

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Tuesday, February 11, 2014
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Lee, Chair; Senator Soto, Vice Chair; Senators Bradley, Gardiner, Joyner, Latvala, Richter, Ring, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 326 Thompson (Identical H 227)	Victims of Wrongful Incarceration; Providing that a wrongfully incarcerated person who was convicted and sentenced to death on or before December 31, 1979, is exempt from certain application procedures for compensation if a special prosecutor issues a nolle prosequi after reviewing the defendant's conviction; requiring the claimant to file an application with the Department of Legal Affairs within a specified time; requiring the application to include certain information and documents; providing that the claimant is entitled to compensation if all requirements are met, etc. JU 02/11/2014 Fav/CS CJ AP RC	Fav/CS Yeas 9 Nays 0
2	SM 368 Simpson (Similar HM 261)	Constitutional Convention/Single-Subject Requirement for Federal Legislation; Urging Congress to call a convention for the purpose of proposing an amendment to the Constitution of the United States to provide that every law enacted by Congress shall embrace only one subject, which shall be clearly expressed in its title, etc. JU 02/11/2014 Favorable GO RC	Favorable Yeas 7 Nays 2
3	SB 448 Evers (Identical CS/H 89, Compare S 438)	Threatened Use of Force; Applying provisions relating to the use of force in defense of persons to the threatened use of force; applying presumption relating to the use of deadly force to the threatened use of deadly force in the defense of a residence and similar circumstances; applying immunity provisions that relate to the use of force to the threatened use of force; providing that a person is not justified in the threatened use of force to resist an arrest by a law enforcement officer, etc. CJ 01/08/2014 Favorable JU 02/11/2014 RC	Amendment Adopted - Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 11, 2014, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SM 476 Hays (Identical HM 381)	Amendments to the Constitution of the United States; Applying to Congress to call a convention for the sole purpose of proposing amendments to the Constitution of the United States which impose fiscal restraints on the Federal Government, limit the power and jurisdiction of the Federal Government, and limit the terms of office for federal officials and members of Congress, etc. JU 02/11/2014 Favorable RC	Favorable Yeas 7 Nays 2
5	SB 592 Criminal Justice	Criminal Justice; Requiring the Department of Corrections to verify the authenticity of certain court orders before releasing a person from incarceration, etc. JU 02/11/2014 Not Considered	Not Considered
6	SB 620 Detert (Identical H 627, Compare S 912)	Service of Process; Requiring sheriffs to charge a uniform fee for service of process; requiring an employer to allow an authorized individual to make service on an employee in a private area designated by the employer; providing a civil fine for employers who fail to comply with the process; requiring the person requesting service or the person authorized to serve the process to file the return-of-service form; authorizing a sheriff to apply for instructions from the court regarding the distribution of proceeds from the sale of a levied property, etc. JU 02/11/2014 Favorable CA	Favorable Yeas 9 Nays 0
7	SM 658 Stargel (Similar HM 625)	Balanced Federal Budget ; Applying to Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States which requires a balanced federal budget, etc. JU 02/11/2014 Favorable RC	Favorable Yeas 8 Nays 1

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 Judiciary

BILL: CS/SB 326

INTRODUCER: Judiciary Committee and Senator Thompson

SUBJECT: Victims of Wrongful Incarceration

DATE: February 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			CJ	
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 326 amends the “Victims of Wrongful Incarceration Compensation Act” to make a limited expansion in the type of evidence a claimant may use as proof of eligibility for compensation as a wrongfully incarcerated person. Under the bill, a claimant is “innocent of the offenses charged” and eligible for compensation if:

- The Governor by an executive order appointed a special prosecutor to review the claimant’s conviction;
- The special prosecutor entered a nolle prosequi for charges for which the claimant was convicted and sentenced to death; and
- The claimant was convicted and sentenced to death before January 1, 1980.

Under current law, a claimant’s eligibility for compensation is established through a court order vacating the claimant’s conviction and sentence as the result of exonerating evidence.

A claimant who is eligible for compensation under the criteria in the bill must apply to the Department of Legal Affairs for compensation. The same application documents currently required for compensation under the existing criteria are required for a claimant who is eligible for compensation under the bill, except that the certified copy of the nolle prosequi or nolle prosequi memorandum replaces the requirement of the court order vacating conviction and sentence.

Current amounts and forms of compensation, such as monetary compensation, an educational tuition and fee waiver, and the reimbursement of fines, penalties, court costs, and reasonable attorney's fees available to wrongfully incarcerated persons are equally available to wrongfully incarcerated persons qualifying for redress under the bill. Similarly, timelines for the Department of Legal Affairs to review an application and related decision-making are the same as in current law.

The bill does not affect the provision of existing law which makes a wrongfully incarcerated person ineligible for compensation as the result of a disqualifying felony conviction.

A claimant seeking compensation under the expanded eligibility criteria in the bill must apply to the DLA by July 1, 2016.

II. Present Situation:

Wrongful Incarceration Act

The Florida Legislature established the "Victims of Wrongful Incarceration Compensation Act" (Act) in 2008.¹ The Act defines a wrongfully incarcerated person as:

a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and ... the original sentencing court has issued its order finding that the person neither committed the act nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.²

Disqualifying Felonies

To be eligible for compensation, a wrongfully incarcerated person must not have a disqualifying felony, which is one of the following situations:

- The person had a prior conviction or pled guilty or nolo contendere to a felony offense in this state, a federal offense that is a felony, or to an offense in another state that would be a felony in this state;
- The person was convicted of, or pled guilty or nolo contendere to a felony offense while wrongfully incarcerated; or
- While wrongfully incarcerated, the person was serving a concurrent sentence for another felony for which the person was not wrongfully convicted.³

Court Process of Establishing Status as a Wrongfully Incarcerated Person

The claimant first files a petition with the original sentencing court seeking status as a wrongfully incarcerated person eligible for compensation. The claimant must allege in

¹ Chapter 2008-39, L.O.F.

² Section 961.02(4), F.S.

³ Section 961.04, F.S.

the petition that verifiable and substantial evidence of actual innocence exists and that the claimant is not disqualified from seeking compensation.⁴

The prosecuting authority has 30 days to submit a response to the court.⁵

Based on the prosecuting attorney's response, the court will either find that the petitioner has met his or her burden through clear and convincing evidence of innocence, or that based on a preponderance of the evidence, that the petitioner is ineligible for compensation due to a separate disqualifying felony.⁶ If the court finds the petitioner ineligible, the court will dismiss the petition.⁷

If the prosecuting attorney contests the petition and raises issues of fact on the question of innocence, an administrative law judge must determine whether the petitioner is eligible for compensation.⁸ The original sentencing court will then review the administrative law judge's finding and issue its own order within 60 days.⁹

Application Requirements for the Department of Legal Affairs

After receiving a court order vacating the conviction and the sentence, the claimant must file an application with the Department of Legal Affairs (DLA) within 2 years after the original sentencing court enters its order finding that the person is a wrongfully incarcerated person eligible for compensation.¹⁰

The claimant must provide through application:

- A certified copy of the order vacating the conviction and sentence;
- A certified copy of the original sentencing court's order finding the claimant to be a wrongfully incarcerated person who is eligible for compensation (meaning not disqualified);
- Certified copies of the original judgment and sentence;
- Documentation of the length of sentence served, including from the Department of Corrections (DOC) showing the person's admission and release from the custody of the DOC;
- Proof of identification, including two sets of fingerprints taken by a law enforcement agency and a current form of photo identification, showing that the applicant is the person wrongfully incarcerated;
- Supporting documentation of fines, penalties, and court costs imposed and paid by the wrongfully incarcerated person;
- Supporting documentation of reasonable attorney's fees and expenses; and
- Any documentation required by the DLA.¹¹

⁴ Section 961.03(1)(a)1. and 2., F.S.

⁵ Section 961.03(2), F.S.

⁶ Section 961.03(3) and (4), F.S.

⁷ Section 961.03(4)(a), F.S.

⁸ Section 961.03(5), F.S.

⁹ Section 961.03(6)(d), F.S.

¹⁰ Section 961.05(1), F.S.

¹¹ Section 961.05(4), F.S.

The DLA forwards one set of fingerprints each to the Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) for a criminal records background check of the applicant.¹²

The DLA must notify the applicant of errors or omissions within 30 calendar of days after receipt of the application and provide an opportunity to correct the application within 15 days.¹³

The DLA has 90 days to process a claim and must notify the claimant within 5 business days after its determination. If the DLA determines that the applicant meets all requirements, the applicant is eligible for compensation.¹⁴

Compensation

Compensation consists of:

- Monetary compensation, at the rate of \$50,000 for each year of wrongful incarceration, subject to proration and inflation based on the Consumer Price Index;
- A waiver of tuition and fees for up to 120 hours of instruction at a public career center, community college, or state university;
- A refund of fines, penalties, and court costs imposed and paid;
- Reasonable attorney's fees and expenses incurred and paid; and
- Immediate expunction, including administrative expunction, of the person's criminal record of the wrongful arrest, conviction, and incarceration.

Total compensation is capped at \$2 million.¹⁵

Wrongfully Incarcerated Persons Ineligible for Relief under Chapter 961, F.S.

Although the Wrongful Incarceration Act specifically provides compensation for wrongfully incarcerated persons, not all wrongfully incarcerated persons are eligible for relief under the Act. A case in point is that of James Joseph Richardson. He was sentenced to death for murdering one of his children in 1968 (during which time all of his seven children died of poisoning). His conviction was upheld by the Florida Supreme Court in 1971.¹⁶ Mr. Richardson filed a second appeal to the Florida Supreme Court in 1989, under a claim of a writ of error coram nobis.¹⁷ The court again upheld his conviction and sentence.

¹² Section 961.05(5), F.S.

¹³ Section 961.05(6), F.S.

¹⁴ Section 961.05(6) and (7), F.S.

¹⁵ Section 961.06(1), F.S.

¹⁶ *Richardson v. State*, 247 So. 2d 296 (Fla. 1971); Mr. Richardson's death sentence was later converted to life imprisonment without the possibility of parole for 25 years, due to the United States Supreme Court decision in *Furman v. Georgia*, 408 U.S. 238 (1972), which found unconstitutional procedural errors in capital cases and required conversion of all death penalty convictions to life sentences.

¹⁷ A writ of error coram nobis is a common law writ designed to correct errors of fact which do not appear in the record, but affect the validity of the judgment. 47 AM. JUR. 2D JUDGMENTS S. 656. The Florida Supreme Court ruled the writ of error coram nobis inadequate, as this common law writ was largely replaced by Rule 3.850, Fla. R. of Crim. Proc., as the preferred method for a defendant to challenge a conviction through a collateral attack. *Richardson v. State*, 546 So. 2d 1037, 1037-1038 (Fla. 1989).

Shortly thereafter, on July 31, 1989, through an Executive Order, the Governor appointed a special prosecutor to review Mr. Richardson's case.¹⁸ The special prosecutor found Mr. Richardson's case replete with errors, raising serious questions about his guilt.¹⁹ Because of this, the special prosecutor entered a Nolle Prose Memorandum in Mr. Richardson's case on May 5, 1989, vacating his conviction and sentence, and releasing Mr. Richardson from prison after 21 years of incarceration.

Mr. Richardson attempted to secure monetary relief for wrongful incarceration through filing a petition in circuit court under ch. 961, F.S. Mr. Richardson was the first person to file a claim under the Act.²⁰ Although the circuit judge found that Mr. Richardson was not ineligible based on a disqualifying felony conviction, the prosecutor challenged Mr. Richardson's claims of innocence. An administrative law judge appointed to determine whether Mr. Richardson was actually innocent, ruled in 2009 that Mr. Richardson failed to meet the burden of proving actual innocence through clear and convincing evidence.²¹ Specifically, the administrative law judge stated:

A review of the Nolle Prose Memorandum and the detailed evidence it discusses makes it clear that Petitioner was wrongfully accused based upon the evidence and lack of evidence the prosecution had gathered. It is further clear that Petitioner's conviction and sentence based upon that insufficient evidence should have been vacated, and they were. . . . A review of the two investigations of Petitioner's prosecution clearly shows an absence of evidence proving Petitioner guilty beyond a reasonable doubt. However, a review of the two investigations does not show that Petitioner is actually innocent.²²

III. Effect of Proposed Changes:

The bill makes a limited expansion in the type of evidence a claimant may use as proof of eligibility for compensation as a wrongfully incarcerated person under the "Victims of Wrongful Incarceration Compensation Act." Under the bill, a claimant is "innocent of the offenses charged" and eligible for compensation if:

- The Governor by an executive order appointed a special prosecutor to review the claimant's conviction;
- The special prosecutor entered a nolle prosequi for charges for which the claimant was convicted and sentenced to death; and
- The claimant was convicted and sentenced to death before January 1, 1980.

¹⁸ Executive Order Number 89-23.

¹⁹ Special Prosecutor Janet Reno noted in support in the Nolle Prose Memorandum conflicting evidence, apparent perjured testimony, prosecutorial suppression of exculpatory evidence, and a failure of law enforcement to follow standard investigative procedure. The Memorandum concluded that the complainant "was probably wrongfully accused." Janet Reno, Special Prosecutor, Nolle Prose Memorandum in *State v. Richardson* (Case Number 3302-D) (May 5, 1989).

²⁰ The Florida Senate, Issue Brief 2012-215, *Victims of Wrongful Incarceration Act Implementation and Claims*, p. 2 (September 2011).

²¹ *Richardson v. State*, 2009 WL 2588851 (Fla. Div. Admin. Hrgs.) (August 21, 2009).

²² *Richardson v. State*, 2009 WL 2588851, p. 7, 9 (Fla. Div. Admin. Hrgs.) (August 21, 2009).

Under current law, a claimant's eligibility for compensation is established through a court order vacating the claimant's conviction and sentence as the result of exonerating evidence.

Under the bill, just as for other claims for compensation under ch. 961, F.S., only the wrongfully incarcerated person may pursue a claim. An estate or a personal representative of an estate is prohibited from filing a claim on behalf of a wrongfully incarcerated person.

To receive compensation, the wrongfully incarcerated person must submit an application to the DLA which includes:

- A certified copy of the nolle prosequi or nolle prosequi memorandum;
- Certified copies of the original judgment and sentence;
- Documentation of the length of sentence served, including from the Department of Corrections (DOC) showing the person's admission and release from the custody of the DOC;
- Proof of identification, including two sets of fingerprints taken by a law enforcement agency of this state and a current form of photo identification;
- Supporting documentation of fines, penalties, and courts costs imposed and paid by the wrongfully incarcerated person;
- Supporting documentation of reasonable attorney's fees and expenses; and
- Any documentation required by the Department of Legal Affairs.

Application requirements are identical to the current requirements under s. 961.05, F.S., except that, instead of requiring a court order vacating conviction and sentence, the nolle prosequi entered into by the special prosecutor is required. Likewise, a mandatory background check confirming an absence of disqualifying felonies remains in place. And the timelines for the DLA to process applications are the same.

If the DLA determines that a claimant meets the requirements of the Act, the wrongfully incarcerated person is entitled to the same forms and amounts of compensation currently provided in law.

This bill clarifies that the Chief Financial Officer (CFO) may purchase multiple annuities selected by a wrongfully incarcerated person, instead of a single annuity, with the compensation awarded under the Victims of Wrongful Incarceration Compensation Act. In purchasing the annuities, the CFO must maximize the benefits to the wrongfully incarcerated person.

A claimant seeking compensation under the expanded eligibility criteria in the bill must apply to the DLA by July 1, 2016.

The bill takes effect July 1, 2014 and is repealed July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator does not expect a fiscal impact.²³

The Department of Legal Affairs (DLA) does not expect a fiscal impact. To date, the DLA indicates that seven claims have been made since the inception of ch. 961, F.S., in 2008. Of these, three claims have been paid in the cases of Leroy McGee (2010), James Bain (2011), and Luis Diaz (2012). The DLA denied 1 claim, that of Jarvis McBride (2012). Three other claims resulted in findings of ineligibility or incomplete submission of application: Robert Lewis (2011), Edwin Lampkin (2012), and Ricardo Johnson (2013).

The DLA has incurred insignificant costs to process applications for compensation due to the scarcity of claims to date and because the claimant is responsible for providing necessary documentation.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 961.055 and 961.056 of the Florida Statutes.

²³ Office of the State Courts Administrator, *2014 Judicial Impact Statement SB 326* (February 6, 2014).

²⁴ Email correspondence with Rob Johnson, Director of Legislative and Cabinet Affairs, Office of the Attorney General (February 5, 2014).

IX. Additional Information:

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

CS by Judiciary on February 11, 2014:

The committee substitute:

- Clarifies that the Chief Financial Officer (CFO) may purchase multiple annuities selected by a wrongfully incarcerated person instead of a single annuity.
- Specifies that in entering into annuity contracts for the compensation awarded under the Victims of Wrongful Incarceration Compensation Act, the CFO must maximize the benefit to the wrongfully incarcerated person.

- B. **Amendments:**

None.



100506

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/13/2014	.	
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The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 20 and 21

insert:

Section 1. Section 961.04, Florida Statutes, is amended to read:

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

~~(1) Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or~~



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12 ~~nolo contendere to, regardless of adjudication, any felony~~
13 ~~offense, or a crime committed in another jurisdiction the~~
14 ~~elements of which would constitute a felony in this state, or a~~
15 ~~crime committed against the United States which is designated a~~
16 ~~felony, excluding any delinquency disposition;~~

17 (1)~~(2)~~ During the person's wrongful incarceration, the
18 person was convicted of, or pled guilty or nolo contendere to,
19 regardless of adjudication, any felony offense; or

20 (2)~~(3)~~ During the person's wrongful incarceration, the
21 person was also serving a concurrent sentence for another felony
22 for which the person was not wrongfully convicted.

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

25 And the title is amended as follows:

26 Between lines 2 and 3
27 insert:

28 amending s. 961.04, F.S.; deleting a provision that
29 renders a person who has a specified prior felony
30 conviction ineligible for compensation for wrongful
31 incarceration;



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2014	.	
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The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment (with title amendment)

Between lines 107 and 108

insert:

Section 3. Subsections (4) and (5) of section 961.06,
Florida Statutes, are amended to read:

961.06 Compensation for wrongful incarceration.—

(4) The Chief Financial Officer shall issue payment in the amount determined by the department to an insurance company or



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10 other financial institution admitted and authorized to issue
11 ~~purchase an annuity~~ contracts in this state to purchase an
12 annuity or annuities, selected by the wrongfully incarcerated
13 person, on behalf of the claimant for a term of not less than 10
14 years. The Chief Financial Officer is directed to execute all
15 necessary agreements to implement this act and to maximize the
16 benefit to the wrongfully incarcerated person. The terms of the
17 annuity or annuities shall:

18 (a) Provide that the annuity or annuities may not be sold,
19 discounted, or used as security for a loan or mortgage by the
20 wrongfully incarcerated person applicant.

21 (b) Contain beneficiary provisions for the continued
22 disbursement of the annuity or annuities in the event of the
23 death of the wrongfully incarcerated person applicant.

24 (5) Before the department approves the application for
25 compensation ~~Chief Financial Officer draws the warrant for the~~
26 ~~purchase of the annuity,~~ the wrongfully incarcerated person
27 ~~claimant~~ must sign a release and waiver on behalf of the
28 wrongfully incarcerated person claimant and his or her heirs,
29 successors, and assigns, forever releasing the state or any
30 agency, instrumentality, or any political subdivision thereof,
31 or any other entity subject to ~~the provisions of s. 768.28,~~ from
32 all present or future claims that the wrongfully incarcerated
33 person claimant or his or her heirs, successors, or assigns may
34 have against such entities arising out of the facts in
35 connection with the wrongful conviction for which compensation
36 is being sought under the act. ~~The release and waiver must be~~
37 ~~provided to the department prior to the issuance of the warrant~~
38 ~~by the Chief Financial Officer.~~



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

And the title is amended as follows:

Between lines 16 and 17

insert:

amending s. 961.06, F.S.; requiring the Chief
Financial Officer to issue payment to an insurance
company or other financial institution authorized to
issue annuity contracts to purchase an annuity or
annuities selected by the wrongfully incarcerated
person; authorizing the Chief Financial Officer to
execute all necessary agreements to implement
compensation and to maximize the benefit to the
wrongfully incarcerated person; requiring the
wrongfully incarcerated person to sign a waiver before
the department's approval of the application;

By Senator Thompson

12-00152-14

2014326__

1 A bill to be entitled
2 An act relating to victims of wrongful incarceration;
3 creating s. 961.055, F.S.; providing that a wrongfully
4 incarcerated person who was convicted and sentenced to
5 death on or before December 31, 1979, is exempt from
6 certain application procedures for compensation if a
7 special prosecutor issues a nolle prosequi after
8 reviewing the defendant's conviction; creating s.
9 961.056, F.S.; providing alternative procedures for
10 applying for compensation; requiring the claimant to
11 file an application with the Department of Legal
12 Affairs within a specified time; requiring the
13 application to include certain information and
14 documents; providing that the claimant is entitled to
15 compensation if all requirements are met; providing
16 that the section is repealed on a specified date;
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 961.055, Florida Statutes, is created to
22 read:

23 961.055 Application for compensation for a wrongfully
24 incarcerated person; exemption from application by nolle
25 prosequi.-

26 (1) A person alleged to be a wrongfully incarcerated person
27 who was convicted and sentenced to death on or before December
28 31, 1979, is exempt from the application provisions of ss.
29 961.03, 961.04, and 961.05 in the determination of wrongful

12-00152-14

2014326__

30 incarceration and eligibility to receive compensation pursuant
31 to s. 961.06 if:

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

34 (b) The special prosecutor thereafter enters a nolle
35 prosequi for the charges for which the defendant was convicted
36 and sentenced to death.

37 (2) The nolle prosequi constitutes conclusive proof that
38 the defendant is innocent of the offenses charged and is
39 eligible to receive compensation under this chapter.

40 (3) This section is repealed July 1, 2018.

41 Section 2. Section 961.056, Florida Statutes, is created to
42 read:

43 961.056 Alternative application for compensation for a
44 wrongfully incarcerated person.-

45 (1) A person who has been determined to be a wrongfully
46 incarcerated person pursuant to s. 961.055 is eligible to apply
47 to the department to receive compensation for such wrongful
48 incarceration.

49 (a) Only the wrongfully incarcerated person may apply for
50 compensation. The estate of, or personal representative for, a
51 decedent may not apply on behalf of the decedent for
52 compensation for wrongful incarceration.

53 (b) In order to receive compensation, the wrongfully
54 incarcerated person shall, by July 1, 2016, submit to the
55 Department of Legal Affairs an application for compensation
56 irrespective of whether the person has previously sought
57 compensation under this chapter. The application must include:

58 1. A certified copy of the nolle prosequi or nolle prosequi

12-00152-14

2014326__

59 memorandum;60 2. Certified copies of the original judgment and sentence;61 3. Documentation demonstrating the length of the sentence
62 served, including documentation from the Department of
63 Corrections regarding the person's admission into and release
64 from the custody of the Department of Corrections;65 4. Positive proof of identification, as evidenced by two
66 full sets of fingerprints prepared by a law enforcement agency
67 of this state and a current form of photo identification;68 5. Supporting documentation of any fine, penalty, or court
69 costs imposed on and paid by the wrongfully incarcerated person
70 as described in s. 961.06(1);71 6. Supporting documentation of any reasonable attorney fees
72 and expenses as described in s. 961.06(1); and73 7. Any other documentation, evidence, or information
74 required by rules adopted by the department.75 (2) The law enforcement agency that prepared the
76 applicant's set of fingerprints shall forward both full sets to
77 the Department of Law Enforcement. The Department of Law
78 Enforcement shall retain one set for statewide criminal records
79 checks and forward the second set of fingerprints to the Federal
80 Bureau of Investigation for national criminal records checks.
81 The results of the state and national records checks shall be
82 submitted to the department.83 (3) Upon receipt of an application, the department shall
84 examine the application and, within 30 days after receipt of the
85 application, shall notify the claimant of any error or omission
86 and request any additional information relevant to the review of
87 the application.

12-00152-14

2014326__

88 (a) The claimant has 15 days after proper notification by
89 the department to correct any identified error or omission in
90 the application and to supply any additional information
91 relevant to the application.

92 (b) The department may not deny an application for failure
93 of the claimant to correct an error or omission or to supply
94 additional information unless the department has notified the
95 claimant of such error or omission and requested the additional
96 information within the 30-day period specified in this
97 subsection.

98 (c) The department shall process and review each complete
99 application within 90 calendar days.

100 (d) Once the department determines whether a claim for
101 compensation meets the requirements of this chapter, the
102 department shall notify the claimant within 5 business days
103 after that determination.

104 (5) If the department determines that a claimant meets the
105 requirements of this chapter, the wrongfully incarcerated person
106 is entitled to compensation under s. 961.06.

107 (6) This section is repealed July 1, 2018.

108 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)

2-11-14
Meeting Date

Topic Wrongful Incarceration

Bill Number 326
(if applicable)

Name Richard Pinsky

Amendment Barcode _____
(if applicable)

Job Title _____

Address 106 E College Suite 1200
Street
Tallahassee FL 32301
City State Zip

Phone _____

E-mail _____

Speaking: For Against Information

Representing James Joseph Richardson

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 / 11 / 2014

Meeting Date

Topic _____

Bill Number 326
(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 Judiciary

BILL: SM 368

INTRODUCER: Senator Simpson

SUBJECT: Constitutional Convention/Single-Subject Requirement for Federal Legislation

DATE: February 10, 2014

REVISED: 02/11/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.			GO	
3.			RC	

I. Summary:

SM 368 is an application to the United States Congress urging Congress to call an Article V Convention for the purpose of proposing an amendment to the U.S. Constitution which will:

- Prohibit Congress from passing a bill that embraces more than one subject; and
- Require that the subject be clearly expressed in the bill's title.

The memorial also states that it supersedes all previous memorials and current resolutions applying to Congress for a single-subject amendment and, if passed, will revoke, withdraw, nullify, and supersede all such memorials and resolutions as though they were never passed.

If this memorial is passed by the Legislature and at least 33 other states pass a similar or identical memorial or resolution calling on Congress to call an amendments convention for the sole purpose of proposing a single subject amendment to the U.S. Constitution, then under Article V of the U.S. Constitution, Congress is obligated to call the convention.

II. Present Situation:

Methods of Amending the U.S. Constitution

Article V of the United States Constitution provides two methods for proposing amendments to the Constitution. The first method authorizes Congress to propose amendments to the states which are approved by two-thirds vote of both Houses of Congress.¹ Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.² Starting with the Bill of Rights in 1789, Congress has used this method to submit 33

¹ U.S. CONST. art. V.

² *The Constitutional Amendment Process*, U.S. National Archives and Records Administration, <http://www.archives.gov/federal-register/constitution> (last visited February 4, 2014).

amendments to the states. Of those 33 proposals, 27 amendments to the Constitution have been approved by the states.³

The second method, which has never been used, requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures make application to Congress to call an amendments convention.⁴ Currently, 34 states would need to make applications to meet the two-thirds requirement to call an Article V Convention.

Article V further provides that the amendments will become a part of the Constitution when ratified by the Legislatures of three-fourths of the states or by conventions in three-fourths of the states. This would require ratification by 38 states. Because Article V provides that the amendments become valid when ratified by three-fourths of the legislatures or conventions “as the one or the other Mode of Ratification may be proposed by the Congress,” Congress may choose the method of ratification. With the exception of the 21st Amendment, which repealed the 18th Amendment and prohibition, Congress has sent all proposed amendments to the legislatures for ratification.⁵

It has become accepted procedure, although not stated in the Constitution, that Congress may set time limits on the ratification process and specify when an amendment must be ratified by the requisite number of states to become valid. With several amendments, Congress stated that ratification must occur within 7 years after their proposal to become effective.⁶ The U.S. Supreme Court, in *Dillon v. Gloss*, concluded that Congress does have the authority to determine what a reasonable time frame for ratification is, even though the Constitution is silent on the matter.⁷

Although no attempts to call an Article V Convention have ever been successful, two relatively recent attempts approached the requisite number of 34 applications to Congress. In 1969, a total of 33 states submitted applications for a convention to address U.S. Supreme Court decisions that dealt with voting districts and the apportionment of votes. The effort fell short of the total number required by one application. Several states later rescinded their applications and the call for a convention dissipated.⁸

In the second instance, and similar to this proposal, state legislatures made application to Congress to call an Article V Convention requesting a balanced budget amendment. North Dakota was the first state to make application to Congress in 1975, followed by a succession of 30 other states over the years, ending with Missouri’s application in 1983 as the 32nd application. The effort fell short of the 34 applications to Congress by two states and again, interest in calling for a convention declined.⁹

³ Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (July 9, 2012) (on file with the Senate Committee on Judiciary).

⁴ U.S. CONST. art. V.

⁵ Neale, *supra*, note 3, at 22.

⁶ *Id.* at 2.

⁷ *Dillon v. Gloss*, 256 U.S. 368 (1921).

⁸ James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 *1005*, 1009-10 (2007).

⁹ *Id.* at 1010.

Single Subject Requirements

State Provisions

The majority of states limit legislation to a single subject in their state constitutions. In Florida, the State Constitution provides that “Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”¹⁰ According to the National Conference of State Legislatures, 41 states have similar single-subject requirements. Seven state constitutions contain no single-subject provisions, one state places the requirement in a joint rule, while one remaining state seems to imply in its constitution that that legislation should be limited to a single subject.¹¹

Federal Provisions

Currently, there is no federal constitutional or statutory requirement that legislation be limited to a single subject. However, legislation calling for a single subject requirement was introduced in both Houses of Congress during the current 113th Congress. Entitled the “One Subject at a Time Act,” the legislation provides, in part, that “Each bill or joint resolution shall embrace no more than one subject.”¹² The bills, H.R.2113 and S. 1664, have each been referred to a committee but neither has been scheduled for a hearing at this time. Similar legislation died in committee last year.¹³

III. Effect of Proposed Changes:

Senate Memorial 368 is an application to Congress urging Congress to call an Article V Convention for the purpose of proposing an amendment to the U.S. Constitution which will:

- Prohibit Congress from passing a bill that embraces more than one subject; and
- Require that the subject be clearly expressed in the bill’s title.

The memorial also states that it supersedes all previous memorials and current resolutions applying to Congress for a single-subject amendment and, if passed, will revoke, withdraw, nullify, and supersede all such memorials and resolutions as though they had never been passed.

If the memorial is used for any purpose other than calling a convention to propose a single-subject amendment to the Constitution, the memorial is revoked and treated as though it was never passed.

¹⁰ FLA. CONST. art. III, s. 6.

¹¹ National Conference of State Legislatures, “*State Constitutional Provisions that Limit Bills to One Subject*” (*Single Subject Requirement*). E-mail and attachment dated February 4, 2014, (on file with the Senate Committee on Judiciary).

¹² H.R. 2113 and S. 1664. H.R. 2113 is currently pending in the Constitution and Civil Justice Subcommittee in the House Judiciary Committee and S. 1664 has been referred to the Senate Committee on Rules and Administration. At this time, neither bill has received a committee hearing. Phone conversations conducted February 5, 2014, with the House Constitution Civil Justice Subcommittee and Senate Committee on Rules and Administration.

¹³ The Library of Congress website, Thomas. <http://thomas.loc.gov/cgi-bin/bdquery/D?d112:1:./temp/~bdTBk0:@@X/home/LegislativeData.php?n=BSS;c=112>; <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:SN03359:@@L&summ2=m&#status>. (last visited on February 5, 2014).

If this memorial is passed by the Legislature and at least 33 other states pass a similar or identical memorial or resolution calling on Congress to call a single-subject amendments convention, then under Article V of the U.S. Constitution, Congress is obligated to call the convention.

While the constitutional amendment process involves two separate steps, the proposal and its ratification, this memorial only makes application for an amendments convention and has no control over the outcome of the convention. Therefore, there is no guarantee that the proposed language will eventually be agreed upon or ratified by the states. If the amendments convention is called and the language is later ratified by the requisite number of states, it will become an amendment to the U.S. Constitution. The amendment will state, "Congress shall pass no bill, and no bill shall become law, which embraces more than one subject, that subject to be clearly expressed in the bill's title."

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:

If an Article V amendments convention is called at some point in the future, the state may be responsible for the costs of sending delegates to the convention. Whether Congress or the state would be responsible for related expenses for the convention is not a settled issue at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because an Article V amendments convention has never been conducted, what might actually occur procedurally or substantively is not known.

Diverse scholars have raised, but have not necessarily answered, many questions regarding the nature of an amendments convention. Some of those issues involve, in part:

- To what extent Congress would establish the framework for the convention;
- Whether the scope of the convention is limited in its focus or may be expanded to include other topics;
- Whether the states have any constitutional authority over the convention once it is convened;
- Whether the role of Congress is to summon, convene, define, and administer the convention; or
- How convention delegates will be apportioned among the states and whether it might occur in a manner similar to the Electoral College.¹⁴

Congressional legislation was introduced between 1973 and 1992, in anticipation of an amendments convention being convened, which endeavored to develop a procedural framework that would address the issues raised above and similar issues. None of the legislation passed both Houses of Congress.¹⁵

VIII. Statutes Affected:

None.

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.

¹⁴ See the sources cited in footnotes 3 and 8 for an in-depth analysis of the issues.

¹⁵ Neale, *supra* note 3, at 26.

By Senator Simpson

18-00478-14

2014368__

1 Senate Memorial

2 A memorial to the Congress of the United States,
3 urging Congress to call a convention for the purpose
4 of proposing an amendment to the Constitution of the
5 United States to provide that every law enacted by
6 Congress shall embrace only one subject, which shall
7 be clearly expressed in its title.
8

9 WHEREAS, each measure before a legislative body should pass
10 on its own merits without depending on legislative support for
11 other unrelated measures to achieve the required number of votes
12 for passage, and

13 WHEREAS, a single-subject constitutional provision
14 addresses this concern by prohibiting a legislative body from
15 enacting a law that embraces more than one subject, and

16 WHEREAS, 41 of the 50 states, including Florida, have a
17 single-subject provision in their respective state
18 constitutions, and the legislatures and citizens of these states
19 have benefited from a single-subject requirement, and

20 WHEREAS, the United States Constitution is the supreme law
21 of the United States of America, touching the lives of every
22 citizen in the several states, but is missing this important
23 provision, and

24 WHEREAS, our great country is deep in debt and Congress is
25 currently searching for a solution, and

26 WHEREAS, a federal single-subject amendment would provide
27 the means to limit pork barrel spending, control the phenomenon
28 of legislating through riders, limit omnibus legislation
29 produced by logrolling, prevent public surprise, and increase

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2014368__

30 the institutional accountability of Congress and its members,
31 and

32 WHEREAS, it is Florida's hope and desire that Congress will
33 be able to conduct its business in a more productive, efficient,
34 transparent, and less acrimonious way with a single-subject
35 requirement, and

36 WHEREAS, Article V of the United States Constitution makes
37 provision for amending the Constitution on the application of
38 the legislatures of two-thirds of the several states, calling a
39 convention for proposing amendments that shall be valid to all
40 intents and purposes if ratified by the legislatures of three-
41 fourths of the several states or by conventions in three-fourths
42 thereof, as the one or the other mode of ratification may be
43 proposed by Congress, NOW, THEREFORE,

44

45 Be It Resolved by the Legislature of the State of Florida:

46

47 That the Legislature of the State of Florida, with all due
48 respect, does hereby make application to the Congress of the
49 United States pursuant to Article V of the Constitution of the
50 United States to call a convention for the sole purpose of
51 proposing an amendment to the Constitution of the United States
52 to provide:

53 Congress shall pass no bill, and no bill shall become
54 law, which embraces more than one subject, that
55 subject to be clearly expressed in the bill's title.

56 BE IT FURTHER RESOLVED that this memorial supersedes all
57 previous memorials and concurrent resolutions applying to the
58 Congress of the United States to call a convention for the

18-00478-14

2014368__

59 purpose of proposing a single-subject amendment to the
60 Constitution of the United States and that such previous
61 memorials and resolutions be hereby revoked and withdrawn,
62 nullified, and superseded to the same effect as if they had
63 never been passed.

64 BE IT FURTHER RESOLVED that this memorial is revoked and
65 withdrawn, nullified, and superseded to the same effect as if it
66 had never been passed, and be retroactive to the date of
67 passage, if it is used for the purpose of calling a convention
68 or used in support of conducting a convention to amend the
69 Constitution of the United States for any purpose other than
70 requiring that every law enacted by Congress embrace only one
71 subject, which shall be clearly expressed in the title.

72 BE IT FURTHER RESOLVED that copies of this memorial be
73 dispatched to the President of the United States, to the
74 President of the United States Senate, to the Speaker of the
75 United States House of Representatives, and to each member of
76 the Florida delegation to the United States Congress.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/14

Meeting Date

Topic Article II Convention

Bill Number JM 368 (if applicable)

Name Ivan Chiplinsky

Amendment Barcode (if applicable)

Job Title Union Boilermaker

Address PO BOX 181223

Phone (850) 702-3720

Street

TALLAHASSEE

FL

32318

City

State

Zip

E-mail triad2@yahoo.com

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

Representing myself

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-11-14

Meeting Date

Topic ARTICLE V CONVENTION

Bill Number SM 368
(if applicable)

Name RONALD COLEMAN

Amendment Barcode _____
(if applicable)

Job Title RETIRED

Address 5369 High Colony DR.

Phone 850-877-2326

Street

TAILO HASSER FL 32317

City

State

Zip

E-mail REC247@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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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)

2/11/14

Meeting Date

Topic Article V Convention

Bill Number SM 36B (if applicable)

Name Keith Dunn

Amendment Barcode (if applicable)

Job Title Field Coordinator

Address 4211 NW 170th St

Phone 352-316-2444

Street

Newberry

FL

32669

City

State

Zip

E-mail keithsdunn@yahoo.com

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

Representing myself

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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2/11/2014

Meeting Date

Topic ARTICLE V. CONVENTION

Bill Number SM 308
(if applicable)

Name PETER J. RIBAUDO

Amendment Barcode _____
(if applicable)

Job Title RETIRED

Address 1781 COPPERFIELD CIR
Street

Phone 850-765-2244

TALLAHASSEE FL. 32312
City State Zip

E-mail MARYLUEIRA@COMCAST-NEFLA

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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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)

2/11/14
Meeting Date

Topic Single Subject-Title Amendment *Article V Convention* Bill Number SM 368
(if applicable)

Name W. Spider Webb Jr Amendment Barcode _____
(if applicable)

Job Title CEO & Founder

Address 267 John Knox Rd Suite 100 Tallahassee ³²³⁰³ Phone 850-694-2607
Street City State Zip E-mail spiderw@SingleSubjectAmendment.com

Speaking: For Against Information

Representing Single Subject Amendment, a Super PAC

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)

2/18/14

Meeting Date

Topic _____

Bill Number 368
(if applicable)

Name Tom Nelson

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1722 Pickens Circle

Phone 850-420-2531

Street

Baker

FL

33537

City

State

Zip

E-mail tomnelson1066@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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 448

INTRODUCER: Senator Evers

SUBJECT: Threatened Use of Force

DATE: February 8, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 448 amends Florida’s self-defense laws in ch. 776, F.S. The self-defense laws regulate a person’s right to use force in self-defense and provide that a person is immune from civil actions and criminal prosecutions for the lawful use of force. The self-defense laws in ch. 776, F.S., do not expressly regulate mention the idea of using the use of threats of force in self-defense. This bill expressly authorizes a person to threaten the use of force in situations where the person may lawfully use actual force in self-defense. Additionally, the bill extends the immunity protections in existing law for the lawful use of force to a person who lawfully uses threats of force in self-defense.

In recent years, defendants have been convicted of aggravated assault for threatening to use force (e.g., displaying a firearm, firing a “warning shot,” etc.) and sentenced to mandatory minimum terms of imprisonment pursuant to the 10-20-Life law. In some cases, the defendant unsuccessfully argued self-defense.

II. Present Situation:

Aggravated Assault

Assault, a second degree misdemeanor¹ is defined as an intentional, unlawful threat by word or act to do violence to another person, coupled with an apparent ability to do so, followed by an act which creates a well-founded fear in the other person that violence is imminent.²

¹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

² Section 784.011(1), F.S.

Aggravated assault, a third degree felony,³ is an assault:

- With a deadly weapon without intent to kill; or
- With an intent to commit a felony.⁴

The 10-20-Life Law

Section 775.087, F.S., often referred to as the “10-20-Life” law, requires a judge to sentence a person convicted of specified offenses to a minimum term of imprisonment if, while committing the offense, the person possessed or discharged a firearm or destructive device.⁵ Under the 10-20-Life law, a person convicted of aggravated assault must be sentenced to:

- A minimum term of imprisonment of 3 years if the person possessed a firearm or destructive device during commission of the offense;
- A minimum term of imprisonment of 20 years if the person discharged a firearm or destructive device during commission of the offense; or
- A minimum term of imprisonment of between 25 years and life in prison if, during commission of the offense, the person discharged a firearm or destructive device which resulted in death or great bodily harm.⁶

Self-defense

The “Castle” Concept

Section 776.013, F.S., absolves a person of a duty to retreat before using deadly force if the person knows or reasonably believes that an unlawful and forcible entry of a dwelling, residence, or occupied vehicle was occurring or had occurred.⁷ This provision appears to codify and expand what constitutes a “castle” under the common law. Under the common law “Castle Doctrine,” a “castle” was limited to a person’s home.

Section 776.013(4), F.S., creates a presumption that a person intends to commit an unlawful act using force or violence when that person unlawfully and forcibly enters another person’s dwelling, residence, or occupied vehicle. Similarly, s. 776.013(1), F.S., creates a presumption that the person using deadly, defensive force has a reasonable fear of imminent peril of death or great bodily harm.

³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

⁴ Section 784.021, F.S.

⁵ The terms “firearm” and “destructive device” are defined in accordance with s. 790.001, F.S.

⁶ Section 775.087(2)(a)1., 2., and 3., F.S.

⁷ A dwelling is defined as: “a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.” Section 776.013(5)(a), F.S. A residence is defined as “a dwelling in which a person resides, even temporarily, or visits as an invited guest.” Section 776.013(5)(b), F.S. A vehicle is defined as “a motorized or non-motorized conveyance intended to transport people or property.” Section 776.013(5)(c), F.S. In addition to extending the concept of a home to other places of shelter, s. 776.013(3), F.S., extends the right to “stand your ground” beyond a place of habitation altogether provided that a person is attacked while he or she is in a place where he or she has a right to be and is not engaged in unlawful activity.

The presumption that a person intends to commit an unlawful act does not apply if the person against whom force is used:

- Has the right to enter the place, including as an owner or lessee, and if he or she is not subject to a court-ordered injunction or “no contact” order.
- Has custody of and is in the process of legally removing a child or grandchild.
- Is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle for that purpose.
- Is a law enforcement officer acting pursuant to his or her official duties.

Self-defense and Defense of Others (Outside the “Castle”)

Section 776.012, F.S., relieves a person of a duty to retreat before using non-deadly force when the person reasonably believes that the force is needed for defense against a person’s imminent use of unlawful force. Deadly force is permitted when the person defends himself or herself or another person under a reasonable belief that deadly force is needed to prevent imminent great bodily harm or death or to prevent the perpetrator from committing a forcible felony.⁸

Self-defense and Defense of Property

Section 776.031, F.S., authorizes a person to use non-deadly force to protect personal property and real property other than a dwelling. Additionally, the provision absolves a person of a duty to retreat and justifies the use of deadly force if the person reasonably believes deadly force is necessary to prevent the commission of a forcible felony.⁹

Limitations on Self-defense Claims by Aggressors

A person who is in the process of committing or escaping after committing a forcible felony is precluded from claiming a justifiable use of force.¹⁰

The defense is also not available to a person who otherwise qualifies but initially provokes the use of force against himself or herself, unless:

The force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and has exhausted every reasonable means other than the use of force which is likely to result in death or great bodily harm; or

- The person physically withdraws in good faith and clearly indicates the desire to withdraw, but the assailant continues or resumes the use of force.¹¹

Immunities and Defenses to Legal Actions

A person who uses force as authorized under the Stand Your Ground law is immune from criminal prosecution and any civil action based on the use of force. Immunity from criminal

⁸ Section 776.012, F.S.

⁹ A forcible felony is defined to include the following offenses: “treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.” Section 776.08, F.S.

¹⁰ Section 776.041(1), F.S.

¹¹ Section 776.041(2)(a) and (b), F.S.

prosecution includes immunity from being arrested, detained in custody, and charged or prosecuted.¹² A defendant to a civil action based on a use of force is entitled to reasonable attorney's fees, court costs, lost income and all expenses related to the defense of the action if the defendant is immune from criminal prosecution for the use of force.¹³

Case Law

Actual Use of Force vs. Threatened Use of Force

The above-listed provisions of ch. 776, F.S., expressly address a person's actual use of force, not a person's threatened use of force. While some courts have recognized that a threatened use of force, the firing of a warning shot, is an actual use of force,¹⁴ the statutes do not clearly indicate this.

In recent years, there have been cases in which persons have been convicted of aggravated assault for threatening to use force (e.g., displaying a firearm, firing a "warning shot," etc.) and have been sentenced to mandatory minimum terms of imprisonment pursuant to the 10-20-Life law.¹⁵ In some of these cases, the defendant unsuccessfully argued self-defense.¹⁶ Specifying that the justifications in ch. 776, F.S., apply to threatened use of force may clarify the issue.

III. Effect of Proposed Changes:

SB 448 amends Florida's self-defense law in ch. 776, F.S. The bill expressly authorizes a person to threaten the use of force in self-defense in situations where the actual use of force is lawful under existing law. Additionally, the bill extends the immunity protections in existing law for the lawful use of force in self-defense to persons who threaten the use of force in self-defense.

The bill also contains the following legislative findings and intent:

- People have been criminally prosecuted and sentenced to mandatory minimum terms of imprisonment pursuant to the 10-20-Life law, for threatening to use force in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used;
- Criminal and civil immunity are extended to those who threaten to use force if made in a manner and under circumstances that would have been immune under ch. 776, F.S., had force actually been used;

¹² Section 776.032(1), F.S.

¹³ Section 776.032(3), F.S.

¹⁴ See, e.g., *Hosnedl v. State*, 2013 WL 5925402, 404-405 (Fla. 4th DCA 2013) in which a weapon was arguably accidentally discharged; *Stewart v. State*, 672 So.2d 865, 867-868 (Fla. 2nd DCA 1996)(the mere display of a gun without more constitutes non-deadly force); and *Miller v. State*, 613 So.2d 530, 531 (Fla. 3rd DCA 1993)(firing a firearm in the air, even as a so-called "warning shot," constitutes as a matter of law the use of deadly force).

¹⁵ For example, 53 year old Orville Wollard was charged with aggravated assault with a deadly weapon after firing a warning shot into a wall in response to his daughter's boyfriend's aggressive behavior towards his daughter. The Defendant alleged that his daughter's boyfriend had physically attacked him earlier that day and, upon returning to the Defendant's house, shoved his daughter and punched a hole in the wall). The defendant claimed self-defense but was convicted and sentenced to 20-years pursuant to the 10-20-Life law. <http://famm.org/orville-lee-wollard/> (last visited on November 20, 2013); <http://www.theledger.com/article/20090619/NEWS/906195060> .

¹⁶ *Id.*

- People who threaten to use force in a manner and under circumstances that are justifiable under ch. 776, F.S., may not be sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S.; and
- Defendants sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S., for threatening to use force in a manner and under circumstances justifiable under ch. 776, F.S., are encouraged to apply for executive clemency.

The bill takes effect upon becoming a law.

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 Office of the State Courts Administrator indicates that to the extent that people are being prosecuted for threatening to use force in legitimate self-defense, this bill may reduce judicial workload. However, impact is likely insignificant.¹⁷

The Department of Corrections may realize a reduction in beds allocated to inmates convicted of aggravated assault if there are fewer convictions due to successful claims of immunity or self-defense.

VI. Technical Deficiencies:

None.

¹⁷ Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 448* (December 30, 2013).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 776.012, 776.013, 776.031, 776.032, 776.041, and 776.051.

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.



899892

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/11/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 49 and 50
insert:

Section 2. Paragraph (a) of subsection (2) and paragraph (a) of subsection (3) of section 775.087, Florida Statutes, is amended to read:

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

(2)(a)1. Any person who is convicted of a felony or an attempt to commit a felony, regardless of whether the use of a



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12 | weapon is an element of the felony, and the conviction was for:
13 | a. Murder;
14 | b. Sexual battery;
15 | c. Robbery;
16 | d. Burglary;
17 | e. Arson;
18 | ~~f. Aggravated assault;~~
19 | f.g. Aggravated battery;
20 | g.h. Kidnapping;
21 | h.i. Escape;
22 | i.j. Aircraft piracy;
23 | j.k. Aggravated child abuse;
24 | k.l. Aggravated abuse of an elderly person or disabled
25 | adult;
26 | l.m. Unlawful throwing, placing, or discharging of a
27 | destructive device or bomb;
28 | m.n. Carjacking;
29 | n.o. Home-invasion robbery;
30 | o.p. Aggravated stalking;
31 | p.q. Trafficking in cannabis, trafficking in cocaine,
32 | capital importation of cocaine, trafficking in illegal drugs,
33 | capital importation of illegal drugs, trafficking in
34 | phencyclidine, capital importation of phencyclidine, trafficking
35 | in methaqualone, capital importation of methaqualone,
36 | trafficking in amphetamine, capital importation of amphetamine,
37 | trafficking in flunitrazepam, trafficking in gamma-
38 | hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
39 | trafficking in Phenethylamines, or other violation of s.
40 | 893.135(1); or



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41 ~~q.f.~~ Possession of a firearm by a felon
42
43 and during the commission of the offense, such person actually
44 possessed a "firearm" or "destructive device" as those terms are
45 defined in s. 790.001, shall be sentenced to a minimum term of
46 imprisonment of 10 years, except that a person who is convicted
47 for ~~aggravated assault~~, possession of a firearm by a felon, or
48 burglary of a conveyance shall be sentenced to a minimum term of
49 imprisonment of 3 years if such person possessed a "firearm" or
50 "destructive device" during the commission of the offense.
51 However, if an offender who is convicted of the offense of
52 possession of a firearm by a felon has a previous conviction of
53 committing or attempting to commit a felony listed in s.
54 775.084(1)(b)1. and actually possessed a firearm or destructive
55 device during the commission of the prior felony, the offender
56 shall be sentenced to a minimum term of imprisonment of 10
57 years.

58 2. Any person who is convicted of a felony or an attempt to
59 commit a felony listed in sub-subparagraphs (a)1.a.-~~p.f.~~,
60 regardless of whether the use of a weapon is an element of the
61 felony, and during the course of the commission of the felony
62 such person discharged a "firearm" or "destructive device" as
63 defined in s. 790.001 shall be sentenced to a minimum term of
64 imprisonment of 20 years.

65 3. Any person who is convicted of a felony or an attempt to
66 commit a felony listed in sub-subparagraphs (a)1.a.-~~p.f.~~,
67 regardless of whether the use of a weapon is an element of the
68 felony, and during the course of the commission of the felony
69 such person discharged a "firearm" or "destructive device" as



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70 defined in s. 790.001 and, as the result of the discharge, death
71 or great bodily harm was inflicted upon any person, the
72 convicted person shall be sentenced to a minimum term of
73 imprisonment of not less than 25 years and not more than a term
74 of imprisonment of life in prison.

75 (3)(a)1. Any person who is convicted of a felony or an
76 attempt to commit a felony, regardless of whether the use of a
77 firearm is an element of the felony, and the conviction was for:

- 78 a. Murder;
- 79 b. Sexual battery;
- 80 c. Robbery;
- 81 d. Burglary;
- 82 e. Arson;
- 83 ~~f. Aggravated assault;~~
- 84 ~~f.g.~~ Aggravated battery;
- 85 ~~g.h.~~ Kidnapping;
- 86 ~~h.i.~~ Escape;
- 87 ~~i.j.~~ Sale, manufacture, delivery, or intent to sell,
88 manufacture, or deliver any controlled substance;
- 89 ~~j.k.~~ Aircraft piracy;
- 90 ~~k.l.~~ Aggravated child abuse;
- 91 ~~l.m.~~ Aggravated abuse of an elderly person or disabled
92 adult;
- 93 ~~m.n.~~ Unlawful throwing, placing, or discharging of a
94 destructive device or bomb;
- 95 ~~n.o.~~ Carjacking;
- 96 ~~o.p.~~ Home-invasion robbery;
- 97 ~~p.q.~~ Aggravated stalking; or
- 98 ~~q.r.~~ Trafficking in cannabis, trafficking in cocaine,



899892

99 capital importation of cocaine, trafficking in illegal drugs,
100 capital importation of illegal drugs, trafficking in
101 phencyclidine, capital importation of phencyclidine, trafficking
102 in methaqualone, capital importation of methaqualone,
103 trafficking in amphetamine, capital importation of amphetamine,
104 trafficking in flunitrazepam, trafficking in gamma-
105 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
106 trafficking in Phenethylamines, or other violation of s.
107 893.135(1);

108
109 and during the commission of the offense, such person possessed
110 a semiautomatic firearm and its high-capacity detachable box
111 magazine or a machine gun as defined in s. 790.001, shall be
112 sentenced to a minimum term of imprisonment of 15 years.

113 2. Any person who is convicted of a felony or an attempt to
114 commit a felony listed in subparagraph (a)1., regardless of
115 whether the use of a weapon is an element of the felony, and
116 during the course of the commission of the felony such person
117 discharged a semiautomatic firearm and its high-capacity box
118 magazine or a "machine gun" as defined in s. 790.001 shall be
119 sentenced to a minimum term of imprisonment of 20 years.

120 3. Any person who is convicted of a felony or an attempt to
121 commit a felony listed in subparagraph (a)1., regardless of
122 whether the use of a weapon is an element of the felony, and
123 during the course of the commission of the felony such person
124 discharged a semiautomatic firearm and its high-capacity box
125 magazine or a "machine gun" as defined in s. 790.001 and, as the
126 result of the discharge, death or great bodily harm was
127 inflicted upon any person, the convicted person shall be



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128 sentenced to a minimum term of imprisonment of not less than 25
129 years and not more than a term of imprisonment of life in
130 prison.

131
132 ===== T I T L E A M E N D M E N T =====

133 And the title is amended as follows:

134 Delete line 3

135 and insert:

136 providing legislative findings and intent; amending s.
137 775.087, F.S.; removing aggravated assault from the
138 list of offenses that qualify for certain minimum
139 mandatory sentences; amending s.



266424

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/11/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment

Between lines 65 and 66
insert:

Section 7. Section 776.052, Florida Statutes, is created to
read:

776.052 Threatened use of force.-

When a person may lawfully use force in self-defense, the
discharge of a firearm as a warning and without the intent to
cause harm and without causing harm to another is a threat to
use force, not the use of deadly force.



174960

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/11/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

1 **Senate Substitute for Amendment (266424) (with title**
2 **amendment)**

3
4 Delete lines 53 - 131

5 and insert:

6 person.-

7 (1) A person is justified in using force, except deadly
8 force, or threatening to use force against another when and to
9 the extent that the person reasonably believes that such conduct
10 is necessary to defend himself or herself or another against the
11 other's imminent use of unlawful force. However, a person is



174960

12 justified in using or threatening to use ~~the use of~~ deadly force
13 and does not have a duty to retreat if:

14 ~~(a)(1)~~ He or she reasonably believes that using or
15 threatening to use such force is necessary to prevent imminent
16 death or great bodily harm to himself or herself or another or
17 to prevent the imminent commission of a forcible felony; or

18 ~~(b)(2)~~ Under those circumstances permitted pursuant to s.
19 776.013.

20 (2) When a person may lawfully use force in self-defense,
21 the discharge of a firearm as a warning and without the intent
22 to cause harm and without causing harm to another is a threat to
23 use force, not the use of deadly force.

24 Section 3. Subsections (1), (2), and (3) of section
25 776.013, Florida Statutes, are amended to read:

26 776.013 Home protection; use or threatened use of deadly
27 force; presumption of fear of death or great bodily harm.—

28 (1) A person is presumed to have held a reasonable fear of
29 imminent peril of death or great bodily harm to himself or
30 herself or another when using or threatening to use defensive
31 force that is intended or likely to cause death or great bodily
32 harm to another if:

33 (a) The person against whom the defensive force was used or
34 threatened was in the process of unlawfully and forcefully
35 entering, or had unlawfully and forcibly entered, a dwelling,
36 residence, or occupied vehicle, or if that person had removed or
37 was attempting to remove another against that person's will from
38 the dwelling, residence, or occupied vehicle; and

39 (b) The person who uses or threatens to use defensive force
40 knew or had reason to believe that an unlawful and forcible



174960

41 entry or unlawful and forcible act was occurring or had
42 occurred.

43 (2) The presumption set forth in subsection (1) does not
44 apply if:

45 (a) The person against whom the defensive force is used or
46 threatened has the right to be in or is a lawful resident of the
47 dwelling, residence, or vehicle, such as an owner, lessee, or
48 titleholder, and there is not an injunction for protection from
49 domestic violence or a written pretrial supervision order of no
50 contact against that person; or

51 (b) The person or persons sought to be removed is a child
52 or grandchild, or is otherwise in the lawful custody or under
53 the lawful guardianship of, the person against whom the
54 defensive force is used or threatened; or

55 (c) The person who uses or threatens to use defensive force
56 is engaged in an unlawful activity or is using the dwelling,
57 residence, or occupied vehicle to further an unlawful activity;
58 or

59 (d) The person against whom the defensive force is used or
60 threatened is a law enforcement officer, as defined in s.
61 943.10(14), who enters or attempts to enter a dwelling,
62 residence, or vehicle in the performance of his or her official
63 duties and the officer identified himself or herself in
64 accordance with any applicable law or the person using or
65 threatening to use force knew or reasonably should have known
66 that the person entering or attempting to enter was a law
67 enforcement officer.

68 (3) A person who is not engaged in an unlawful activity and
69 who is attacked in any other place where he or she has a right



174960

70 to be has no duty to retreat and has the right to stand his or
71 her ground and use or threaten to use ~~meet force with~~ force,
72 including deadly force if he or she reasonably believes it is
73 necessary to do so to prevent death or great bodily harm to
74 himself or herself or another or to prevent the commission of a
75 forcible felony.

76 Section 4. Section 776.031, Florida Statutes, is amended to
77 read:

78 776.031 Use or threatened use of force in defense of
79 property ~~others~~.—A person is justified in using ~~the use of~~
80 force, except deadly force, or threatening to use force against
81 another when and to the extent that the person reasonably
82 believes that such conduct is necessary to prevent or terminate
83 the other's trespass on, or other tortious or criminal
84 interference with, either real property other than a dwelling or
85 personal property, lawfully in his or her possession or in the
86 possession of another who is a member of his or her immediate
87 family or household or of a person whose property he or she has
88 a legal duty to protect. However, a ~~the~~ person is justified in
89 using ~~the use of~~ deadly force only if he or she

90
91
92 ===== T I T L E A M E N D M E N T =====

93 And the title is amended as follows:

94 Delete line 6

95 and insert:

96 of force; providing that the discharge of a firearm in
97 certain circumstances is not the use of deadly force;
98 amending s. 776.013, F.S.; applying



219972

LEGISLATIVE ACTION

Senate	.	House
Comm: PEND	.	
02/11/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 187 and 188

insert:

Section 8. Section 776.09, Florida Statutes, is created to read:

776.09 .-Notwithstanding the eligibility requirements pursuant to s. 943.0585(2), a person who has an information, indictment, or other charging document either not filed or dismissed by the state attorney, or dismissed by the court because it was found that the person acted in lawful self-



219972

12 defense pursuant to the provisions related to the justifiable
13 use of force in ch. 776, is eligible to apply for and receive a
14 certificate of eligibility for expunction under s. 943.0585.
15 This section does not confer any right to the expunction of a
16 criminal history record, and any request for expunction of a
17 criminal history record may be denied at the discretion of the
18 court.

19 Section 9. Subsection (5) of section 943.0585, Florida
20 Statutes, is renumbered as subsection (6), respectively, and
21 subsection (5) is added to that section, to read:

22 943.0585 Court-ordered expunction of criminal history
23 records.—The courts of this state have jurisdiction over their
24 own procedures, including the maintenance, expunction, and
25 correction of judicial records containing criminal history
26 information to the extent such procedures are not inconsistent
27 with the conditions, responsibilities, and duties established by
28 this section. Any court of competent jurisdiction may order a
29 criminal justice agency to expunge the criminal history record
30 of a minor or an adult who complies with the requirements of
31 this section. The court shall not order a criminal justice
32 agency to expunge a criminal history record until the person
33 seeking to expunge a criminal history record has applied for and
34 received a certificate of eligibility for expunction pursuant to
35 subsection (2). A criminal history record that relates to a
36 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
37 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
38 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
39 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
40 any violation specified as a predicate offense for registration



219972

41 as a sexual predator pursuant to s. 775.21, without regard to
42 whether that offense alone is sufficient to require such
43 registration, or for registration as a sexual offender pursuant
44 to s. 943.0435, may not be expunged, without regard to whether
45 adjudication was withheld, if the defendant was found guilty of
46 or pled guilty or nolo contendere to the offense, or if the
47 defendant, as a minor, was found to have committed, or pled
48 guilty or nolo contendere to committing, the offense as a
49 delinquent act. The court may only order expunction of a
50 criminal history record pertaining to one arrest or one incident
51 of alleged criminal activity, except as provided in this
52 section. The court may, at its sole discretion, order the
53 expunction of a criminal history record pertaining to more than
54 one arrest if the additional arrests directly relate to the
55 original arrest. If the court intends to order the expunction of
56 records pertaining to such additional arrests, such intent must
57 be specified in the order. A criminal justice agency may not
58 expunge any record pertaining to such additional arrests if the
59 order to expunge does not articulate the intention of the court
60 to expunge a record pertaining to more than one arrest. This
61 section does not prevent the court from ordering the expunction
62 of only a portion of a criminal history record pertaining to one
63 arrest or one incident of alleged criminal activity.
64 Notwithstanding any law to the contrary, a criminal justice
65 agency may comply with laws, court orders, and official requests
66 of other jurisdictions relating to expunction, correction, or
67 confidential handling of criminal history records or information
68 derived therefrom. This section does not confer any right to the
69 expunction of any criminal history record, and any request for



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70 expunction of a criminal history record may be denied at the
71 sole discretion of the court.

72 (5) Notwithstanding the eligibility requirements pursuant to s.
73 943.0585(2), a person who has an information, indictment, or
74 other charging document either not filed or dismissed by the
75 state attorney, or dismissed by the court because it was found
76 that the person acted in lawful self-defense pursuant to the
77 provisions related to the justifiable use of force in ch. 776,
78 is eligible to apply for and receive a certificate of
79 eligibility for expunction under s. 943.0585. This subsection
80 does not confer any right to the expunction of a criminal
81 history record, and any request for expunction of a criminal
82 history record may be denied at the discretion of the court.

83
84 ===== T I T L E A M E N D M E N T =====

85 And the title is amended as follows:

86 Delete line 22

87 and insert:

88 officer; creating s. 776.09, F.S.; providing that a
89 person is eligible to apply for and receive a
90 certificate of eligibility for expunction,
91 notwithstanding the eligibility requirements, if the
92 charging document in the case is not filed or is
93 dismissed because it is found that the person acted in
94 lawful self-defense pursuant to the provisions related
95 to the justifiable use of force in ch. 776; amending
96 s. 943.0585, F.S.; providing that a person is eligible
97 to apply for and receive a certificate of eligibility
98 for expunction, notwithstanding the eligibility



219972

99 requirements, if the charging document in the case is
100 not filed or is dismissed because it is found that the
101 person acted in lawful self-defense pursuant to the
102 provisions related to the justifiable use of force in
103 ch. 776; providing an effective date.

By Senator Evers

2-00388B-14

2014448__

1 A bill to be entitled
2 An act relating to the threatened use of force;
3 providing legislative findings and intent; amending s.
4 776.012, F.S.; applying provisions relating to the use
5 of force in defense of persons to the threatened use
6 of force; amending s. 776.013, F.S.; applying
7 presumption relating to the use of deadly force to the
8 threatened use of deadly force in the defense of a
9 residence and similar circumstances; applying
10 provisions relating to such use of force to the
11 threatened use of force; amending s. 776.031, F.S.;
12 applying provisions relating to the use of force in
13 defense of property to the threatened use of force;
14 amending s. 776.032, F.S.; applying immunity
15 provisions that relate to the use of force to the
16 threatened use of force; amending s. 776.041, F.S.;
17 applying provisions relating to the use of force by an
18 aggressor to the threatened use of force; providing
19 exceptions; amending s. 776.051, F.S.; providing that
20 a person is not justified in the threatened use of
21 force to resist an arrest by a law enforcement
22 officer; providing an effective date.

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

25
26 Section 1. (1) The Legislature finds that persons have been
27 criminally prosecuted and have been sentenced to mandatory
28 minimum terms of imprisonment pursuant to s. 775.087, Florida
29 Statutes, for threatening to use force in a manner and under

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2014448__

30 circumstances that would have been justifiable under chapter
31 776, Florida Statutes, had force actually been used.

32 (2) The Legislature intends to:

33 (a) Provide criminal and civil immunity to those who
34 threaten to use force if the threat was made in a manner and
35 under circumstances that would have been immune under chapter
36 776, Florida Statutes, had force actually been used.

37 (b) Clarify that those who threaten to use force may claim
38 self-defense if the threat was made in a manner and under
39 circumstances that would have been justifiable under chapter
40 776, Florida Statutes, had force actually been used.

41 (c) Ensure that those who threaten to use force in a manner
42 and under circumstances that are justifiable under chapter 776,
43 Florida Statutes, are not sentenced to a mandatory minimum term
44 of imprisonment pursuant to s. 775.087, Florida Statutes.

45 (d) Encourage those who have been sentenced to a mandatory
46 minimum term of imprisonment pursuant to s. 775.087, Florida
47 Statutes, for threatening to use force in a manner and under
48 circumstances that are justifiable under chapter 776, Florida
49 Statutes, to apply for executive clemency.

50 Section 2. Section 776.012, Florida Statutes, is amended to
51 read:

52 776.012 Use or threatened use of force in defense of
53 person.—A person is justified in using or threatening to use
54 force, except deadly force, against another when and to the
55 extent that the person reasonably believes that such conduct is
56 necessary to defend himself or herself or another against the
57 other's imminent use of unlawful force. However, a person is
58 justified in using or threatening to use ~~the use of~~ deadly force

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59 and does not have a duty to retreat if:

60 (1) He or she reasonably believes that using or threatening
61 to use such force is necessary to prevent imminent death or
62 great bodily harm to himself or herself or another or to prevent
63 the imminent commission of a forcible felony; or

64 (2) Under those circumstances permitted pursuant to s.
65 776.013.

66 Section 3. Subsections (1), (2), and (3) of section
67 776.013, Florida Statutes, are amended to read:

68 776.013 Home protection; use or threatened use of deadly
69 force; presumption of fear of death or great bodily harm.—

70 (1) A person is presumed to have held a reasonable fear of
71 imminent peril of death or great bodily harm to himself or
72 herself or another when using or threatening to use defensive
73 force that is intended or likely to cause death or great bodily
74 harm to another if:

75 (a) The person against whom the defensive force was used or
76 threatened was in the process of unlawfully and forcefully
77 entering, or had unlawfully and forcibly entered, a dwelling,
78 residence, or occupied vehicle, or if that person had removed or
79 was attempting to remove another against that person's will from
80 the dwelling, residence, or occupied vehicle; and

81 (b) The person who uses or threatens to use defensive force
82 knew or had reason to believe that an unlawful and forcible
83 entry or unlawful and forcible act was occurring or had
84 occurred.

85 (2) The presumption set forth in subsection (1) does not
86 apply if:

87 (a) The person against whom the defensive force is used or

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2014448__

88 threatened has the right to be in or is a lawful resident of the
89 dwelling, residence, or vehicle, such as an owner, lessee, or
90 titleholder, and there is not an injunction for protection from
91 domestic violence or a written pretrial supervision order of no
92 contact against that person; or

93 (b) The person or persons sought to be removed is a child
94 or grandchild, or is otherwise in the lawful custody or under
95 the lawful guardianship of, the person against whom the
96 defensive force is used or threatened; or

97 (c) The person who uses or threatens to use defensive force
98 is engaged in an unlawful activity or is using the dwelling,
99 residence, or occupied vehicle to further an unlawful activity;
100 or

101 (d) The person against whom the defensive force is used or
102 threatened is a law enforcement officer, as defined in s.
103 943.10(14), who enters or attempts to enter a dwelling,
104 residence, or vehicle in the performance of his or her official
105 duties and the officer identified himself or herself in
106 accordance with any applicable law or the person using or
107 threatening to use force knew or reasonably should have known
108 that the person entering or attempting to enter was a law
109 enforcement officer.

110 (3) A person who is not engaged in an unlawful activity and
111 who is attacked in any other place where he or she has a right
112 to be has no duty to retreat and has the right to stand his or
113 her ground and use or threaten to use ~~meet force with force~~,
114 including deadly force if he or she reasonably believes it is
115 necessary to do so to prevent death or great bodily harm to
116 himself or herself or another or to prevent the commission of a

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117 forcible felony.

118 Section 4. Section 776.031, Florida Statutes, is amended to
119 read:

120 776.031 Use or threatened use of force in defense of
121 property ~~others~~.—A person is justified in using or threatening
122 to use ~~the use of~~ force, except deadly force, against another
123 when and to the extent that the person reasonably believes that
124 such conduct is necessary to prevent or terminate the other's
125 trespass on, or other tortious or criminal interference with,
126 either real property other than a dwelling or personal property,
127 lawfully in his or her possession or in the possession of
128 another who is a member of his or her immediate family or
129 household or of a person whose property he or she has a legal
130 duty to protect. However, a ~~the~~ person is justified in using or
131 threatening to use ~~the use of~~ deadly force only if he or she
132 reasonably believes that such conduct ~~force~~ is necessary to
133 prevent the imminent commission of a forcible felony. A person
134 does not have a duty to retreat if the person is in a place
135 where he or she has a right to be.

136 Section 5. Subsections (1) and (2) of section 776.032,
137 Florida Statutes, are amended to read:

138 776.032 Immunity from criminal prosecution and civil action
139 for justifiable use or threatened use of force.—

140 (1) A person who uses or threatens to use force as
141 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
142 in ~~using~~ such conduct ~~force~~ and is immune from criminal
143 prosecution and civil action for the use or threatened use of
144 such force, unless the person against whom force was used or
145 threatened is a law enforcement officer, as defined in s.

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146 943.10(14), who was acting in the performance of his or her
147 official duties and the officer identified himself or herself in
148 accordance with any applicable law or the person using or
149 threatening to use force knew or reasonably should have known
150 that the person was a law enforcement officer. As used in this
151 subsection, the term "criminal prosecution" includes arresting,
152 detaining in custody, and charging or prosecuting the defendant.

153 (2) A law enforcement agency may use standard procedures
154 for investigating the use or threatened use of force as
155 described in subsection (1), but the agency may not arrest the
156 person for using or threatening to use force unless it
157 determines that there is probable cause that the force that was
158 used or threatened was unlawful.

159 Section 6. Subsection (2) of section 776.041, Florida
160 Statutes, is amended to read:

161 776.041 Use or threatened use of force by aggressor.—The
162 justification described in the preceding sections of this
163 chapter is not available to a person who:

164 (2) Initially provokes the use or threatened use of force
165 against himself or herself, unless:

166 (a) Such force or threat of force is so great that the
167 person reasonably believes that he or she is in imminent danger
168 of death or great bodily harm and that he or she has exhausted
169 every reasonable means to escape such danger other than the use
170 or threatened use of force which is likely to cause death or
171 great bodily harm to the assailant; or

172 (b) In good faith, the person withdraws from physical
173 contact with the assailant and indicates clearly to the
174 assailant that he or she desires to withdraw and terminate the

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2014448__

175 use or threatened use of force, but the assailant continues or
176 resumes the use or threatened use of force.

177 Section 7. Subsection (1) of section 776.051, Florida
178 Statutes, is amended to read:

179 776.051 Use or threatened use of force in resisting arrest
180 or making an arrest or in the execution of a legal duty;
181 prohibition.-

182 (1) A person is not justified in the use or threatened use
183 of force to resist an arrest by a law enforcement officer, or to
184 resist a law enforcement officer who is engaged in the execution
185 of a legal duty, if the law enforcement officer was acting in
186 good faith and he or she is known, or reasonably appears, to be
187 a law enforcement officer.

188 Section 8. 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)

2/11/14
Meeting Date

Topic Threatened Use of Force

Bill Number 448
(if applicable)

Name Sheriff John Rutherford

Amendment Barcode 899892
(if applicable)

Job Title Sheriff

Address 501 E. Bay St.
Street

Phone 904-630-5898

JAX FL 32202
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/3/2014

Meeting Date

Topic Stand Your Ground

Bill Number 448
(if applicable)

Name Honorable Stacy Scott

Amendment Barcode 899892
(if applicable)

Job Title Public Defender, 8th Judicial Circuit

Address 35 North Main Street
Street

Phone 352.338.7370

Gainesville Florida 32601
City *State* *Zip*

E-mail scotts@pdo8.org

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.

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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)

A-174960
A-899892
THRASHER

2/11/14
Meeting Date

Substitute Amendment

Topic MARION HAMMER

Bill Number to SB-448
(if applicable)

Name _____

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone _____

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.

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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)

2/11/14

Meeting Date

Topic Threatened Use of Force Bill Number SB 448
(if applicable)

Name Lorelei Bowden Jacobs Amendment Barcode 174960
(if applicable)

Job Title Legislative Coordinator

Address 2008 E. 8th Avenue Phone 813 363-0375

Street

Tampa FL 33601

City

State

Zip

E-mail LBowden@
HCSO.tampa.fl.us

Speaking: For Against Information

Representing Hillsborough County Sheriff's Office

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)

2-11-14

Meeting Date

Topic Sub. Amend. to Therapeutic Use Force Bill Number 174960 448
(if applicable)

Name John H. Burkhardt Amendment Barcode 174960
(if applicable)

Job Title Sheriff

Address 521 E. Bay St Phone 904 630-5898
Street

TAX FL 32202 E-mail _____
City State Zip

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.

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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)

2/11/14
Meeting Date

Topic

Bill Number ~~448~~ 448
(if applicable)

Name Brad King

Amendment Barcode ~~264421~~
174960
(if applicable)

Job Title STATE ATTORNEY, 5th CIRCUIT, PRESIDENT FPAA

Address 110 NW 1ST Ave, Suite 5000
Street
Ocala FL 34475
City State Zip

Phone 352-671-5914

E-mail

Speaking: For Against Information

Representing FL Prosecuting Attorneys 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.

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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)

2/11/14
Meeting Date

Topic Threatened Use of Force

Bill Number 448
(if applicable)

Name Sheriff John Rutherford

Amendment Barcode 219972
(if applicable)

Job Title _____

Address 501 E. Bay Street
Street

Phone 904-630-5898

Jacksonville FL 32202
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2-11-14

Meeting Date

Topic Threatened use of force

Bill Number SB 448
(if applicable)

Name Tolan H. Rutherford

Amendment Barcode _____
(if applicable)

Job Title Sheriff; Duval Co.

Address 501 E. Bay St.

Phone 904-630-5898

Street

Tarponville FL 32209

City

State

Zip

E-mail _____

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.

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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)

2-11-14

Meeting Date

Topic Defensive Display

Bill Number SD448
(if applicable)

Name Eric J. Friday

Amendment Barcode _____
(if applicable)

Job Title _____

Address 541 E Monroe St
Street

Phone 904-353-7733

Jacksonville FL 32202
City State Zip

E-mail eFriday@ericFriday.com

Speaking: For Against Information

Representing Florida Curry

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

AND
AMENDMENTS

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/11/14

Date

SB-448

Bill Number

Name MARION HAMMER

Phone 222-9518

Address P.O. Box 1387

E-mail

Street

TALLAHASSEE

FL

32302

Job Title

City

State

Zip

Speaking: For Against Information

Appearing at request of Chair

Subject

Representing NRA & UNIFIED SPORTSMEN OF FLORIDA

Lobbyist registered with Legislature: Yes

No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/11/2014

Meeting Date

Topic ARTICLE 5 CONVENTION

Bill Number SM368
(if applicable)

Name MARY L RIBAUDO

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1781 COPPERFIELD CIRCLE

Phone 850-765-2244

Street

PALM HARBOR

FL

32312

E-mail MARYLUSLA@COMCAST.NET

City

State

Zip

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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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)

2-11-14
Meeting Date

Topic Sentencing

Bill Number SB 448
(if applicable)

Name Greg Newburn

Amendment Barcode _____
(if applicable)

Job Title Florida Project Director

Address PO Box 142933
Street
Gainesville, FL 32614
City State Zip

Phone 352.682.5542

E-mail gnewburn@fammm.org

Speaking: For Against Information

Representing Families Against Mandatory Minimums

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)

2/11/2014

Meeting Date

Topic _____

Bill Number 448
(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.

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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)

11 Feb 14

Meeting Date

Topic Threatened Use of Force

Bill Number 448
(if applicable)

Name Barney Bishop III

Amendment Barcode _____
(if applicable)

Job Title President & CEO

Address 204 S. Monroe St, Ste. 201

Phone 907-3436

Street

Tall

City

FL

State

32301

Zip

E-mail barney@barneybishop.com

Speaking: For Against Information

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2/3/2014

Meeting Date

Topic Stand Your Ground

Bill Number 448
(if applicable)

Name Honorable Stacy Scott

Amendment Barcode _____
(if applicable)

Job Title Public Defender, 8th Judicial Circuit

Address 35 North Main Street
Street
Gainesville Florida 32601
City State Zip

Phone 352.338.7370

E-mail scotts@pdo8.org

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)

2/11/2014
Meeting Date

Topic Threatened Use of Force

Bill Number 448
(if applicable)

Name Jorge Chamizo

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 108 South Monroe St

Phone (850)681-0029

Street
Tallahassee, FL 32301
City State Zip

E-mail jorge@flapartners.com

Speaking: For Against Information

Representing FLA Association of Criminal Defense Lawyers

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)

2/3/2014

Meeting Date

Topic Stand Your Ground

Bill Number 448
(if applicable)

Name Honorable Stacy Scott

Amendment Barcode 219972
(if applicable)

Job Title Public Defender, 8th Judicial Circuit

Address 35 North Main Street
Street
Gainesville Florida 32601
City *State* *Zip*

Phone 352.338.7370

E-mail scotts@pdo8.org

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SM 476

INTRODUCER: Senator Hays

SUBJECT: Amendments to the Constitution of the United States

DATE: February 10, 2014

REVISED: 02/11/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Favorable
2.			RC	

I. Summary:

SM 476 is a state application to the United States Congress calling upon Congress to convene an Article V constitutional amendments convention for the sole purposes of proposing amendments to the U.S. Constitution to: impose fiscal restraints on the federal government; limit the power and jurisdiction of the federal government; and limit the terms of office for federal officials and members of Congress. Each of these three proposed amendment categories is severable from one another and may be counted individually to satisfy the requirement that 34 state legislatures apply to Congress to call a constitutional convention.

This memorial is revoked and withdrawn, nullified, and superseded as if it had never been passed, if it is used for the purpose of calling a convention or used in support of conducting a convention to amend the U.S. Constitution for any purpose other than imposing fiscal restraints on the federal government, limiting the power and jurisdiction of the federal government, or limiting the terms of office for federal officials and members of Congress.

This memorial serves as a continuing application, in accordance with the requirements for calling a constitutional convention, until the legislatures of at least two-thirds of states also make applications on one or more of the three proposed amendment categories listed in the memorial.

II. Present Situation:

Article V of the U.S. Constitution provides a mechanism for proposing amendments to the U.S. Constitution. Article V of the U.S. Constitution, states:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall proposed Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof,

as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent shall be deprived of its equal Suffrage in the Senate.

Article V of the U.S. Constitution means that amendments to the Constitution may be proposed in one of two ways. First, an amendment may be proposed upon a two-thirds vote of the U.S. House of Representatives and the Senate.¹ Secondly, upon the applications of two-thirds (34) of the state legislatures, Congress must call an amendments convention.

Congress is authorized to choose the method states may ratify proposed amendments. First, Congress may require that amendments be ratified by ad hoc conventions in three-fourths (38) of the states for the specific purpose of the consideration of amendments. Secondly, Congress may require that an amendment be ratified by three-fourths (38) of the legislatures of the states.²

Article X of the U.S. Constitution provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Article X draws the line between the powers of states and the power of the federal government. The volume of litigation on the scope of federal power suggests that the exact line between state and federal power is not clear. However, if Congress legislates upon a subject that is exclusively within its jurisdiction and constitutional control, and manifests its intention to deal with the subject in full, then any state law is preempted to the extent it is contrary to federal law.³

III. Effect of Proposed Changes:

This memorial is a state application to the United States Congress calling upon Congress to convene an Article V constitutional amendments convention for the sole purposes of proposing amendments to the U.S. Constitution to: impose fiscal restraints on the federal government; limit the power and jurisdiction of the federal government; and limit the terms of office for federal officials and members of Congress. Each of these three proposed amendment categories is severable from one another and may be counted individually towards the requirement that 34 states apply to Congress to call to satisfy the requirement that 34 state legislatures apply to Congress to call a constitutional convention.

This memorial is revoked and withdrawn, nullified, and superseded as if it had never been passed, if it is used for the purpose of calling a convention or used in support of conducting a convention to amend the U.S. Constitution for any purpose other than imposing fiscal restraints on the federal government, limiting the power and jurisdiction of the federal government, or limiting the terms of office for federal officials and members of Congress.

This memorial serves as a continuing application, in accordance with the requirements for calling a constitutional convention, until the legislatures of at least two-thirds of states also make applications on one or more of the three proposed amendment categories listed in the memorial

¹ See 16 AM. JUR. 2D CONSTITUTIONAL LAW s. 15.

² Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (Jul. 9, 2012) p. 2, <http://www.fas.org/sgp/crs/misc/R42589.pdf>

³ See 16A AM. JUR. 2D CONSTITUTIONAL LAW s. 232.

Copies of the memorial are to be distributed to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because an Article V amendments convention has never been conducted, what might actually occur procedurally or substantively is unclear.

Diverse scholars have raised, but not necessarily answered, many questions regarding the nature of an amendments convention. Some of those issues involve, in part:

- To what extent Congress would establish the framework for the convention;
- Whether the scope of the convention is limited in its focus or expanded to include other topics;
- Whether the states have any constitutional authority over the convention once it is convened;

- Whether it is the role of Congress to summon, convene, define, and administer the convention; or
- How convention delegates will be apportioned among the states and whether it might occur in a manner similar to the Electoral College.⁴

Congressional legislation was introduced between 1973 and 1992, in anticipation of an amendments convention being convened, that endeavored to develop a procedural framework that would address the issues raised above and similar issues. None of the legislation passed both Houses of Congress.⁵

VIII. Statutes Affected:

None.

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.

⁴ See general, Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (Jul. 9, 2012), <http://www.fas.org/sgp/crs/misc/R42589.pdf>. See also, James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 HARV. J.L & PUB. POL'Y 1005, 1009-1010 (2007).

⁵ Neale, at 26.

By Senator Hays

11-00350A-14

2014476__

Senate Memorial

1
2 A memorial to the Congress of the United States,
3 applying to Congress to call a convention for the sole
4 purpose of proposing amendments to the Constitution of
5 the United States which impose fiscal restraints on
6 the Federal Government, limit the power and
7 jurisdiction of the Federal Government, and limit the
8 terms of office for federal officials and members of
9 Congress.

10
11 WHEREAS, the Founders of the United States of America
12 provided in the Constitution of the United States for a limited
13 Federal Government of express enumerated powers, and

14 WHEREAS, the Tenth Amendment to the Constitution
15 specifically provides that all powers not delegated to the
16 Federal Government nor prohibited by the Constitution to the
17 states are reserved to the states, respectively, or to the
18 people, and

19 WHEREAS, for many decades, this balance of power was
20 generally respected and followed by those occupying positions of
21 authority in the Federal Government, and

22 WHEREAS, as federal power has expanded over the past
23 decades, federal spending has exponentially increased to the
24 extent that it is now decidedly out of balance in relation to
25 actual revenues or when comparing the ratio of accumulated
26 public debt to the nation's gross domestic product, and

27 WHEREAS, in 2013, the Federal Government's accumulated
28 public debt exceeded \$17 trillion, which is more than double
29 that in 2006, and

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2014476__

30 WHEREAS, projections of federal deficit spending in the
31 coming decades demonstrate that this power shift and its fiscal
32 impacts are continuing and pose serious threats to the freedom
33 and financial security of the American people and future
34 generations, and

35 WHEREAS, the Founders of the United States of America
36 provided a procedure in Article V of the Constitution to amend
37 the Constitution on application of two-thirds of the several
38 states, calling a convention for proposing amendments that will
39 be valid to all intents and purposes if ratified by the
40 legislatures of three-fourths of the several states, or by
41 conventions in three-fourths thereof, as one or the other mode
42 of ratification may be proposed by Congress, and

43 WHEREAS, it is a fundamental duty of state legislatures to
44 support, protect, and defend the liberty of the American people,
45 including generations yet to come, by asserting their solemn
46 duty and responsibility under the Constitution to call for a
47 convention under Article V for proposing amendments to the
48 Constitution to reverse and correct the ominous path that the
49 country is now on and to restrain future expansions and abuses
50 of federal power, NOW, THEREFORE,

51
52 Be It Resolved by the Legislature of the State of Florida:

53
54 (1) That the Legislature of the State of Florida does
55 hereby make application to Congress pursuant to Article V of the
56 Constitution of the United States to call an Article V
57 convention for the sole purpose of proposing amendments to the
58 Constitution of the United States which:

11-00350A-14

2014476__

59 (a) Impose fiscal restraints on the Federal Government.

60 (b) Limit the power and jurisdiction of the Federal
61 Government.

62 (c) Limit the terms of office for federal officials and
63 members of Congress.

64 (2) That these three proposed amendment categories are
65 severable from one another and may be counted individually
66 toward the required two-thirds number of applications made by
67 the state legislatures for the calling of an Article V
68 convention.

69 (3) That this memorial is revoked and withdrawn, nullified,
70 and superseded to the same effect as if it had never been
71 passed, and retroactive to the date of passage, if it is used
72 for the purpose of calling a convention or used in support of
73 conducting a convention to amend the Constitution of the United
74 States for any purpose other than imposing fiscal restraints on
75 the Federal Government, limiting the power and jurisdiction of
76 the Federal Government, or limiting the terms of office for
77 federal officials and members of Congress.

78 (4) That this application constitutes a continuing
79 application in accordance with Article V of the Constitution of
80 the United States until the legislatures of at least two-thirds
81 of the several states have made applications on one or more of
82 the three proposed amendment categories listed above.

83 BE IT FURTHER RESOLVED that copies of this memorial be
84 dispatched to the President of the United States, to the
85 President of the United States Senate, to the Speaker of the
86 United States House of Representatives, and to each member of
87 the Florida delegation to the United States Congress.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/14

Meeting Date

Topic Article V Convention

Bill Number SM 476
(if applicable)

Name Keith Dunn

Amendment Barcode _____
(if applicable)

Job Title Field Coordinator

Address 4211 NW 170th St

Phone 352-316-2444

Street

Newberry FL 32669

City

State

Zip

E-mail keithsdunn@yahoo.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.

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)

2-11-14

Meeting Date

Topic ARTICLE V CONVENTION

Bill Number SM 476
(if applicable)

Name RONALD COLEMAN

Amendment Barcode _____
(if applicable)

Job Title RETIRED

Address 5369 High Colony Drive

Phone 850-877-2326

Street

Tallahassee FL 32317

City

State

Zip

E-mail RCC 247@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.

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)

02/11/2014

Meeting Date

Topic ARTICLE 5 CONVENTION

Bill Number SM 476
(if applicable)

Name MARY RIBAUDO

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1781 COPPERFIELD CIRCLE
Street

Phone 850-765-2244

TALLAHASSEE FL 32312
City State Zip

E-mail MARYLUERA@COMCAST.NET

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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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 / 11 / 2014

Meeting Date

Topic _____

Bill Number 476
(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
APPEARANCE RECORD

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

2/11/2014
Meeting Date

Topic ARTICLE V CONVENTION

Bill Number ~~SM 476~~ SM 476
(if applicable)

Name PETER J. RIBAUDO

Amendment Barcode _____
(if applicable)

Job Title RETIRED

Address 1781 COPPERFIELD CIR

Phone 850-765-2244

TALLAHASSEE FL. 32312
Street City State Zip

E-mail MARYLUERA@CONCONST.NEJ

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)

2/11/14
Meeting Date

Topic Constitution Amendments

Bill Number 476
(if applicable)

Name Tom Nelson

Amendment Barcode _____
(if applicable)

Job Title N/A

Address 1722 Pickens Circle

Phone 850-420-2531

Street
Baker FL 32531
City *State* *Zip*

E-mail tomnelson1066@gmail.com

Speaking: For Against Information

Representing N/A

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)

Meeting Date _____

Topic Convention of States

Bill Number SM 476
(if applicable)

Name W Spider Webb Jr

Amendment Barcode _____
(if applicable)

Job Title CEO

Address 267 John Knox Rd Ste 100

Phone 850-694-2607

Street
Mulhannock FL 32312
City State Zip

E-mail ~~WSpiderWebb@~~
spiderw@SingleSubject
amendment.com

Speaking: For Against Information

Representing Single Subject amendment

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)

2/11/14
Meeting Date

Topic Article IV Convention

Bill Number SM 476
(if applicable)

Name Ivan Chiplinsky

Amendment Barcode _____
(if applicable)

Job Title Union Boilermaker

Address PO Box 181223
Street

Phone (850) 702-3720

Tallahassee FL 32318
City State Zip

E-mail trid2@yahoo.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.

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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)

22/11/14
Meeting Date

Topic SM 476 - Article V

Bill Number SM 476
(if applicable)

Name Judy Heutger

Amendment Barcode _____
(if applicable)

Job Title _____

Address 420 NW Firfly Way

Phone 850 929 4716

Madison
City State Zip

E-mail hentgesx7@embargo.mail.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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 592

INTRODUCER: Criminal Justice Committee

SUBJECT: Criminal Justice

DATE: February 10, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Sumner</u>	<u>Cannon</u>		CJ SPB 7006 as Introduced
1. <u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting

I. Summary:

SB 592 amends s. 944.70, F.S., to include additional conditions for releasing inmates from incarceration. The bill requires the Department of Corrections (DOC) to verify the authenticity of court orders that change a person's release date to an earlier date before releasing the person from incarceration, unless the order received from the clerk of court is accompanied by a confirmation from the issuing judge or authorized designee.

II. Present Situation:

Current Law Relating to When DOC May Release an Inmate

Under current law authorizes the DOC to release an inmate only after it receives the court's written order from the Clerk of Court. The Clerk of Court is the custodian of the judicial record. There are three ways the Clerk of Court receives sentencing and modification orders:

- From a non-secure drop box or mail.
- Secured direct pick up from the Courts.
- In Court directly from the judge.¹

Section 944.70, F.S., provides that persons who are convicted of a crime committed on or after October 1, 1983, but before January 1, 1994, may be released from incarceration only upon the following conditions:

- Expiration of the person's sentence;
- Expiration of the person's sentence as reduced by accumulated gain-time;
- As directed by an executive order granting clemency;
- Attaining the provisional release date;

¹ PowerPoint presentation from Florida Court Clerks & Comptrollers.

- Placement in a conditional release program pursuant to s. 947.1405, F.S.; or
- Granting of control release pursuant to s. 947.146, F.S.

A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only upon the following conditions:

- Expiration of the person's sentence;
- Expiration of the person's sentence as reduced by accumulated meritorious or incentive gain-time;
- As directed by an executive order granting clemency;
- Placement in a conditional release program pursuant to s. 947.1405, F.S., or a conditional medical release program pursuant to s. 947.149, F.S.; or
- Granting of control release, including emergency control release, pursuant to s. 947.146, F.S.²

Background on Recent Incidents Using Fraudulent Orders

In an e-mail dated July 2, 2013, Michael R. Ramage, General Counsel for the Florida Department of Law Enforcement (FDLE) notified DOC that inmates having long sentences had recently attempted to secure reduction of sentences through use of fraudulent court orders.³ He stated that the "scheme" involved preparation of legitimate-looking orders that are filed in the court and then presented to the Department of Corrections or others to secure a reduction of a sentence. He further stated that, in one case, an inmate was actually released.⁴ Though the inmate was captured, Ramage requested DOC's help in getting the word out and that "the best success in curbing this abuse is through greater awareness on everyone's part."⁵

In late August and September of 2013, Joseph Jenkins and Charles Walker were released from the Franklin County Correctional Institution after the Department of Corrections received fraudulent release documents from the Orange County Clerk of Court. The FDLE along with Bay County Sheriff's Office, Panama City Police Department, and the U.S. Marshals Service Task Force arrested both inmates on October 19, 2013.⁶ An FDLE investigation revealed that the release was part of a larger conspiracy involving six current and former inmates of the Department of Corrections.

In the meetings of the Senate Criminal Justice Committee on November 4, 2013 and the meeting of the Senate Appropriations Subcommittee on Criminal and Civil Justice on November 6, 2013, there was a briefing by FDLE, DOC, the Clerk of Courts and the State Attorneys on remedial actions that were taken based on the recent escapes and the use of fraudulent sentencing modification documents.

² Section 944.70(1)(b), F.S.

³ Correspondence between Florida Department of Law Enforcement staff and Senate Criminal Justice staff (July 2, 2014) (on file with the Senate Committee on Judiciary).

⁴ *Id.*

⁵ *Id.*

⁶ December 19, 2013 News Release, Florida Department of Law Enforcement.

The FDLE's Commissioner, Gerald Bailey, testified before the Senate that the release of the inmates continued to be part of an ongoing investigation. Bailey further testified that due to lack of good audit trails, the investigation is still underway to determine how the documents got to the Clerk's office. Bailey revealed that confidential sources, who were inmates, were saying the documents came from inside the prison. Bailey also stated that there was no evidence that any employees from the Orange County Clerk's Office were involved.⁷

Lee Adams, Chief of the Bureau of Admission and Release at the Department of Corrections gave a PowerPoint presentation on fraudulent court orders. During the presentation, Chief Adams stated that the fundamental duty of the DOC is to execute sentencing orders by calculating release dates. When the lawful sentence ends, the DOC no longer has the authority to hold the inmate and the inmate has a constitutional right to be at liberty. He stated that DOC's proof of lawful detention is based solely on the court's written order.

Chief Adams stressed that there is a presumption of validity of the Order on which the department relies. Adams explained that during the standard release process, there is a 180-day time period from the comprehensive record review, contact with a social service provider, and the final release phase. He explained that there is also an immediate release process that takes only 2 hours but with the same safeguards in place.

Since January 2010, Chief Adams reported that 61 life sentences for murder, attempted murder, or manslaughter were reduced or vacated. During FY 2012-13, more than 4,100 court orders were reduced or vacated. It was noted that DOC does not evaluate the legality of the order; however, it does recognize and seek clarification of discrepancies involving the factual record and internal inconsistencies within orders.

A PowerPoint presentation by the Florida Court Clerks and Comptrollers set forth its proposed strategies for fraud prevention in document processing. Its strategies are to:

- Establish a secure process for the delivery of documents between the Judge and the Clerk.
- Establish a secure location in a non-public work area to process documents.
- Establish a secure process for delivering or receiving documents from the State Attorney and local detention or jail facilities.⁸

An additional step in verification procedures also discussed included having the Clerk review Orders for unusual circumstances including unusual signatures, incorrect spellings, and incorrect court type or document style.

Statewide forms for notifying the Court, a uniform procedure for filing such notification forms, and an adoption of uniform procedure of notification to DOC of order verification were also proposed.

⁷ November 4, 2013 Senate Criminal Justice Committee and the November 6, 2013 Senate Appropriations Subcommittee on Criminal and Civil Justice.

⁸ Florida Court Clerks and Comptrollers, PowerPoint presentation, "Fraudulent Documents: Document Processing and Fraud Prevention Standards" (2013).

Recent Developments in E-Filing Court Documents

E-filing standards were mandated by the Supreme Court for filings in criminal cases beginning on February 3, 2014.⁹ The Supreme Court has begun discussions at the statewide level for judges to use the e-portal for their orders. This use of the e-portal would provide a method to authenticate judicial orders through secured electronic transmission from the Court.

III. Effect of Proposed Changes:

The bill amends s. 944.70, F.S., to include additional conditions for releasing inmates from incarceration. The bill requires the Department of Corrections (DOC) to verify the authenticity of court orders that change a person's release date to an earlier date before releasing the person from incarceration, unless the order received from the clerk of court is accompanied by a confirmation from the issuing judge or authorized designee.

The bill takes effect 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.

⁹ Electronic Filing of Criminal Cases in the Trial Courts of Florida via the Florida Courts E-Filing Portal, Admin. Order No. AOSC13-48 (Fla. September 27, 2013), available at: <http://www.floridasupremecourt.org/clerk/adminorders/2013/AOSC13-48.pdf#xml=http://199.242.69.43/texis/search/pdfhi.txt?query=AOSC13-48&pr=Florida+Supreme+Court&prox=page&rorder=1000&rprox=1000&rdfreq=500&rwfreq=500&rlead=1000&rdepth=0&sufs=2&order=r&cq=&id=5249aff617> (last visited February 4, 2014).

C. Government Sector Impact:

DOC may experience additional workload as a result of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 944.70 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.

By the Committee on Criminal Justice

591-00954-14

2014592__

1 A bill to be entitled
2 An act relating to criminal justice; amending s.
3 944.70, F.S.; requiring the Department of Corrections
4 to verify the authenticity of certain court orders
5 before releasing a person from incarceration;
6 providing an exception; providing an effective date.
7

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

10 Section 1. Subsection (3) is added to section 944.70,
11 Florida Statutes, to read:

12 944.70 Conditions for release from incarceration.—

13 (3) If a court order has the effect of changing a person's
14 release date to an earlier date, the department must verify the
15 authenticity of the order with the issuing judge before
16 releasing the person from incarceration unless the order
17 received from the clerk of court is accompanied by a
18 confirmation from the issuing judge or authorized designee
19 verifying the authenticity of the order.

20 Section 2. This act shall take effect July 1, 2014.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 620

INTRODUCER: Senator Detert

SUBJECT: Service of Process

DATE: February 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Favorable
2.			CA	

I. Summary:

The bill revises the procedures for serving process as follows:

- Authorizes a sheriff to charge a \$40 fee for each summons served instead of a \$40 fee for serving multiple summons at same time.
- Provides that if a sheriff relies on an affidavit from a levying creditor, the sheriff is immune from liability for the wrongful levy or distribution of the proceeds of an execution sale.
- Requires that the party requesting service of process or the process server file the return-of-service form instead of the person issuing the process.
- Adds a noncriminal violation punishable by a fine of up to \$1,000 for an employer, employee, or a representative or agent of the employer who refuses to accommodate service on an employee.
- Permits service of process on a corporation at any address where the registered agent, president, vice president, or other head of the corporation is located.

II. Present Situation:

Service of Process

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for execution of legal process. Chapter 48, F.S., provides that service of process may be served by the sheriff in the county where the person to be served is located.¹ The sheriff may appoint special process servers who meet specified statutory minimum requirements.² The chief judge of the circuit court may establish an approved list of certified process servers.³

¹ Section 48.021, F.S.

² *Id.*

³ Section 48.27, F.S.

Authorized process servers serve the complaint or petition on a defendant or a respondent in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant or respondent receives notice of the proceedings filed.⁴ Because strict compliance with all of the statutory requirements is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant or respondent.⁵

The law specifies the manner and methods that service of process must be executed by process servers. Service of original process and most witness subpoenas are made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any resident who is 15 years of age or older and informing the person of their contents.⁶ Each process server must document all service of process by placing the date and time of service and the process server's identification number and initials on the copy served.⁷ The person issuing the process is obligated to file the return of service form with the court to show that service was made.⁸

The sheriffs of all counties of the state in civil cases must charge fixed, nonrefundable fees for service of process.⁹ The sheriffs must charge \$40 for recording and serving each summons or writ of execution, except if duplicate process is to be served in the same action on the same person.¹⁰ This may occur, for example, when a defendant is sued both individually and in some representative capacity in the same action. In such an event, two summons are issued and served. Current law precludes the sheriff from charging for service of each summons served in such an event or for serving multiple individuals at the same time.¹¹

Sheriffs may levy upon or seize a person's assets to satisfy a judgment and sell those assets to pay the judgment when they are provided a writ of execution by the court.¹² The judgment creditor must provide an affidavit assuring the sheriff that the judgment debtor has clear title to an asset to be seized.¹³ However, there is no statutory requirement that the parties in interest direct the sheriff how to distribute the proceeds of sale.

Service on Employees and Businesses

Section 48.031, F.S., requires employers to allow a process server to serve an employee in a private area designated by an employer. However, the law does not specify a penalty for an employer who fails to permit such service.

⁴ *Vidal v. SunTrust Bank*, 41 So. 3d 401, 402-03 (Fla. 4th DCA 2010).

⁵ Section 48.031, F.S.; *Vidal*, at 402-04 (holding that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint which was served on the debtor rendered the service of the complaint defective).

⁶ Subsections 48.031(1) and (3), F.S.

⁷ Sections 48.29(6) and 48.031(5), F.S.

⁸ Section 48.031(5), F.S.

⁹ Section 30.231(1), F.S.

¹⁰ Section 30.231(1)(a), F.S.

¹¹ *Id.*

¹² See s. 30.30, F.S.

¹³ Section 56.27(4), F.S.

Service on Corporations

Section 48.081, F.S., provides that service of process on a corporation is made on the registered agent, president, vice president, or other head of the corporation, and in their absence, upon another officer, and in their absence, a director. Current law states that if the address *provided* for the registered agent, officer, director, or principal place of business is a residence or private mailbox, service of process may be made in accordance with the general procedures for serving process. Current law suggests that the address must be physically given in order to be used in the service of process.

III. Effect of Proposed Changes:

This bill revises the procedures relating to the service of legal process, such as complaints and subpoenas.

Sheriff's Fees for Service (Section 1)

The bill amends s. 30.231, F.S., which currently provides that when serving more than one process regarding the same action at one location, the sheriff is only entitled to one fee. The bill deletes this limitation, and allows the sheriff to charge \$40 per process served at the same time in the same cause of action. In effect, the sheriff may be paid multiple fees to serve a single person who is being sued in multiple capacities in one lawsuit.

Service on an Employee of a Business (Section 2)

Existing s. 48.031, F.S., requires an employer to permit service of process on an employee in a private area designated by the employer. The bill creates a noncriminal penalty¹⁴ punishable by a fine of up to \$1,000 for an employer or an agent who fails to comply with this requirement.

Filing of the Return of Service (Section 2)

The bill requires either the person requesting service or the person authorized to serve process to file the return of service with the court. Under existing law, the person issuing the process has this responsibility.

Service on corporation (Section 3)

Section 48.031(3)(b), F.S., currently provides that if the address *provided* for the registered agent, officer, director, or principal place of business is a residence or private mailbox, then service may be made by serving the registered agent, officer, or director in accordance with s. 48.031, F.S. The bill makes a minor substantive change to clarify that if the address for the registered agent, officer, director, or principal place of business is a residence or private mailbox, then service may be made by serving the registered agent, officer, or director in accordance with the general procedures for serving process.

¹⁴ A noncriminal violation is any offense punishable by nothing more than a fine, forfeiture, or other civil penalty, and does not constitute a crime. *State v. Knowles*, 625 So. 2d 88, 90 (Fla. 5th DCA 1993).

Sheriff Sales in Execution of Judgments (Section 4)

The bill amends s. 56.27, F.S., to provide that a sheriff is immune from liability for the wrongful levy or distribution of the proceeds of an execution sale, if the sheriff relied on an affidavit from a levying creditor.

The bill also provides that a sheriff may apply for instructions from the court if the sheriff is uncertain as to whom to disburse the proceeds of the sale of levied property. The sheriff may seek such instruction from the court that entered the judgment or the court in the jurisdiction where the levied property is located. The bill requires the sheriff to serve the application for instructions and the notice of hearing to the affected parties, who include the levying creditor, the judgment debtor, and any other parties identified in the affidavit.

Effective date (Section 5)

The bill provides 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:

The sheriff may be paid multiple fees to serve a single person who is being sued in multiple capacities in one lawsuit.

C. Government Sector Impact:

Sheriffs may receive additional fees for serving process in some instances.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 130.231, 48.031, 48.081, and 56.27.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Detert

28-00630A-14

2014620__

1 A bill to be entitled
2 An act relating to service of process; amending s.
3 30.231, F.S.; requiring sheriffs to charge a uniform
4 fee for service of process; providing that such
5 uniform fee does not include the cost of docketing;
6 amending s. 48.031, F.S.; requiring an employer to
7 allow an authorized individual to make service on an
8 employee in a private area designated by the employer;
9 providing a civil fine for employers who fail to
10 comply with the process; revising provisions relating
11 to substitute service if a specified number of
12 attempts of service have been made at a business that
13 is a sole proprietorship under certain circumstances;
14 requiring the person requesting service or the person
15 authorized to serve the process to file the return-of-
16 service form; amending s. 48.081, F.S.; revising a
17 provision related to service on a corporation;
18 amending s. 56.27, F.S.; providing that a sheriff may
19 rely on the affidavit submitted by the levying
20 creditor; authorizing a sheriff to apply for
21 instructions from the court regarding the distribution
22 of proceeds from the sale of a levied property;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (1) of section 30.231, Florida
28 Statutes, is amended to read:

29 30.231 Sheriffs' fees for service of summons, subpoenas,

28-00630A-14

2014620__

30 and executions.—

31 (1) The sheriffs of all counties of the state in civil
32 cases shall charge fixed, nonrefundable fees for ~~docketing and~~
33 service of process, according to the following schedule:

34 (a) All summons or writs except executions: \$40 for each
35 summons or writ to be served, ~~except when more than one summons~~
36 ~~or writ is issued at the same time out of the same cause of~~
37 ~~action to be served upon one person or defendant at the same~~
38 ~~time, in which case the sheriff shall be entitled to one fee.~~

39 (b) All writs except executions requiring a levy or seizure
40 of property: \$50 in addition to the \$40 fee as stated in
41 paragraph (a).

42 (c) Witness subpoenas: \$40 for each witness to be served.

43 (d) Executions:

44 1. Forty dollars for processing each writ of execution,
45 regardless of the number of persons involved.

46 2. Fifty dollars for each levy.

47 a. A levy is considered made when any property or any
48 portion of the property listed or unlisted in the instructions
49 for levy is seized, or upon demand of the sheriff the writ is
50 satisfied by the defendant in lieu of seizure. Seizure requires
51 that the sheriff take actual possession, if practicable, or,
52 alternatively, constructive possession of the property by order
53 of the court.

54 b. When the instructions are for levy upon real property, a
55 levy fee is required for each parcel described in the
56 instructions.

57 c. When the instructions are for levy based upon personal
58 property, one fee is allowed, unless the property is seized at

28-00630A-14

2014620__

59 different locations, conditional upon all of the items being
 60 advertised collectively and the sale being held at a single
 61 location. However, if the property seized cannot be sold at one
 62 location during the same sale as advertised, but requires
 63 separate sales at different locations, the sheriff may ~~is~~ then
 64 ~~authorized to~~ impose a levy fee for the property and sale at
 65 each location.

66 3. Forty dollars for advertisement of sale under process.

67 4. Forty dollars for each sale under process.

68 5. Forty dollars for each deed, bill of sale, or
 69 satisfaction of judgment.

70 Section 2. Paragraph (b) of subsection (1), paragraph (b)
 71 of subsection (2), and subsection (5) of section 48.031, Florida
 72 Statutes, are amended to read:

73 48.031 Service of process generally; service of witness
 74 subpoenas.—

75 (1)

76 (b) An employer ~~Employers~~, when contacted by an individual
 77 authorized to serve ~~make service of~~ process, shall allow ~~permit~~
 78 the authorized individual to serve an employee ~~make service on~~
 79 ~~employees~~ in a private area designated by the employer. An
 80 employer who fails to comply with this paragraph commits a
 81 noncriminal violation, punishable by a fine of up to \$1,000.

82 (2)

83 (b) Substitute service may be made on an individual doing
 84 business as a sole proprietorship at his or her place of
 85 business, during regular business hours, by serving the person
 86 in charge of the business at the time of service if two ~~or more~~
 87 attempts to serve the owner have been made at the place of

28-00630A-14

2014620__

88 business.

89 (5) A person serving process shall place, on the first page
90 of at least one of the processes served, the date and time of
91 service and his or her identification number and initials for
92 all service of process. The person serving process shall list on
93 the return-of-service form all initial pleadings delivered and
94 served along with the process. The person requesting service or
95 the person authorized to serve ~~issuing~~ the process shall file
96 the return-of-service form with the court.

97 Section 3. Paragraph (b) of subsection (3) of section
98 48.081, Florida Statutes, is amended to read:

99 48.081 Service on corporation.—

100 (3)

101 (b) If the address ~~provided~~ for the registered agent,
102 officer, director, or principal place of business is a residence
103 or private mailbox, service on the corporation may be made by
104 serving the registered agent, officer, or director in accordance
105 with s. 48.031.

106 Section 4. Subsection (5) of section 56.27, Florida
107 Statutes, is amended, and subsection (6) is added to that
108 section, to read:

109 56.27 Executions; payment of money collected.—

110 (5) A sheriff may rely on the affidavit submitted as
111 required under this section, and a sheriff paying money received
112 under an execution in accordance with the information contained
113 in the affidavit required under subsection (4) is not liable to
114 anyone for damages arising from a wrongful levy or wrongful
115 distribution of funds.

116 (6) A sheriff who is uncertain as to whom to disburse the

28-00630A-14

2014620__

117 proceeds from the sale of the levied property may apply for
118 instructions from:

119 (a) The court that entered the judgment that is the basis
120 of the judgment lien; or

121 (b) The appropriate court where the levied property was
122 located at the time of the levy,

123
124 if the sheriff serves, by process pursuant to chapter 48, by
125 certified mail, or by return receipt requested, a copy of his or
126 her application and the notice of hearing on the levying
127 creditor, the judgment debtor, and any other parties identified
128 in the affidavit.

129 Section 5. 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)

Feb-11th

Meeting Date

Topic Service of Process

Bill Number SB 620
(if applicable)

Name J.C. Canabal

Amendment Barcode _____
(if applicable)

Job Title Associate

Address 108 E Jefferson Street, suite B

Phone (954) 624-2114

Street

Tallahassee

FL

32301

E-mail JCarloC11@gmail.com

City

State

Zip

Speaking: For Against Information

Representing Florida Association of Professional Process Servers

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)

0/11/14
Meeting Date

Topic Service of Process

Bill Number SB620
(if applicable)

Name Keri Rayborn

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 1565
Street

Phone 850-524-2374

Tallahassee FL 32302
City State Zip

E-mail Keri@raybornconsultants.com

Speaking: For Against Information

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on General
Government
Banking and Insurance
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR NANCY C. DETERT

28th District

February 11, 2014

The Honorable Tom Lee
Chair
Senate Judiciary Committee
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chair:

Thank you for agreeing to hear Senate Bill 620-Service of Process, in the Judiciary Committee this morning.

I respectfully request that my aide, Charlie Anderson, be allowed to present my bill for me.

Sincerely,

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

Nancy C. Detert

NCD/ca

cc: Tom Cibula, Staff Director
Shirley Proctor, Administrative Assistant

REPLY TO:

- 417 Commercial Court, Suite D, Venice, Florida 34292 (941) 480-3547 FAX: (941) 480-3549
- 416 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

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 Judiciary

BILL: SM 658

INTRODUCER: Senator Stargel

SUBJECT: Balanced Federal Budget

DATE: February 10, 2014

REVISED: 02/11/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.			RC	

I. Summary:

SM 658 is an application to the United States Congress calling upon Congress to convene an Article V constitutional amendments convention. The convention would be limited to proposing an amendment to the Constitution which requires that, except in a national emergency, the total of all federal appropriations for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year, together with any related and appropriate fiscal restraints. This is commonly referred to as a balanced budget amendment.

The memorial provides that it may not be added to other application totals on any other subject calling for a constitutional convention in an effort to meet the requisite number of 34 applications needed to call a convention. It is to be a continuing application and supersedes all previous applications on the subject.

II. Present Situation:

Methods of Amending the U.S. Constitution

Article V of the United States Constitution provides two methods for proposing amendments to the Constitution. The first method authorizes Congress to propose amendments to the states which are approved by a two-thirds vote of both Houses of Congress.¹ Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.² Starting with the Bill of Rights in 1789, Congress used this method to submit 33 amendments to the states. Of those 33 proposals, 27 amendments to the Constitution were approved by the states.³

¹ U.S. CONST. art. V.

² U.S. National Archives and Records Administration, *The Constitutional Amendment Process*, <http://www.archives.gov/federal-register/constitution> (last visited February 4, 2014).

³ Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (July 9, 2012), <http://www.fas.org/sgp/crs/misc/R42589.pdf>.

The second method, which has never been used, requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures apply to Congress to call an amendments convention.⁴ Currently, 34 states would need to make applications to meet the two-thirds requirement to call an Article V Convention. Because an Article V amendments convention has never been conducted, what might actually occur procedurally or substantively is unclear.

Article V further provides that the amendments shall become a part of the Constitution when ratified by the Legislatures of three-fourths of the states or by conventions in three-fourths of the states. This would require ratification by 38 states. Because Article V provides that the amendments become valid when ratified by three-fourths of the legislatures or conventions “as the one or the other Mode of Ratification may be proposed by the Congress,” Congress may choose the method of ratification. With the exception of the 21st Amendment, which repealed the 18th Amendment and prohibition, Congress has sent all proposed amendments to the legislatures for ratification.⁵

It has become accepted procedure, although not stated in the Constitution, that Congress may set time limits on the ratification process and specify when an amendment must be ratified by the requisite number of states to become valid. With several amendments, Congress stated that ratification must occur within 7 years after their proposal to become effective.⁶ The U.S. Supreme Court, in *Dillon v. Gloss*, concluded that Congress does have the authority to determine what a reasonable time frame for ratification is, even though the Constitution is silent on the matter.⁷

Although no attempts to call an Article V Convention have ever been successful, two relatively recent attempts approached the requisite number of 34 applications to Congress. In 1969, a total of 33 states submitted applications for a convention to address U.S. Supreme Court decisions that dealt with voting districts and the apportionment of votes. The effort fell short of the total number required by one application. Several states later rescinded their applications and the call for a convention dissipated.⁸

In the second instance, and similar to this proposal, state legislatures made application to Congress to call an Article V Convention requesting a balanced budget amendment. In 1975, North Dakota was the first state to make application, followed by a succession of 30 other states over the years, ending with Missouri’s application in 1983 as the 32nd application. The effort fell short of the 34 applications to Congress by two states and again, interest in calling for a convention declined.⁹

In 1976, Florida adopted Senate Memorial 234 and House Memorial 2801, each calling for a convention for proposing an amendment that would require a balanced federal budget. In 1988,

⁴ U.S. CONST. art. V.

⁵ Neale, *supra*, note 3, at 22.

⁶ *Id.* at 2.

⁷ *Dillon v. Gloss*, 256 U.S. 368 (1921).

⁸ James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 HARV. J.L. & PUB. POL’Y 1005, 1009-1010 (2007).

⁹ *Id.* at 1010.

the Legislature adopted Senate Memorial 302, which, rather than call for a constitutional convention, urged Congress to propose an amendment to the U.S. Constitution requiring a federal balanced budget. In 2010, the Legislature passed SCR 10, which called for an amendments convention to propose amendments to provide for a balanced federal budget and limit Congress' ability to dictate to the states requirements for the expenditure of federal funds. None of these attempts was ultimately successful and no federal balanced budget amendment has been offered to the states for ratification.

Federal and State Balanced Budget Requirements

There is no requirement in the U.S. Constitution that the federal government must operate under a balanced federal budget. Florida, in contrast, is required to have a balanced budget and those provisions are set forth in both the State Constitution and statute. Article VII, section 1 states that "Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period." Similarly, s. 216.221(1), F.S., provides that "All appropriations shall be maximum appropriations, based upon the collection of sufficient revenues to meet and provide for such appropriations." The subsection also provides that it is the Governor's duty to ensure that "revenues collected will be sufficient to meet the appropriations and that no deficit occurs in any state fund."

According to the National Conference of State Legislatures, 45 states have some kind of a constitutional requirement for a balanced budget. In four states it is only a statutory requirement, while Vermont is the only state without any requirement for a balanced budget.¹⁰

Current Federal Financial Debt Information

On February 4, 2014, the Congressional Budget Office (CBO) released its report "*The Budget and Economic Outlook: 2014 to 2024*." Contained in that report is the following financial information from the CBO's Baseline Budget Projections and Federal Debt Projected in CBO's Baseline:

- The actual budget deficit for the U.S. Government for 2013 was \$680 billion.
- The actual debt held by the public for 2013 was \$11.982 trillion, which is the sum total of all previous annual deficits.
- The budget deficit will be \$514 billion and the debt held by the public will be \$12.717 trillion at the end of 2014.¹¹
- The Gross Federal Debt at the end of 2013 was \$16.717 trillion and the Gross Federal Debt for 2014 is projected to be \$17.694 trillion.¹²

¹⁰ E-mail from Todd Haggerty, NCSL Fiscal Affairs Program (February 3, 2014) (on file with the Senate Committee on Judiciary).

¹¹ Congressional Budget Office, Congress of the United States, *The Budget and Economic Outlook: 2014 To 2024* (2014), Congressional Budget Office, Table 1-2.

¹² *Id.*, at Table 1.3. The report, on p. 17, defines Gross Federal Debt as "Federal debt held by the public plus Treasury securities held by federal trust funds and other government accounts."

III. Effect of Proposed Changes:

Senate Memorial 658 is an application to Congress urging Congress to call a limited Article V Convention for the purpose of proposing an amendment to the U.S. Constitution that would, in the absence of a national emergency, specify that the total of all federal appropriations made by Congress for any fiscal year not exceed the total of all estimated federal revenues for that year, along with any related and appropriate fiscal restraints.

Senate Memorial 658 also provides that the application is to be considered as covering the same subject matter as other state applications calling for a federal balanced budget and is to be combined with those applications to reach the requisite 34 applications necessary to call an amendments convention. It may not be added for purposes of reaching the two-thirds total necessary to call a convention on any other topic. It is considered a continuing application and exists until the two-thirds total of applications on the same subject matter is reached. It supersedes all previous applications made by the Legislature on this balanced budget subject.

While the constitutional amendment process involves two separate steps, the proposal and its ratification, this memorial only makes application for an amendments convention and has no control over the outcome of the convention. Therefore, there is no guarantee that the proposed language would eventually be agreed upon or ratified by the states. If the amendments convention is called and the language is later ratified by the requisite number of states, it would become an amendment to the U.S. Constitution which would mandate that, in the absence of a national emergency, Congress may not pass a budget in which the appropriations exceed the estimated federal revenues for a fiscal year, together with any related and appropriate fiscal restraints.

If this proposed amendment is eventually ratified, the federal government would be required to drastically change its approach to fiscal policy. The fiscal impact would be felt significantly in the government and private sector, although it would be difficult to offer any measurable indication of what those results would be.

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:

If an Article V amendments convention is called at some point in the future, the state might be responsible for the costs of sending delegates to the convention. Whether Congress or the state would be responsible for related expenses for the convention is not a settled issue at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because an Article V amendments convention has never been conducted, what might actually occur procedurally or substantively is unclear.

Diverse scholars have raised, but not necessarily answered, many questions regarding the nature of an amendments convention. Some of those issues involve, in part:

- To what extent Congress would establish the framework for the convention;
- Whether the scope of the convention would be limited in its focus or may be expanded to include other topics;
- Whether the states have any constitutional authority over the convention once it is convened;
- Whether it is the role of Congress to summon, convene, define, and administer the convention; or
- How convention delegates will be apportioned among the states and whether it might occur in a manner similar to the Electoral College.¹³

Congressional legislation was introduced between 1973 and 1992, in anticipation of an amendments convention being convened, that endeavored to develop a procedural framework that would address the issues raised above and similar issues. None of the legislation passed both Houses of Congress.¹⁴

¹³ See the sources cited in footnotes 3 and 8 for an in-depth analysis of these issues.

¹⁴ Neale, *supra* note 3 at 26.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Stargel

15-00757-14

2014658__

1 Senate Memorial

2 A memorial to the Congress of the United States,
3 applying to Congress to call a convention for the sole
4 purpose of proposing an amendment to the Constitution
5 of the United States which requires a balanced federal
6 budget.

7
8 WHEREAS, the Legislature of the State of Florida passed
9 Senate Concurrent Resolution 10 on April 21, 2010, and

10 WHEREAS, Senate Concurrent Resolution 10 made application
11 to Congress to call a convention for proposing amendments
12 pursuant to Article V of the Constitution of the United States
13 for two purposes: to achieve and maintain a balanced federal
14 budget and to control the ability of Congress and federal
15 executive agencies to dictate to states requirements for the
16 expenditure of federal funds, and

17 WHEREAS, the Legislature of the State of Florida desires to
18 conform to the single subject applications from Alabama, Alaska,
19 Arkansas, Colorado, Delaware, Indiana, Iowa, Kansas, Maryland,
20 Michigan, Mississippi, Missouri, Nebraska, Nevada, New
21 Hampshire, New Mexico, North Carolina, Ohio, Pennsylvania, and
22 Texas and limit its application to Congress for the sole purpose
23 of proposing an amendment to the Constitution of the United
24 States to require a balanced federal budget, NOW, THEREFORE,

25
26 Be It Resolved by the Legislature of the State of Florida:

27
28 (1) That the Legislature of the State of Florida hereby
29 applies to Congress, under Article V of the Constitution of the

15-00757-14

2014658__

30 United States, to call a convention limited to proposing an
31 amendment to the Constitution requiring that, in the absence of
32 a national emergency, the total of all federal appropriations
33 made by the Congress for any fiscal year may not exceed the
34 total of all estimated federal revenues for that fiscal year,
35 together with any related and appropriate fiscal restraints.

36 (2) That this application is to be considered as covering
37 the same subject matter as the presently outstanding balanced
38 budget applications from other states and is to be aggregated
39 with the applications from those states for the purpose of
40 attaining the two-thirds number of states necessary to require
41 the calling of a convention, but may not be aggregated with
42 applications on any other subject calling for a constitutional
43 convention under Article V of the United States Constitution.

44 (3) That this application constitutes a continuing
45 application in accordance with Article V until the legislatures
46 of at least two-thirds of the states have made applications on
47 the same subject and supersedes all previous applications by
48 this Legislature on the same subject.

49 BE IT FURTHER RESOLVED that copies of this memorial be
50 dispatched to the President of the United States, to the
51 President of the United States Senate, to the Speaker of the
52 United States House of Representatives, and to each member of
53 the Florida delegation to the United States Congress.

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/11/2014
Meeting Date

Topic SM 658 / Balanced Budget Amend Bill Number SM 658
(if applicable)

Name Loren Enns Amendment Barcode _____
(if applicable)

Job Title Co-Founder BBA Task Force

Address 4944 Easter Circle Phone 407.937.9450
Street

Orlando, FL 32808 E-mail loren@operation
City State Zip bba4usa.org

Speaking: For Against Information

Representing Balanced Budget Amendment Task Force

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)

2/11/14
Meeting Date

Topic Article IV Convention

Bill Number SM 658
(if applicable)

Name Ivan Chiplinsky

Amendment Barcode _____
(if applicable)

Job Title Union Boilermaker

Address PO Box 181223

Phone (850) 702-3720

Street

Tallahassee

FL

32318

City

State

Zip

E-mail triad2y@yahoo.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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THE FLORIDA SENATE
APPEARANCE RECORD

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FEB 11, 2014

Meeting Date

Topic BBA

Bill Number 658
(if applicable)

Name HOW MARIN

Amendment Barcode _____
(if applicable)

Job Title I AM AMERICAN CEO

Address 5469 GROVE CROSSWYS BLVD
Street

Phone (321) 228 2800

OWDO FL
City State Zip

E-mail How@IAMAmerican.org

Speaking: For Against Information

Representing I AM AMERICAN

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)

2/11/14

Meeting Date

Topic Article V Convention

Bill Number SM 658
(if applicable)

Name Keith Dunn

Amendment Barcode _____
(if applicable)

Job Title Field Coordinator

Address 4211 NW 170th St

Phone 352-316-2444

Street

Newberry

City

FL

State

32669

Zip

E-mail keithsdunn@yahoo.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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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-11-2014
Meeting Date

Topic BALANCED BUDGET AMENDMENT

Bill Number SM 658
(if applicable)

Name KATHY GIBSON

Amendment Barcode _____
(if applicable)

Job Title LEGISLATIVE CO-ORDINATOR

Address 3411 SPOTTED FAWN DR.

Phone 407-963-4194

Street

ORLANDO

FL

32817

City

State

Zip

E-mail jeettomajaild@hotmail.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.

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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)

2-11-14

Meeting Date

Topic ARTICLE VI CONVENTION

Bill Number SM 658
(if applicable)

Name RONALD COLEMAN

Amendment Barcode _____
(if applicable)

Job Title RETIRED

Address 5369 High Colony Dr.

Phone 850-877-2326

Street

TALAHASSEE

FL

32317

City

State

Zip

E-mail RFC247@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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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)

2 111 12014

Meeting Date

Topic _____

Bill Number 658
(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.

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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)

02/11/2014

Meeting Date

Topic ARTICLE 5 CONVENTION

Bill Number SM 658
(if applicable)

Name MARY K RIBAUDO

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1781 COPPERFIELD CIRCLE
Street

Phone 850-765-2244

TALAHASSEE FL 32312
City State Zip

E-mail MARYKUBRA@GMAIL.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)

2/11/2014
Meeting Date

Topic ARTICLE V CONVENTION

Bill Number SM 658
(if applicable)

Name PETER J. RIBAUDO

Amendment Barcode _____
(if applicable)

Job Title RETIRED

Address 1781 COPPERFIELD CIR
Street

Phone 1-850-765-2244

TALLAHASSEE FL 32312
City State Zip

E-mail MARCYLUERA@COMCAST.NET

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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