

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 58

INTRODUCER: Judiciary Committee and Senator Book

SUBJECT: Contempt and Disorderly Conduct Before a Legislative Committee

DATE: January 24, 2019

REVISED: \_\_\_\_\_

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

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

The bill creates an enforcement mechanism to punish legislators or non-legislators who engage in contemptuous or disorderly conduct before a legislative committee. The bill further provides that contemptuous conduct includes knowingly making a materially false statement before a legislative committee, regardless of whether the speaker is under oath. The enforcement mechanism, in effect, implements related provisions of the State Constitution.

The enforcement mechanism begins when a committee member files a complaint with the appropriate rules chair alleging that misconduct occurred in a committee meeting. The complaint can then be heard by a special master or other committee to determine probable cause. If probable cause is found, the appropriate house may punish the person who engaged in misconduct. The punishment may include a fine of up to \$1,000 or a term of imprisonment of up to 90 days in the county jail, or both.

The provisions of the bill will apply in the absence of legislative rules establishing a procedure to address misconduct occurring before legislative committees.

## II. Present Situation:

### **Punishing the Misconduct of Legislators and Non-Legislators in a Legislative Setting**

#### *The Florida Constitution*

Article III of the Florida Constitution, which pertains to the Legislature, authorizes the Legislature to punish legislators and non-members in two separate sections. These provisions, however, do not define what constitutes the misconduct or provide a procedure for resolving allegations of misconduct.

#### **Members**

The Constitution authorizes each house of the Legislature to punish a member for contempt or disorderly conduct. The Constitution also authorizes each house to expel a member when two-thirds of the membership votes for expulsion.<sup>1</sup>

#### **Non-Members**

When the Legislature is in session, each house may compel witnesses to attend and produce documents and other forms of evidence regarding a matter under investigation before the Legislature or a legislative committee. A person who is not a member of the Legislature may be punished while the Legislature is in session by a fine that does not exceed \$1,000 or imprisonment that does not exceed 90 days, or both, who is found guilty of:

- Disorderly or contemptuous conduct before the Legislature or one of its committees;
- Refusal to obey a lawful summons; or
- Refusal to answer lawful questions.<sup>2</sup>

The punishment for contempt occurring before an interim legislative committee must be by judicial proceedings as established by law.<sup>3</sup>

#### *The Florida Statutes*

The statutes authorize legislative committees to invite public and private individuals to appear before them and submit information relevant to the committee's jurisdiction. To carry out its duties, committees may issue subpoenas and other process necessary to compel the attendance of witnesses before the committee and issue subpoenas duces tecum to compel the production of documentary evidence.<sup>4</sup> The chair or any other member of the committee may administer oaths and affirmations as prescribed by law to witnesses who appear before the committee for the purpose of testifying in any matter for which the committee desires evidence.<sup>5</sup>

While in session, either house of the Legislature is authorized to punish a person, who is not a member, who is found guilty of disorderly or contemptuous conduct in its presence or who refuses to obey a lawful summons. The imprisonment, however, must not extend beyond the

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<sup>1</sup> FLA. CONST. art. III, s. 4(d).

<sup>2</sup> FLA. CONST. art. III, s. 5.

<sup>3</sup> *Id.*

<sup>4</sup> Section 11.143(3)(a), F.S.

<sup>5</sup> *Id.*

final adjournment of the legislative session.<sup>6</sup> When the Legislature is not in session and a witness does not respond to a lawful subpoena or fails to answer lawful inquiries or turn over subpoenaed evidence, the procedure is different. The committee may file a complaint in circuit court, and the court will take jurisdiction of the witness and direct the witness to respond to lawful inquiries. A failure to comply with the court order is treated as a direct and criminal contempt of court which the court will punish.

Two distinct statutes provide criminal penalties for giving false testimony to a legislative committee: false swearing and perjury.

The false swearing provision is contained in s. 11.143(4)(a), F.S. and states that whoever willfully affirms or swears falsely regarding a material matter or thing before a legislative committee commits a second degree felony.<sup>7</sup> The statute addressing perjury in official proceedings is found in s. 837.02, F.S. In pertinent part, the statute provides that “whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree.”<sup>8</sup> An “official proceeding” is defined to include a proceeding before a legislative body, which would include a legislative committee.<sup>9</sup> A “material matter” is any subject which could affect the course or outcome of the proceeding.<sup>10</sup> A statement that is alleged to be perjury must be a statement of fact, not a statement of opinion or belief. For a statement to be material, it must be germane to the inquiry and have a bearing on a determination in the underlying case.<sup>11</sup>

### III. Effect of Proposed Changes:

The bill removes the current provision that authorizes either house, during session, to punish a non-legislative member for “disorderly or contemptuous conduct in its presence.” It transfers that brief provision to a newly created and expanded section of law.

#### **Legislative Members Are Included**

The newly created section expands the prohibition against disorderly or contemptuous conduct before legislative committees to include members of the legislature as well as non-members.

#### **“Contemptuous Conduct”**

“Contemptuous conduct” is not defined but the bill expressly provides that contemptuous conduct includes the act of knowingly making a materially false statement before a legislative committee, regardless of whether the speaker is under oath or affirmation. This change is consistent with the *Mason’s Manual of Legislative Procedure*, which states:

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<sup>6</sup> Section 11.143(1) and (3), F.S.

<sup>7</sup> A second degree felony is punishable by a maximum of 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>8</sup> A third degree felony is punishable by a maximum of 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> Section 837.011(1), F.S.

<sup>10</sup> Section 837.011(3), F.S.

<sup>11</sup> *Vargas v. State*, 705 So. 2d 270 (Fla. 3d DCA 2001).

Witnesses before a legislative body or its committee need not be sworn, unless there is some rule or provision of law or of the constitution requiring it, but give their testimony under the penalty of being adjudged guilty of contempt if they testify falsely.<sup>12</sup>

## **Punishment**

### During Session

Whoever engages in disorderly or contemptuous conduct while the Legislature is in session may be punished by the appropriate house by a fine that does not exceed \$1,000 and imprisonment in the county jail for up to 90 days, or both, when the presiding officer of the appropriate house orders the punishment. This mirrors the constitutional language contained in section 5, Article III.

### During Interim Committee Meetings

Whoever engages in disorderly or contemptuous conduct during an interim legislative committee meeting commits a misdemeanor of the second degree which is punishable by a maximum of 60 days imprisonment and a fine not to exceed \$500.<sup>13</sup>

## **Procedure to be Used in the Absence of Legislative Rules**

The bill establishes a legislative procedure for either house to follow when addressing allegations of disorderly and contemptuous misconduct. However, if the Senate or House of Representatives establishes legislative rules governing the procedure for addressing misconduct allegations, those rules take precedence and this bill does not apply.

### Complaint

When a committee member believes that disorderly or contemptuous conduct has occurred in the committee, he or she may file a complaint with the rules chair of the appropriate house. The complaint must identify the alleged disorderly or contemptuous conduct, state the facts demonstrating that the conduct was a violation of the statute, and supply the relevant documentation or evidence.

### Referral to a Special Master or Committee

If the rules chair does not find that disorderly or contemptuous conduct occurred, he or she must dismiss the complaint. If the chair determines that the facts, if found to be true, would amount to a violation of the statute, he or she must refer the complaint to either a special master or a standing or select committee for an expeditious determination of probable cause.

The special master or committee must then:

- Give reasonable notice to the person named in the complaint;
- Conduct an investigation;

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<sup>12</sup> National Conference of State Legislatures, *Mason's Manual of Legislative Procedure*, s. 800, para. 4. (2010).

<sup>13</sup> Sections 775.082 and 775.083, F.S.

- Give the accused an opportunity to be heard; and
- Prepare a report and recommendation regarding the violation.

#### Probable Cause Finding

If the report and recommendation do not support a finding of probable cause, the rules chair must dismiss the complaint. If probable cause is found, however, the report and recommendation must be taken up and acted upon by the appropriate house.

#### Duties of the Presiding Officer

If the appropriate house determines that the accused did engage in disorderly or contemptuous conduct and determines a punishment, the presiding officer must issue an order imposing the punishment. If imprisonment is ordered, the order must direct the Leon County Sheriff or the sheriff where the person resides to take the person into custody for confinement in the county jail for the time specified in the order. If any fines are levied they must be deposited into the Lobbyist Registration Trust Fund.

#### **Effective Date**

This bill takes effect July 1, 2019.

#### **IV. Constitutional Issues:**

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. State Tax or Fee Increases:

None.

##### E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

##### A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

County jails would bear the cost of housing a person who is punished under this section by imprisonment of up to 90 days.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 11.143, Florida Statutes, and creates section 11.1435, Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on January 22, 2019:**

This committee substitute substantially amends the underlying bill. The substance of the underlying bill required persons to first take an oral or written oath or affirmation and declare to speak truthfully before testifying before a legislative committee. It exempted legislators, legislative staff, and children in certain circumstances. The committee substitute does not address oaths or affirmations but prohibits disorderly or contemptuous conduct before a legislative committee. The committee substitute clarifies that contempt includes knowingly making a false statement about a material matter when testifying before a committee and establishes a process for addressing disorderly and contemptuous conduct.

**B. Amendments:**

None.