

THE FLORIDA SENATE
2015 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

HB 115 — Sentencing

by Rep. Gaetz (SB 732 by Senator Abruzzo)

The bill amends the definition of “victim” in s. 775.089(1)(c), F.S., relating to restitution, to clarify that it includes governmental entities and political subdivisions when such entities are a direct victim of the defendant’s offense or criminal episode and are not merely providing public services in response to the offense or criminal episode.

The bill also requires a judge to order a person convicted of any offense relating to bribery and misuse of public office in ch. 838, F.S., or of any offense by public officers and employees in ch. 839, F.S., to make restitution to the victim and perform 250 hours of community service work. Restitution will be ordered if the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person’s offense or an actual financial loss related to the person’s criminal episode.

These conditions of restitution and community service work are in addition to any fine or sentence that may be imposed and they may not be substituted for such fine or sentence under the bill.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 39-0; House 114-0

THE FLORIDA SENATE
2015 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

CS/HB 133 — Sexual Offenses

by Civil Justice Subcommittee and Rep. Plasencia and others (CS/SB 1270 by Fiscal Policy Committee and Senators Soto and Abruzzo)

Statute of Limitation

The bill provides that the act may be cited as the “43 Days Initiative Act.”

It amends the statute of limitation law, s. 775.15, F.S., by extending the current statute of limitation time period for a first or second degree felony sexual battery when the victim is 16 years of age or older and does not report the crime within 72 hours. The bill provides a statute of limitation of 8 years for these offenses instead of the previous 3 or 4 year time period.

Under the bill, if a 16 year old or older victim of *second* degree felony sexual battery or an 18 year old or older victim of *first* degree felony sexual battery reports the crime within 72 hours, current law is applicable and there is no time limitation for bringing a prosecution.

The bill applies to any such offense except one already time-barred on or before July 1, 2015, meaning it applies retroactively to previously committed offenses as long as the statute of limitation has not run on these offenses prior to July 1, 2015.

Sexting

The bill also amends the punishment schedule in the sexting statute, s. 847.0141, F.S., by including the issuance of a citation for first violations, which are classified as noncriminal violations. The bill specifies that for a first violation of sexting the minor must sign and accept a citation indicating a promise to appear before the juvenile court. In lieu of appearing in court, the minor may complete 8 hours of community service work, pay a \$60 civil penalty, or participate in a cyber-safety program, if such a program is locally available. The minor must satisfy any penalty within 30 days after receipt of the citation.

If the citation is contested and the court determines that the minor committed a noncriminal violation under this section, the court may order the minor to perform 8 hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program, or any combination thereof.

A minor who fails to comply with the citation waives the right to contest it and the court may impose any of the stated penalties or issue an order to show cause. Upon a finding of contempt, the court may impose additional age-appropriate penalties, which may include issuance of an order to the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend the driver license or driving privilege of, the minor for 30 consecutive days. The court may not impose incarceration.

The bill also requires 80 percent of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors. The remaining 20 percent must remain with the clerk of the court to defray administrative costs.

The bill specifically addresses the holding in *State v. C.M.*, 154 So.3d 1177 (Fla. 4th DCA 2015) by amending s. 985.0301, F.S., to provide that the circuit court has exclusive original jurisdiction of proceeding in which a child is alleged to have committed a noncriminal violation that has been assigned to juvenile court by law.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 37-0; House 117-1

THE FLORIDA SENATE
2015 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

HB 193 — Crime Stoppers Trust Fund

by Rep. Broxson and others (SB 164 by Senators Evers and Grimsley)

This bill amends s. 16.555, F.S., to authorize a county that is awarded a grant from the Crime Stopper Trust Fund to purchase and distribute promotional items to increase public awareness and educate the public about Crime Stoppers.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 39-0; House 114-1

THE FLORIDA SENATE
2015 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

CS/CS/HB 197 — Tracking Devices or Tracking Applications

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Metz and others (CS/CS/SB 282 by Rules Committee; Criminal Justice Committee; and Senator Hukill)

The bill creates a new section of the Florida Statutes making it a second degree misdemeanor for a person to knowingly install a tracking device or tracking application on another's property without the other person's consent.

The bill creates the following definitions:

- “Business entity” means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state;
- “Tracking application” means any software program whose primary purpose is to track or identify the location or movement of an individual;
- “Tracking device” means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals; and
- “Person” means an individual and does not mean a business entity.

The bill amends s. 493.6118, F.S., to add commission of the new offense as grounds for disciplinary action against persons regulated under ch. 493, F.S. (Private Investigative, Private Security, and Repossession Services), or who are engaged in activities regulated under that chapter.

The bill specifies that a person's consent to be tracked is presumed to be revoked in the following circumstances:

- When the consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or
- When the consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, s. 741.315, s. 784.046, or s. 784.0485, F.S.

The prohibition against knowingly installing a tracking device or tracking application does not apply to:

- A law enforcement officer as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or application on another person's property as part of a criminal investigation;
- A parent or legal guardian of a minor child who installs a tracking device or application on the minor's property (Note: when the parents or guardians are divorced, separated, or otherwise living apart from one another, this exception applies only if both parents or guardians consent to the installation of the device or application; however, if one parent or guardian has been granted sole custody, consent of the noncustodial parent is not required; the exemption also applies to the sole surviving parent or guardian.);

- A caregiver of an elderly person or disabled adult, if the elderly person or disabled adult's treating physician certifies that such installation is necessary to ensure the safety of the elderly person or disabled adult;
- A person acting in good faith on behalf of a business entity for a legitimate business purpose (Note: this exemption does not apply to a person engaged in private investigation for another person unless the person for whom the investigation is being conducted would otherwise be exempt from the bill's provisions.);
- An owner or lessor of a motor vehicle during the period of ownership or lease, provided that the device is removed before the vehicle title is transferred or the lease expires, or the new owner gives written consent for non-removal; or
- The original manufacturer of a vehicle.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 39-0; House 113-0

THE FLORIDA SENATE
2015 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

CS/HB 201 — Diabetes Awareness Training for Law Enforcement Officers

by Criminal Justice Subcommittee and Rep. Narain and others (CS/SB 746 by Criminal Justice Committee and Senators Lee, Thompson, Soto, Latvala, and Dean)

This bill requires the Florida Department of Law Enforcement to establish an online continued employment training component relating to diabetic emergencies. Instruction must include, at a minimum, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 40-0; House 117-1

THE FLORIDA SENATE
2015 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

CS/CS/CS/SB 248 — Public Records/Body Camera Recording Made by a Law Enforcement Officer

by Rules Committee; Governmental Oversight and Accountability Committee; Criminal Justice Committee; and Senators Smith, Thompson, Soto, and Stargel

This bill creates a public records exemption for a body camera recording made by a law enforcement officer. By definition, the body camera records audio and video data in the course of the officer performing his or her official duties and responsibilities.

The bill makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services; or
- In a place that a reasonable person would expect to be private.

A law enforcement agency may disclose a body camera recording in furtherance of its official duties and responsibilities and may also disclose the recording to another governmental agency in the furtherance of its official duties and responsibilities.

A law enforcement agency must disclose a body camera recording, or a portion thereof, to:

- A person recorded by a body camera (the agency must disclose those portions of the recording relevant to the person's presence in the recording);
- The personal representative of a person recorded by a body camera (the agency must disclose those portions of the recording relevant to the recorded person's presence in the recording);
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording (the agency must disclose those portions of the recording that disclose the interior of such place); and
- Pursuant to a court order.

The bill specifies grounds the court must consider in determining whether to order disclosure of the body camera recording. These grounds are in addition to any other grounds the court may choose to consider. In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording must be given reasonable notice of hearings and an opportunity to participate.

A law enforcement agency must retain a body camera recording for at least 90 days.

The exemption applies retroactively. It does not supersede any other exemption existing prior to or created after the effective date of this exemption. Those portions of a body camera recording

that are protected from disclosure by another exemption continue to be exempt or confidential and exempt.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 36-2; House 112-2

THE FLORIDA SENATE
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Committee on Criminal Justice

CS/CS/SB 290 — Carrying a Concealed Weapon or a Concealed Firearm

by Rules Committee; Criminal Justice Committee; and Senators Brandes, Bradley, Evers, Negrón, and Stargel

The bill creates an exception to s. 790.01, F.S., the statute that prohibits carrying concealed weapons or firearms, unless a person is licensed. If the weapon is a self-defense chemical spray or nonlethal stun gun or similar device designed for defensive purposes, a person may carry it concealed without a license.

The exception provided in the bill allows a person to carry a concealed weapon or firearm on or about his or her person, regardless of licensure status, while in the act of complying with a mandatory evacuation order. The order must be issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S., or declared by a local authority pursuant to ch. 870, F.S. In order to carry a firearm the person must be lawfully able to possess the firearm.

The bill defines the term “in the act of evacuating” as the immediate and urgent movement of a person away from the evacuation zone within 48 hours after a mandatory evacuation is ordered. It provides that the 48 hours may be extended by an order issued by the Governor.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 29-10; House 86-26

THE FLORIDA SENATE
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Committee on Criminal Justice

CS/SB 378 — Juvenile Justice

by Criminal Justice Committee and Senators Garcia, Gibson, Bullard, Smith, and Detert

The bill expands juvenile civil citation by allowing law enforcement to issue a civil citation or participation in a similar diversion program to youth who have committed up to three misdemeanors. Use of civil citation or similar diversion programs will no longer only be available to first-time misdemeanor offenders under the bill.

In addition, law enforcement will be authorized to issue a simple warning to the youth or inform the youth's parents of the misdemeanor, as well as issue a civil citation or require participation in a similar diversion program under the bill.

The bill also states that if an arrest is made, law enforcement must provide written documentation as to why the arrest is warranted.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 37-1; House 115-2

THE FLORIDA SENATE
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Committee on Criminal Justice

CS/CS/HB 465 — Human Trafficking

by Judiciary Committee; Criminal Justice Subcommittee; and Reps. Spano, Kerner, and others
(CS/SB 1106 by Appropriations Committee and Senator Flores)

This bill amends s. 796.07, F.S., relating to prostitution, by enhancing the criminal penalties for a person who solicits, induces, entices, or procures another to commit prostitution, lewdness, or assignation as follows:

- A first violation becomes a first degree misdemeanor (currently a second degree misdemeanor);
- A second violation becomes a third degree felony (currently a first degree misdemeanor); and
- A third or subsequent violation becomes a second degree felony (currently a third degree felony).

The bill requires such person to perform 100 hours of community service and to pay for and attend an educational program about the negative effects of prostitution and human trafficking, if one exists. The bill allows a judge to order the offender's vehicle, if one is used in the offense, to be impounded or immobilized for up to 60 days (unless certain exceptions apply).

A person convicted of a second or subsequent solicitation violation under the bill is required to serve a minimum of 10 days in county jail.

The bill also amends s. 943.0583, F.S., relating to human trafficking victim expunction, to require the court to allow an advocate from the state attorney's office, law enforcement agency, safe house or safe foster home, or residential facility offering services to adult human trafficking victims to be present with the victim/petitioner during any expunction court proceeding.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 38-0; House 113-0

THE FLORIDA SENATE
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Committee on Criminal Justice

HB 467 — Public Records/Human Trafficking Victims

by Rep. Spano and others (CS/SB 1108 by Governmental Oversight and Accountability Committee and Senator Flores)

This bill expands the current public records exemption for certain criminal intelligence and criminal investigative information to include identifying information of a child victim of human trafficking for labor or services, as well as any victim of human trafficking for commercial sexual activity. The bill also creates a public record exemption for this newly described criminal intelligence or investigative information relating to human trafficking victims that is expunged or ordered expunged under s. 943.0583, F.S.

Such information is confidential and exempt from public record requirements, except that the information may be disclosed by a law enforcement agency as follows:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered; or
- To another governmental agency in the furtherance of its official duties and responsibilities.

The exemption applies to information held by a law enforcement agency before, on, or after the effective date of the exemption.

The bill provides for repeal of the exemptions on October 2, 2020, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 39-0; House 114-0

THE FLORIDA SENATE
2015 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

HB 469 — Public Records/Residential Facilities Serving Victims of Sexual Exploitation

by Rep. Spano and others (CS/SB 1110 by Governmental Oversight and Accountability Committee and Senator Flores)

This bill creates a public records exemption for the location information of a safe house, safe foster home, or other residential facility serving child victims of sexual exploitation. It also creates an exemption for the location information of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity.

The exempted location information can be disclosed to an agency as necessary to maintain health and safety standards or to address emergency situations in the safe house or residential facility. The exemptions do not apply to facilities licensed by the Agency for Health Care Administration.

The exemptions apply to information held by an agency before, on, or after the effective date of the exemption.

The bill provides for repeal of the exemptions on October 2, 2020, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

If approved by the Governor, these provisions take effect October 1, 2015.
Vote: Senate 37-0; House 114-0

THE FLORIDA SENATE
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CS/CS/SB 538 — Disclosure of Sexually Explicit Images

by Rules Committee; Criminal Justice Committee; and Senators Simmons and Soto

The bill creates s. 784.049, F.S., to prohibit a person from willfully and maliciously sexually cyberharassing another person. “Sexually cyberharass” is defined as publishing a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without such person’s consent, for no legitimate purpose, and with the intent to cause substantial emotional distress to such person.

The bill provides that a person who commits sexual cyberharassment commits a first degree misdemeanor. However, a second or subsequent violation by a person with a prior conviction for sexual cyberharassment is a third degree felony.

The bill amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant when there is probable cause to believe that the person has committed sexual cyberharassment. Additionally, the bill permits a search warrant to be issued for a private dwelling if evidence relevant to proving sexual cyberharassment is contained therein.

The bill authorizes an aggrieved person to initiate a civil action against a person who commits sexual cyberharassment to obtain all appropriate relief in order to prevent or remedy a violation. This relief includes:

- Injunctive relief; monetary damages to include five thousand dollars or actual damages incurred, whichever is greater; and reasonable attorney fees and costs.

The bill specifies that sexual cyberharassment is considered to be committed in Florida if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within the state.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 38-2; House 114-2

THE FLORIDA SENATE
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Committee on Criminal Justice

CS/HB 897 — Controlled Substances

by Criminal Justice Subcommittee and Rep. Ingram (CS/SB 1098 by Criminal Justice Committee and Senator Bradley)

This bill adds several synthetic cannabinoids to the controlled substances list in Schedule I of s. 893.03, F.S. This scheduling also applies to any material, compound, mixture, or preparation that contains any of the substances' salts, isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

As a result of this scheduling, a person who possesses, purchases, delivers, sells, manufactures, or brings into this state any of these substances may be subject to criminal prosecution and punishment.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 40-0; House 116-0

THE FLORIDA SENATE
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Committee on Criminal Justice

SB 1010 — False Personation

by Senator Braynon

This bill revises the list of officials who are prohibited from being falsely personated to include firefighters and fire or arson investigators of the Department of Financial Services.

For purposes of the prohibition of falsely personating a “watchman,” the bill clarifies that a “watchman” is a security officer licensed under ch. 493, F.S. The bill also removes reference to falsely personating an “officer of the Department of Transportation.” False personation of these officers is covered under the current prohibition against falsely personating an “officer of the Florida Highway Patrol.”

The bill also prohibits the use of badges or indicia of authority bearing in any manner or combination the words “fire department” and the ownership or operation of vehicles marked by the words “fire department.” Further, relevant to these offenses, the bill modifies criminal intent language to require proof that the offender had the intent to mislead or cause another person to believe that:

- The offender is a member of a criminal justice agency or fire department or is authorized by such agency or department to wear or display its badge; or
- The vehicle the offender owns or operates is an official law enforcement vehicle or fire department vehicle and its use by the offender is authorized by such agency or department.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 39-0; House 114-1

THE FLORIDA SENATE
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Committee on Criminal Justice

HB 7001 — Intercepting and Recording Oral Communications

by Criminal Justice Subcommittee and Reps. Trujillo and Moskowitz (CS/SB 542 by Criminal Justice Committee and Senators Benacquisto and Simpson)

This bill creates an exception to the general prohibition against interceptions of oral communications. The bill allows a child who is under 18 years of age and a party to the communication to intercept and record an oral communication if:

- The child is a party to the communication;
- The child has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication; and
- The statement by the other party is that he or she intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 32-0; House 116-0

THE FLORIDA SENATE
2015 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

HB 7061 — Public Records/Florida RICO Act

by Civil Justice Subcommittee and Rep. Passidomo (CS/SB 1536 by Criminal Justice Committee and Senator Flores)

This bill makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of the Florida Racketeer Influenced and Corrupt Organization (RICO) Act. The bill provides a public necessity statement in support of the exemption.

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal.

The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 39-0; House 116-2