Is 7 grams or more, such person shall be sentenced to a
 330 mandatory minimum term of imprisonment of 15 calendar years and
 331 pay a fine of \$500,000.
 332 2. Any person who knowingly manufactures or brings into
 333 this state 7 grams or more of lysergic acid diethylamide (LSD)
 334 as described in s. 893.03(1)(c), or any mixture containing
 335 lysergic acid diethylamide (LSD), and who knows that the
 336 probable result of such manufacture or importation would be the
 337 death of any person commits capital manufacture or importation
 338 of lysergic acid diethylamide (LSD), a capital felony punishable
 339 as provided in ss. 775.082 and 921.142. Any person sentenced for
 340 a capital felony under this paragraph shall also be sentenced to
 341 pay the maximum fine provided under subparagraph 1.
 342 Section 2. This act shall take effect July 1, 2014.

Page 12 of 12

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ARTHENIA L. JOYNER
19th District

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on General
Government
Ethics and Elections
Health Policy
Judiciary
Transportation

SELECT COMMITTEE:
Select Committee on Indian River Lagoon
and Lake Okeechobee Basin

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

November 7, 2013

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

Dear Mr. Chair:

This is to request that Senate Bill 328, Trafficking in Illegal Drugs, be placed on the agenda for the Committee on Criminal Justice. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

ALJ/rr

REPLY TO:

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

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)

2/10/2014

Meeting Date

Topic Drug Sentences

Bill Number 328

(if applicable)

Name Honorable Nancy Daniels

Amendment Barcode _____

(if applicable)

Job Title Public Defender, 2nd Judicial Circuit

Address 301 South Monroe Street

Phone 850-606-1000

Street

Tallahassee

Florida

32301

E-mail nancy.daniels@flpd2.com

City

State

Zip

Speaking: For Against Information

Representing Florida Public Defender Association, Inc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-10-14

Meeting Date

Topic Treating In-Plant Drugs

Bill Number SB328
(if applicable)

Name John H. Rutherford,

Amendment Barcode _____
(if applicable)

Job Title Sheriff; Jacksonville, Duval Co.

Address 501 E Bay St.
Street

Phone 904-630-5898

JAX FL 32202
City State Zip

E-mail linda.mckroy@jaxsheriff.org

Speaking: For Against Information

Representing Florida Sheriffs Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

This form is part of the Senate's public records.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/14

Meeting Date

Topic Drug Trafficking

Bill Number SB 328
(if applicable)

Name Buddy Jacobs

Amendment Barcode _____
(if applicable)

Job Title General Counsel Fla. Prosecuting Attys Assoc.

Address 961 687 Gateway Blvd

Phone _____

Street

Fernandina Bch FL 32034

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing State Attorneys 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 records of the Florida Senate.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/10/2014

Meeting Date

Topic _____

Bill Number 328

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 548

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Bullying

DATE: February 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 548 creates a criminal statute penalizing bullying and aggravated bullying. The newly created statute provides a second degree misdemeanor penalty¹ for bullying and a first degree misdemeanor penalty² for aggravated bullying. Cyberbullying is included in each new crime. The elements of these two new offenses and the definitions provided in the bill are the same as the elements and definitions in the stalking statute (found to be constitutional by the Florida Supreme Court in 1995).

II. Present Situation:

Bullying Statute

Florida law requires each district school board to adopt a policy prohibiting bullying and harassment in district schools.³ Violation of these policies can result in school disciplinary actions being taken. Among other things, the law prohibits the bullying or harassment of any public K-12 student or employee during a public K-12 education program or activity; during a school-related or school-sponsored program or activity; on a public K-12 school bus; through a computer, computer system, or computer network that is within the scope of a public K-12 educational institution; or through the use of data or computer software accessed at a nonschool-

¹ Punishable by up to 60 days in jail and a potential fine up to \$500. Sections 775.082 and 775.083, F.S.

² Punishable by up to one year in jail and a potential fine up to \$1,000. Sections 775.082 and 775.083, F.S.

³ Section 1006.147, F.S.

related location or through the use of electronic device technology or electronic devices not owned, leased, or used by a public school or school district if it substantially interferes with or limits the victim's ability to participate or benefit from the services, activities, or opportunities offered by a school or substantially disrupts the education process or orderly operation of a school.⁴

The law defines "bullying" as systematically and chronically inflicting physical hurt or psychological distress on one or more students, which may involve teasing; social exclusion; threat; intimidation; stalking; physical violence; theft; sexual, religious, or racial harassment; public humiliation; or destruction of property. It includes "cyberbullying" and defines it as bullying through the use of specified technology or electronic communications; the creation of a webpage or weblog in which the creator assumes the identity of another person or the knowing impersonation of another person as the author of posted content or messages; or the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that is accessible to others.⁵

Law enforcement, among other entities, must be involved with the school district in the process of adopting the policies. The policies must include a process to investigate whether a reported act of bullying or harassment is within the scope of a district school system and if it is not, a process for referring such act to the appropriate jurisdiction must be identified. A procedure must also be included that provides immediate notification to parents and to criminal justice authorities so that actions rising to the level of criminal activity can be referred to the appropriate law enforcement entity for further investigation.⁶

Although Florida's anti-bullying law does not provide criminal penalties for bullying per se, it does provide a process that allows bullying behavior to be investigated and prosecuted by criminal justice authorities and if warranted, pursued as other criminal offenses such as assault, aggravated assault, battery, aggravated battery, theft, stalking, or aggravated stalking.

Stalking Statute

Florida's stalking law⁷ was upheld by the Florida Supreme Court as constitutional in 1995.⁸ It defines "harass," "course of conduct," "credible threat," and "cyberstalk."⁹ Basically, "harass" means a "course of conduct" (a pattern comprised of a series of acts over a time period, however short, showing a continuity of purpose), directed at a specific person causing substantial emotional distress to that person and serving no legitimate purpose. "Cyberstalk" means a course of conduct communicating or causing to be communicated, words or images by electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. Finally, "credible threat" is defined to mean a

⁴ Section 1006.147(2), F.S.

⁵ Section 1006.147(3), F.S.

⁶ Section 1006.147(4), F.S.

⁷ Section 784.048, F.S.

⁸ *Bouters v State*, 659 So.2d 235 (Fla 1995). The Court concluded that the stalking statute was not unconstitutionally overbroad or vague. *Bouters* at 238.

⁹ Section 784.048(1), F.S.

verbal or nonverbal threat placing a person in reasonable fear for his or his family's safety, made with the apparent ability to carry it out.

The stalking statute provides a first degree misdemeanor penalty for stalking¹⁰ and third degree felony penalties for several aggravated stalking offenses.¹¹ The misdemeanor stalking offense occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.¹²

One of the aggravated stalking offenses occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person.¹³ The other three aggravated stalking offenses involve this same behavior without a threat being made and instead, the victim is either under 16 years; there is a protective injunction against a person for repeat violence, sexual violence, dating violence, or domestic violence; or there is a no contact (the victim) order against a person convicted of certain sexual offenses.¹⁴

III. Effect of Proposed Changes:

The bill creates a criminal statute penalizing bullying and aggravated bullying. The newly created statute provides a second degree misdemeanor penalty for bullying and a first degree misdemeanor penalty for aggravated bullying. Cyberbullying is included in each new crime. The second degree misdemeanor bullying offense will occur when a person willfully, maliciously, and repeatedly harasses or cyberbullies another person. The aggravated bullying offense will occur when a person willfully, maliciously, and repeatedly harasses or cyberbullies another person and makes a credible threat to that person. The elements of these two new offenses and the definitions provided in the bill are the same as the elements and definitions in the stalking statute.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ See Footnote 2.

¹¹ Punishable by up to five years in prison and a potential fine up to \$5,000. Sections 775.082, 775.083, and 775.084, F.S.

¹² Section 784.048(2), F.S.

¹³ Section 784.048(3), F.S.

¹⁴ Section 784.048(4), (5), and (7), F.S.

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

None.

B. Private Sector Impact:

Persons convicted of bullying and aggravated bullying under the bill will potentially be subject to a criminal fine of up to \$500 and \$1,000, respectively.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014 and determined that the prison bed impact from this bill is insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 784.049 of the Florida Statutes.

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

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

CS by Criminal Justice on February 10, 2014:

- Decreases the penalty for bullying from a first degree misdemeanor to a second degree misdemeanor.
- Decreases the penalty for aggravated bullying from a third degree felony to a first degree misdemeanor.

B. Amendments:

None.



590212

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 45 - 51
and insert:
bullying, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who willfully, maliciously, and repeatedly harasses or cyberbullies another person and makes a credible threat to that person commits the offense of aggravated bullying, a misdemeanor of the first degree, punishable as



590212

11 provided in s. 775.082 or s. 775.083.

By Senator Simmons

10-00810-14

2014548__

1 A bill to be entitled
 2 An act relating to bullying; creating s. 784.049,
 3 F.S.; defining terms; providing that a person who
 4 willfully, maliciously, and repeatedly harasses or
 5 cyberbullies another person commits the offense of
 6 bullying; providing that a person who willfully,
 7 maliciously, and repeatedly harasses or cyberbullies
 8 another person and makes a credible threat to that
 9 person commits the offense of aggravated bullying;
 10 providing criminal penalties; providing an effective
 11 date.

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

14
 15 Section 1. Section 784.049, Florida Statutes, is created to
 16 read:

17 784.049 Bullying; aggravated bullying.-

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

19 (a) "Course of conduct" means a pattern of conduct
 20 involving a series of acts over any period of time which
 21 evidences a continuity of purpose. The term does not include
 22 constitutionally protected activity such as picketing or other
 23 organized protests.

24 (b) "Credible threat" means a verbal or nonverbal threat,
 25 or both, including a threat delivered electronically or implied
 26 by a pattern of conduct, which places the target of the threat
 27 in reasonable fear for his or her safety, the safety of his or
 28 her family, or the safety of a closely associated individual and
 29 which is made with the apparent ability to carry out the threat.

Page 1 of 2

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

10-00810-14

2014548__

30 For purposes of prosecution under this section, it is not
 31 necessary to prove that the person making the threat had the
 32 intent to actually carry out the threat.

33 (c) "Cyberbullying" means the communication of, or the
 34 attempt to communicate, words, images, symbols, or spoken
 35 language by or through the use of electronic communication which
 36 is directed to a specific person, causes substantial emotional
 37 distress to that person, and does not serve a legitimate
 38 purpose.

39 (d) "Harass" means to engage in a course of conduct
 40 directed at a specific person which causes substantial emotional
 41 distress to that person and which does not serve a legitimate
 42 purpose.

43 (2) A person who willfully, maliciously, and repeatedly
 44 harasses or cyberbullies another person commits the offense of
 45 bullying, a misdemeanor of the first degree, punishable as
 46 provided in s. 775.082 or s. 775.083.

47 (3) A person who willfully, maliciously, and repeatedly
 48 harasses or cyberbullies another person and makes a credible
 49 threat to that person commits the offense of aggravated
 50 bullying, a felony of the third degree, punishable as provided
 51 in s. 775.082, s. 775.083, or s. 775.084.

52 Section 2. This act shall take effect October 1, 2014.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request



To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 10, 2014

I respectfully request that **Senate Bill 548**, relating to Bullying, be placed on the:

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

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

Senator David Simmons
Florida Senate, District 10

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-10-14
Meeting Date

Topic SB 548 - Bullying

Bill Number 548
(if applicable)

Name Bob Harris

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2018 Centennial Place
Street
Tallahassee FL 32308
City State Zip

Phone 850-222-0720
E-mail bharris@lawfla.com

Speaking: For Against Information

Representing Panhandle Area Educational Consortium

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)

2/10/14

Meeting Date

Topic Bullying

Bill Number 548
(if applicable)

Name Kristopher Browning

Amendment Barcode _____
(if applicable)

Job Title Legislative Coordinator

Address 204 South Monroe Street, Suite 201
Street

Phone (850) 577-3032

Tallahassee FL 32301
City State Zip

E-mail KBrowning@bridgeofamerica.org

Speaking: For Against Information

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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: SPB 7030

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Community Reentry Programs

DATE: February 6, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Cannon		Pre-meeting

I. Summary:

SPB 7030 requires the Department of Corrections (Department) to develop an operational plan to implement a vocational work-release pilot program in Santa Rosa, Escambia, Walton, and Okaloosa counties. The bill requires that inmates who are within 36 months of their release date be considered for participation in the program based upon a risk assessment.

II. Present Situation:

Community Work Release

The statutory authority for the Department of Corrections to offer a work release program is found in s. 945.091, F.S., entitled “Extension of the limits of confinement; restitution by employed inmates.” Section 945.091(1)(b), F.S., specifically provides for the Department to adopt rules permitting the extension of the limits of confinement with the approval of the secretary or secretary’s designee to leave the confines of the facility unaccompanied by a custodial agent for a proscribed period of time to:

- work at paid employment;
- participate in an education or training program; or
- voluntarily serve a public or nonprofit agency or faith –based service group in the community.

An inmate may participate in paid employment only during the last 36 months of confinement unless requested sooner by the Parole Commission or the Control Release Authority.¹ Inmates may also apply for placement at a contracted substance abuse transition housing program while working at paid employment and residing at a facility. An inmate may also request placement in a faith-based substance abuse transition housing program after the transition specialist consults with the chaplain prior to such placement.²

¹ s. 945.091(1)(b)1., F.S.

² s. 945.091(1)(b)2., F.S.

Community Release Programs

There are several categories of community release programs:

- Center Work Assignment (CWA) – inmate is assigned to a work release center to serve in a support capacity
- Community Release Program – program allowing inmates to work at paid employment or a center work assignment or to participate in education, training, substance abuse treatment programs, or any other transitional program to facilitate re-entry into the community while in a work release center, contract community work release facility, or other contract community facility
- Community Work Release (CWR) – community release program that allows inmates to work at paid employment in the community while continuing as inmates of the facility where they are confined
- Community Study Release – allows inmates to attend an education or vocational facility or participate in a training program in the community while continuing as inmates of the facility where they are confined
- Community Volunteer Service – allows inmates housed at a work release center or contract facility to voluntarily work with a governmental or nonprofit agency in the community³

Within the four northwest Florida counties affected by the bill, the Department reports that 1,450 inmates were admitted and 1,380 were released during Fiscal Year 2012-2013. The Department reports that this group of inmates could reasonably be assumed to have ties to the geographical area. Though, the Department states that an independent review of each case would be required to determine eligibility for the program in order to eliminate duplication between admissions and releases.

FY 12-13 Admissions & Releases for Counties included in Proposed Vocational Work Release Program		
County	Admissions⁴	Releases⁵
Santa Rosa	217	219
Escambia	785	793
Walton	95	79
Okaloosa	353	289
Total	1,450	1,380

Based upon the January 31, 2014 status file, the following information from the department’s Bureau of Research and Data Analysis reflects:

³ Rule 33-601.602, F.A.C.

⁴ Florida Department of Corrections 2012-2013 Agency Statistics-
http://www.dc.state.fl.us/pub/annual/1213/stats/ia_county_commitment.html (last viewed 2/7/14).

⁵ Florida Department of Corrections 2012-2013 Agency Statistics-
http://www.dc.state.fl.us/pub/annual/1213/stats/ir_county.html (last viewed 2/7/14).

- 255 inmates (221 male; 34 female) meet the basic criteria required for the proposed program – minimum custody, no murder charges/sex offenses, returning to or convicted out of the four county implementation area, and have between 37 months⁶ and 14 months left to serve on their sentence.
- The number of eligible inmates may be further reduced when considering other required needs.

Eligibility Requirements to Participate in Community Release Programs

To meet the eligibility requirements to participate in a community release program an inmate must:

- Be in community custody in accordance with Rule 33-601.210, F.A.C., or have a recommendation for community custody currently under review.
- Be in Department custody for 60 days prior to placement in paid employment.
- For inmates with non-advanceable dates, the inmate must be within:
 - 28 months of his earliest release date for the transition program, or
 - 19 months of his earliest release date for CWA, or
 - 14 months of his earliest release date for CWR.
- For inmates who do not have non-advanceable dates, the inmate must be within:
 - 36 months of his earliest release date for the transition program, or
 - 28 months of his earliest release date for CWA, or
 - 19 months of his earliest release date for CWR.⁷

Ineligibility for Community Release

An inmate is ineligible for a community release program if he or she has:

- A current or prior conviction for a sex offense;
- Been found guilty on any disciplinary report for escape or attempted escape within the last five years;
- A current or prior conviction for escape;
- Been terminated from CWR, CWA, or a transition program for disciplinary reasons during the inmates current commitment;
- Been committed to or incarcerated in a state or federal correctional facility four or more times;
- Been found guilty of any disciplinary report in the 60 days prior to placement;
- Refused to complete or has an unsatisfactory removal from a substance abuse program
- A felony, Immigration and Customs Enforcement, or misdemeanor (for other than child support) warrant or detainer; or

A misdemeanor detainer for child support.⁸

⁶ 37 months based on the method inmates are selected for the transition centers which is most similar to the program described in the bill.

⁷ Id.

⁸ Id.

III. Effect of Proposed Changes:

The bill directs the department to develop an operational plan to implement a vocational work-release pilot program for the 2015 -2016 fiscal year in Santa Rosa, Escambia, Walton, and Okaloosa Counties.

The bill requires that the program be designed to provide residential care, custody, control, and on-the-job vocational training or certification to eligible inmates. Vocational training or certification include housing assistance, money management training, employment assistance, vocational education, life skills training, and substance abuse education or treatment.

The bill requires the department to consider all inmates who are within 36 months of their release date for participation in the program. Selection must be based on a risk assessment process that includes, but is not limited to, whether:

- The inmate has potential for rehabilitation and has the need for on-the- job vocational training.
- The inmate can be placed in the geographic area where he or she is from, or has family or identified friends, and intends to reside in the area upon release from custody.

The operational plan for the program must describe and document:

- Resources needed for the program including but not limited to:
 - Specific buildings
 - Grounds
 - Property that must be obtained for or redesignated as vocational work release;
- Placement of facilities and services in specific areas to maximize the opportunity for inmates to be located near where they plan to live;
- Additional staff or changes to staff qualifications;
- Types of contracts the program intends to use for private providers;
- Security Staffing plan;
- Programming plan;
- Proposed budget;
- Process and method for selecting inmate participation and screening; and
- Changes in the law which are necessary to implement the program.

The bill requires the Department to submit a status report on the program by February 15, 2015, to the Governor, the President of the Senate and the Speaker of the House. The report must document the projected number of inmates to be served by the pilot program in the 2015-2016 fiscal year and the funding needed to implement the operational plan.

The bill has an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides for the department to develop a plan that could ultimately have a fiscal impact, but does not authorize implementation of the plan.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Criminal Justice

591-01125C-14

20147030__

A bill to be entitled

An act relating to community reentry programs; requiring the Department of Corrections to develop an operational plan to implement a vocational work-release pilot program in specified counties; requiring that the operational plan describe the necessary facilities, staff, budget, and methods for selecting inmates to participate in the pilot program; providing examples of vocational training or certification; requiring inmates to be within a specified time period of their release dates to be considered for participation in the pilot program; providing criteria to assess the risk of placing an inmate in the pilot program; requiring that the department submit a report to the Governor and the Legislature by a specified date; providing an effective date.

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

Section 1. Vocational work-release pilot program.—

(1) The Department of Corrections shall develop an operational plan to implement a vocational work-release pilot program for the 2015–2016 fiscal year in Santa Rosa, Escambia, Walton, and Okaloosa Counties. At a minimum, the operational plan for the pilot program must describe and document:

(a) The resources needed for the program, including, but not limited to, specific buildings, grounds, and property that must be obtained for or redesignated as vocational work-release facilities.

Page 1 of 3

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

591-01125C-14

20147030__

(b) The placement of facilities and services in specific areas to maximize the opportunity for participating inmates to benefit from being located near where they plan to live after completion of their sentences.

(c) The additional staff or changes to staff qualifications necessary to operate the program.

(d) The types of contracts the program intends to use for private providers that desire to provide on-the-job vocational training to eligible inmates.

(e) The security staffing plan.

(f) The programming plan.

(g) The proposed budget.

(h) The process and method for selecting an inmate to participate in the program, including any initial screening process, the criteria used in the risk assessment, and any prioritization of placement.

(i) The changes in law which are necessary to implement the program.

(2) The pilot program shall be designed to provide residential care, custody, control, and on-the-job vocational training or certification to eligible inmates. For purposes of the program, vocational training or certification include, but are not limited to, housing assistance, money management training, employment assistance, vocational education, life skills training, and substance abuse education or treatment.

(3) All inmates who are considered for participation in the program must be within 36 months of their release dates. The selection must be based upon a risk assessment process that includes, but is not limited to, whether:

Page 2 of 3

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

591-01125C-14

20147030__

59 (a) The inmate has potential for rehabilitation and has the
60 need for on-the-job vocational training.

61 (b) The inmate can be placed in the geographic area where
62 he or she is from, or has family or identified friends, and
63 intends to reside in the area upon release from custody.

64 (4) The pilot program may include an existing community
65 work-release program established pursuant to s. 945.091, Florida
66 Statutes, as a service provider, but the existing program must
67 provide enhanced reentry services to participating inmates,
68 including, but not limited to, housing assistance, money
69 management training, employment assistance, vocational
70 education, life skills training, and substance abuse education
71 or treatment.

72 Section 2. The Department of Corrections shall submit a
73 status report related to the vocational work-release pilot
74 program authorized by this act by February 15, 2015, to the
75 Executive Office of the Governor, the President of the Senate,
76 and the Speaker of the House of Representatives. The report must
77 document the projected number of inmates to be served by the
78 pilot program in the 2015-2016 fiscal year and the funding
79 needed to implement the operational plan.

80 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/14
Meeting Date

Topic Community Reentry Programs

Bill Number 7030
(if applicable)

Name Kristopher Browning

Amendment Barcode _____
(if applicable)

Job Title Legislative Coordinator

Address 204 South Monroe Street, Suite 201
Street

Phone (850) 577-3032

Tallahassee FL 32301
City State Zip

E-mail KBrowning@bridgesofamerica.org

Speaking: For Against Information

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

21/10/2014

Meeting Date

Topic _____

Bill Number 7030
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

CourtSmart Tag Report

Room: LL 37

Case:

Type:

Caption: Senate Criminal Justice Committee Judge:

Started: 2/10/2014 4:12:36 PM

Ends: 2/10/2014 5:39:22 PM

Length: 01:26:47

4:12:38 PM Chair Evers calls the meeting to order
4:13:45 PM roll call
4:14:46 PM quorum present
4:14:58 PM SB 328 by Senator Joyner
4:15:17 PM Senator Joyner explains the bill
4:16:27 PM Senator Dean asks question about bill
4:16:39 PM Senator Joyner answers
4:17:06 PM Sheriff Rutherford speaks in opposition of bill
4:19:33 PM Senator Joyner comments
4:20:16 PM Sheriff Rutherford comments he would still be in opposition
4:20:57 PM Chair Evers asks a question of Sheriff Rutherford
4:22:00 PM Sheriff Rutherford responds
4:22:52 PM Senator Simmons
4:23:05 PM Sheriff Rutherford
4:23:22 PM Senator Bradley
4:23:55 PM Chair Evers
4:24:26 PM Senator Bradley
4:24:43 PM Senator Simmons
4:25:39 PM Sheriff Rutherford
4:26:53 PM Chair Evers
4:27:09 PM Sheriff Rutherford
4:27:30 PM Chair Evers
4:27:52 PM Buddy Jacobs, representing State Attorneys of Florida, speaks against bill
4:31:47 PM Senator Simmons
4:32:51 PM Mr. Jacobs responds
4:33:10 PM Chair Evers answers
4:34:47 PM Mr. Jacobs
4:35:58 PM Chair Evers
4:36:02 PM Mr. Jacobs
4:36:10 PM Honorable Nancy Daniels, Florida Public Defender Association, in support of the bill
4:38:07 PM Senator Bradley in debate on the bill
4:40:07 PM Senator Gibson in debate on the bill
4:42:01 PM Senator Simmons asks if the bill can be brought up next meeting
4:43:42 PM Chair Evers
4:44:49 PM Senator Dean
4:46:12 PM Senator Altman
4:47:30 PM Senator Simmons
4:49:11 PM Mike from the Criminal Justice committee staff gives extra information about the bill
4:50:46 PM Senator Joyner closes on bill
4:54:19 PM Senator Joyner requests the bill to be TP'd
4:55:21 PM Senator Simmons
4:56:26 PM Chair Evers
4:57:26 PM Senator Gibson moves to TP SB 328
4:57:53 PM Show SPB 7030 as TP'd
4:58:25 PM SB 548 by Senator Simmons
4:59:21 PM Senator Simmons explains the bill
5:00:49 PM Amendment 590212 by Senator Evers adopted
5:01:52 PM Senator Smith
5:02:08 PM Senator Simmons answers
5:02:18 PM Senator Smith
5:02:50 PM Senator Simmons responds
5:03:21 PM Senator Smith worries this can be overused or misused

5:04:19 PM Senator Simmons
5:06:00 PM Senator Dean
5:07:41 PM Senator Gibson asks if this includes cyberbullying
5:09:14 PM Senator Simmons responds
5:09:41 PM Senator Gibson with a followup question
5:09:54 PM Senator Simmons
5:11:41 PM Senator Gibson asks another followup
5:12:30 PM Senator Simmons
5:12:42 PM Senator Gibson with another question
5:13:01 PM Senator Simmons
5:13:55 PM Brian Pitts, Justice-2-Jesus, speaks on bill
5:19:22 PM Bob Harris, Panhandle Area Educational Consortium, speaks on the bill
5:22:03 PM Senator Gibson asks when this goes from being a school issue to a law enforcement issue
5:24:28 PM Mr. Harris answers
5:25:50 PM Chair Evers
5:29:08 PM Senator Dean
5:32:09 PM Senator Smith in debate on the bill
5:34:07 PM Senator Dean moves for a CS
5:35:07 PM Senator Simmons closes on SB 548
5:38:38 PM roll call
5:38:51 PM CS/SB 548 reported favorable
5:39:03 PM Senator Gibson moves we rise