

Tab 1	CS/SB 234 by JU, Polsky (CO-INTRODUCERS) Martin ; (Similar to H 00117) Disclosure of Grand Jury Testimony						
Tab 2	SB 312 by Collins (CO-INTRODUCERS) Hooper ; (Similar to CS/H 00305) Offenses Involving Children						
530650	A	S	RCS	CJ, Collins	Delete L.60 - 80:	01/10 10:24 AM	
Tab 3	SB 340 by Yarborough ; (Identical to H 00275) Intentional Damage to Critical Infrastructure						
167934	A	S	RCS	CJ, Yarborough	Delete L.23 - 59:	01/10 10:24 AM	
Tab 4	SB 450 by Wright ; (Similar to H 00875) Sheltering or Aiding Unmarried Minors						
Tab 5	SB 538 by Harrell ; (Identical to H 00531) Traveling Across County Lines to Commit Criminal Offenses						
Tab 6	SB 638 by Grall ; (Similar to H 00729) Lethality Assessments						
691894	A	S	RCS	CJ, Grall	Delete L.103 - 123:	01/10 10:25 AM	
Tab 7	SB 758 by Martin ; (Similar to H 00401) Tracking Devices and Applications						
Tab 8	SB 764 by Stewart ; (Similar to CS/H 00607) Retention of Sexual Offense Evidence						
200146	D	S	RCS	CJ, Stewart	Delete everything after	01/10 10:25 AM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Martin, Chair
Senator Bradley, Vice Chair

MEETING DATE: Wednesday, January 10, 2024
TIME: 8:30—10:00 a.m.
PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Martin, Chair; Senator Bradley, Vice Chair; Senators Ingoglia, Perry, Pizzo, Polsky, Powell, and Yarborough

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 234 Judiciary / Polsky (Similar H 117)	Disclosure of Grand Jury Testimony; Revising the list of persons prohibited from disclosing the testimony of a witness examined before, or the evidence received by, a grand jury; creating an exception for a request by the media or an interested person to the prohibited publishing, broadcasting, disclosing, divulging, or communicating of any testimony of a witness examined before the grand jury, or the content, gist, or import thereof; providing criminal penalties, etc. JU 12/13/2023 Fav/CS CJ 01/10/2024 Favorable RC	Favorable Yeas 8 Nays 0
2	SB 312 Collins (Similar CS/H 305)	Offenses Involving Children; Increasing the maximum age of a child victim of specified acts whose out-of-court statements may be admissible in certain circumstances; providing that a first offense of specified sex trafficking offenses involving minors requires designation of the defendant as a sexual predator, etc. CJ 01/10/2024 Fav/CS JU RC	Fav/CS Yeas 8 Nays 0
3	SB 340 Yarborough (Identical H 275)	Intentional Damage to Critical Infrastructure; Providing criminal penalties for causing intentional harm or damage to critical infrastructure; providing for civil liability for such violations, etc. CJ 01/10/2024 Fav/CS RI FP	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Wednesday, January 10, 2024, 8:30—10:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 450 Wright (Similar H 875)	Sheltering or Aiding Unmarried Minors; Creating a presumption of knowledge upon proof that an unmarried minor has not attained 18 years of age for the purpose of unlawfully sheltering or aiding unmarried minors; providing a defense to unlawfully sheltering or aiding unmarried minors; increasing criminal penalties for unlawfully sheltering or aiding unmarried minors, etc. CJ 01/10/2024 Favorable CF RC	Favorable Yeas 8 Nays 0
5	SB 538 Harrell (Identical H 531)	Traveling Across County Lines to Commit Criminal Offenses; Deleting the definition of the term "burglary"; providing for reclassification of grand theft or forcible felony offenses if the person who commits the offense travels with the intent to commit the offense in a county other than the person's county of residence, etc. CJ 01/10/2024 Favorable ACJ FP	Favorable Yeas 8 Nays 0
6	SB 638 Grall (Similar H 729, Compare H 673, S 610)	Lethality Assessments; Requiring law enforcement officers who investigate an alleged incident of domestic violence to administer a lethality assessment under certain circumstances; requiring the Department of Law Enforcement to consult with specified entities to develop and implement a statewide lethality assessment; requiring certain law enforcement officers to be trained in administering lethality assessments by a specified date; prohibiting law enforcement officers from disclosing in certain statements and reports the domestic violence center to which the victim was referred, etc. CJ 01/10/2024 Fav/CS ACJ FP	Fav/CS Yeas 8 Nays 0
7	SB 758 Martin (Similar H 401)	Tracking Devices and Applications; Prohibiting the placement or use of a tracking device or tracking application to determine the location or movement of another person or another person's property without that person's consent, etc. CJ 01/10/2024 Favorable JU RC	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Wednesday, January 10, 2024, 8:30—10:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 764 Stewart (Similar CS/H 607)	Retention of Sexual Offense Evidence; Requiring specified sexual offense evidence to be retained in a certain manner for a minimum amount of years after the collection date; requiring such evidence to be stored anonymously and with a documented chain of custody, etc. CJ 01/10/2024 Fav/CS ACJ FP	Fav/CS Yeas 8 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 234

INTRODUCER: Judiciary Committee and Senators Polsky and Martin

SUBJECT: Disclosure of Grand Jury Testimony

DATE: January 9, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Cellon</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 234 amends s. 905.27, F.S., that generally prohibits the disclosure of testimony or evidence received by a grand jury. There are currently three exceptions to this general prohibition: ascertaining whether the testimony is consistent with the testimony given by a witness before the court, determining whether a witness is guilty of perjury, or furthering justice.

The bill amends the third exception of “furthering justice” by expanding that concept to include furthering a public interest when the disclosure of testimony is requested by the media or an interested person. The testimony may be disclosed if:

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry is related to criminal or sexual activity between a subject of the grand jury investigation and a person who was a minor at the time;
- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

Even if these conditions are met, the court may limit the disclosure of testimony, which may include redacting parts of the testimony.

The bill also adds the custodian of a grand jury record to the list of persons in statute who may not disclose the testimony of a witness examined before a grand jury or disclose other evidence received by the grand jury.

The bill reenacts s. 905.17(1) and (2), F.S.

The Office of the State Courts Administrator expects a minimal fiscal impact to the State Court System from this bill. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

The Grand Jury

“There is a tradition in the United States, a tradition that is “older than our Nation itself,” that proceedings before a grand jury shall generally remain secret. ... The rule of secrecy, however, is not without exceptions.”¹

Background

The state court system has two types of juries: grand juries and petit juries. While a petit jury, also known as a trial jury, weighs evidence and returns a verdict of guilt or innocence after hearing from both sides, a grand jury does not hear from both sides. A grand jury only hears witnesses presented by a state attorney and determines whether there is sufficient evidence to formally indict, or charge, an accused person with a crime.² In other words, the grand jury initiates the criminal prosecution.³

The modern grand jury is rooted in ancient tradition. It originated in England centuries ago and was brought to this country by the early colonists. A grand jury was formally recognized in the Magna Carta in 1215 but can be traced even earlier to 997 A.D., when an Anglo-Saxon king, unfortunately named “Ethelred the Unready,” tasked an investigative body to perform “its duty by accusing no innocent person and sheltering no guilty one.”⁴

The State Constitution

According to the State Constitution, no one may be tried for a capital crime, a crime punishable by death, unless he or she is indicted by a grand jury.⁵ This is the only instance in which a grand jury indictment is required. For all other crimes, the state attorney may initiate criminal charges.

¹ *CA Florida Holdings, LLC v. Aronberg*, 360 So. 3d 1149, 1153 (Fla. 4th DCA 2023) (quoting *In re Petition of Craig*, 131 F.3d 99, 101 (2d Cir. 1997)).

² The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *Chapter 30 Florida Grand Jury Handbook*.

³ Gregg D. Thomas, Carol Jean LoCicero, and Linda R. Norbut, The Florida Bar, *The Reporters’ Handbook on Law-Related Topics: The Grand Jury* (Revised Aug. 1, 2020) <https://www.floridabar.org/news/resources/rpt-hbk/#1619193085264-69d9d83a-2799>.

⁴ The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *supra* note 2.

⁵ FLA. CONST. art. I, s. 15(a). The full text of section 15 is “No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.”

Composition and Investigative Power

A grand jury is composed of at least 15 and no more than 21 citizens who have been summoned and empaneled by a circuit court judge.^{6,7} In order to return an indictment, at least 12 grand jurors must agree.⁸ Although the grand jury is considered an agency of the circuit court, it works separately and independently from the court.⁹

To aid a grand jury in its broad power of investigation, it is given the authority to subpoena witnesses through the state attorney.¹⁰ While grand juries primarily focus on capital cases, they may also be used to investigate controversies involving the alleged illegal acts of public officials.¹¹

The Work of the Grand Jury

Secrecy

Grand jury evidence is rarely, if ever, disclosed to the public. By shielding the grand jury's work from public scrutiny, grand jurors can speak freely with one another, witnesses who appear may speak openly without fear of being identified, a potential defendant who is not aware of the proceedings is prevented from destroying evidence that could be damaging, and the reputation of a potential defendant who is not indicted is not damaged. The majority of a grand jury's work is focused on listening to witnesses and deciding whether the evidence presented justifies an indictment. For the proceedings to function as they are designed, it is essential that the proceedings are kept secret. Section 905.24, F.S., states:

Grand jury proceedings are secret, and a grand juror or an interpreter appointed pursuant to s. 90.6063(2) shall not disclose the nature or substance of the deliberations or vote of the grand jury.

Consistently and similarly applying the need for secrecy, s. 905.25, F.S., states:

A grand juror shall not be permitted to state or testify in any court how she or he or any other grand juror voted on any matter before them or what opinion was expressed by herself or himself or any other grand juror about the matter.

Who May Attend a Grand Jury Session

To underscore the importance of secrecy, the statutes provide the limited number and specific persons who may be present during a session. No person may be present at the grand jury sessions except:

- The witness under examination;
- One attorney who represents the witness and advises and consults the witness;

⁶ Section 905.01(1), F.S.

⁷ The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *supra* note 2.

⁸ Section 905.23, F.S.

⁹ The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *supra* note 2.

¹⁰ Section 905.185, F.S.

¹¹ Thomas, et al., *supra* at note 3.

- The state attorney and her or his assistant state attorneys;
- The court reporter or stenographer; and
- The interpreter.¹²

No one is allowed to be present while the grand jurors are deliberating or voting, except an interpreter who may be present after he or she swears to refrain from making any personal interjections and who also commits to uphold the secrecy of the proceeding.¹³

Confidential Nature of Notes and Transcripts

The notes, records, and transcripts of the stenographer or court reporter are filed with the clerk who is charged with keeping them in a sealed container that is not subject to public inspection. They are confidential and exempt from the disclosure requirements of the public records laws, and may be released by the clerk *only* upon the request by a grand jury for use by the grand jury or upon order of the court pursuant to s. 905.27, F.S.¹⁴

Grand Jury Testimony May Not Be Disclosed

Section 905.27(1), F.S., prohibits a grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person who appears before the grand jury from disclosing the testimony of a witness who was examined before the grand jury or any other evidence received by it except when required by a court to disclose the testimony for the purpose of:

- Ascertaining whether it is consistent with the testimony given by the witness before the court;
- Determining whether the witness is guilty of perjury; or
- Furthering justice.¹⁵

Section 905.27(2), F.S., states that it is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause, or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, except when the testimony is or has been disclosed in a court proceeding.

When the court orders the disclosure of the grand jury testimony for use in a *criminal* case it may be disclosed:

- To the prosecuting attorney in the court where the case is pending.
- By the prosecuting attorney to his or her assistants, associates, and employees.
- To the defendant.
- To the defendant's attorney.
- To the defendant's attorney to his or her legal associates and employees.¹⁶

¹² Section 905.17(1), F.S.

¹³ Section 905.17(3), F.S.

¹⁴ Section 905.17(1), F.S.

¹⁵ Section 905.27(1), F.S.

¹⁶ Section 905.27(2)(a), F.S.

When the court orders the disclosure of the grand jury testimony for use in a *civil* case, it may be disclosed to all parties to the case and their attorneys, and by the attorneys to their legal associates and employees.¹⁷

The unlawful disclosure of grand jury testimony is a first degree misdemeanor and constitutes criminal contempt of court.¹⁸

Jeffrey Epstein Grand Jury Testimony, 2006

In 2006, Jeffrey Epstein was investigated by the Palm Beach Police Department for allegedly sexually abusing five young girls, all under the age of 16 years, at his mansion. In addition, several other young girls who were not yet 18 years old also alleged that they were sexually abused by Jeffrey Epstein at his mansion.¹⁹

The Palm Beach Police Department contacted State Attorney Barry Krischer and asked that he charge Mr. Epstein with four counts of unlawful sexual activity with a minor and one count of lewd and lascivious molestation. If convicted of those charges, Mr. Epstein would have been sent to prison for decades. Instead of charging Jeffrey Epstein as the police recommended, State Attorney Krischer chose an unusual legal maneuver and presented the case to a grand jury. The grand jury returned only one charge, that of soliciting a prostitute. Mr. Epstein was arrested after the indictment and charged with one felony count of soliciting a prostitute.²⁰

According to the Palm Beach Post, this was the first time a sex crime case was presented to a grand jury by State Attorney Krischer's office. Although 13 teenage girls gave virtually identical accounts of their interactions with Mr. Epstein, the state attorney's office called only one 14-year-old girl to testify before the grand jury.²¹

Litigation

Trial Court

In November 2019, The Palm Beach Post sued the then current State Attorney, who was no longer Mr. Krischer, and the Clerk and Comptroller of Court in an effort to obtain a court order to unseal the grand jury proceedings and reveal why the grand jury returned only minimal charges. Because the grand jury's proceedings are private, The Post relied on s. 905.27(1), F.S., which allows a judge to disclose testimony for the purpose of "furthering justice."

¹⁷ Section 905.27(2)(b), F.S.

¹⁸ Section 905.27 (4) and (5), F.S. This first degree misdemeanor is punishable by up to 1 year in the county jail and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁹ Holly Baltz, THE PALM BEACH POST, *Why Was Jeffrey Epstein in 2006 Charged Only with Picking Up a Prostitute? Where We Stand* (Feb. 9, 2023) <https://www.palmbeachpost.com/story/news/2023/02/09/palm-beach-post-lawsuit-to-unseal-jeffrey-epstein-grand-jury-records/69867241007/>.

²⁰ *Id.*

²¹ Jane Musgrave, John Pacenti, and Lulu Ramadan, THE PALM BEACH POST, *How the Epstein Saga Could've Been Ended Years Ago: To His First Prosecutors, Victims Were Prostitutes* (Nov. 20, 2019). <https://www.usatoday.com/story/news/2019/11/20/jeffrey-epstein-saga-couldve-been-ended-attorney-barry-krischer/4237757002/>.

The Palm Beach Post, through its attorney, argued in part:

Access to the grand jury materials will allow the public to determine whether the grand jury process, and the secrecy that comes with it, was used to further justice or, instead, operated to shield Epstein and his co-conspirators from the consequences of their criminal activities.²²

In December 2021, the circuit judge determined that the court’s “inherent authority” had its boundaries and its authority to release the records was constrained by s. 905.27, F.S. Accordingly, the publisher’s access to the grand jury materials was denied and the documents and records would not be released.

In the final order the trial judge said:

Perhaps the circumstances presented above will induce the Legislature to amend section 905.27 to grant the courts additional authority or leeway in ruling on unique cases such as this one.²³

The Palm Beach Post appealed the ruling to the Fourth District Court of Appeal.

Appellate Court

The Fourth District Court of Appeal issued a decision on May 10, 2023. The appellate court held that the trial court was required to determine whether the disclosure of the requested grand jury proceedings would have furthered justice. In support of its conclusion, and after citing related cases on point, the court stated:

We extract from these decisions the court’s inherent authority to disclose grand jury materials despite the traditional rule of secrecy. In fact, this is contemplated and supported by section 905.27’s language.²⁴

The appellate court reversed the case and remanded it for further proceedings. The trial court was directed to conduct an in-camera inspection of the materials and decide whether disclosure of the grand jury materials would further justice. The trial court was instructed to evaluate the materials guided by the following non-exhaustive criteria cited in an earlier federal decision dealing with the disclosure of materials reviewed by a federal grand jury:

- The identity of the party seeking disclosure;
- Whether the defendant to the grand jury proceeding or the government opposes the disclosure;
- Why disclosure is being sought in the particular case;

²² *CA Florida Holdings, LLC, Publisher of The Palm Beach Post, v. Dave Aronberg, as State Attorney of Palm Beach County, Florida; Sharon R. Bock, as Clerk and Comptroller of Palm Beach, County, Florida*, Motion of Plaintiff for Summary Judgment, p. 3 (April 22, 2021).

²³ *CA Florida Holdings, LLC, Publisher of The Palm Beach Post, v. Dave Aronberg, as State Attorney of Palm Beach County, Florida; Sharon R. Bock, as Clerk and Comptroller of Palm Beach, County, Florida*, Final Judgment, p. 12 (Dec. 20, 2021).

²⁴ *CA Florida Holdings, LLC v. Aronberg*, 360 So. 3d 1149, 1153 (Fla. 4th DCA 2023).

- What specific information is being sought for disclosure;
- How long ago the grand jury proceedings took place;
- The current status of the principals of the grand jury proceedings and that of their families;
- The extent to which the desired material – either permissibly or impermissibly – has been previously made public;
- Whether witnesses to the grand jury proceedings who might be affected by disclosure are still alive; and
- The additional need for maintaining secrecy in the particular case in question.²⁵

On June 9, 2023, the trial court ordered the Clerk of the Circuit Court in Palm Beach County to provide him the materials presented to the grand jury in the Jeffrey Epstein case.²⁶ When the materials were delivered, the court determined that the materials were audio recordings and needed to be transcribed. On June 29, 2023, the court ordered the transcripts with the costs being paid for by the plaintiff seeking the information.²⁷ To date, the court has not released any testimony from the Epstein grand jury.

III. Effect of Proposed Changes:

The bill amends s. 905.27, F.S., which generally prohibits the disclosure of testimony or evidence received by a grand jury. There are currently three exceptions to this general prohibition that allow certain persons to disclose such testimony or evidence when a court requires the disclosure for one or more of the following purposes: ascertaining whether the testimony is consistent with the testimony given by a witness before the court, determining whether a witness is guilty of perjury, or furthering justice.²⁸

The bill amends the third exception of “furthering justice”²⁹ by creating paragraph (c) of s. 905.27(2), F.S., to include furthering a public interest when the disclosure of testimony is requested by the media or an interested person regardless of whether the purpose of disclosure is for use in a criminal or civil case. The testimony may be disclosed if:

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry is related to criminal or sexual activity between a subject of the grand jury investigation and a person who was a minor at the time;
- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

The bill further provides that even if the listed requirements are met, the court may limit the disclosure of testimony, including redacting certain testimony.

²⁵ *Id.* (citing *In re Petition of Craig*, 131 F.3d 99, 106 (2d Cir. 1997)).

²⁶ *CA Florida Holdings, LLC, Publisher of The Palm Beach Post, v. Dave Aronberg, as State Attorney of Palm Beach County, Florida, and Joseph Abruzzo, as Clerk of the Circuit Court and Comptroller of Palm Beach, County, Florida*, Order Directing Clerk of Court To Deliver Grand Jury Materials for In Camera Inspection (June 9, 2023).

²⁷ *CA Florida Holdings, LLC, Publisher of The Palm Beach Post, v. Dave Aronberg, as State Attorney of Palm Beach County, Florida, and Joseph Abruzzo, as Clerk and Comptroller of Palm Beach, County, Florida*, Order Directing Transcription of the Testimony in The Grand Jury Proceeding (June 29, 2023).

²⁸ Section 905.27(1)(c), F.S.

²⁹ *Id.*

The bill further amends s. 905.27(2), F.S., by creating a new paragraph (a) limiting the use of grand jury testimony disclosed by the court for use in a criminal case. This amendment provides that the testimony may only be used for the prosecution or defense of the case.

Similarly, the bill creates s. 905.27(2)(b), F.S., to reflect the requirement that grand jury testimony disclosed by a court for use in a civil case may only be used for that purpose.

The bill also amends s. 905.27(1), F.S., to include the custodian of a grand jury record in the current list of persons who may not disclose the testimony of a witness examined before a grand jury or other evidence received by a grand jury.

Section 2 of the bill reenacts s. 905.17(1) and (2), F.S., which relates to who may be present during a session of a grand jury, to incorporate the amendments made to s. 905.27, F.S.

The bill takes effect July 1, 2024.

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:**

The Office of the State Courts Administrator expects a minimal fiscal impact to the State Court System from the bill.³⁰

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

The Legislature may wish to consider whether it should incorporate into the bill all the interest-of-justice factors identified by the Fourth District Court of Appeal in *CA Florida Holdings, LLC v. Aronberg*, 360 So. 3d 1149 (2023).

VIII. **Statutes Affected:**

This bill substantially amends section 905.27 of the Florida Statutes.

This bill reenacts section 905.17 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.)

CS by Judiciary on December 13, 2023:

A technical amendment was adopted to add the omitted word “for” to the end of line 67 of the original bill.

B. **Amendments:**

None.

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

³⁰ Office of the State Courts Administrator, 2024 Judicial Impact Statement for SB 234, December 10, 2023 (on file with the Senate Criminal Justice Committee).

By the Committee on Judiciary; and Senators Polsky and Martin

590-01857-24

2024234c1

1 A bill to be entitled
 2 An act relating to disclosure of grand jury testimony;
 3 amending s. 905.27, F.S.; revising the list of persons
 4 prohibited from disclosing the testimony of a witness
 5 examined before, or the evidence received by, a grand
 6 jury; creating an exception for a request by the media
 7 or an interested person to the prohibited publishing,
 8 broadcasting, disclosing, divulging, or communicating
 9 of any testimony of a witness examined before the
 10 grand jury, or the content, gist, or import thereof;
 11 providing criminal penalties; providing construction;
 12 making technical changes; reenacting s. 905.17(1) and
 13 (2), F.S., relating to who may be present during a
 14 session of a grand jury, to incorporate the amendment
 15 made to s. 905.27, F.S., in references thereto;
 16 providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 905.27, Florida Statutes, is amended to
 21 read:

22 905.27 Testimony not to be disclosed; exceptions.—
 23 (1) Persons present or appearing during a grand jury
 24 proceeding, including a grand juror, a state attorney, an
 25 assistant state attorney, a reporter, a stenographer, or an
 26 interpreter, as well as the custodian of a grand jury record,
 27 may not or any other person appearing before the grand jury
 28 shall not disclose the testimony of a witness examined before
 29 the grand jury or other evidence received by it except when

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

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30 required by a court to disclose the testimony for the purpose
 31 of:

32 (a) Ascertaining whether it is consistent with the
 33 testimony given by the witness before the court;
 34 (b) Determining whether the witness is guilty of perjury;
 35 or
 36 (c) Furthering justice, which may encompass furthering a
 37 public interest when the disclosure is requested pursuant to
 38 paragraph (2) (c).

39 (2) It is unlawful for any person knowingly to publish,
 40 broadcast, disclose, divulge, or communicate to any other
 41 person, or knowingly to cause or permit to be published,
 42 broadcast, disclosed, divulged, or communicated to any other
 43 person, in any manner whatsoever, any testimony of a witness
 44 examined before the grand jury, or the content, gist, or import
 45 thereof, except when such testimony is or has been disclosed in
 46 a court proceeding in any of the following circumstances:-

47 (a) When a court orders the disclosure of such testimony
 48 pursuant to subsection (1) for use in a criminal case, it may be
 49 disclosed to the prosecuting attorney of the court in which such
 50 criminal case is pending, and by the prosecuting attorney to his
 51 or her assistants, legal associates, and employees, and to the
 52 defendant and the defendant's attorney, and by the latter to his
 53 or her legal associates and employees. However, the grand jury
 54 testimony afforded such persons by the court may only be used in
 55 the defense or prosecution of the criminal case and for no other
 56 purpose.

57 (b) When a court orders the ~~such~~ disclosure of such
 58 testimony is ordered by a court pursuant to subsection (1) for

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590-01857-24

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59 use in a civil case, it may be disclosed to all parties to the
60 case and to their attorneys and by the latter to their legal
61 associates and employees. However, the grand jury testimony
62 afforded such persons by the court ~~may~~ can only be used in the
63 defense or prosecution of the civil ~~or criminal~~ case and for no
64 other purpose ~~whatsoever~~.

65 (c) When a court orders the disclosure of such testimony
66 pursuant to subsection (1) in response to a request by the media
67 or an interested person, regardless of whether that purpose is
68 for use of the testimony in a criminal or civil case, it may be
69 disclosed if the subject of the grand jury inquiry is deceased,
70 the grand jury inquiry is related to criminal or sexual activity
71 between a subject of the grand jury investigation and a person
72 who at the time was a minor, the testimony was previously
73 disclosed by a court order, and the state attorney is provided
74 notice of the request. This paragraph does not restrict the
75 court's ability to limit the disclosure of testimony, including,
76 but not limited to, by redaction.

77 (3) ~~Nothing in~~ This section does not ~~shall~~ affect the
78 attorney-client relationship. A client has ~~shall have~~ the right
79 to communicate to his or her attorney any testimony given by the
80 client to the grand jury, any matters involving the client
81 discussed in the client's presence before the grand jury, and
82 any evidence involving the client received by or proffered to
83 the grand jury in the client's presence.

84 (4) A person who violates ~~Persons convicted of violating~~
85 this section commits ~~shall be guilty of~~ a misdemeanor of the
86 first degree, punishable as provided in s. 775.083, or by fine
87 not exceeding \$5,000, or both.

590-01857-24

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88 (5) A violation of this section constitutes ~~shall~~
89 ~~constitute~~ criminal contempt of court.

90 Section 2. For the purpose of incorporating the amendment
91 made by this act to section 905.27, Florida Statutes, in
92 references thereto, subsections (1) and (2) of section 905.17,
93 Florida Statutes, are reenacted to read:

94 905.17 Who may be present during session of grand jury.—

95 (1) No person shall be present at the sessions of the grand
96 jury except the witness under examination, one attorney
97 representing the witness for the sole purpose of advising and
98 consulting with the witness, the state attorney and her or his
99 assistant state attorneys, designated assistants as provided for
100 in s. 27.18, the court reporter or stenographer, and the
101 interpreter. The stenographic records, notes, and transcriptions
102 made by the court reporter or stenographer shall be filed with
103 the clerk who shall keep them in a sealed container not subject
104 to public inspection. The notes, records, and transcriptions are
105 confidential and exempt from the provisions of s. 119.07(1) and
106 s. 24(a), Art. I of the State Constitution and shall be released
107 by the clerk only on request by a grand jury for use by the
108 grand jury or on order of the court pursuant to s. 905.27.

109 (2) The witness may be represented before the grand jury by
110 one attorney. This provision is permissive only and does not
111 create a right to counsel for the grand jury witness. The
112 attorney for the witness shall not be permitted to address the
113 grand jurors, raise objections, make arguments, or otherwise
114 disrupt proceedings before the grand jury. The attorney for the
115 witness shall be permitted to advise and counsel the witness and
116 shall be subject to the provisions of s. 905.27 in the same

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117 manner as all who appear before the grand jury. An attorney or
118 law firm may not represent more than one person or entity in an
119 investigation before the same grand jury or successive grand
120 juries in the same investigation.

121 Section 3. This act shall take effect July 1, 2024.

OFFICE OF THE STATE COURTS ADMINISTRATOR
2024 JUDICIAL IMPACT STATEMENT

DATE: December 10, 2023

BILL NUMBER: SB 234

SPONSOR(S): Senator Polsky

STATUTE(S) AFFECTED: ss. 905.17 and 905.27, F.S.

COMPANION BILL(S): HB 117 (Representative Gossett-Seidman)

AGENCY CONTACT: Tashiba Robinson, Chief of Legislative Affairs

TELEPHONE: (850) 922-5692

ASSIGNED OSCA STAFF: BNS & MH

- I. **SUMMARY:** The bill amends s. 905.27, F.S., to revise the list of persons prohibited from disclosing grand jury testimony or evidence received by a grand jury to include persons who are present at a grand jury proceeding but not appearing before the grand jury and the custodian of a grand jury record. The bill also creates an exception to allow disclosure of grand jury testimony upon court order after a request by the media or an interested person under specified conditions.

The bill takes effect July 1, 2024.

II. **ANALYSIS:**

Current Situation

Grand jury proceedings are secret¹ and the stenographic records, notes, and transcriptions of such proceedings made by the court reporter or stenographer are filed with the clerk of court who must keep them under seal.² The notes, records, and transcriptions are confidential and exempt from public records requirements.³

Section 905.27, F.S., also prohibits a grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person

¹ Section 905.24, F.S.

² Testimony in grand jury proceedings must be reported by an approved court reporter but may not be transcribed unless required by order of the court. Other parts of grand jury proceedings, including deliberations and voting, may not be reported. The approved court reporter's work product, including stenographic notes, electronic recordings, and transcripts, must be filed with the clerk of court under seal. Florida Rule of General Practice and Judicial Administration 2.535(h)(6); See also s. 905.17, F.S.

³ Section 905.17, F.S.

OFFICE OF THE STATE COURTS ADMINISTRATOR
2024 JUDICIAL IMPACT STATEMENT

appearing before a grand jury from disclosing the testimony of a witness examined before the grand jury or evidence received by the grand jury.

Current law provides exceptions to the prohibition on disclosure of grand jury testimony and authorizes the clerk of court to release grand jury notes, records, and transcripts when requested by a grand jury for use by the grand jury⁴ and when ordered by a court to:

- Ascertain whether it is consistent with the testimony given by the witness before the court;
- Determine whether a witness is guilty of perjury; or
- Further justice.

If the court orders disclosure of grand jury testimony pursuant to one of the stated exceptions in a criminal or civil case, the testimony may only be disclosed to specified parties to the case (including employees of legal counsel) and may only be used in defense or prosecution of the civil or criminal case.

It is unlawful for any person to knowingly themselves, or to permit another person to, publish, broadcast, disclose, divulge, or communicate to any other person grand jury testimony except when such testimony has been disclosed in a court proceeding. Unlawful disclosure of grand jury testimony or evidence is a 1st degree misdemeanor and a criminal contempt of court.

Effect of the Bill

The bill amends s. 905.27, F.S., to revise the list of persons prohibited from disclosing grand jury testimony or evidence to include persons who are present at a grand jury proceeding but not appearing before the grand jury and the custodian of a grand jury record.

The bill also specifies that “furthering justice,” as grounds for disclosing grand jury testimony, may encompass furthering a public interest when the disclosure is requested by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, and:

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry related to criminal or sexual activity between a subject of the grand jury investigation and a person who was at the time a minor;
- The testimony was previously disclosed by a court order; and
- The state attorney is notified of the request.

⁴ Section 905.17, F.S.

OFFICE OF THE STATE COURTS ADMINISTRATOR
2024 JUDICIAL IMPACT STATEMENT

The additional disclosure exception does not restrict the court's authority to limit the disclosure of grand jury testimony, including, but not limited to, redaction of testimony.

The bill takes effect July 1, 2024.

- III. **ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT:** Indeterminate. The bill has the potential to increase judicial workload because there could conceivably be more prosecutions for unlawful disclosure and there could conceivably be more requests for disclosure of grand jury testimony. The amount of the increase is not likely to be significant, however.
- IV. **IMPACT TO COURT RULES/JURY INSTRUCTIONS:** Review of Florida Rule of General Practice and Judicial Administration 2.420 is recommended.
- V. **ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:**
- A. **Revenues:** None.
- B. **Expenditures:** The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial workload resulting from more prosecutions for unlawful disclosure and more requests for disclosure of grand jury testimony, as discussed in Section III, above. However, this legislation is anticipated to have a minimal fiscal impact on expenditures of the State Court System.

January 10, 2024

Meeting Date

Criminal Justice

Committee

Name **Barney Bishop III**

Phone **FL**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

234

Bill Number or Topic

Amendment Barcode (if applicable)

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Smart Justice Alliance

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

W

The Florida Senate

APPEARANCE RECORD

SB 2034

Bill Number or Topic

1/10/24

Meeting Date

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Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Andrew Watt for Palm Beach Clerk of Courts

Phone 561-657-6898

Address 301 N. Olive Ave

Email Awatt@mypalmbeachclerk.com

West Palm Beach FL 33401

Street

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Clerk of the Court, PBC

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022JointRules.pdf)

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

S-001 (08/10/2021)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Committee on Agriculture, Environment,
and General Government
Criminal Justice
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR TINA SCOTT POLSKY

30th District

December 14, 2023

Chairman Jonathan Martin
Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Martin,

I respectfully request that you place CS/SB 234, relating to Disclosure of Grand Jury Testimony on the agenda of the Committee on Criminal Justice, at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

A handwritten signature in black ink, appearing to read "Tina S. Polsky".

Senator Tina S. Polsky
Florida Senate, District 30

cc: Amanda Stokes, Staff Director
Sue Arnold, Administrative Assistant

REPLY TO:

- 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 312

INTRODUCER: Criminal Justice Committee and Senators Collins and Hooper

SUBJECT: Offenses Involving Children

DATE: January 10, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 312 amends s. 90.803, F.S., to increase the age for the child hearsay exception from 16 to 17 years of age. The hearsay rule is a rule of evidence which prohibits the admission of out-of-court statements that are offered to prove the truth of the matter asserted as evidence in judicial proceedings.

Under the child hearsay exception in current law, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
- The child either testifies, or is unavailable as a witness and there is other corroborative evidence of abuse or offense.

The bill amends s. 775.21, F.S., providing that human trafficking offenses involving a minor under s. 787.06(3)(f) and (g), F.S., will require a sexual predator designation on a first offense. The bill provides that any violation of s. 787.06(3)(f) and (g), F.S., will require registration as a sexual predator if the offender has another qualifying offense.

The bill may have an indeterminate fiscal impact on the courts. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2024.

II. Present Situation:

The hearsay rule is a rule of evidence which prohibits the admission of out-of-court statements that are offered to prove the truth of the matter asserted as evidence in judicial proceedings.¹

Hearsay

Hearsay is a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted.² Current law provides hearsay exceptions where, based on the circumstances surrounding the statement, the law finds sufficient reliability to warrant a hearsay exception. For example, out-of-court statements made by children who are 16 or less, are admissible in certain instances.³

Courts have noted that the questioning of hearsay in criminal cases is of particular importance based on the constitutional right of the accused to cross-examine all witnesses appearing against him or her.⁴

Although hearsay evidence is generally inadmissible as evidence in a court hearing or trial, courts permit the admission of hearsay if the statement falls under a firmly-rooted exception in law, or possess a guarantee of trustworthiness.⁵

Florida's evidence code groups hearsay exceptions together as non-hearsay, hearsay exceptions where the availability of the declarant is immaterial, and hearsay exceptions where the declarant is unavailable.

Non-hearsay

A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination and the statement is:

- Inconsistent with the declarant's testimony and given under oath subject to perjury at a trial, hearing, or other proceedings or in a deposition;
- Consistent with the declarant's testimony and offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication; or

¹ Sections 90.801(1)(c) and 90.802, F.S.

² Section 90.801, F.S.

³ Section 90.803(23), F.S.

⁴ The Confrontation Clause of the Sixth Amendment of the U.S. Constitution provides, in part "that in all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." Section 16, Art. I, of the State Constitution, provides, in part "In all criminal prosecutions the accused ... shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses" Indeed, "the right to confront one's accusers is a concept that dates back to Roman times." *Crawford v. Washington*, 541 U.S. 36, 43 (2004).

⁵ See *Crawford v. Washington*, 541 U.S. 36, 43 (2004).

- One of identification of a person made after perceiving the person.⁶

Hearsay Exceptions Where the Availability of the Declarant is Immaterial

Current law provides exceptions to the hearsay rule, even though the declarant is available.⁷ The following provides, in part, a list of exceptions which may be admissible even when the declarant is available as a witness:

- **SPONTANEOUS STATEMENT:** A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.⁸
- **EXCITED UTTERANCE:** A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.⁹
- **THEN-EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION:** A statement of the declarant's then-existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to: (1) Prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action; (2) Prove or explain acts of subsequent conduct of the declarant.¹⁰
- **ADMISSIONS:** A statement that is offered against a party and is the party's own statement in either an individual or a representative capacity; a statement of which the party has manifested an adoption or belief in its truth; a statement by a person specifically authorized by the party to make a statement concerning the subject; a statement by the party's agent or servant concerning a matter within the scope of the agency or employment thereof, made during the existence of the relationships; or a statement by a person who was a coconspirator of the party during the course, and in furtherance, of the conspiracy. Upon request of counsel, the court shall instruct the jury that the conspiracy itself and each member's participation in it must be established by independent evidence, either before the introduction of any evidence or before evidence is admitted under this paragraph.¹¹
- **STATEMENT OF CHILD VICTIM:** Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or

⁶ Section 90.801(2), F.S.

⁷ Section 90.803(1)-(24), F.S., includes the following exceptions where the availability of the declarant is immaterial: spontaneous statement, excited utterance, then-existing mental, emotional, or physical condition, statement for purposes of medical diagnosis or treatment, recorded recollection, records of regularly conducted business activity, absence of entry in records of regularly conducted activity, public records and reports, records of vital statistics, absence of public record or entry, records of religious organizations, marriage, baptismal, and similar certificates, family records, records of documents affecting an interest in property, statements of documents affecting an interest in property, statements in ancient documents, marketing reports and commercial publications, admissions, reputation concerning personal or family history, reputation concerning boundaries or general history, reputation as to character, former testimony, statement of child victim, statement of elderly person or disabled adult.

⁸ Section 90.803(1), F.S.

⁹ Section 90.803(2), F.S.

¹⁰ Section 90.803(3), F.S., However, this subsection does not make admissible: (1) an after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such statement relates to the execution, revocation, identification, or terms of the declarant's will; (2) a statement made under circumstances that indicate its lack of trustworthiness.

¹¹ Section 90.803(18), F.S.

developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
- The child either testifies, or is unavailable¹² as a witness and there is other corroborative evidence of abuse or offense.¹³

Hearsay Exceptions Where the Declarant is Unavailable

Current law provides a list of hearsay exceptions that applies when the declarant is unavailable.^{14,15} The following provides, in part, a list of exceptions which may be admissible when the declarant is unavailable as a witness:

- **FORMER TESTIMONY:** Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.¹⁶
- **STATEMENT UNDER BELIEF OF IMPENDING DEATH:** In a civil or criminal trial, a statement made by a declarant while reasonably believing that his or her death was imminent, concerning the physical cause or instrumentalities of what the declarant believed to be impending death or the circumstances surrounding impending death.¹⁷
- **STATEMENT AGAINST INTEREST:** A statement which, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject the declarant to liability or to render invalid a claim by the declarant against another, so that a person in the declarant's position would not have made the statement unless he or she believed it to be true. A statement tending to expose the declarant to criminal liability and

¹² Section 90.803(23)(a)2.b., F.S., provides that unavailability includes a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1), F.S.

¹³ Section 90.803(23), F.S.

¹⁴ Section 90.804(1), F.S., provides that "unavailability as a witness" means that the declarant: is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial; is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means. However, a declarant is not unavailable as a witness if such exemption, refusal, claim of lack of memory, inability to be present, or absence is due to the procurement or wrongdoing of the party who is the proponent of his or her statement in preventing the witness from attending or testifying.

¹⁵ Section 90.804(2)(a)-(f), F.S., includes the following exceptions where the declarant is unavailable: Former testimony, statement under belief of impending death, statement against interest, statement of personal or family history, statement by deceased or ill declarant similar to one previously admitted, and statement offered against a party that wrongfully caused the declarant's unavailability.

¹⁶ Section 90.804(2)(a), F.S.

¹⁷ Section 90.804(2)(b), F.S.

offered to exculpate the accused is inadmissible, unless corroborating circumstances show the trustworthiness of the statement.¹⁸

Hearsay within Hearsay

Hearsay within hearsay is not excluded under s. 90.802, F.S., provided each part of the combined statements conforms with an exception to the hearsay rule as provided in s. 90.803 or s. 90.804, F.S.¹⁹

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.²⁰ The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders.

Section 775.21, F.S., provides that a person is designated as a sexual predator by a court if the person:

- Has been convicted of a qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;^{21,22}
- Has been convicted of a qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense;²³ or
- Was found to be a sexually violent predator in a civil commitment proceeding.^{24,25}

Section 943.0435, F.S., provides that a person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;²⁶
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense;²⁷ or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the juvenile was 14 years of age or older.²⁸

¹⁸ Section 90.804(2)(c), F.S.

¹⁹ Section 90.805, F.S.

²⁰ Sections 775.21 and 943.0435, F.S.

²¹ Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

²² Section 775.21(4)(a)1.a., F.S.

²³ Section 775.21(4)(a)1.b., F.S.

²⁴ Section 775.21(4)(d), F.S.

²⁵ Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

²⁶ Section 943.0435(1)(h)1.a., F.S.

²⁷ Section 943.0435(1)(h)1.b. and c., F.S.

²⁸ Section 943.0435(1)(h)1.d., F.S.

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.²⁹ Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the Department of Corrections (DOC) control or custody, under the DOC's or the Department of Juvenile Justice's (DJJ) supervision, or in a residential commitment program under the DJJ.

Sexual predators and sexual offenders are required to report at registration and reregistration certain information, including but not limited to, physical characteristics, relevant sex offense history, and information on residence, vehicles/vessels owned, and travel. The Florida Department of Law Enforcement (FDLE), through its agency website, provides a searchable database that includes some of this information.³⁰ Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

Human Trafficking

Human trafficking victims are young children, teenagers, and adults who are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.³¹ Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.³² Any minor who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim even if there is no force, fraud, or coercion.³³ Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.³⁴ The average ages of youth who are trafficked are 11-14 years old.³⁵

²⁹ All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register per s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (on the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(b), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times per year (on the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). Section 943.0435(14)(a), F.S.

³⁰ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. See <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on December 8, 2023).

³¹ See s. 787.06(1)(a), F.S.

³² The Department of Education, *Healthy Schools – Human Trafficking*, available at <https://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited December 28, 2023).

³³ *Id.*

³⁴ *Id.*

³⁵ Blue Campaign, *Human Trafficking 101 for School Administrators and Staff*, available at <https://rems.ed.gov/docs/Human%20Trafficking%20101%20for%20School%20Administrators%20and%20Staff.pdf> (last visited December 28, 2023).

Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

- For labor³⁶ or services³⁷ of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 commits a first degree felony;³⁸
- Using coercion for labor or services of an adult commits a first degree felony;³⁹
- Using coercion for commercial sexual activity of an adult commits a first degree felony;⁴⁰
- For labor or services of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 who is an unauthorized alien commits a first degree felony;^{41,42}
- Using coercion for labor or services of an adult who is an unauthorized alien commits a first degree felony;⁴³
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien commits a first degree felony;⁴⁴
- For labor or services who does so by the transfer or transport of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 from outside the state of Florida to within the state of Florida commits a first degree felony;⁴⁵
- Using coercion for labor or services who does so by the transfer or transport of an adult from outside the state of Florida to within the state of Florida commits a first degree felony;⁴⁶
- For commercial sexual activity who does so by the transfer or transport of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 from outside of the state of Florida to within the state of Florida commits a first degree felony punishable by imprisonment for a term of years not exceeding life;⁴⁷
- Using coercion for commercial sexual activity who does so by the transfer or transport of an adult from outside the state of Florida to within the state of Florida commits a first degree felony;⁴⁸ or

³⁶ Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

³⁷ Section 787.06(2)(h), F.S., provides “services” means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

³⁸ Section 787.06(3)(a)1., F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Section 775.082, F.S.

³⁹ Section 787.06(3)(a)2., F.S.

⁴⁰ Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines “sexual explicit performance” as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

⁴¹ Section 787.06(3)(c)1., F.S.

⁴² Section 787.06(2)(j), F.S., defines “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

⁴³ Section 787.06(3)(c)2., F.S.

⁴⁴ Section 787.06(3)(d), F.S.

⁴⁵ Section 787.06(3)(e)1., F.S.

⁴⁶ Section 787.06(3)(e)2., F.S.

⁴⁷ Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

⁴⁸ Section 787.06(3)(f)2., F.S.

- For commercial sexual activity in which any child under the age of 18 or an adult believed by the person to be a child younger than 18, or in which any person who is mentally defective⁴⁹ or mentally incapacitated⁵⁰ is involved commits a life felony.⁵¹

It is a life felony for any parent, legal guardian, or other person having custody or control of a minor to sell or otherwise transfer custody or control of such minor, or make such an offer, with knowledge or reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking.⁵²

III. Effect of Proposed Changes:

The bill amends s. 90.803, F.S., to increase the age for the child hearsay exception from 16 to 17 years of age. The hearsay rule is a rule of evidence which prohibits the admission of out-of-court statements that are offered to prove the truth of the matter asserted as evidence in judicial proceedings.

Under the child hearsay exception in current law, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
- The child either testifies, or is unavailable as a witness and there is other corroborative evidence of abuse or offense.

The bill amends s. 775.21, F.S., providing that human trafficking offenses involving a minor under s. 787.06(3)(f) and (g), F.S., will require a sexual predator designation on a first offense. The bill provides that any violation of s. 787.06(3)(f) and (g), F.S., will require registration as a sexual predator if the offender has another qualifying offense.

Under current law, s. 787.06(3)(f) and (g), F.S., which generally relate to human trafficking for commercial sexual activity, do not require an offender to be designated as a sexual predator based solely on a single conviction for either offense. Instead, both ss. 787.06(3)(f) and (g), F.S., require an offender to have a specified prior sexual offense conviction before he or she is required to be designated as a sexual predator upon such a conviction.

The bill is effective October 1, 2024.

⁴⁹ Section 794.011(1)(b), F.S., defines “mentally defective” as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

⁵⁰ Section 794.011(1)(c), F.S., defines “mentally incapacitated” as temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

⁵¹ Section 787.06(3)(g), F.S. A life felony is generally punishable by life imprisonment or by a term of imprisonment not exceeding 40 years. Section 775.082, F.S.

⁵² Section 787.06(4)(a), F.S.

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:

The bill may have an indeterminate fiscal impact on the courts. The bill is increasing the age for the child hearsay exception which may lead to an increase in court proceedings and appeals.⁵³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵³ Office of the State Courts Administrator *2024 Judicial Impact Statement* of HB 305 (December 11, 2023), at 2 (on file with the Senate Committee on Criminal Justice).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 90.803 and 775.21.

IX. Additional Information:

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

CS by Criminal Justice on January 10, 2024:

The committee substitute:

- Provides that only a person convicted of a specified human trafficking offense for commercial sexual activity, where the victim is a minor will automatically be designated as a sexual predator.
- Provides that a person's prior specified human trafficking conviction can still serve as a predicate offense for sexual predator designation should the person commit an additional sexual offense.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2024	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 60 - 80
and insert:
is a minor; or s. 787.06(3)(f) or (g), where the victim is a
minor;~~r~~ or s. 794.011, s. 800.04, or s. 847.0145;~~r~~ or a
violation of a similar law of another jurisdiction; or
b. Any felony violation, or any attempt thereof, of s.
393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
787.025(2)(c), where the victim is a minor; s. 787.06(3)(b),



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11 (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding
12 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;
13 s. 800.04; s. 810.145(8)(b); s. 825.1025; s. 827.071; s.
14 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if
15 the court makes a written finding that the racketeering activity
16 involved at least one sexual offense listed in this sub-
17 subparagraph or at least one offense listed in this sub-
18 subparagraph with sexual intent or motive; s. 916.1075(2); or s.
19 985.701(1); or a violation of a similar law of another
20 jurisdiction, and the offender has previously been convicted of
21 or found to have committed, or has pled nolo contendere or
22 guilty to, regardless of adjudication, any violation of s.
23 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
24 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b),
25 (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding

By Senator Collins

14-00413-24

2024312__

A bill to be entitled

An act relating to offenses involving children; amending s. 90.803, F.S.; increasing the maximum age of a child victim of specified acts whose out-of-court statements may be admissible in certain circumstances; amending s. 775.21, F.S.; providing that a first offense of specified sex trafficking offenses involving minors requires designation of the defendant as a sexual predator; providing an effective date.

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

Section 1. Paragraph (a) of subsection (23) of section 90.803, Florida Statutes, is amended to read:

90.803 Hearsay exceptions; availability of declarant immaterial.—The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

(23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.—

(a) Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 17 ~~16~~ or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is

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

14-00413-24

2024312__

admissible in evidence in any civil or criminal proceeding if:

1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and

2. The child either:

a. Testifies; or

b. Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1).

Section 2. Paragraph (a) of subsection (4) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first degree felony violation, or

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14-00413-24 2024312__

59 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 60 is a minor; s. 787.06(3)(f) or (g); or s. 794.011, s. 800.04,
 61 or s. 847.0145; or a violation of a similar law of another
 62 jurisdiction; or

63 b. Any felony violation, or any attempt thereof, of s.
 64 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 65 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b) or
 66 (d), ~~(f), or (g)~~; former s. 787.06(3)(h); s. 794.011, excluding
 67 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;
 68 s. 800.04; s. 810.145(8)(b); s. 825.1025; s. 827.071; s.
 69 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if
 70 the court makes a written finding that the racketeering activity
 71 involved at least one sexual offense listed in this sub-
 72 subparagraph or at least one offense listed in this sub-
 73 subparagraph with sexual intent or motive; s. 916.1075(2); or s.
 74 985.701(1); or a violation of a similar law of another
 75 jurisdiction, and the offender has previously been convicted of
 76 or found to have committed, or has pled nolo contendere or
 77 guilty to, regardless of adjudication, any violation of s.
 78 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 79 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b) or
 80 (d), ~~(f), or (g)~~; former s. 787.06(3)(h); s. 794.011, excluding
 81 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;
 82 s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 83 excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court
 84 makes a written finding that the racketeering activity involved
 85 at least one sexual offense listed in this sub-subparagraph or
 86 at least one offense listed in this sub-subparagraph with sexual
 87 intent or motive; s. 916.1075(2); or s. 985.701(1); or a

Page 3 of 4

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14-00413-24 2024312__

88 violation of a similar law of another jurisdiction;
 89 2. The offender has not received a pardon for any felony or
 90 similar law of another jurisdiction that is necessary for the
 91 operation of this paragraph; and

92 3. A conviction of a felony or similar law of another
 93 jurisdiction necessary to the operation of this paragraph has
 94 not been set aside in any postconviction proceeding.

95 Section 3. This act shall take effect July 1, 2024.

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OFFICE OF THE STATE COURTS ADMINISTRATOR
2024 JUDICIAL IMPACT STATEMENT

DATE: December 11, 2023

BILL NUMBER: HB 305

SPONSOR(S): Representative Baker

STATUTE(S) AFFECTED: ss. 90.803 and 775.21, F.S.

COMPANION BILL(S): SB 312 (Senator Collins)

AGENCY CONTACT: Tashiba Robinson, Chief of Legislative Affairs

TELEPHONE: (850) 922-5692

ASSIGNED OSCA STAFF: BNS

I. **SUMMARY:** The bill increases the maximum age (defined as physical, mental, emotional, or developmental age) from 16 years of age to 17 years of age by which child hearsay may be admissible in civil and criminal cases. The bill also provides that an offender's first conviction for certain human trafficking offenses, specifically offenses relating to commercial sexual activity involving minors, requires designation of the offender as a sexual predator.

II. **ANALYSIS:**
Under s. 90.803(23), F.S., child hearsay regarding child/sex abuse or child neglect may be admissible in any civil or criminal proceeding for children with a maximum physical, mental, emotional, or developmental age of 16 if the judge finds the hearsay statement reliable. The bill increases the maximum age of possible child hearsay admissibility from 16 to 17.

Additionally, under the Florida Sexual Predators Act (s. 775.21, F.S.), a person is designated as a sexual predator upon a conviction of specified human trafficking offenses relating to commercial sexual activity involving minors only if the person has previously been convicted of certain sex offenses. The bill repeals the prior conviction requirement and requires that a person convicted of specified human trafficking offenses relating to commercial sexual activity involving minors be designated a sexual predator. As a result, first-time offenders of human trafficking offenses involving sexual activity with minors will be designated as a sexual predator.

III. **ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT:** Revisions regarding admissibility of child hearsay will likely increase judicial

OFFICE OF THE STATE COURTS ADMINISTRATOR
2024 JUDICIAL IMPACT STATEMENT

workload in an indeterminate amount due to an anticipated increase in court proceedings and appeals. The effect of revisions relating to sexual predator designations is indeterminate.

Trial court judicial workload is measured using a case weighting system that calculates the amount of time it takes for a judge to dispose of a case. The number of case filings using the case weighting system is used to determine the need for additional judicial resources each year. Any judicial workload increases in the future as a result of legislation that passes this session will be reflected in the Supreme Court's annual opinion, *In re: Certification of Need for Additional Judges*. Please note that the workload impact from each bill may be nominal but the cumulative effect to the State Courts System from all bills could be substantial.

IV. **IMPACT TO COURT RULES/JURY INSTRUCTIONS:** None anticipated.

V. **ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:**

A. **Revenues:** None.

B. **Expenditures:** The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial workload resulting from increased court proceedings and appeals related to admissibility of child hearsay and sexual predator designations, as discussed in Section III.

The Florida Senate

APPEARANCE RECORD

SB 312

1/10/24

Meeting Date

Bill Number or Topic

Deliver both copies of this form to Senate professional staff conducting the meeting

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Aaron DiPietro

Phone 904-608-4471

Address PO Box 530103

Email aaron.d@flfamily.org

Street

Orlando

FL

32853

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Family Policy Council

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

January 10, 2024

Meeting Date

Criminal Justice

Committee

Name **Barney Bishop III**

Phone **FL**

Address **1454 Vieux Carre Drive**

Street

Tallahassee

City

FL

State

32308

Zip

Email **Barney@BarneyBishop.com**

312

Bill Number or Topic

Amendment Barcode (if applicable)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Smart Justice Alliance

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 340

INTRODUCER: Criminal Justice Committee and Senator Yarborough

SUBJECT: Intentional Damage to Critical Infrastructure

DATE: January 12, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	Fav/CS
2.			RI	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 340 creates s. 812.141, F.S., relating to the intentional damage of or trespass upon critical infrastructure. The bill creates new felony offenses and provides for civil liability to the owner or operator of critical infrastructure if a person is found to have improperly tampered with critical infrastructure based on a conviction for one of the crimes created by the bill.

A person who improperly tampers with critical infrastructure for which the owner or operator thereof has employed measures that are designed to exclude unauthorized persons, and such improper tampering results in damage that is \$200 or greater to critical infrastructure, commits a felony of the second degree, punishable by up to 15 years imprisonment and a \$10,000 fine.

A person who physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure commits a felony of the second degree, punishable by up to 15 years imprisonment and a \$10,000 fine.

A person who willfully, knowingly, and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized commits a felony of the third degree, punishable by up to 5 years imprisonment and a \$5,000 fine.

Any person who, without being authorized, licensed, or invited, willfully enters upon or remains on a physical critical infrastructure as to which notice against entering or remaining in is given, commits the offense of trespass on a critical infrastructure, a third degree felony punishable by up to 5 years imprisonment and a \$5,000 fine. The bill specifies the manner in which notice must be given against trespass on a critical infrastructure based on the size of the property and includes including signage requirements.

The bill defines the terms “improperly tampers” and “critical infrastructure.”

“Improperly tampers” means to intentionally and knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

- Changing the physical location or physical or virtual condition of the property, or any portion thereof, without permission or authority to do so;
- Otherwise moving, damaging, or destroying the property or any portion thereof, without permission or authority to do so; or
- The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure’s digital systems.

“Critical infrastructure” is defined in the bill as any of the following:

- An electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
- Any portion of an aboveground oil or gas pipeline.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including but not limited to, law enforcement agencies, fire emergency medical services, emergency management agencies, or any other governmental entity.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
- A facility used for the operation, landing, takeoff, or surface maneuvering of vehicles or aircraft.
- A transmission facility used by a federally licensed radio or television station.
- A military base or military facility conducting research and development of military weapons systems, subsystems, components, or parts.

- Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data that are essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

The bill may have a positive indeterminate fiscal impact on the Department of Corrections. The bill creates additional felony offenses not taken into account since the preliminary estimate provided by the Office of Economic and Demographic Research. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

Acts of Destruction against Utilities

The National Conference of State Legislatures (NCSL) suggests that states should be aware of and be prepared for actual physical threats perpetrated by humans to energy infrastructure.¹ The U.S. Department of Energy's annual summary of Electric Emergency Incident and Disturbance Reports indicates at least 25 reports were filed as actual physical attacks perpetrated by humans in 2022, compared to six attacks in 2021.²

A sample of the attacks to critical infrastructure throughout the country in the last few years includes:

- In September 2022, six separate incidents occurred at Duke Energy substations in Central Florida.³
- In December 2022, 40,000 customers in Monroe County, North Carolina, lost power due to firearm attacks at two substations.⁴
- Additional such attacks – or at least thwarted plans to make them – to critical infrastructure have also occurred in Oregon, South Carolina, and Washington.⁵

¹ The National Conference of State Legislatures, *Human-Driven Physical Threats to Energy Infrastructure*, updated May 22, 2023, available at www.ncsl.org/energy/human-driven-physical-threats-to-energy-infrastructure (last visited December 13, 2023).

² *Id.*; U.S. Department of Energy, *Office of Cybersecurity, Energy Security, & Emergency Response, Electric Disturbance Events (OE-417) Annual Summaries*, available at https://www.oe.netl.doe.gov/OE417_annual_summary.aspx (last visited December 13, 2023).

³ USA TODAY, *Attacks on power substations are growing. Why is the electric grid so hard to protect?*, Dinah Voyles Pulver, Grace Hauck, December 30, 2022, updated February 8, 2023, available at <https://www.usatoday.com/story/news/nation/2022/12/30/power-grid-attacks-increasing/10960265002/> (last visited December 14, 2023).

⁴ Utility Dive News, *FBI called to investigate firearms attacks on Duke Energy substations in North Carolina; 40K without power*, Robert Walton, December 4, 2022, available at <https://www.utilitydive.com/news/fbi-investigate-firearms-attacks-duke-energy-substations-North-Carolina/637927/> (last visited December 14, 2023).

⁵ Koin News, *Memo: Oregon, Washington substations intentionally attacked; Aim is 'violent anti-government activity,'* Elise Haas, December 6, 2022, available at <https://www.koin.com/news/oregon/memo-oregon-washington-substations-intentionally-attacked/> (last visited December 14, 2023); WLTX News 19, *South Carolina lawmakers pass power grid protections after attacks, Dominion Energy said the state had 12 of these incidents last year alone*, Becky Budds, March 20, 2023, available at <https://www.wltx.com/article/news/politics/state-lawmakers-pass-power-grid-protections/101-a3c290a8-42f5-4915-94aa-533cfbed0db1> (last visited December 14, 2023).

Florida Criminal Laws that May Apply to Incidents Involving Intentional Damage of Critical Infrastructure

Although there is no current Florida criminal offense of Intentional Damage of Critical Infrastructure, under certain facts involving intentional damage to critical infrastructure, a person may be charged under existing crimes. These crimes include, in part, the offense of trespass and criminal mischief.

A person commits the crime of trespass on a property other than a structure or conveyance⁶ if he or she, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation; or
- If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Trespass on property other than a structure or conveyance is a first degree misdemeanor offense.⁷

If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she commits a third degree felony.^{8,9}

A person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti thereon or other acts of vandalism thereto.¹⁰

- If the damage to such property is \$200 or less, it is a misdemeanor of the second degree.¹¹
- If the damage to such property is greater than \$200 but less than \$1,000, it is a misdemeanor of the first degree.¹²
- If the damage is \$1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs \$1,000 or more in labor and supplies to restore, it is a felony of the third degree.¹³

Additionally, Florida law specifically criminalizes damage to certain telephone equipment. A person who, without the consent of the owner thereof, willfully destroys or substantially

⁶ Section 810.09, F.S.

⁷ A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁸ Section 810.09(2)(c), F.S.

⁹ A third degree felony is punishable by up to 5 years' incarceration and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Section 806.13, F.S.

¹¹ *Id.* A second degree misdemeanor is punishable by up to 60 days in the county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

¹² *Id.* A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹³ *Id.* A third degree felony is punishable by up to 5 years' incarceration and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

damages any public telephone, or telephone cables, wires, fixtures, antennas, amplifiers, or any other apparatus, equipment, or appliances, which destruction or damage renders a public telephone inoperative or which opens the body of a public telephone, commits a third degree felony.¹⁴

Current Florida Statutes Defining “Critical Infrastructure”

The term “critical infrastructure facility” is currently defined in two sections of Florida law.

In the context of protecting critical infrastructure from a drone’s flightpath, s. 330.41, F.S., defines a “critical infrastructure facility” as any of the following, if completely enclosed by a fence or other physical barrier obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

- A power generation or transmission facility, substation, switching station, or electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility.
- Any portion of an aboveground oil or gas pipeline.
- A refinery.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.
- A seaport as listed in s. 311.09(1), F.S., which need not be completely enclosed by a fence or other physical barrier and need not be marked with a sign or signs indicating that entry is forbidden.
- An inland port or other facility or group of facilities serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport.
- An airport as defined in s. 330.27, F.S.
- A spaceport territory as defined in s. 331.303(18), F.S.
- A military installation as defined in 10 U.S.C. s. 2801(c)(4) and an armory as defined in s. 250.01, F.S.
- A dam as defined in s. 373.403(1), F.S., or other structures, such as locks, floodgates, or dikes, which are designed to maintain or control the level of navigable waterways.
- A state correctional institution as defined in s. 944.02, F.S., or a private correctional facility authorized under ch. 957, F.S.

¹⁴ *Id.* A conspicuous notice of the provisions of this subsection and the penalties provided must be posted on or near the destroyed or damaged instrument and visible to the public at the time of the commission of the offense.

- A secure detention center or facility as defined in s. 985.03, F.S., or a nonsecure residential facility, a high-risk residential facility, or a maximum-risk residential facility as those terms are described in s. 985.03(44), F.S.
- A county detention facility as defined in s. 951.23, F.S.
- A critical infrastructure facility as defined in s. 692.201, F.S.¹⁵

In Part III, ch. 692.201, F.S., Conveyances to Foreign Entities, “critical infrastructure facility” means any of the following, if it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons:

- A chemical manufacturing facility.
- A refinery.
- An electrical power plant as defined in s. 403.031(20), F.S.
- A water treatment facility or wastewater treatment plant.
- A liquid natural gas terminal.
- A telecommunications central switching office.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A seaport as listed in s. 311.09, F.S.
- A spaceport territory as defined in s. 331.303(18), F.S.
- An airport as defined in s. 333.01, F.S.¹⁶

Federal Law

Title 18 U.S.C.A. section 1366 is a current federal criminal law that applies in cases of damaging the property of an energy facility.¹⁷

“Energy facility” is defined as: “a facility that is involved in the production, storage, transmission, or distribution of electricity, fuel, or another form or source of energy, or research, development, or demonstration facilities relating thereto, regardless of whether such facility is still under construction or is otherwise not functioning, except a facility subject to the jurisdiction, administration, or in the custody of the Nuclear Regulatory Commission or an interstate gas pipeline facility.”¹⁸

¹⁵ The “Unmanned Aircraft Systems Act,” Section 330.41(1) and (2)(a)1.-20., F.S.

¹⁶ Section 692.201(2), F.S.

¹⁷ 18 U.S.C. s. 1366(a), (b), and (d), provide: (a) Whoever knowingly and willfully damages or attempts or conspires to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed, or if the object of the conspiracy had been achieved, have exceeded \$100,000, or damages or attempts or conspires to damage the property of an energy facility in any amount and causes or attempts or conspires to cause a significant interruption or impairment of a function of an energy facility, shall be punishable by a fine under this title or imprisonment for not more than 20 years, or both.

(b) Whoever knowingly and willfully damages or attempts to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed have exceeded \$5,000 shall be punishable by a fine under this title, or imprisonment for not more than five years, or both....

(d) Whoever is convicted of a violation of subsection (a) or (b) that has resulted in the death of any person shall be subject to imprisonment for any term of years or life.

¹⁸ 18 U.S.C. s. 1366(c)

III. Effect of Proposed Changes:

The bill creates s. 812.141, F.S., relating to the intentional damage to and trespass upon critical infrastructure.

The term “improperly tampers” as used in the bill means to intentionally and knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

- Changing the physical location or physical or virtual condition of the property without authorization;
- Otherwise moving, damaging, or destroying the property without authorization; or
- The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure’s digital systems.

The bill provides that a person who “improperly tampers” with critical infrastructure for which the owner or operator thereof has employed measures that are designed to exclude unauthorized persons, which may include physical or digital measures such as fences, barriers, or guard posts, or identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls, and such improper tampering results in damage that is \$200 or greater to critical infrastructure commits a second degree felony.¹⁹

Additionally, a person who physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure commits a second degree felony.²⁰

The bill provides that a person who willfully, knowingly, and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized commits a third degree felony.²¹

Under the bill it is third degree felony²² for any person who, without being authorized, licensed, or invited, to willfully enter upon or remain on a physical critical infrastructure as to which notice against entering or remaining in is given as provided in the bill, commits the offense of trespass on a critical infrastructure. The bill specifies the manner in which notice must be given against trespass on a critical infrastructure based on the size of the property and includes including signage requirements.

The bill defines the term “critical infrastructure” as any of the following:

- An electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.

¹⁹ A second degree felony is punishable by up to 15 years imprisonment and a fine of up to \$10,000. Sections 775.082, 775.083, or 775.084, F.S.

²⁰ *Id.*

²¹ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine.

²² *Id.*

- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
- Any portion of an aboveground oil or gas pipeline.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including but not limited to, law enforcement agencies, fire emergency medical services, emergency management agencies, or any other governmental entity.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
- A facility used for the operation, landing, takeoff, or surface maneuvering of vehicles or aircraft.
- A transmission facility used by a federally licensed radio or television station.
- A military base or military facility conducting research and development of military weapons systems, subsystems, components, or parts.
- Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data that are essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

The bill provides for civil damages against a person who is found to have improperly tampered with critical infrastructure based on a conviction for the crime created by the bill. The person is civilly liable to the operator or owner of the critical infrastructure for damages in an amount equal to three times the actual damage sustained by the operator or owner due to any personal injury, wrongful death, or property damage caused by the act, or for an amount equal to three times any claim made against the operator or owner for any personal injury, wrongful death, or property damage caused by the malfunction of the critical infrastructure resulting from the act, whichever is greater.

The bill becomes effective July 1, 2024.

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:

The Office of Economic and Demographic Research has provided a preliminary proposed estimate which determines that the bill may have a positive indeterminate fiscal impact on the Department of Corrections. A positive indeterminate fiscal impact means that the number of prison beds that may result from the bill is unquantifiable at this time.²³ However, the CS creates additional felony offenses that may affect the preliminary proposed estimate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There are sources of energy produced in Florida that may not be included in the definition of critical infrastructure created in the bill. For example, the 2022 State of Florida Energy Sector

²³ Office of Economic and Demographic Research, *SB340 Preliminary Estimate* (on file with the Senate committee for Criminal Justice).

Risk Profile recognizes that 65 wind or solar plants existed in Florida at the time of the report in 2021.²⁴

VIII. Statutes Affected:

This bill creates section 812.141 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on January 10, 2024:

The committee substitute:

- Amends the definition of “improperly tampers,” to clarify that a person must intentionally and knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:
 - Changing the physical or virtual condition of the property without authorization; or
 - The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure’s digital systems.
- Requires proof of resulting damage of \$200 or greater if the owner or operator has taken measures to exclude unauthorized persons to prove the second degree felony crime of improperly tampering with critical infrastructure existing in the original bill.
- Expands the list of measures designed to exclude unauthorized persons.
- Creates an additional second degree felony for physically tampering, etc., with a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure.
- Creates a third degree felony of trespass on a critical infrastructure, and specifies the requirements that constitute notice against entering or remaining in a physical critical infrastructure.
- Creates a new third degree felony, for willfully, knowingly, and without authorization gaining access to a computer, etc., owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized.
- Provides for civil damages against a person who is found to have improperly tampered with critical infrastructure.
- Expands the definition of “critical infrastructure” by including additional facilities, etc.
- Removes Section 2. of the bill.
- Makes technical changes.

²⁴ U.S. Department of Energy; Cybersecurity, Energy Security, and Emergency Response; State of Florida Energy Sector Risk Profile, March 2021; available at <https://www.energy.gov/sites/default/files/2021-09/Florida%20Energy%20Sector%20Risk%20Profile.pdf> (last visited December 15, 2023).

B. Amendments:

None.

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



167934

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2024	.	
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	.	

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

Senate Amendment (with title amendment)

Delete lines 23 - 59

and insert:

5. A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

6. A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.

7. Any portion of an aboveground oil or gas pipeline.

8. A wireless or wired communications network, including



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11 the tower, antennae, support structures, and all associated
12 ground-based equipment, including equipment intended to provide
13 communications to governmental entities including but not
14 limited to, law enforcement, fire emergency medical services,
15 emergency management agencies, or any other governmental entity.

16 9. A water intake structure, water treatment facility,
17 wastewater treatment plant, pump station, or lift station.

18 10. A deepwater port, railroad switching yard, airport,
19 trucking terminal, or other freight transportation facility.

20 11. A facility used for the operation, landing, takeoff, or
21 surface maneuvering of vehicles or aircraft.

22 12. A transmission facility used by a federally licensed
23 radio or television station.

24 13 A military base or military facility conducting research
25 and development of military weapons systems, subsystems,
26 components or parts.

27 14. Cyber or virtual assets including electronic systems,
28 networks, servers, data centers, devices, hardware, software, or
29 data that are essential to the reliable operations, monitoring,
30 and security of any critical infrastructure as defined in this
31 section.

32 15. Dams and other water control structures.

33 (b) "Improperly tampers" means to intentionally and
34 knowingly cause, or attempt to cause, a significant interruption
35 or impairment of a function of critical infrastructure by:

36 1. Changing the physical location or physical or virtual
37 condition of the property, or any portion thereof, without
38 permission or authority to do so;

39 2. Otherwise moving, damaging, or destroying the property



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40 or any portion thereof, without permission or authority to do
41 so; or,

42 3. The unauthorized access, introduction of malware, or any
43 action that compromises the integrity or availability of the
44 critical infrastructure's digital systems.

45 (2) A person who improperly tampers with critical
46 infrastructure for which the owner or operator thereof has
47 employed measures that are designed to exclude unauthorized
48 persons, which may include physical or digital measures such as
49 fences, barriers, or guard posts, or identity and access
50 management, firewalls, virtual private networks, encryption,
51 multi-factor authentication, passwords, or other cybersecurity
52 systems and controls, and such improper tampering results in
53 damage that is \$200 or greater to critical infrastructure,
54 commits a felony of the second degree, punishable as provided in
55 s. 775.082, s. 775.083, or s. 775.084.

56 (3) A person who is found in a civil action to have
57 improperly tampered with critical infrastructure based on a
58 conviction of subsection (2) is liable to the operator or owner
59 of the critical infrastructure for damages in an amount equal to
60 three times the actual damage sustained by the operator or owner
61 due to any personal injury, wrongful death, or property damage
62 caused by the act or an amount equal to three times any claim
63 made against the operator or owner for any personal injury,
64 wrongful death, or property damage caused by the malfunction of
65 the critical infrastructure resulting from the act, whichever is
66 greater.

67 (4) (a) Any person who, without being authorized, licensed,
68 or invited, willfully enters upon or remains on a physical



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69 critical infrastructure as to which notice against entering or
70 remaining in is given as provided in paragraph (b), commits the
71 offense of trespass on a critical infrastructure.

72 (b)1. For a physical critical infrastructure that is:

73 a. One acre or less in area, a sign must be posted that
74 appears prominently, in letters of not less than 2 inches in
75 height, and reads in substantially the following manner: "This
76 area is a designated critical infrastructure facility and anyone
77 who trespasses on this property commits a felony."

78 b. More than one acre in area, signs must be placed not
79 more than 500 feet apart along and at each corner of the
80 boundaries of the land or, for land owned by a water control
81 district that exists pursuant to ch. 298, or was created by
82 special act of the Legislature, signs placed at or near the
83 intersection of any district canal right-of-way and a road
84 right-of-way.

85 2. Signs must be placed along the boundary line of posted
86 land in a manner and in such position as to be clearly
87 noticeable from outside the boundary line. A sign in letters of
88 not less than 2 inches in height, must read in substantially the
89 following manner: "This area is a designated critical
90 infrastructure facility and anyone who trespasses on this
91 property commits a felony."

92 (c) A person who trespasses on a physical critical
93 infrastructure in violation of this subsection commits a felony
94 of the third degree, punishable as provided in s. 775.082, s.
95 775.083, or s. 775.084.

96 (5)(a) A person who willfully, knowingly, and without
97 authorization gains access to a computer, computer system,



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98 computer network, or electronic device owned, operated, or used
99 by any critical infrastructure entity, while knowing that such
100 access is unauthorized commits a felony of the third degree,
101 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

102 (b) A person who physically tampers with, inserts a
103 computer contaminant into, or otherwise transmits commands or
104 electronic communications to a computer, computer system,
105 computer network, or electronic device that causes a disruption
106 in any service delivered by any critical infrastructure commits
107 a felony of the second degree, punishable as provided in s.
108 775.082, s. 775.083, or s. 775.084.

109
110
111 ===== T I T L E A M E N D M E N T =====

112 And the title is amended as follows:

113 Delete lines 4 - 6

114 and insert:

115 definitions; providing criminal penalties for
116 improperly tampering with critical infrastructure;
117 providing for civil liability for such violations;
118 providing criminal penalties for trespass upon a
119 critical infrastructure; providing criminal penalties
120 for the unauthorized access to or tampering with
121 specified electronic devices or networks of critical
122 infrastructure;

By Senator Yarborough

4-00264B-24

2024340__

A bill to be entitled

An act relating to intentional damage to critical infrastructure; creating s. 812.141, F.S.; providing definitions; providing criminal penalties for causing intentional harm or damage to critical infrastructure; providing for civil liability for such violations; providing construction; providing an effective date.

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

Section 1. Section 812.141, Florida Statutes, is created to read:

812.141 Intentional damage to critical infrastructure.-

(1) For purposes of this section, the term:

(a) "Critical infrastructure" means any of the following:

1. An electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.

2. A chemical or rubber manufacturing or storage facility.

3. A mining facility.

4. A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.

5. A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.

6. Any portion of an aboveground oil or gas pipeline.

7. A wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.

8. A water intake structure, water treatment facility,

Page 1 of 3

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

4-00264B-24

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wastewater treatment plant, pump station, or lift station.

9. A deepwater port or railroad switching yard.

(b) "Improperly tampers" means, without permission or authority to do so, to change the physical location or the physical condition of the property or any portion thereof, or otherwise knowingly and intentionally move, deface, damage, or destroy the property or any portion thereof.

(2) A person who improperly tampers with critical infrastructure for which the owner or operator thereof has employed measures that are designed to exclude unauthorized persons, which may include measures such as fences, barriers, or guard posts, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who is found in a civil action to have knowingly and intentionally harmed critical infrastructure based on a conviction for a violation of subsection (2) is liable to the utility, communication services provider, operator, or owner for damages in an amount equal to three times the actual damage sustained by the utility, communication services provider, operator, or owner due to any personal injury, wrongful death, or property damage caused by the act or an amount equal to three times any claim made against the utility, communications service provider, operator, or owner for any personal injury, wrongful death, or property damage caused by the malfunction of the critical infrastructure resulting from the violation of subsection (2), whichever is greater.

Section 2. A prosecution for an offense committed before July 1, 2024, is not abated or affected by this act, and a statute that would be applicable but for this act remains

Page 2 of 3

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

4-00264B-24

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59 applicable to the prosecution.

60 Section 3. This act shall take effect July 1, 2024.

SB 340 – Intentional Damage to Critical Infrastructure (Identical HB 275)

This bill creates s. 812.141, F.S., defining “improperly tampers” to mean “without permission or authority to do so, to change the physical location or the physical condition of the property or any portion thereof, or otherwise knowingly and intentionally move, deface, damage, or destroy the property or any portion thereof.” It then defines “critical infrastructure” as “an electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center...a chemical or rubber manufacturing or storage facility...a mining facility...a natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline...a liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more...any portion of an aboveground oil or gas pipeline...a wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment...a water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station...a deepwater port or railroad switching yard.” An **unranked, 2nd degree felony (Level 4 by default)** is added for “a person who improperly tampers with critical infrastructure for which the owner or operator thereof has employed measures that are designed to exclude unauthorized persons, which may include measures such as fences, barriers, or guard posts.”

Per U.S. Department of Energy, there were 3 incidents of vandalism at Florida electrical facilities in CY 2022, and there were 5 incidents in the first six months of CY 2023 involving vandalism or suspicious activity at electrical facilities.¹

Misdemeanor violations with monetary thresholds exist under s. 806.13(1)(a), F.S., s. 806.13(1)(b)1, F.S., and s. 806.13(1)(b)2, F.S. for when “a person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti thereon or other acts of vandalism thereto.” Per FDLE, in FY 22-23, there were 7,708 arrests, with 3,572 guilty/convictions, and 1,104 adjudications withheld for these misdemeanor criminal mischief violations.

A Level 2, 3rd degree felony exists under s. 806.13(1)(b)3, F.S., where “a person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property” and “the damage is \$1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs \$1,000 or more in labor and supplies to restore.” Per DOC, in FY 22-23, there were 73 new commitments to prison for these violations.

Per FDLE, in FY 22-23, there were 2 convictions for the Level 7, 1st degree felony under s. 812.145, F.S., where someone “intentionally takes copper or other nonferrous metals

¹ Electric Disturbance Events (OE-417) Annual Summaries, https://www.oe.netl.doe.gov/OE417_annual_summary.aspx

from a utility or communications services provider, thereby causing damage.” Additionally, there were 2 convictions for the Level 1, 3rd degree felony under s. 860.09, F.S. when a person “knowingly or willfully moves, interferes with, removes, or obstructs any railroad switch, bridge, track, crossties, or other equipment located on the right-of-way or property of a railroad and used in railroad operations.” Per DOC, there were no new commitments to prison under these statutes in FY 22-23.

In FY 22-23, the incarceration rate for a Level 4, 2nd degree felony was 27.6%.

Given the absence of data for this pool of potential offenders, and not knowing how many misdemeanor offenders or new commitments under s. 806.13, F.S. fit the criteria under this new language, it is not known how this newly created felony will impact prison beds.

EDR PROPOSED ESTIMATE: Positive Indeterminate

Requested by: Senate

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

SB 340

Bill Number or Topic

167934

Amendment Barcode (if applicable)

1/10/24

Meeting Date

Criminal Justice

Committee

Name Casey Reed

Phone (850) 591-6002

Address 150 South Monroe Street

Email CV8243

Street

4th Floor

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: ATT

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

1/10/24

The Florida Senate
APPEARANCE RECORD

SB 340

Meeting Date

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Senate professional staff conducting the meeting

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Casey Reed

Phone (850) 591-6004

Address 150 South Monroe St

Email cv8243@att.com

Street

City State Zip 4th FL

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: ATT

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/10/24

Meeting Date

340

Bill Number (if applicable)

Topic Intentional Damage to Critical Infrastructure

Amendment Barcode (if applicable)

Name Adam Basford

Job Title VP-Governmental Affairs

Address 516 N Adams St

Phone 850-224-7073

Street

Tallahassee

FL

32301

Email abasford@aif.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

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 (10/14/14)

1/9/24

Meeting Date

Criminal Justice

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

340

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Robert Stuart**

Phone **850-577-9090**

Address **301 S Bronough Street, Suite 600**

Email **Robert.Stuart@gray-robinson.com**

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Lumen Technologies

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

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S-001 (08/10/2021)

January 10, 2024

Meeting Date

Criminal Justice

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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SB 340 - Intentional Damage to Critical Infrastructure

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Kevin Noonan**

Phone **407.466.1287**

Address **100 West Anderson Street**

Email **knoonan@ouc.com**

Street

Orlando

FL

32801

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Orlando Utilities Commission

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

APPEARANCE RECORD

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340

Bill Number or Topic

10 SEPT 2024

Meeting Date

CRIM JUST

Committee

STEVE SCHALE

Name

Phone

850-5590317

Amendment Barcode (if applicable)

Address

201 S. MONROE

Email

STEVE@TAMPAFL.COM

Street

TALLAHASSEE

32317

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

PORT TAMPA BAY

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

The Florida Senate

APPEARANCE RECORD

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340

Bill Number or Topic

1/10/2024

Meeting Date

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name

Jeff Branch Branch

Phone

701-3701

Address

Street

Tallahassee

City

State

FL

Zip

32309

Email

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

SA 340

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida League of Cities

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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S-001 (08/10/2021)

January 10, 2024

Meeting Date

Criminal Justice

Committee

Name **Barney Bishop III**

Phone **FL**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Smart Justice Alliance

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

340

Bill Number or Topic

Deliver both copies of this form to
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Amendment Barcode (if applicable)

The Florida Senate

APPEARANCE RECORD

340

1/10/24

Meeting Date

Criminal Justice

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ryan Matthews

Phone

850-294-8591

Address

310 W. College Ave. Suite A

Email

Ryan.Matthews@gray-robinson.com

Street

Tallahassee FL

32301

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: FL Chamber of Commerce

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

340

Bill Number or Topic

1/10/24

Meeting Date

Deliver both copies of this form to Senate professional staff conducting the meeting

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Renee Goode

Phone 904-887-4440

Address 192 Gargonza Court

Email goodrr@jea.com

Street

St Augustine FL 32084

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

JE A

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

340

Bill Number or Topic

1/10/24

Meeting Date

Deliver both copies of this form to Senate professional staff conducting the meeting

Crim Justice

Committee

Amendment Barcode (if applicable)

Name

Nicole Albers

Phone

850 224 3314

Address

PO Box 10114

Email

NAlbers@fdpublicpower.com

Street

Tallahassee FL

32302

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL Municipal Electric Association

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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SB 340

Bill Number or Topic

Amendment Barcode (if applicable)

11/11/2024

Meeting Date

S CJ

Committee

Name KEYNA CORRY

Phone 850 566 9575

Address 730 E. PARK AVE

Email Keynacory@paconsultants.com

Street

TALLAHASSEE FL 32301

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

THE CHEMOURS COMPANY

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

0340

1/10/24

Meeting Date

Bill Number or Topic

Criminal Justice

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Shawn Sausville

Phone 904/535-9198

Address 576 W Penman RD

Email BLE309@gmail.com

Street

Neptune Beach FL 32266

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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H-10-24

Meeting Date

340

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Dale Calhoun

Phone 850 510 5940

Address PO Box 11026

Email dale.calhoun@floridagas.org

Street

Tallahassee FL

32302

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Natural Gas Association
Florida Propane Gas Association

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1-10-24

Meeting Date

SB0340

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Rick Myers

Phone 904 610-5609

Address 940 17th Ave N

Email

Street

SAY Beach

FL

32250

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

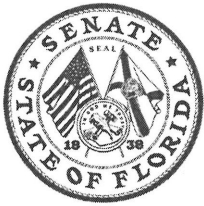
I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)



The Florida Senate

Committee Agenda Request


To: Senator Jonathan Martin, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 13, 2023

I respectfully request that **Senate Bill #340**, relating to Intentional Damage to Critical Infrastructure, be placed on the:

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



Senator Clay Yarborough
Florida Senate, District 4

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 450

INTRODUCER: Senator Wright

SUBJECT: Sheltering or Aiding Unmarried Minors

DATE: January 9, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	Favorable
2.			CF	
3.			RC	

I. Summary:

SB 450 amends ss. 984.085 and 985.731, F.S., to create a presumption and defense to the crime of sheltering or aiding an unmarried minor. Those sections provide that a person:

- Who is not an authorized agent of the Department of Children and Families (DCF) or the Department of Juvenile Justice (DJJ) may not knowingly shelter an unmarried minor for more than 24 hours without the consent of the minor’s parent or guardian or without notifying a law enforcement office of the minor’s name and the fact that the minor is being provided shelter.
- May not knowingly provide aid to an unmarried minor who has run away from home without first contacting the minor’s parent or guardian or notifying a law enforcement officer. The aid prohibited includes assisting the minor in obtaining shelter, such as hotel lodgings.

The bill increases the crime of sheltering or aiding an unmarried minor from a first degree misdemeanor to a third degree felony.

The bill provides that proof that an unmarried minor has not attained 18 years of age creates a presumption that the person knew the minor’s age or acted in reckless disregard thereof.

This bill creates a defense to the crime of unlawfully sheltering or aiding unmarried minors where the defendant had reasonable cause to believe that his or her action was necessary to preserve the minor from danger to his or her welfare.

The bill may have an indeterminate fiscal impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2024.

II. Present Situation:

Federal law provides a definition for the term “homeless children and youths,” which means individuals who lack a fixed, regular, and adequate nighttime residence and includes children and youths who are:

- Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
- Living in emergency or transitional shelters or are abandoned in hospitals;
- Utilizing for a primary nighttime residence a place that is a public or private place but not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children living in circumstances described above.¹

The term “unaccompanied youth” includes a youth not in the physical custody of a parent or guardian.²

Homeless and Runaway Children and Youth

Florida law defines the term “children and youths who are experiencing homelessness” to have the same meaning as “homeless children and youths” under federal law and described above.³

Homeless Children and Youth

Each year, an estimated 3.5 million youth and young adults experience homelessness in the United States, 700,000 of which are unaccompanied minors—meaning they are not part of a family or accompanied by a parent or guardian. These estimates indicate that approximately one in 10 adults’ ages 18 to 25, and one in 30 youth ages 13 to 17 will experience homelessness each year.⁴

The Voices of Youth Count from Chapin Hall at the University of Chicago found, in part, that one in 10 young adults ages 18-25, and at least one in 30 adolescents ages 13-17, experience some form of homelessness unaccompanied by a parent or guardian over the course of a year.

- 29% of homeless youth report having substance abuse problems.
- 69% of homeless youth report mental health problems.
- 33% of homeless youth report having once been a part of the foster care system.
- 50% of homeless youth have been in the juvenile justice system, in jail, or detention.
- Black youth face an 83% increased risk, and Hispanic youth 33% increased risk, than their white peers.
- LGBTQ youth were more than twice as likely to have experienced homelessness.

¹ 42 USC s. 11434a.

² *Id.*

³ Section 1003.01(4), F.S.

⁴ National Network for Youth, *Youth Homelessness*, available at <https://nn4youth.org/learn/youth-homelessness/> (last visited December 12, 2023).

- The lack of a high school diploma or General Equivalency Diploma is the number one correlate for elevated risk of youth homelessness.⁵

As of 2022, Florida had an estimated 19,519 people experiencing homelessness on any given day, as reported by the U.S. Department of Housing and Urban Development (HUD), which is 11.9 in every 10,000 people.⁶ Of that total, 6,440 people were in families with children, 1,011 were unaccompanied homeless youth, 2,279 were veterans, and 4,233 were chronically homeless individuals.⁷

The Florida Department of Education (FDOE) reports that 78,277 students experienced homelessness in the 2021-2022 school year, this is a 23 percent increase from the 2020-2021 school year. While the data shows an increase in youth homelessness in the 2021-2022 school year, research has indicated an estimated 420,000 fewer youth experiencing homelessness were identified during school year 2019-2020.⁸

Runaway Youth

Research shows that almost 7 percent of youth, or 1.5 million children and adolescents, run away each year.⁹ Youth most often runaway from home and become homeless due to family conflicts, abuse, and/or neglect.¹⁰ The risk factors for running away from home or state care are multifaceted, and there is no typical endangered runaway. The National Center for Missing & Exploited Children defines an Endangered Runaway as a child under the age of 18 who is missing on his or her own accord and whose whereabouts are unknown to their parent or legal guardian.¹¹ These children are highly vulnerable and can experience homelessness when they are missing. Research indicates that 77 percent of endangered runaways reported were between 15-17 years old. It also states that 87 percent of missing children reported risk factors that put the youth at an increased risk of running away or becoming homeless. Those risk factors include:

- Physical or sexual abuse
- Family conflict
- Lack of acceptance of gender identity or sexual orientation
- Struggling to manage mental health
- Substance abuse
- Medical issue/developmental or physical disability

⁵ *Id.*

⁶ U.S. Department of Housing and Urban Development, *2022 Annual Homelessness Assessment Report (AHAR) to Congress*, available at <https://www.huduser.gov/portal/sites/default/files/pdf/2022-ahar-part-1.pdf> (last visited December 12, 2023).

⁷ *Id.*

⁸ Florida's Council on Homelessness, *2023 Annual Report*, pg. 16, available at <https://www.myflfamilies.com/sites/default/files/2023-07/Florida%27s%20Council%20On%20Homelessness%20Annual%20Report%202023.pdf#:~:text=The%20number%20of%20people%20experiencing%20unsheltered%20homelessness%20in%20Florida%20increased,the%20number%20of%20unsheltered%20homeless> (last visited December 12, 2023).

⁹ National Conference of State Legislatures, *Youth Homelessness Overview*, available at <https://www.ncsl.org/human-services/youth-homelessness-overview> (last visited December 12, 2023).

¹⁰ *Id.*

¹¹ National Center for Missing & Exploited Children, *Endangered Runaways*, available at [Endangered Runaways \(missingkids.org\)](https://www.missingkids.org) (last visited December 27, 2023).

- Pregnancy
- Online enticement
- To be with a friend, romantic partner, or biological family
- Gang activity
- Child sex trafficking
- Social rejection or bullying¹²

Risk of Human Trafficking

Homeless and runaway youth experience the risk factors of trafficking at a higher rate, such as mental health issues, addiction, poverty, unemployment, and a history of abuse. As a result, they are more susceptible to human trafficking and other forms of exploitation.¹³ According to research, an estimated 4.2 million young people (ages 13-25) experience homelessness annually, including 700,000 unaccompanied minor youth ages 13 to 17. Many of those young people will become victims of sex or labor trafficking. Research from numerous studies have found trafficking rates among youth experiencing homelessness ranging from 19 percent to 40 percent. Using the lower-end estimate of 1 in 5 youth experiencing homelessness also being trafficked for sex, labor, or both, this means that approximately 800,000 youth who experience homelessness are also survivors of trafficking.¹⁴

The Florida Legislature recognizes human trafficking as a form of modern-day slavery whose victims include young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.¹⁵ While victims of human trafficking are forced to work in prostitution or sexual entertainment, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, factory work, and agricultural work.¹⁶

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,¹⁷ purchasing, patronizing, procuring, or obtaining¹⁸ another person for the purpose of exploitation of that person.¹⁹

¹² National Center for Missing & Exploited Children, *Endangered Runaways*, available at <https://www.missingkids.org/theissues/runaways> (last visited December 12, 2023).

¹³ United Way, *The intersection between Housing Instability and Human Trafficking*, Richards, Daniele, April 25, 2022, available at <https://www.unitedway.org/blog/the-intersection-between-housing-instability-and-human-trafficking> (last visited December 27, 2023).

¹⁴ Human Trafficking Search, *The Intersection Between Youth Homelessness and Human Trafficking*, available at [The Intersection Between Youth Homelessness and Human Trafficking - Human Trafficking Search](#) (last visited December 27, 2023).

¹⁵ Section 787.06, F.S.

¹⁶ *Id.*

¹⁷ Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

¹⁸ Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

¹⁹ Section 787.06(2)(d), F.S.

Human trafficking includes two types of exploitation: commercial sexual exploitation (CSE) and forced labor.²⁰ In 2022, according to the Department of Children and Families, 354 youth were verified as victims of commercial sexual exploitation (CSE) in Florida. The number has decreased from 2021, when 379 youth were verified.²¹

Sheltering or Aiding Unmarried Minors

Florida law provides criminal penalties under two sections of law for sheltering or aiding unmarried minors.

Sections 984.085 and 985.731, F.S., provides it is a first degree misdemeanor²² for a person:

- Who is not an authorized agent of the DCF or the DJJ to knowingly shelter an unmarried minor for more than 24 hours without the consent of the minor's parent or guardian or without notifying a law enforcement officer of the minor's name and the fact that the minor is being provided shelter.
- To knowingly provide aid to an unmarried minor who has run away from home without first contacting the minor's parent or guardian or notifying a law enforcement officer. The aid prohibited under this paragraph includes assisting the minor in obtaining shelter, such as hotel lodgings.^{23,24}

III. Effect of Proposed Changes:

The bill amends ss. 984.085 and 985.731, F.S., to create a presumption and defense to the crime of sheltering or aiding an unmarried minor. Those sections provide that a person:

- Who is not an authorized agent of the DCF or the DJJ may not knowingly shelter an unmarried minor for more than 24 hours without the consent of the minor's parent or guardian or without notifying a law enforcement office of the minor's name and the fact that the minor is being provided shelter.
- May not knowingly provide aid to an unmarried minor who has run away from home without first contacting the minor's parent or guardian or notifying a law enforcement officer. The aid prohibited includes assisting the minor in obtaining shelter, such as hotel lodgings.

The bill increases the crime of sheltering or aiding an unmarried minor from a first degree misdemeanor to a third degree felony.

The bill provides that proof that an unmarried minor has not attained 18 years of age creates a presumption that the person knew the minor's age or acted in reckless disregard thereof.

²⁰ Section 787.06, F.S.

²¹ Office of Program Policy Analysis & Government Accountability, *Annual Report on Commercial Sexual Exploitation of Children in Florida, 2023*, available at <https://oppaga.fl.gov/Documents/Reports/23-08.pdf> (last visited December 13, 2023).

²² A misdemeanor of the first degree is punishable by a term of imprisonment not exceeding 1 year, as provided in s. 775.082 or s. 775.083, F.S.

²³ Section 984.085, F.S.

²⁴ Section 985.731, F.S.

This bill creates a defense to the crime of unlawfully sheltering or aiding unmarried minors where the defendant had reasonable cause to believe that his or her action was necessary to preserve the minor from danger to his or her welfare.

The bill provides an effective date of October 1, 2024.

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:

The bill may have an indeterminate fiscal impact on the Department of Corrections due to the enhanced penalties under the bill and the possibility of offenders receiving prison sentences.

Per FDLE, in FY 22-23, there were 8 arrests and 1 guilty/convicted for a violation of s. 984.085, F.S., and there were 17 arrests and 4 guilty/convicted for a violation of

s. 985.731, F.S. In FY 22-23, the incarceration rate for a Level 1, 3rd degree felony was 9.5 percent. The bill may have a positive insignificant fiscal impact.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 984.085 and 985.731.

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.

²⁵ Office of Economic and Demographic Research *SB 450 Preliminary Estimate*, (on file with the Senate Committee on Criminal Justice).

By Senator Wright

8-00518-24

2024450__

A bill to be entitled

An act relating to sheltering or aiding unmarried minors; amending ss. 984.085 and 985.731, F.S.; creating a presumption of knowledge upon proof that an unmarried minor has not attained 18 years of age for the purpose of unlawfully sheltering or aiding unmarried minors; providing a defense to unlawfully sheltering or aiding unmarried minors; increasing criminal penalties for unlawfully sheltering or aiding unmarried minors; providing an effective date.

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

Section 1. Section 984.085, Florida Statutes, is amended to read:

984.085 Sheltering unmarried minors; aiding unmarried minor runaways; presumption; defense; penalty violations.-

(1) (a) A person who is not an authorized agent of the Department of Juvenile Justice or the Department of Children and Families may not knowingly shelter an unmarried minor for more than 24 hours without the consent of the minor's parent or guardian or without notifying a law enforcement officer of the minor's name and the fact that the minor is being provided shelter.

(b) A person may not knowingly provide aid to an unmarried minor who has run away from home without first contacting the minor's parent or guardian or notifying a law enforcement officer. The aid prohibited under this paragraph includes assisting the minor in obtaining shelter, such as hotel

Page 1 of 3

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

8-00518-24

2024450__

lodgings.

(c) Proof that an unmarried minor has not attained 18 years of age creates a presumption that the person knew the minor's age or acted in reckless disregard thereof.

(2) It is a defense to a violation under this section that the defendant had reasonable cause to believe that his or her action was necessary to preserve the minor from danger to his or her welfare.

(3) A person who violates this section commits a felony of the third misdemeanor of the first degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

Section 2. Section 985.731, Florida Statutes, is amended to read:

985.731 Sheltering unmarried minors; aiding unmarried minor runaways; presumption; defense; penalty violations.-

(1) (a) A person who is not an authorized agent of the department or the Department of Children and Families may not knowingly shelter an unmarried minor for more than 24 hours without the consent of the minor's parent or guardian or without notifying a law enforcement officer of the minor's name and the fact that the minor is being provided shelter.

(b) A person may not knowingly provide aid to an unmarried minor who has run away from home without first contacting the minor's parent or guardian or notifying a law enforcement officer. The aid prohibited under this paragraph includes assisting the minor in obtaining shelter, such as hotel lodgings.

(c) Proof that an unmarried minor has not attained 18 years of age creates a presumption that the person knew the minor's

Page 2 of 3

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

8-00518-24

2024450__

59 age or acted in reckless disregard thereof.

60 (2) It is a defense to a violation under this section that
61 the defendant had reasonable cause to believe that his or her
62 action was necessary to preserve the minor from danger to his or
63 her welfare.

64 (3) A person who violates this section commits a felony of
65 the third ~~misdemeanor of the first~~ degree, punishable as
66 provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

67 Section 3. This act shall take effect October 1, 2024.

SB 450 – Sheltering or Aiding Unmarried Minors (Similar HB 875)

This bill amends multiple statutes. First, it amends s. 984.085, F.S., which prohibits sheltering an unmarried minor for more than 24 hours without the consent of a parent/guardian or without notifying a law enforcement officer, as well as knowingly providing aid to an unmarried minor, which includes assisting the minor in obtaining shelter, such as hotel lodgings. It adds that “proof that an unmarried minor has not attained 18 years of age creates a presumption that the person knew the minor’s age or acted in reckless disregard thereof.” Additionally, it includes the following language: “it is a defense to a violation under this section that the defendant had reasonable cause to believe that his or her action was necessary to preserve the minor from danger to his or her welfare.” Lastly, it increases the 1st degree misdemeanor for violating these prohibited acts to an **unranked, 3rd degree felony (Level 1 by default)**. This bill also amends s. 985.731, F.S., which currently includes nearly identical language when compared to s. 984.085, F.S., and also adds the same language as that amended statute, including increasing the 1st degree misdemeanor for violating these prohibited acts to an **unranked, 3rd degree felony (Level 1 by default)**.

Per FDLE, in FY 22-23, there were 8 arrests and 1 guilty/convicted for a violation of s. 984.085, F.S., and there were 17 arrests and 4 guilty/convicted for a violation of s. 985.731, F.S.

In FY 22-23, the incarceration rate for a Level 1, 3rd degree felony was 9.5%.

EDR PROPOSED ESTIMATE: Positive Insignificant

Requested by: Senate

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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450

Bill Number or Topic

01-10-24

Meeting Date

CS

Committee

Amendment Barcode (if applicable)

Name

MIKE CRABB

Phone

321-436-4447

Address

2500 W. COLONIAL DR

Email

MICHAEL.CRABB@OCISOFL.COM

Street

ORLANDO

City

FL

State

32804

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

ORANGE COUNTY
SHERIFF'S OFFICE

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

January 10, 2024

Meeting Date

Criminal Justice

Committee

Name **Barney Bishop III**

Address **1454 Vieux Carre Drive**

Street

Tallahassee

City

FL

State

32308

Zip

The Florida Senate
APPEARANCE RECORD

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450

Bill Number or Topic

Amendment Barcode (if applicable)

Phone **FL**

Email **Barney@BarneyBishop.com**

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Smart Justice Alliance

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 450

1/10/2024

Meeting Date

Criminal Justice

Committee

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Bill Number or Topic

Amendment Barcode (if applicable)

Name **Lauren Jackson**

Phone **931-265-8999**

Address **205 South Adams St.**

Email **lauren@ericksconsultants.com**

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

SEMINOLE COUNTY SHERIFF'S OFFICE

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

450

1-10-24

Meeting Date

Bill Number or Topic

Criminal Justice

Committee

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Amendment Barcode (if applicable)

Name Bob Cortes

Phone 407.463.8257

Address 100 Eslinger way

Email bcortes@seminolestate.org

Street

Sanford

City

FL

State

32773

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

S-001 (08/10/2021)



The Florida Senate

Committee Agenda Request

To: Senator Jonathan Martin, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 11, 2023

I respectfully request that **Senate Bill 450**, relating to Sheltering or Aiding Unmarried Minors, and **SB 506**, relating to Code Enforcement Officers, be placed on the:

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

Thank you for your consideration.

A handwritten signature in cursive script that reads "Tom A. Wright".

Senator Tom A. Wright
Florida Senate, District 8

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 538

INTRODUCER: Senator Harrell

SUBJECT: Traveling Across County Lines to Commit Criminal Offenses

DATE: January 9, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wyant	Stokes	CJ	Favorable
2.			ACJ	
3.			FP	

I. Summary:

SB 538 amends s. 843.22, F.S., which provides an enhanced penalty for persons who travel across county lines with the intent to commit a burglary. This bill replaces the crime of burglary with the crime of grand theft or a forcible felony as defined in s. 776.08, F.S.

Specifically, the bill reclassifies the degree of a criminal offense to the next highest level if a person travels any distance to commit a grand theft or forcible felony in a county other than the person's county of residence. An offense that is reclassified under this section is ranked one level above the ranking specified in the offense severity ranking chart.

This bill may have a positive indeterminate prison bed impact. See Section V. Fiscal Impact Statement.

This bill is effective upon becoming a law.

II. Present Situation:

Organized theft is a growing problem across the country. Offenders who travel for the purpose of theft, fraud, and related charges are often referred to as "felony lane gangs" or "traveling criminals." Felony lane gangs originated in south Florida, and according to the FBI, these gangs often commit bank fraud after smash-and-grab theft of identity documents.¹ Earlier this year a retail-theft crime ring faced charges for stealing merchandise worth more than \$1.4 million from Home Depot stores.² These thefts took place at Home Depot stores in 15 counties across the

¹ South Florida Sun Sentinel, *Is the Felony Lane Gang at it again? Man held in ID theft heist*, Mario Ariza, September 17, 2019, available at <https://www.sun-sentinel.com/news/crime/fl-ne-felony-lane-gang-again-20190917-xnbass6zhbbbvipdb4hhcw5qui-story.html> (last visited December 15, 2023).

² Florida Office of the Attorney General, *News Release, Another retail theft ring shut down by Attorney General Moody's Florida Organized Retail Crime Exchange Taskforce*, August 7, 2023, available at:

state, beginning in Indian River County. The Indian River County Sheriff stated, “We have so many traveling criminals coming to our area. There’s still the small-time crime that happens – people breaking into cars, things like that – but the bigger crimes; the boat motor thefts, the catalytic converter thefts, the larger burglaries, all of those are being done by criminals from other areas.”³

Burglary

Section 810.02(1), F.S., provides that a person commits burglary by:

- Entering a dwelling,⁴ structure,⁵ or conveyance⁶ with the intent to commit an offense therein, unless the premises are open to the public or the person’s entry is licensed or invited; or
- Notwithstanding a licensed or invited entry, remaining in a dwelling, structure, or conveyance:
 - Surreptitiously, with the intent to commit an offense therein;
 - After permission to remain is withdrawn, with the intent to commit an offense therein; or
 - To commit or attempt to commit a forcible felony.

Traveling to commit a Burglary

Section 843.22, F.S., provides that if a person who commits a burglary travels any distance with the intent to commit the burglary in a county other than the person’s county of residence, the degree of the burglary is reclassified to the next higher degree.

“County of residence” means the county within the state in which a person resides. Evidence of a person’s county of residence includes, but is not limited to:

- The address on a person’s driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;

<https://www.myfloridalegal.com/newsrelease/another-retail-theft-ring-shut-down-attorney-general-moodys-florida-organized-retail> (last accessed December 18, 2023).

³ See CBS12 News, *Leader of retail theft ring targeting Home Depot stores in 15 Florida Counties sentenced to 8 years behind bars*, Dylan Huberman, November 15, 2023, available at: <https://cbs12.com/news/local/leader-of-retail-theft-ring-targeting-home-depot-stores-in-15-florida-counties-sentenced-to-8-years-behind-bars> (Last accessed December 18, 2023).

⁴ Section 810.011(2), F.S., defines “dwelling,” to mean a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S. only, the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

⁵ Section 810.011(1), F.S., defines “structure,” to mean a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S. only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

⁶ Section 810.011(3), F.S., defines “conveyance,” to mean any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and “to enter a conveyance” includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S. only, the term “conveyance” means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

- The county in which a person's motor vehicle is registered;
- The county in which a person is enrolled in an educational institution; and
- The county in which a person is employed.⁷

For the purposes of sentencing, a burglary that is reclassified under this section is ranked one level above the ranking specified in s. 921.0022 or s. 921.0023, F.S., for the offense committed.⁸

Reclassification and Ranking

Florida currently has various statutes that reclassify criminal offenses under specified circumstances. Generally, criminal laws provide for reclassification to the next highest degree. Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.⁹

Severity Ranking Chart

Section 921.0022(1) and (2), F.S., provides the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The chart has 10 offense levels, ranked from least severe to most severe.

Section 921.0023, F.S., provides that until the Legislature specifically assigns an offense to a severity level in the offense severity ranking chart, the severity level is within the following parameters:

- A third degree felony is within offense level 1;
- A second degree felony is within offense level 4;
- A first degree felony is within offense level 7;
- A first degree punishable by life felony is within offense level 9; and
- A life felony is within offense level 10.

Grand Theft

Section 812.014, F.S., provides that a person commits a theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or

⁷ Section 843.22 (1) (a) (1-6), F.S.

⁸ Section 843.22 (2), F.S.

⁹ Section 775.082, F.S. Fines may also be imposed, and those fines escalate based on the degree of the offense.

Section 775.083, F.S., provides the following maximum fines; \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

- Appropriate the property to his or her own use or to the use of any person not entitled to use the property.¹⁰

Generally, a person commits a third degree felony¹¹ crime of grand theft if the property stolen is valued at \$750 or more, but less than \$20,000.¹² If the property stolen is \$20,000 or more, but less than \$100,000, the offender commits a second degree felony,¹³ and if the property stolen is \$100,000 or more, the offender commits a first degree felony.¹⁴ Other items listed under this section such as the theft of a firearm, a motor vehicle, or a stop sign, may also constitute grand theft.¹⁵

Forcible Felony

Section 776.08, F.S., defines a “forcible felony” as:

- 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.

III. Effect of Proposed Changes:

The bill amends s. 843.22, F.S., which provides an enhanced penalty for persons who travel across county lines with the intent to commit a burglary. This bill replaces the crime of burglary with the crime of grand theft or a forcible felony.

Specifically, the bill reclassifies the degree of a criminal offense to the next highest level if a person travels any distance to commit a grand theft or forcible felony in a county other than the

¹⁰ Section 812.014(1), F.S.

¹¹ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

¹² Section 812.014(2)(c)1.-3., F.S.

¹³ Section 812.014(2)(b), F.S.

¹⁴ Section 812.014(2)(a)1., F.S.

¹⁵ Section 812.014(2)(c), F.S.

person's county of residence. An offense that is reclassified under this section is ranked one level above the ranking specified in the offense severity ranking chart.

The bill removes the definition for burglary as it would be encompassed under forcible felony as defined in s. 776.08, F.S.

This bill is effective 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.

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:

This bill may have a positive indeterminate prison bed impact due to expanding the crimes eligible for enhancements which may lead to an increased number of offenders receiving enhanced sentences.

According to a preliminary estimate by the Office of Economic and Demographic Research (EDR), FDLE reported 121 arrests since 2022 where the offenses were elevated for traveling any distance with the intent to commit a burglary in a county in this state

other than the person's county of residence, with one convicted charge under this section. In the fiscal year of 2022-23, DOC reported 1,090 new commitments to prison for grand theft offenses and 8,759 new commitments for forcible felonies. While it is unknown how many offenders would be impacted by this change, EDR estimated this bill to have a positive indeterminate impact.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 843.22 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹⁶ Office of Economic and Demographic Research, *SB 538- Traveling Across County Lines to Commit Criminal Offenses (identical HB 531)*(on file with the Senate Committee on Criminal Justice).

By Senator Harrell

31-00752A-24

2024538__

A bill to be entitled

An act relating to traveling across county lines to commit criminal offenses; amending s. 843.22, F.S.; deleting the definition of the term "burglary"; providing for reclassification of grand theft or forcible felony offenses if the person who commits the offense travels with the intent to commit the offense in a county other than the person's county of residence; providing an effective date.

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

Section 1. Section 843.22, Florida Statutes, is amended to read:

843.22 Traveling across county lines with intent to commit certain offenses ~~a burglary.~~

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

~~(a)~~ "county of residence" means the county within this state in which a person resides. Evidence of a person's county of residence includes, but is not limited to:

(a)1- The address on a person's driver license or state identification card.~~;~~

(b)2- Records of real property or mobile home ownership.~~;~~

(c)3- Records of a lease agreement for residential property.~~;~~

(d)4- The county in which a person's motor vehicle is registered.~~;~~

(e)5- The county in which a person is enrolled in an educational institution.~~;~~ ~~and~~

Page 1 of 2

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~~(f)6-~~ The county in which a person is employed.

~~(b)~~ "Burglary" means burglary as defined in s. 810.02, including an attempt, solicitation, or conspiracy to commit such offense.~~;~~

(2) If a person who commits a grand theft or a forcible felony, as defined in s. 776.08, burglary travels any distance with the intent to commit the offense burglary in a county in this state other than the person's county of residence, the degree of the offense burglary shall be reclassified to the next higher degree. For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, an offense a burglary that is reclassified under this section is ranked one level above the ranking specified in s. 921.0022 or s. 921.0023 for the offense burglary committed.

Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

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

SB 538 – Traveling Across County Lines to Commit Criminal Offenses (Identical HB 531)

This bill amends s. 843.22, F.S., deleting burglary and adding the following (new language in bold: “if a person who commits a **grand theft or a forcible felony, as defined in s. 776.08, F.S.**, travels any distance with the intent to commit the **offense** in a county in this state other than the person’s county of residence, the degree of the **offense** shall be reclassified to the next higher degree.” Therefore, by including grand theft and forcible felonies, which also include burglary, more offenders could be subject to being reclassified and ranked one level above their specified ranking under the Criminal Punishment Code when traveling across county lines is involved.

Per FDLE, there have been 121 arrests since 2022 where the offense was elevated for traveling any distance with the intent to commit the burglary in a county in this state other than the person’s county of residence, with one guilty/convicted charge under s. 843.22, F.S. Per DOC, in FY 22-23, there were 1,090 new commitments to prison for grand theft offenses and 8,759 new commitments for forcible felonies listed under s. 776.08, F.S. It is not known how many offenders would be impacted by this change in language.

EDR PROPOSED ESTIMATE: Positive Indeterminate

Requested by: Senate & House

The Florida Senate

APPEARANCE RECORD

SB 538

Bill Number or Topic

1/10/2024

Meeting Date

Deliver both copies of this form to
Senate professional staff conducting the meeting

CRIMINAL JUSTICE

Committee

Amendment Barcode (if applicable)

Name JONATHAN Webber

Phone 954-593-4449

Address 400 Washington Ave

Email JONATHAN.WEBBER@SPLCActionFunds.org

Street

Montgomery

AL

36107

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

SPLC Action Funds

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

January 10, 2024

Meeting Date

Criminal Justice

Committee

Name **Barney Bishop III**

Phone **FL**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Smart Justice Alliance

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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538

Bill Number or Topic

Amendment Barcode (if applicable)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 638

INTRODUCER: Criminal Justice Committee and Senator Grall

SUBJECT: Lethality Assessments

DATE: January 10, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wyant	Stokes	CJ	Fav/CS
2.			ACJ	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 638 amends s. 741.29, F.S., to require law enforcement officers who investigate an alleged incident of domestic violence to administer a lethality assessment if the allegation is against an intimate partner, regardless of whether an arrest is made.

The bill also requires the Department of Law Enforcement (FDLE) to consult with the Department of Children and Families (DCF) and at least one domestic violence advocacy organization to develop policies, procedures, and training necessary for implementation of a state-wide evidence based lethality assessment. Training must be accessible in an online format.

The bill provides a series of questions to be used in the same or similar wording and same order to administer the lethality assessment.

All law enforcement officers who respond to or investigate crimes of domestic violence must be trained for administering a lethality assessment by July 1, 2025. An officer may not administer a lethality assessment if he or she has not received training. The bill requires a law enforcement officer to advise the victim of the results of the assessment and refer the victim to the nearest locally certified domestic violence center if the victim's responses meet the criteria for referral.

If a victim does not, or is unable to, provide information to a law enforcement officer sufficient to allow the officer to administer a lethality assessment, the officer must document the lack of an assessment in the written police report and refer the victim to the nearest locally certified

domestic violence center. An officer may not include in a probable cause statement, written police report, or incident report the domestic violence center to which a victim was referred.

The bill requires the results of a lethality assessment, if administered, to be included in a written police report, given to the officer's supervisor, and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled.

The bill may have an indeterminate fiscal impact on the FDLE and local law enforcement agencies. See Section V. Fiscal Impact Statement.

The bill is effective on July 1, 2024.

II. Present Situation:

Domestic violence is any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.¹

Domestic Violence in Florida

In 2020, 106,615 crimes of domestic violence were reported to Florida law enforcement agencies, resulting in 63,217 arrests.² Of those 106,615 reported domestic violence offenses, the relationship of the victims to the offenders varied, including:

- 20,735 were spousal;³
- 29,663 were co-habitants;⁴ and
- 20,142 were other.⁵

Domestic Violence Training

Section 943.171, F.S., requires basic skills training in handling domestic violence cases. Every basic skills course required in order for law enforcement officers to obtain initial certification shall include a minimum of six hours of training in handling domestic violence cases and training must include the recognition and determination of the primary aggressor in domestic violence cases and the issues involved in child-to-parent cases.

¹ Section 741.28, F.S.; "Family or household member," means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

² Florida Department of Law Enforcement, *Crime in Florida: Florida Uniform Crime Report*, available at: <https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence> (Last accessed December 12, 2023).

³ Florida Department of Law Enforcement, *Domestic Violence, Victim to Offender Relationships*, available at: <https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/Domestic-Violence-Relationships-Chart.aspx> (Last accessed December 14, 2023). Spouse means the victim and offender are married by law or have been previously married. This category included ex-spouses.

⁴ *Id.* Co-Habitant means the victim lived with the offender as a married couple without legal marriage. This category includes former co-habitants.

⁵ *Id.* Other means the victim and offender had a child together but were never married and never lived together.

Domestic Violence Investigations

Section 741.29, F.S., provides domestic violence investigations require an officer who investigates an alleged incident of domestic violence to:

- Assist the victim to obtain medical treatment if such is required;⁶
- Advise the victim that there is a domestic violence center from which the victim may receive services;⁷
- Give the victim immediate notice of the legal rights and remedies available;⁸
- Make a written report, whether or not an arrest is made, that is complete and clearly indicates the alleged offense was an incident of domestic violence. The report shall be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled.⁹ Such report must include:
 - A description of physical injuries observed, if any.
 - If a law enforcement officer decides not to make an arrest or decides to arrest two or more parties, the officer must include the grounds for not arresting anyone or for arresting two or more parties.
 - A statement which indicates that a copy of the legal rights and remedies notice was given to the victim.
- Obtain a written statement from the victim and witnesses concerning the alleged domestic violence when possible; and
- Make an arrest whenever the officer determines probable cause that an act of domestic violence has been committed.^{10, 11}

When complaints are received from two or more parties, the officers must evaluate each complaint separately to determine whether there is probable cause for arrest. If the officer has probable cause to believe that two or more persons have committed a crime, or two or more persons make complaints, the officer must attempt to determine who was the primary aggressor.¹² Section 943.171, F.S., requires the training in handling domestic violence cases to include the recognition and determination of the primary aggressor. Arrest is the preferred

⁶ Section 741.29 (1), F.S.

⁷ Section 741.29 (1), F.S.

⁸ Section 741.29 (1), F.S. The Legal Rights and Remedies Notice to Victims must include a general summary of s. 741.30, F.S., the resource listing and phone number for the area domestic violence center, and a copy of the following statement: "If you are a victim of domestic violence, you may ask the state attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an injunction for protection from domestic violence which may include, but need not be limited to, provisions which restrain the abuser from further acts of abuse; direct the abuser to leave your household; prevent the abuser from entering your residence, school, business, or place of employment; award you custody of minor children; and direct the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.

⁹ Section 741.29 (2), F.S.

¹⁰ Section 741.29(3), F.S.

¹¹ Section 901.15(7), F.S., provides that a law enforcement officer may arrest a person without a warrant when there is probable cause to believe that the person has committed an act of domestic violence. The decision to arrest does not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence or dating violence on each other and to encourage training of law enforcement and prosecutors in these areas.

¹² Section 741.29(4)(a), F.S.

response only for the primary aggressor and not the preferred response for a person who acts in a reasonable manner to protect or defend oneself or another family or household member.¹³

A law enforcement officer may not be held liable, in any civil action, for an arrest based on probable cause, enforcement in good faith of a court order, or service of process in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.¹⁴

The use of lethality assessments in incidents of Domestic Violence

Effective July 1, 2023, Utah implemented a bill requiring police to perform a lethality assessment for domestic violence calls. Since the law went into effect in Utah, the Director of Public Policy at the Utah Domestic Violence Coalition reported that victim resource providers have seen 80 percent more people statewide reaching out for help.¹⁵

Maryland is another state that has implemented lethality assessments as a statewide approach. Maryland Network Against Domestic Violence (MNADV) created and implemented the Lethality Assessment Program Maryland Model in 2005.¹⁶ The program was created based on the research conducted and supported by a grant from the National Institute of Justice. The program was developed as a way for first responders to identify victims of intimate partner violence who are at the greatest risk of being killed. The program has been adopted in 31 additional states since the initial implementation in Maryland. Researchers found that although the program did not appear to have a significant effect on reducing the frequency of intimate partner violence, at follow-up, it appeared to significantly reduce the severity and frequency of the violence that survivors experience and increased help seeking and safety planning.¹⁷ Overall, the evaluation concluded that although additional research is needed on the Lethality Assessment Program, it shows promise as an evidence-informed intervention that increases survivors' safety and empowers them to make self-care decisions.¹⁸

There is no current law in Florida pertaining to the administration of a lethality assessment.

III. Effect of Proposed Changes:

The bill amends s. 741.29, F.S., to require law enforcement officers who investigate an alleged incident of domestic violence to administer a lethality assessment if the allegation is against an intimate partner, regardless of whether an arrest is made.

¹³ Section 741.29(4)(b), F.S.

¹⁴ Section 741.29(5), F.S.

¹⁵ See KSL News Radio, *Utah domestic violence victim advocates call for funding amid a surge of demand*, Adam Small, November 7, 2023, available at: <https://kslnnewsradio.com/2056767/utah-domestic-violence-victim-advocates-call-for-funding/> (Last accessed December 8, 2023).

¹⁶ See Maryland Network Against Domestic Violence, *Lethality Assessment Program*. Available at: <https://www.mnadv.org/lethality-assessment-program/lap-program-overview-2/> (Last accessed December 14, 2023).

¹⁷ See National Institute of Justice, *How Effective are Lethality Assessment Programs for Addressing Intimate Partner Violence?*, available at: <https://nij.ojp.gov/topics/articles/how-effective-are-lethality-assessment-programs-addressing-intimate-partner> (Last accessed December 14, 2023).

¹⁸ Inter-University Consortium for Political and Social Research, *Police Departments' Use of Lethality Assessments: An Experimental Evaluation*, Messing, Jill, Campbell, Jacquelyn, Wilson, Janet, Brown, Sheryll, and Patchell, Beverly, January 13, 2016, available at: <https://doi.org/10.3886/ICPSR34975.v1> (Last accessed December 14, 2023).

The bill requires the FDLE to consult with the DCF and at least one domestic violence advocacy organization to develop the policies, procedures, and training necessary for implementation of a statewide evidence-based lethality assessment. The bill includes that training must be accessible in an online format.

To administer a lethality assessment, a law enforcement officer must ask the following questions in the same or similar wording and in the same order:

- Did the aggressor ever use a weapon against you or threaten you with a weapon?
- Did the aggressor ever threaten to kill you or your children?
- Do you believe the aggressor will try to kill you?
- Has the aggressor ever choked you or attempted to choke you?
- Does the aggressor have a gun or could the aggressor easily obtain a gun?
- Is the aggressor violently or constantly jealous, or does the aggressor control most of your daily activities?
- Did you leave or separate from the aggressor after you were living together or married?
- Is the aggressor unemployed?
- To the best of your knowledge, has the aggressor ever attempted suicide?
- Do you have a child whom the aggressor believes is not the aggressor's biological child?
- Has the aggressor ever followed, spied on, or left threatening messages for you?
- Is there anything else that worries you about your safety and, if so, what worries you?

All law enforcement officers who respond to or investigate crimes of domestic violence must be trained on the policies and procedures for administering a lethality assessment by July 1, 2025. A law enforcement officer may not administer a lethality assessment if the officer has not received training. The bill requires a law enforcement officer to advise the victim of the results of the assessment and refer the victim to the nearest locally certified domestic violence center if:

- The victim answers affirmatively to any of the first four questions;
- The victim answers negatively to the first four questions but affirmatively to at least four of questions 5 through 11; or
- As a result of the victim's response to question 12, the law enforcement officer believes the victim is in a potentially lethal situation.

If a victim does not, or is unable to, provide information to the officer sufficient to allow the officer to administer a lethality assessment, the bill requires the law enforcement officer to document the lack of a lethality assessment in the written police report and refer the victim to the nearest locally certified domestic violence center. The bill specifies a law enforcement officer may not include in a probable cause statement, written police report, or incident report the domestic violence center to which the victim was referred.

The bill requires the results of a lethality assessment, if administered, to be included in a written police report, given to the officer's supervisor, and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled.

The bill provides technical changes and reenacts s. 39.06, F.S.

The bill provides an effective date July 1, 2024.

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:

The bill requires the implementation of a lethality assessment and the training on the policies and procedures for administering such assessment. This will likely have a negative fiscal impact on local law enforcement agencies, as well as the FDLE. Additionally, the training is required to be provided online, which may have a fiscal impact on the FDLE.

Per FDLE's analysis, the total fiscal impact to FDLE would be \$152,916 which includes, one Education and Training Specialist salary and benefits totaling \$87,134 in recurring and \$4,682 in nonrecurring costs, training and development cost of \$16,100, and information technology at a cost of \$45,000.¹⁹

¹⁹ See FDLE, 2024 FDLE Legislative Bill Analysis SB 638, December 6, 2023 (on file with the Senate committee on Criminal Justice).

VI. Technical Deficiencies:

Due to ongoing efforts to combat domestic violence, the specific questions used in a lethality assessment may change. Listing specific questions may limit law enforcement's ability to update the lethality assessment as necessary if evidence-based standards change.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 741.29 of the Florida Statutes.

This bill reenacts section 39.906 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on January 10, 2024:

The committee substitute:

- Revises the questions provided for a lethality assessment.
- Provides for the law enforcement officer to refer the victim to the nearest locally certified domestic violence center if certain criteria is met through the victim's responses.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2024	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 103 - 123

and insert:

6. Is the aggressor violently or constantly jealous, or does the aggressor control most of your daily activities?

7. Did you leave or separate from the aggressor after you were living together or married?

8. Is the aggressor unemployed?

9. To the best of your knowledge, has the aggressor ever



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11 attempted suicide?

12 10. Do you have a child whom the aggressor believes is not
13 the aggressor's biological child?

14 11. Has the aggressor ever followed, spied on, or left
15 threatening messages for you?

16 12. Is there anything else that worries you about your
17 safety and, if so, what worries you?

18 (b) By July 1, 2025, all law enforcement officers who
19 respond to or investigate crimes of domestic violence must be
20 trained on the policies and procedures for administering a
21 lethality assessment. A law enforcement officer may not
22 administer a lethality assessment to a victim if the officer has
23 not received training on administering a lethality assessment. A
24 law enforcement officer shall advise the victim of the results
25 of the assessment and refer the victim to the nearest locally
26 certified domestic violence center if:

27 1. The victim answers affirmatively to any of the questions
28 provided in (2) (a)1. through (2) (a)4., of this section;

29 2. The victim answers negatively to the questions in
30 provided in (2) (a)1. through (2) (a)4. of this section, but
31 affirmatively to at least four of the questions provided in
32 (2) (a)5. through (2) (a)11. of this section; or

33 3. As a result of the victim's response to subparagraph
34 (2) (a) 12., the law enforcement officer believes the victim is
35 in a potentially lethal situation.

By Senator Grall

29-00672-24

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1 A bill to be entitled
 2 An act relating to lethality assessments; amending s.
 3 741.29, F.S.; requiring law enforcement officers who
 4 investigate an alleged incident of domestic violence
 5 to administer a lethality assessment under certain
 6 circumstances; requiring the Department of Law
 7 Enforcement to consult with specified entities to
 8 develop and implement a statewide lethality
 9 assessment; requiring that training on administering
 10 lethality assessments be available to law enforcement
 11 officers in an online format; requiring law
 12 enforcement officers administering a lethality
 13 assessment to ask a victim specified questions;
 14 requiring certain law enforcement officers to be
 15 trained in administering lethality assessments by a
 16 specified date; prohibiting law enforcement officers
 17 from administering a lethality assessment if they have
 18 not completed lethality assessment training; requiring
 19 law enforcement officers to advise the victim of the
 20 results of the lethality assessment and refer the
 21 victim to certain domestic violence centers; requiring
 22 law enforcement officers to document in the written
 23 police report a victim's refusal or inability to
 24 provide information necessary for the lethality
 25 assessment; prohibiting law enforcement officers from
 26 disclosing in certain statements and reports the
 27 domestic violence center to which the victim was
 28 referred; requiring that written police reports for
 29 domestic violence incidents include the results of the

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30 lethality assessment, if one was administered; making
 31 technical changes; reenacting s. 39.906, F.S.,
 32 relating to referral to domestic violence centers and
 33 notice of rights, to incorporate the amendment made to
 34 s. 741.29, F.S., in a reference thereto; providing an
 35 effective date.

36
 37 Be It Enacted by the Legislature of the State of Florida:

38
 39 Section 1. Section 741.29, Florida Statutes, is amended to
 40 read:

41 741.29 Domestic violence; investigation of incidents;
 42 notice to victims of legal rights and remedies; reporting.-

43 (1) Any law enforcement officer who investigates an alleged
 44 incident of domestic violence shall:

45 (a) Assist the victim to obtain medical treatment if such
 46 is required as a result of the alleged incident to which the
 47 officer responds; ~~Any law enforcement officer who investigates~~
 48 ~~an alleged incident of domestic violence shall~~

49 (b) Advise the victim of such violence that there is a
 50 domestic violence center from which the victim may receive
 51 services;

52 (c) Administer a lethality assessment consistent with the
 53 requirements established in subsection (2) if the allegation of
 54 domestic violence is against an intimate partner, regardless of
 55 whether an arrest is made; and

56 ~~(d) The law enforcement officer shall~~ Give the victim
 57 immediate notice of the legal rights and remedies available on a
 58 standard form developed and distributed by the department. As

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59 necessary, the department shall revise the Legal Rights and
60 Remedies Notice to Victims to include a general summary of s.
61 741.30 using simple English as well as Spanish, and shall
62 distribute the notice as a model form to be used by all law
63 enforcement agencies throughout this the state. The notice must
64 ~~shall~~ include:

65 1.(a) The resource listing, including telephone number, for
66 the area domestic violence center designated by the Department
67 of Children and Families; and

68 2.(b) A copy of the following statement:

69
70 "IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you may
71 ask the state attorney to file a criminal complaint.
72 You also have the right to go to court and file a
73 petition requesting an injunction for protection from
74 domestic violence which may include, but need not be
75 limited to, provisions which restrain the abuser from
76 further acts of abuse; direct the abuser to leave your
77 household; prevent the abuser from entering your
78 residence, school, business, or place of employment;
79 award you custody of your minor child or children; and
80 direct the abuser to pay support to you and the minor
81 children if the abuser has a legal obligation to do
82 so."

83
84 (2) The department shall consult with the Department of
85 Children and Families and at least one domestic violence
86 advocacy organization to develop the policies, procedures, and
87 training necessary for implementation of a statewide evidence-

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88 based lethality assessment. Training on how to administer a
89 lethality assessment must be accessible to a law enforcement
90 officer in an online format.

91 (a) To administer a lethality assessment, a law enforcement
92 officer shall ask the victim, in the same or similar wording and
93 in the same order, all of the following questions:

94 1. Did the aggressor ever use a weapon against you or
95 threaten you with a weapon?

96 2. Did the aggressor ever threaten to kill you or your
97 children?

98 3. Do you believe the aggressor will try to kill you?

99 4. Has the aggressor ever choked you or attempted to choke
100 you?

101 5. Does the aggressor have a gun or could the aggressor
102 easily obtain a gun?

103 6. Is the aggressor violently or constantly jealous?

104 7. Does the aggressor control most of your daily
105 activities?

106 8. Does the aggressor reside in the same household with
107 you?

108 9. Is the aggressor employed?

109 10. To the best of your knowledge, has the aggressor ever
110 attempted suicide?

111 11. Do you have a child whom the aggressor believes is not
112 the aggressor's biological child?

113 12. Has the aggressor ever followed, spied on, or left
114 threatening messages for you?

115 (b) By July 1, 2025, all law enforcement officers who
116 respond to or investigate crimes of domestic violence must be

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117 trained on the policies and procedures for administering a
 118 lethality assessment. A law enforcement officer may not
 119 administer a lethality assessment to a victim if the officer has
 120 not received training on administering a lethality assessment. A
 121 law enforcement officer shall advise the victim of the results
 122 of the assessment and refer the victim to the nearest locally
 123 certified domestic violence center.

124 (c) If a victim does not, or is unable to, provide
 125 information to a law enforcement officer sufficient to allow the
 126 law enforcement officer to administer a lethality assessment,
 127 the law enforcement officer must document the lack of a
 128 lethality assessment in the written police report required in
 129 subsection (3) and refer the victim to the nearest locally
 130 certified domestic violence center.

131 (d) A law enforcement officer may not include in a probable
 132 cause statement, written police report, or incident report the
 133 domestic violence center to which a victim was referred.

134 (3)(2) When a law enforcement officer investigates an
 135 allegation that an incident of domestic violence has occurred,
 136 the officer shall handle the incident pursuant to the arrest
 137 policy provided in s. 901.15(7), and as developed in accordance
 138 with subsections (4) (3), (5) (4), and (6) (5). Regardless of
 139 whether or not an arrest is made, the officer shall make a
 140 written police report that is complete and clearly indicates the
 141 alleged offense was an incident of domestic violence. Such
 142 report must ~~shall~~ be given to the officer's supervisor and filed
 143 with the law enforcement agency in a manner that will permit
 144 data on domestic violence cases to be compiled. Such report must
 145 include all of the following:

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146 (a) A description of physical injuries observed, if any.

147 (b) If a law enforcement officer decides not to make an
 148 arrest or decides to arrest two or more parties, ~~the officer~~
 149 ~~shall include in the report~~ the grounds for not arresting anyone
 150 or for arresting two or more parties.

151 (c) A statement which indicates that a copy of the legal
 152 rights and remedies notice was given to the victim.

153 (d) The results of a lethality assessment, if one was
 154 administered pursuant to paragraph (1)(c).
 155

156 Whenever possible, the law enforcement officer shall obtain a
 157 written statement from the victim and witnesses concerning the
 158 alleged domestic violence. The officer shall submit the report
 159 to the supervisor or other person to whom the employer's rules
 160 or policies require reports of similar allegations of criminal
 161 activity to be made. The law enforcement agency shall, without
 162 charge, send a copy of the initial police report, as well as any
 163 subsequent, supplemental, or related report, which excludes
 164 victim/witness statements or other materials that are part of an
 165 active criminal investigation and are exempt from disclosure
 166 under chapter 119, to the nearest locally certified domestic
 167 violence center within 24 hours after the agency's receipt of
 168 the report. The report furnished to the domestic violence center
 169 must include a narrative description of the domestic violence
 170 incident.

171 (4)(3) Whenever a law enforcement officer determines upon
 172 probable cause that an act of domestic violence has been
 173 committed within the jurisdiction the officer may arrest the
 174 person or persons suspected of its commission and charge such

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175 person or persons with the appropriate crime. The decision to
 176 arrest and charge shall not require consent of the victim or
 177 consideration of the relationship of the parties.

178 ~~(5) (a) (4) (a)~~ When complaints are received from two or more
 179 parties, the officers shall evaluate each complaint separately
 180 to determine whether there is probable cause for arrest.

181 (b) If a law enforcement officer has probable cause to
 182 believe that two or more persons have committed a misdemeanor or
 183 felony, or if two or more persons make complaints to the
 184 officer, the officer must ~~shall~~ try to determine who was the
 185 primary aggressor. Arrest is the preferred response only with
 186 respect to the primary aggressor and not the preferred response
 187 with respect to a person who acts in a reasonable manner to
 188 protect or defend oneself or another family or household member
 189 from domestic violence.

190 ~~(6) (5)~~ A ~~Ne~~ law enforcement officer may not ~~shall~~ be held
 191 liable, in any civil action, for an arrest based on probable
 192 cause, enforcement in good faith of a court order, or service of
 193 process in good faith under this chapter arising from an alleged
 194 incident of domestic violence brought by any party to the
 195 incident.

196 ~~(7) (6)~~ A person who willfully violates a condition of
 197 pretrial release provided in s. 903.047, when the original
 198 arrest was for an act of domestic violence as defined in s.
 199 741.28, commits a misdemeanor of the first degree, punishable as
 200 provided in s. 775.082 or s. 775.083, and shall be held in
 201 custody until his or her first appearance.

202 Section 2. For the purpose of incorporating the amendment
 203 made by this act to section 741.29, Florida Statutes, in a

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204 reference thereto, section 39.906, Florida Statutes, is
 205 reenacted to read:

206 39.906 Referral to centers and notice of rights.—Any law
 207 enforcement officer who investigates an alleged incident of
 208 domestic violence shall advise the victim of such violence that
 209 there is a domestic violence center from which the victim may
 210 receive services. The law enforcement officer shall give the
 211 victim immediate notice of the legal rights and remedies
 212 available in accordance with the provisions of s. 741.29.

213 Section 3. This act shall take effect July 1, 2024.

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2024 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
BILL NUMBER:	SB 638
BILL TITLE:	Lethality Assessments
BILL SPONSOR:	Sen. Erin Grall
EFFECTIVE DATE:	July 1, 2024

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Committee on Criminal and Civil Justice
3) Fiscal Policy
4)
5)

CURRENT COMMITTEE
Criminal Justice

SIMILAR BILLS	
BILL NUMBER:	SB 610 & HB 673
SPONSOR:	Sen. Book & Rep. Bartleman

PREVIOUS LEGISLATION	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS	
BILL NUMBER:	HB 729
SPONSOR:	Rep. Baker

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	December 6, 2023
LEAD AGENCY ANALYST:	Chad Brown
ADDITIONAL ANALYST(S):	Ashley Pennington, Glen Hopkins, Brett Kirkland
LEGAL ANALYST:	Jim Martin
FISCAL ANALYST:	Elizabeth Martin

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill requires law enforcement officers who investigate an alleged incident of domestic violence to administer a lethality assessment under certain circumstances. It requires the Florida Department of Law Enforcement (FDLE) to consult with the Department of Children and Families (DCF) and at least one domestic violence advocacy organization to develop and implement a statewide lethality assessment; and requires law enforcement officers to be trained in administering lethality assessments by a specified date and that training be accessible in an online format. It provides specific questions to be included in the assessment and prohibits law enforcement officers from using the form if they have not received training on completing the form. Lastly, it prohibits law enforcement officers from disclosing in certain statements and reports of the domestic violence center to which the victim was referred.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** There is currently no lethality assessment form or training on the form required of officers when investigating alleged incidents of domestic violence. Section 741.29, F.S., mandates officers who investigate an allegation that an incident of domestic violence has occurred must write a report which includes a description of any physical injuries observed, statement that indicates that a copy of the legal rights and remedies notice was given to the victim, and grounds for not arresting anyone or for arresting two or more parties. This report must be submitted and maintained in a manner that will allow data on domestic violence cases to be compiled and must be provided to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report. FDLE currently produces the Domestic Violence Victim Rights & Remedies brochure in English and Spanish.
2. **EFFECT OF THE BILL:** The bill requires FDLE to consult with specified entities on the development of policies, procedures and training necessary to implement a lethality assessment. The assessment must include all questions specified in the bill. Officers must complete the lethality assessment training prior to investigating alleged incidents of domestic violence.

The department will develop an online training course related to administering a lethality assessment. Costs associated with the course development are outlined under additional costs. Programming changes to Automatic Training Management System (ATMS) will be required in order to track the officers whom have completed the training.

The Commission for Law Enforcement Accreditation will monitor the legislation and may update the domestic violence allegations standards to include use of a lethality assessment.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y N

If yes, explain:	FDLE must develop the lethality assessment as well as policies, procedures, and training for the use of the assessment.
What is the expected impact to the agency's core mission?	It may delay other projects if using existing personnel resources.
Rule(s) impacted (provide references to F.A.C., etc.):	None

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	Unknown
Provide a summary of the proponents' and opponents' positions:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	
Date Due:	

Bill Section Number:	
----------------------	--

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y N

Board:	
Board Purpose:	
Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y N

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y N

Revenues:	0
Expenditures:	<p>Due to added workload and complexity of the research required, FDLE needs 1 FTE Education and Training Specialist totaling \$87,134 in recurring and \$4,682 in nonrecurring. (\$80,723 in Salaries and Benefits, \$42 in HR Assessment, and \$11,051 in Expenses (\$4,682 non-recurring)).</p> <p>Training and Development Costs - \$16,100 (see Additional Comments below). Information technology costs - \$45,000 (see Technology Impact for details)</p> <p>Total FDLE Fiscal: \$152,916</p>
Does the legislation contain a State Government appropriation?	

If yes, was this appropriated last year?	
--	--

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

Revenues:	
Expenditures:	
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE LEGISLATION IMPACT THE AGENCY’S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	<p>To develop the training associated with the lethality assessment form, programming changes to ATMS will be required in order to track the officers whom have completed the training.</p> <p>The estimated time to complete the necessary changes is three months, at a cost of \$45,000. The department will utilize existing staff resources.</p>
--	---

FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	
--	--

LEGAL - GENERAL COUNSEL’S OFFICE REVIEW

Issues/concerns/comments and recommended action:	
--	--

ADDITIONAL COMMENTS

- The bill has an effective date of July 1, 2024, with officer training being required by July 1, 2025. However, that is not enough time to develop an online form/platform, and develop training specific to using the form. For the training portion, the CJSTC post-basic curriculum development team will need to host workshops, compile research, develop the course and receive feedback from stakeholders at DCF and at least one domestic violence organization. FDLE recommends an effective date change of July 1, 2026.
- The cost for developing the online training portion would be:

	Hours	Cost
FTE		
1 Education and Training Specialist (curriculum developer)		\$91,816
Analysis		
Identify SMEs	40	\$ 940
Research existing material	80	\$ 1,880
SME Workshops—Instructional Analysis	120	\$ 2,820
Design/Development		
Develop course content	320	\$ 7,520
Review/Revisions	80	\$ 2,000
Implementation		
Course edit	40	\$ 940
Total cost		\$ 107,916

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

01/10/2024

Meeting Date

638

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Joseph Petito

Phone 631-767-9942

Address 692 Honeybell Ct SW

Street

Email ~~Joseph Petito~~
Petito.Joseph@gmail.com

Veru Beach

City

FL

State

32968

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

January 10, 2024

Meeting Date

Criminal Justice

Committee

Name **Barney Bishop III**

Name

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

638

Bill Number or Topic

Amendment Barcode (if applicable)

Phone **FL**

Address **1454 Vieux Carre Drive**

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32308

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Smart Justice Alliance

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



The Florida Senate

Committee Agenda Request

To: Senator Jonathan Martin, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 13, 2023

I respectfully request that **Senate Bill #638**, relating to Lethality Assessments, be placed on the:

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

A handwritten signature in blue ink that reads "Erin K. Grall".

Senator Erin Grall

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 758

INTRODUCER: Senator Martin

SUBJECT: Tracking Devices and Applications

DATE: January 9, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 758 amends s. 934.425, F.S., to prohibit a person from knowingly:

- Placing a tracking device or tracking application on another person’s property without that person’s consent; or
- Using a tracking device or tracking application to determine the location or movement of another person or another person’s property without that person’s consent.

The bill expands the scope of prohibited conduct to capture those persons who do not install a tracking device or tracking application on another person’s property themselves, but who place or use such a device or application to determine the location or movement of another person or another person’s property without that person’s consent.

The bill increases the penalty for a violation of this section from a second degree misdemeanor to a third degree felony.¹

The bill expands the exceptions in s. 934.425, F.S., to include an exception for placement of a tracking device or tracking application by:

- Law enforcement officers, or any local, state, federal, or military law enforcement agency;
- A parent or legal guardian of a minor;
- A caregiver of an elderly person or disabled adult; and
- An owner or lessee of a motor vehicle.

The bill amends s. 493.6118, F.S., to provide that use of a tracking device or tracking application constitute grounds for which disciplinary action may be taken by the Department of Agriculture

¹ A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

and Consumer Services (DACS) against any licensee, agency, or applicant regulated by ch. 493, F.S., or any unlicensed person engaged in activities regulated by ch. 493, F.S.

Chapter 493, F.S., relates to private investigative, private security, and repossession services.

The bill may have a positive indeterminate impact on jail and prison beds by expanding the scope of prohibited conduct under s. 934.425, F.S., and increasing the penalty for a violation from a second degree misdemeanor² to a third degree felony, which may result in longer jail sentences and new prison admissions.

The bill provides an effective date of October 1, 2024.

II. Present Situation:

Tracking devices and tracking applications can be used to follow the location or movement of another person, potentially without that person's knowledge or consent. Some applications have legitimate uses, but may be accessed by third parties without the user's consent. Other applications are developed and marketed as surveillance applications, commonly targeting potential customers interested in using the technology to track the movements and communication of another without consent.³

Unless exempted, s. 934.425, F.S., prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent. A violation of the prohibition is punishable as a second degree misdemeanor.⁴

Current law does not specifically prohibit the placement of a tracking device.

Global Positioning System

The Global Positioning System (GPS) is a space-based radio navigation system, owned by the United States Government and operated by the United States Space Force. GPS consists of three segments, including the:

- Space Segment: A constellation of 31 operational satellites that circle the Earth at an altitude of approximately 11,000 miles every 12 hours;
- Control Segment: Stations on Earth that monitor and maintain the GPS satellites; and
- User Segment: Receivers that process the navigation signals from the GPS satellites and calculate position and time.⁵

² A misdemeanor of the second degree is punishable by a definite term of imprisonment not exceeding 60 days, as provided in s. 775.082 or s. 775.083, F.S.

³ New York Times, *I Used Apple AirTags, Tiles and a GPS Tracker to Watch My Husband's Every Move*, Kashmir Hill, February 11, 2022, available at <https://www.nytimes.com/2022/02/11/technology/airtags-gps-surveillance.html> (last visited on December 28, 2023).

⁴ Section 934.425, F.S.

⁵ NASA, *GPS-What is GPS*, Catherine G. Manning, September 25, 2023, available at <https://www.nasa.gov/directorates/somd/space-communicationsnavigation-program/gps/> (last visited on December 28, 2023).

Each GPS satellite transmits its position and time at regular intervals and the signals are intercepted by GPS receivers. The receiver is then able to determine its position by calculating how long it took for the signal to reach the receiver. GPS currently provides two levels of services: standard positioning service and precise positioning service. Access to precise positioning service is restricted to the United States Armed Forces, Federal agencies, and select allied armed forces and governments. Standard positioning service is available to all users on a continuous basis, free of any direct charge to users.⁶

GPS is widely used in a variety of applications because its capabilities are accessible using small, inexpensive equipment.⁷

Wi-Fi Positioning

Wi-Fi is a radio-frequency technology for wireless communication that is used by nearly all devices and network infrastructure, including smartphones, computers, Internet of Things devices, routers, and more and can be used to transmit data between devices using radio waves.⁸ Wi-Fi can be leveraged to detect and track the location of people, devices, and assets, and can be easily activated for indoor positioning with existing Wi-Fi access points. The most commonly used Wi-Fi positioning techniques determine a device's location by using a measure called received signal strength indicator (RSSI). In RSSI applications, multiple existing Wi-Fi access points or Wi-Fi enabled sensors deployed in a fixed position detect transmitting Wi-Fi devices and the received signal strength of a device's signal. The location data collected by the access points or sensors is sent to the central indoor positioning or realtime location system, which analyzes the data to estimate the position of the transmitting device. Alternatively, the signal strength of nearby access points can be used to determine a device's location.⁹ Wi-Fi positioning technology is particularly popular in providing location services in indoor spaces where GPS may not work as effectively.

Division of Agricultural and Consumer Services

The Division of Agricultural and Consumer Services (DACS) has broad duties, including safeguarding the public from unsafe or defective products and deceptive business practices, providing environmental protection and supporting Florida's agricultural economy.¹⁰

Division of Licensing

The Division of Licensing within the DACS is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. Chapter 493, F.S., regulates the licensing of private security, investigative, and recovery

⁶ *Id.*

⁷ Federal Aviation Administration, *Satellite Navigation- Global Positioning System (GPS)*, available at https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/techops/navservices/gnss/gps, last visited on December 28, 2023).

⁸ Inpixon Indoor Intelligence, *Wi-Fi RTLS, Location Tracking and Positioning, What is Wi-Fi Positioning*, available at <https://www.inpixon.com/technology/standards/wifi> (last visited on December 28, 2023).

⁹ *Id.*

¹⁰ Florida Department of Agricultural and Consumer Services, *About Us*, at <https://www.fdacs.gov/About-Us> (last visited January 5, 2024).

industries.¹¹ As of April 30, 2023, the division has a total of 2,890,879 issued licenses amongst 26 different types, including: 797 recovery agents, 7,317 private investigators, 149,061 security officers, and 2,677,967 concealed weapon or firearms.¹²

Grounds for Disciplinary Action against Licensee, Agencies, or Applicants

Section 493.6118, F.S., allows the DACS to pursue disciplinary administrative action against a current ch. 493, F.S., licensee, agency, or applicant, or any unlicensed person engaged in activities regulated under ch. 493, F.S., based on a finding that he or she has committed any of the acts prohibited in s. 493.6118, F.S., including the installation of a tracking device or tracking application in violation of s. 934.425, F.S.¹³

Unlawful Installation of a Tracking Device or Application

Section 934.425, F.S., provides that it is a second degree misdemeanor¹⁴ to knowingly install a tracking device¹⁵ or tracking application¹⁶ on another person's property without the other person's consent.

A person's consent to be tracked is presumed to be revoked if:

- 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;¹⁷ or
- The consenting person or the person to whom consent was given files an injunction for protection against the other person.¹⁸

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

- A law enforcement officer, or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation;¹⁹
- A parent or legal guardian of a minor child who installs a tracking device or tracking application on the minor child's property if:
 - The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;²⁰

¹¹ Section 493.6100, F.S.

¹² Office of Program Policy Analysis and Government Accountability, *Department of Agriculture and Consumer Services Licensing* at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4101> (last visited January 5, 2024).

¹³ Section 493.6118(1)(y), F.S.

¹⁴ Section 934.425(5), F.S.

¹⁵ Section 934.425(1)(c), F.S., provides that a "tracking device" means any device whose primary purpose is to track or identify the location or movement of the individual.

¹⁶ Section 934.425(1)(b), F.S., provides that a "tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual.

¹⁷ Section 934.425(3)(a), F.S.

¹⁸ Section 934.425(3)(b), F.S., references the following injunctions for protection: s. 741.30, F.S., relating to domestic violence; s. 741.315, F.S., relating to foreign protection orders; s. 784.046, F.S., relating to repeat violence, sexual violence, or dating violence; s. 784.048, F.S., relating to stalking.

¹⁹ Section 934.425(4)(a), F.S.

²⁰ Section 934.425(4)(b)1., F.S.

- The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;²¹
- The parent or legal guardian has sole custody of the minor child;²² or
- The parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application.²³
- A caregiver of an elderly person²⁴ or disabled adult,²⁵ if the elderly person or disabled adult's treating physician certifies that the installation of a tracking device or tracking application onto the elderly person or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult;²⁶
- A person acting in good faith on behalf of a business entity for a legitimate business purpose;²⁷ or
- An owner or lessee of a motor vehicle that installs, or directs the installation of, a tracking device or tracking application on such vehicle during the period of ownership or lease, provided that:²⁸
 - The tracking device or tracking application is removed before the vehicle's title is transferred or the vehicle's lease expires;²⁹
 - The new owner or lessor of the vehicle consents in writing for the tracking device or tracking application to remain installed;³⁰ or
 - The owner of the vehicle at the time of the installation of the tracking device or tracking application was the original manufacturer of the vehicle.³¹

III. Effect of Proposed Changes:

The bill amends s. 934.425, F.S., to prohibit a person from knowingly:

- Placing a tracking device or tracking application on another person's property without that person's consent; or
- Using a tracking device or tracking application to determine the location or movement of another person or another person's property without that person's consent.

The bill expands the scope of prohibited conduct to capture those persons who do not install a tracking device or tracking application on another person's property themselves, but who place

²¹ Section 934.425(4)(b)2., F.S.

²² Section 934.425(4)(b)3., F.S.

²³ Section 934.425(4)(b)4., F.S.

²⁴ Section 825.101(4), F.S., defines "Elderly person" to mean a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

²⁵ Section 825.101(3), F.S., defines "Disabled adult" to mean a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

²⁶ Section 934.425(4)(c), F.S.

²⁷ Section 934.425(4)(d), F.S., This paragraph does not apply to a person engaged in private investigation, as defined in s. 493.6101, F.S., on behalf of another person unless such activities would otherwise be exempt under this subsection if performed by the person engaging the private investigator.

²⁸ Section 934.425(4)(e), F.S.

²⁹ Section 934.425(4)(e)1., F.S.

³⁰ Section 934.425(4)(e)2., F.S.

³¹ Section 934.425(4)(e)3., F.S.

or use such a device or application to determine the location or movement of another person or another person's property without that person's consent. By prohibiting the placement, in addition to the installation, of a tracking device or application, the bill clarifies that a person may commit a violation by simply placing such a device on or into another person's property.

The bill increases the penalty for a violation of s. 934.425, F.S., from a second degree misdemeanor to a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine. However, the bill does not rank the offense on the Offense Severity Ranking Chart, and as such, under s. 921.0023, F.S., the offense defaults to a level 1 offense.

The bill expands the exceptions in s. 934.425, F.S., to include an exception for placement of a tracking device or tracking application by:

- Law enforcement officers, or any local, state, federal, or military law enforcement agency;
- A parent or legal guardian of a minor;
- A caregiver of an elderly person or disabled adult; and
- An owner or lessee of a motor vehicle.

The bill amends s. 493.6118, F.S., to provide that use of a tracking device or tracking application constitute grounds for which disciplinary action may be taken by the DACS against any licensee, agency, or applicant regulated by ch. 493, F.S., or any unlicensed person engaged in activities regulated by ch. 493, F.S.

Chapter 493, F.S., relates to private investigative, private security, and repossession services.

The bill provides an effective date of October 1, 2024.

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:

The bill may have a positive indeterminate fiscal impact. It is unlikely that the bill will lead to a substantial increase in judicial workload; however, increasing the penalty for violations of s. 934.425, F.S., from a misdemeanor to a felony will shift workload from the county courts to the circuit courts.

The precise fiscal impact of this legislation is indeterminate due to the unavailability of data needed to quantifiably establish the effect on judicial workload. However, this legislation is anticipated to have a minimal fiscal impact on expenditures of the State Courts System if any.

As to the potential shift of workload from the county courts to the circuit courts. Trial court judicial workload is measured using a case weighting system that calculates the amount of time that it takes for a judge to dispose of a case. Passage of this bill may impact the case weighting system.

The number of case filings using the case weighting system is used to determine the need for additional judicial resources each year. Any judicial workload changes from county to circuit jurisdiction in the future as a result of this bill will be reflected in the Supreme Court's annual opinion, *In re: Certification of Need for Additional Judges*.³²

The bill may have a positive indeterminate impact on jail and prison beds by expanding the scope of prohibited conduct under s. 934.425, F.S., and increasing the penalty for a violation from a second degree misdemeanor to a third degree felony, which may result in longer jail sentences and new prison admissions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³² Office of the State Courts Administrator *2024 Judicial Impact Statement* (November 30, 2023), at 1 (on file with the Senate Committee on Criminal Justice).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 934.425 and 493.6118.

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 Martin

33-01375-24

2024758__

A bill to be entitled

An act relating to tracking devices and applications; amending s. 934.425, F.S.; prohibiting the placement or use of a tracking device or tracking application to determine the location or movement of another person or another person's property without that person's consent; providing criminal penalties; conforming provisions to changes made by the act; amending s. 493.6118, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Section 934.425, Florida Statutes, is amended to read:

934.425 Installation or use of tracking devices or tracking applications; exceptions; penalties.—

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

(a) "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state.

(b) "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual.

(c) "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals.

(d) "Person" means an individual but does not include a

Page 1 of 4

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

33-01375-24

2024758__

business entity.

(2) Except as provided in subsection (4), a person may not knowingly:

(a) Install or place a tracking device or tracking application on another person's property without ~~that the other~~ person's consent; or

(b) Use a tracking device or tracking application to determine the location or movement of another person or another person's property without that person's consent.

(3) For purposes of this section, a person's consent is presumed to be revoked if:

(a) 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

(b) 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.

(4) This section does not apply to:

(a) A law enforcement officer as defined in s. 943.10, or any local, state, federal, or military law enforcement agency, that lawfully installs or places a tracking device or tracking application on another person's property as part of a criminal investigation.

(b) A parent or legal guardian of a minor child who installs or places a tracking device or tracking application on the minor child's property if:

1. The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and

Page 2 of 4

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

33-01375-24

2024758__

59 either parent or legal guardian consents to the installation or
60 placement of the tracking device or tracking application;

61 2. The parent or legal guardian is the sole surviving
62 parent or legal guardian of the minor child;

63 3. The parent or legal guardian has sole custody of the
64 minor child; or

65 4. The parents or legal guardians are divorced, separated,
66 or otherwise living apart and both consent to the installation
67 or placement of the tracking device or tracking application.

68 (c) A caregiver of an elderly person or disabled adult, as
69 those terms are defined in s. 825.101, if the elderly person's
70 or disabled adult's treating physician certifies that the
71 installation or placement of a tracking device or tracking
72 application onto the elderly person's or disabled adult's
73 property is necessary to ensure the safety of the elderly person
74 or disabled adult.

75 (d) A person acting in good faith on behalf of a business
76 entity for a legitimate business purpose. This paragraph does
77 not apply to a person engaged in private investigation, as
78 defined in s. 493.6101, on behalf of another person unless such
79 activities would otherwise be exempt under this subsection if
80 performed by the person engaging the private investigator.

81 (e) An owner or lessee of a motor vehicle that installs or
82 places, or directs the installation or placement of, a tracking
83 device or tracking application on such vehicle during the period
84 of ownership or lease, provided that:

85 1. The tracking device or tracking application is removed
86 before the vehicle's title is transferred or the vehicle's lease
87 expires;

33-01375-24

2024758__

88 2. The new owner of the vehicle, in the case of a sale, or
89 the lessor of the vehicle, in the case of an expired lease,
90 consents in writing to the nonremoval of the tracking device or
91 tracking application; or

92 3. The owner of the vehicle at the time of the installation
93 or placement of the tracking device or tracking application was
94 the original manufacturer of the vehicle.

95 (5) A person who violates this section commits a felony
96 ~~misdeemeanor~~ of the third ~~second~~ degree, punishable as provided
97 in s. 775.082, ~~or s. 775.083,~~ or s. 775.084.

98 Section 2. Paragraph (y) of subsection (1) of section
99 493.6118, Florida Statutes, is amended to read:

100 493.6118 Grounds for disciplinary action.—

101 (1) The following constitute grounds for which disciplinary
102 action specified in subsection (2) may be taken by the
103 department against any licensee, agency, or applicant regulated
104 by this chapter, or any unlicensed person engaged in activities
105 regulated under this chapter:

106 (y) Installation or use of a tracking device or tracking
107 application in violation of s. 934.425.

108 Section 3. This act shall take effect October 1, 2024.

OFFICE OF THE STATE COURTS ADMINISTRATOR
2024 JUDICIAL IMPACT STATEMENT

DATE: November 30, 2023

BILL NUMBER: HB 401

SPONSOR(S): Representative Overdorf

STATUTE(S) AFFECTED: s. 934.425, F.S.

COMPANION BILL(S): None

AGENCY CONTACT: Tashiba Robinson, Chief of Legislative Affairs

TELEPHONE: (850) 922-5692

ASSIGNED OSCA STAFF: BNS

I. SUMMARY: The bill amends s. 934.425, F.S., relating to criminal penalties for the installation of tracking devices or tracking applications without consent, to also prohibit the placement or use of a tracking device or tracking application without consent. The bill also increases the penalty for violating s. 934.425, F.S., from a second-degree misdemeanor to a third-degree felony.

II. ANALYSIS:

Section 934.425, F.S., prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent. There are exceptions to the prohibition for law enforcement, parents and guardians of minors, caregivers of elderly persons or disabled adults, persons acting on behalf of business entities for a legitimate business purpose, and owners or lessees of motor vehicles. Currently, a violation of s. 934.425, F.S., is a second-degree misdemeanor.

The bill amends s. 934.425, F.S., to also prohibit a person from knowingly:

- Placing a tracking device or tracking application on another person's property without consent.
- Using a tracking device or tracking application to determine the location or movement of another person or another person's property without consent.

Under the bill, the current exceptions to the prohibition on installation of a tracking device or application without consent will also apply to the

OFFICE OF THE STATE COURTS ADMINISTRATOR
2024 JUDICIAL IMPACT STATEMENT

placement of a tracking device or application without consent.

The bill also increases the penalty for a violation of s. 934.425, F.S., from a second-degree misdemeanor to a third-degree felony.

- III. **ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT:** It is unlikely that the amendment to s. 934.425, F.S., will lead to a substantial increase in judicial workload; however, increasing the penalty for violations of s. 934.425, F.S., from a misdemeanor to a felony will shift workload from the county courts to the circuit courts.
- IV. **IMPACT TO COURT RULES/JURY INSTRUCTIONS:** May require the creation or amendment of jury instructions.
- V. **ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:**
- A. **Revenues:** None.
- B. **Expenditures:** The precise fiscal impact of this legislation is indeterminate due to the unavailability of data needed to quantifiably establish the effect on judicial workload, as discussed in Section III, above. However, this legislation is anticipated to have a minimal fiscal impact on expenditures of the State Courts System if any.

As to the potential shift of workload from the county courts to the circuit courts as mentioned in Section III, trial court judicial workload is measured using a case weighting system that calculates the amount of time that it takes for a judge to dispose of a case. Passage of this bill may impact the case weighting system. The number of case filings using the case weighting system is used to determine the need for additional judicial resources each year. Any judicial workload changes from county to circuit jurisdiction in the future as a result of this bill will be reflected in the Supreme Court's annual opinion, *In re: Certification of Need for Additional Judges*.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 764

INTRODUCER: Criminal Justice Committee and Senator Stewart

SUBJECT: Retention of Sexual Offense Evidence

DATE: January 11, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	Fav/CS
2.			ACJ	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 764 amends s. 943.326(3), F.S., to specify parameters for the storage of sexual assault evidence kits (SAKs) that are collected in a sexual offense, but the alleged *victim elects not to report* the sexual offense to law enforcement during the forensic physical examination and *does not request* to have the evidence tested.¹ Under these specified criteria, the bill requires that:

- The evidence must be retained in a secure, environmentally safe manner for a period of 8 years after the date of collection; and
- The evidence must be stored anonymously and with a documented chain of custody.

The bill also provides that *if*, at any time following the initial collection of a SAK from a *non-reporting victim* who has not requested DNA testing nor had a request for testing made on his or her behalf, the victim *elects to report* the alleged crime to law enforcement, *the previously collected SAK evidence will be retained until the prosecuting agency approves its destruction.*

There is no reported fiscal effect from the bill. See Part V. Fiscal Impact Statement.

The bill becomes effective July 1, 2024.

¹ Note that if the alleged victim is a minor, the alleged victim's parent, guardian, or legal representative can request to have the SAK evidence tested as can the alleged victim's personal representative, if the alleged victim is deceased. An alleged victim or, if applicable, the person representing the alleged victim must be informed of the purpose of submitting evidence for testing and the right to request testing. Section 943.326(1)(b), and (2), F.S.

II. Present Situation:

Tracking Sexual Assault Evidence Kits

In 2021, the Florida Department of Law Enforcement (FDLE) began creating, implementing, and maintaining a statewide database, the purpose of which is to track the location, processing status, and storage of sexual assault evidence kits (SAKs).² As of July 2023, all 67 counties were using the database and 1602 SAKs were being tracked at that time.³ Law enforcement agencies, medical facilities, crime laboratories, and any other facilities in the chain of custody of the SAKs are required to participate in the statewide database.⁴

An alleged victim⁵ who has reported the offense to law enforcement and who provides the SAK evidence during the forensic physical examination has the ability to access the statewide database.⁶ The reporting alleged victim can follow his or her SAK from the collection site (typically a medical facility⁷), to law enforcement agency storage, then to the crime laboratory for forensic testing and possible destruction after testing, or back to law enforcement agency storage.⁸

A SAK collected from an alleged victim who chooses not to report the sexual offense to law enforcement is not sent from the medical facility to law enforcement for testing.⁹ A SAK must be retained in a secure, environmentally safe manner until the prosecuting agency has approved its destruction.¹⁰ Section 943.326(3), F.S., does not currently delineate between a SAK collected from a reporting victim and a SAK collected from a non-reporting victim.

Time Limitations for Prosecution

The statutes of limitation (SOL) determine the timeframe within which a criminal prosecution must be initiated by a prosecutor.¹¹ The SOL in effect at the time a crime is committed

² Chapter 2021-213, L.O.F., s. 943.326(4)(c), F.S.; A SAK is defined by FDLE rule as a Florida sexual offense evidence kit or other sealed package containing samples collected from the alleged victim's body. Rule 11D-12.001, F.A.C.

³ Information provided by FDLE via e-mail dated September 5, 2023 (on file with the Senate Criminal Justice Committee).

⁴ Section 943.326(4)(d), F.S.

⁵ If the alleged victim is a minor the alleged victim's parent, guardian, or legal representative can request to have the SAK evidence tested as can the alleged victim's personal representative, if the alleged victim is deceased. An alleged victim or, if applicable, the person representing the alleged victim must be informed of the purpose of submitting evidence for testing and the right to request testing. Sections 943.326(1)(b), and (2), F.S.

⁶ If the alleged victim is a minor, his or her parent, guardian, or legal representative will have access to the database. If the alleged victim is deceased, his or her personal representative will have access. Section 943.326(4)(c) and (e), F.S.

⁷ Section 943.326(4)(c), F.S.

⁸ Section 943.326(4)(c) and (e), F.S.

⁹ For a Florida Department of Law Enforcement (FDLE) or regional county laboratory to process evidence from a SAK, there must be an accompanying law enforcement report. Non-reporting SAKs will not be tested pursuant to s. 943.326, F.S., unless an alleged victim converts from a non-reporting victim to one who makes a report to law enforcement. To test a non-reporting SAK would violate the confidentiality and privacy of the victim's health records under the Health Insurance Portability and Accountability Act (HIPAA). FDLE Sexual Assault Kit Submissions Frequently Asked Questions, available at https://www.fdle.state.fl.us/Forensics/Documents/Sexual-Assault-Kit-FAQs-for-LEA_Final.aspx (last visited December 29, 2023).

¹⁰ Section 943.326(3), F.S.

¹¹ Section 775.15, F.S.

controls.¹² In general, time is calculated from the day after a person commits an offense, and the filing of a charging document such as an indictment or information initiates the prosecution for the purpose of satisfying the time limitations.¹³

Regardless of whether a charging document is filed, the time limitation does not run during any time an offender is continuously absent from the state or otherwise undiscoverable because he or she lacks a reasonably ascertainable home address or place of employment; however, an extension under this scenario may not exceed the normal time limitation by more than three years.¹⁴

The standard time limitations for the following crimes are:

- Four years for a first-degree felony.¹⁵
- Three years for a second or third-degree felony.¹⁶
- Two years for a first-degree misdemeanor.¹⁷
- One year for a second-degree misdemeanor.¹⁸

Capital felonies, life felonies, and felonies resulting in a death are not subject to time constraints, and the state may bring charges at any time.¹⁹

Exceptions to the Standard SOL for Sexual Battery Offenses

Florida extends or removes time limitations or changes the date on which the calculation of the SOL begins for specified sexual offenses.²⁰

Pursuant to s. 775.15, F.S., the following SOL apply to sexual battery prosecutions:

- Prosecution may be commenced at any time, for a specified:
 - Sexual battery involving a victim under 16;²¹
 - Sexual battery involving a victim under 18;²²
 - First-degree felony sexual battery involving a victim under 18;²³
 - First or second-degree felony sexual battery involving a victim less than 18 years of age, *if* the offense is reported within 72 hours of the commission of the offense.²⁴

¹² The statute of limitations to be used in determining whether a prosecution is timely is the one that is in effect at the time of the crime. *State v. Wadsworth*, 293 So.2d 345 (Fla.1974).

¹³ Section 775.15(3) and (4), F.S.

¹⁴ Section 775.15(5), F.S.

¹⁵ Section 775.15(2)(a), F.S.

¹⁶ Section 775.15(2)(b), F.S.

¹⁷ Section 775.15(2)(c), F.S.

¹⁸ Section 775.15(2)(d), F.S.

¹⁹ Section 775.15(1), F.S.

²⁰ An extension of a particular crime's SOL does not violate the ex post facto clause of the Florida Constitution if the extension takes effect before prosecution of an offense is barred by the old SOL and the new SOL clearly indicates it applies to cases pending upon its effective date. s. 10, art. I, Fla. Const.; *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980); The statute of limitations to be used in determining whether a prosecution is timely is the one that is in effect at the time of the crime. *State v. Wadsworth*, 293 So.2d 345 (Fla.1974).

²¹ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2010. Section 775.15(13)(c), F.S.

²² Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2020. Section 775.15(20), F.S.

²³ Prosecution must not have been barred by s. 775.15(2), F.S., on or before October 1, 2003. Section 775.15(13)(b), F.S.

²⁴ Prosecution must not have been barred by s. 775.15(2), F.S., on or before December 31, 1984. Section 775.15(13)(a), F.S.

- First or second-degree felony violations of sexual battery involving a victim who is 16 years of age or older at the time of the offense *if* the offense is reported within 72 hours of the commission of the offense.²⁵
- If the offense is not reported within 72 hours of the commission of the offense, prosecution of a specified first or second-degree felony sexual battery involving a victim 16 or older must be commenced within eight years.²⁶

III. Effect of Proposed Changes:

The bill amends s. 943.326(3), F.S., to specify parameters for the storage of SAKs that are collected in a sexual offense, but the alleged victim elects *not* to report the sexual offense to law enforcement during the forensic physical examination and does *not* request to have the evidence tested.²⁷ Under these specified criteria, the bill requires that:

- The evidence must be retained in a secure, environmentally safe manner for a period of 8 years after the date of collection; and
- The evidence must be stored anonymously and with a documented chain of custody.

The 8-year DNA retention limitation for possible DNA evidence in non-reported sexual offenses provides a date certain for evidence disposal by medical facilities while allowing a non-reporting alleged victim time to decide to report the sexual offense.

The anonymous storage of the possible DNA evidence complies with HIPPA by preserving the confidentiality and privacy of the alleged victim's health records.²⁸ Requiring that the evidentiary chain of custody remain unbroken is beneficial to the admissibility of the evidence in court should the alleged non-reporting victim decide to report the sexual offense.

The bill also provides that if, at any time following the initial retention of a SAK from a non-reporting victim who has not requested DNA testing or had a request for testing made on his or her behalf, the victim elects to report the alleged crime to law enforcement, the previously collected SAK evidence will be retained until the prosecuting agency approves its destruction.

The bill becomes effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁵ Section 775.15(14)(a), F.S.

²⁶ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2015. Section 775.15(14)(b), F.S.

²⁷ Note that if the alleged victim is a minor, the alleged victim's parent, guardian, or legal representative can request to have the SAK evidence tested as can the alleged victim's personal representative, if the alleged victim is deceased. An alleged victim or, if applicable, the person representing the alleged victim must be informed of the purpose of submitting evidence for testing and the right to request testing. Sections 943.326(1)(b), and (2), F.S.

²⁸ The Health Insurance Portability and Accountability Act.

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:

Specifying an 8-year time limitation from the date of collection for storing possible DNA evidence in non-reported cases may decrease the storage capacity necessary in order for private medical facilities to comply with s. 943.326, F.S. The FDLE suggests that these medical facilities could use local law enforcement agencies for storage of SAKs not reported to law enforcement.²⁹

C. Government Sector Impact:

Specifying an 8-year time limitation from the date of collection for storing possible DNA evidence in non-reported cases may decrease the storage capacity necessary in order for public medical facilities to comply with s. 943.326, F.S. The FDLE suggests that these medical facilities could use local law enforcement agencies for storage of SAKs not reported to law enforcement.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁹ 2024 FDLE Legislative Bill Analysis of SB 764, dated December 6, 2023 (on file with the Senate Criminal Justice Committee).

³⁰ *Id.*

VIII. Statutes Affected:

This bill substantially amends section 943.326 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on January 10, 2024:

The committee substitute:

- Clarifies the length of time and conditions within which a sexual offense evidence kit collected from a reporting victim must be retained in s. 943.326(3)(a), F.S.
- Specifies the manner and length of time a sexual offense evidence kit collected from a non-reporting victim must be retained in s. 943.326(3)(b)1., F.S.
- Provides that a sexual offense evidence kit collected from a non-reporting victim who decides to report the offense to law enforcement before the 8-year kit retention period expires will be retained until the prosecuting agency has approved its destruction in s. 943.326(3)(b)2., F.S.

- B. **Amendments:**

None.



200146

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2024	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 943.326, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

943.326 DNA evidence collected in sexual offense forensic physical examinations and investigations.—

(1) A sexual offense evidence kit, or other DNA evidence if



200146

11 a kit is not collected, must be submitted to a member of the
12 statewide criminal analysis laboratory system under s. 943.32
13 for forensic testing within 30 days after:

14 (a) Receipt of the evidence by a law enforcement agency if
15 a report of the sexual offense is made to the law enforcement
16 agency; or

17 (b) A request to have the evidence tested is made to the
18 medical provider or the law enforcement agency by:

19 1. The alleged victim;

20 2. The alleged victim's parent, guardian, or legal
21 representative, if the alleged victim is a minor; or

22 3. The alleged victim's personal representative, if the
23 alleged victim is deceased.

24 (3) (a) Except as provided in paragraph (b) a collected
25 sexual offense evidence kit, or other DNA evidence if a kit is
26 not collected, that is collected from an alleged victim who
27 reports a sexual offense to a law enforcement agency or who
28 makes a request, or on whose behalf a request is made, for
29 testing in compliance with paragraph (1) (b), must be retained in
30 a secure, environmentally safe manner until the prosecuting
31 agency has approved its destruction.

32 (b) 1. A sexual offense evidence kit collected from a person
33 who does not report a sexual offense to a law enforcement agency
34 during the forensic physical examination and who does not make a
35 request, or have a request made on his or her behalf, in
36 compliance with paragraph (1) (b) must be retained for a minimum
37 of 8 years from the collection date by the medical facility that
38 collected the kit, a certified rape crisis center with
39 appropriate storage capabilities, or a law enforcement agency. A



40 sexual offense evidence kit retained pursuant to this
41 subparagraph must be stored anonymously, in a secure,
42 environmentally safe manner, and with a documented chain of
43 custody.

44 2. If, at any time following the initial retention of a
45 sexual offense evidence kit pursuant to subparagraph (b)1., an
46 alleged victim makes a report to a law enforcement agency or
47 makes a request, or has a request made on his or her behalf, for
48 testing in compliance with paragraph (1)(b), the kit must be
49 retained as described in paragraph (3)(a).

50 Section 2. This act shall take effect July 1, 2024.

51
52 ===== T I T L E A M E N D M E N T =====

53 And the title is amended as follows:

54 Delete everything before the enacting clause
55 and insert:

56 A bill to be entitled
57 An act relating to retention of sexual offense
58 evidence; amending s. 943.326, F.S.; establishing a
59 minimum timeframe for the retention of specified
60 sexual offense evidence; requiring specified protocols
61 for the storing of specified sexual offense evidence;
62 providing an effective date.

By Senator Stewart

17-00499B-24

2024764__

1 A bill to be entitled
 2 An act relating to the retention of sexual offense
 3 evidence; amending s. 943.326, F.S.; requiring
 4 specified sexual offense evidence to be retained in a
 5 certain manner for a minimum amount of years after the
 6 collection date; requiring such evidence to be stored
 7 anonymously and with a documented chain of custody;
 8 providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (3) of section 943.326, Florida
 13 Statutes, is amended, and subsection (1) of that section is
 14 republished, to read:
 15 943.326 DNA evidence collected in sexual offense
 16 investigations.—
 17 (1) A sexual offense evidence kit, or other DNA evidence if
 18 a kit is not collected, must be submitted to a member of the
 19 statewide criminal analysis laboratory system under s. 943.32
 20 for forensic testing within 30 days after:
 21 (a) Receipt of the evidence by a law enforcement agency if
 22 a report of the sexual offense is made to the law enforcement
 23 agency; or
 24 (b) A request to have the evidence tested is made to the
 25 medical provider or the law enforcement agency by:
 26 1. The alleged victim;
 27 2. The alleged victim's parent, guardian, or legal
 28 representative, if the alleged victim is a minor; or
 29 3. The alleged victim's personal representative, if the

Page 1 of 2

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

17-00499B-24

2024764__

30 alleged victim is deceased.
 31 (3) (a) Except as provided in paragraph (b), a collected
 32 sexual offense evidence kit must be retained in a secure,
 33 environmentally safe manner until the prosecuting agency has
 34 approved its destruction.
 35 (b) A sexual offense evidence kit, or other DNA evidence if
 36 a kit is not collected, that is collected from a person who does
 37 not report a sexual offense to a law enforcement agency during
 38 the forensic physical examination and who does not make a
 39 request in compliance with paragraph (1) (b) must be retained in
 40 a secure, environmentally safe manner for a minimum of 8 years
 41 after the collection date. Collected sexual offense evidence
 42 involving sexual offenses that were not reported to a law
 43 enforcement agency must be stored anonymously and with a
 44 documented chain of custody.
 45 Section 2. This act shall take effect July 1, 2024.

Page 2 of 2

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

From: [Cellon, Connie](#)
To: [Arnold, Sue](#)
Subject: FW: Sexual Assault Kit Tracking System update
Date: Tuesday, January 2, 2024 2:03:28 PM

From: Smith, Bobbie <BobbieSmith@fdle.state.fl.us>
Sent: Tuesday, September 5, 2023 10:04 AM
To: Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Subject: RE: Sexual Assault Kit Tracking System update

Good morning, Connie!

Thanks for your patience. Last Tuesday was complete chaos here at FDLE with storm prep. As promised here's the updates on the SAK Tracking system. The project implementation is complete.

- In January 2023, a press conference was held by the Commissioner to announce the implementation of Phase 2 and survivor access to the tracking database.
- Joint application design meetings were held to discuss customizations for Phase 3, the final phase of implementation. The Test Environment was updated with a re-release and system checks were completed.
- Another release to the Test Environment and associated system checks were completed. The Production environment was then updated.
- During February – March Information for the stakeholders from the remaining 26 counties, which were not using the system, were collected and entered into the database.
- In April, 32 training sessions were held and the tracking database went online in the remaining 26 counties. Multiple presentations were given to Phase 3 stakeholders and community partners.
- At the end of July 2023, all 67 counties are using the tracking database and 1602 kits are being tracked.

As always, let me know if you have any questions.

Thanks,
Bobbie

From: Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Sent: Thursday, August 24, 2023 3:32 PM
To: Smith, Bobbie <BobbieSmith@fdle.state.fl.us>
Cc: Stokes, Amanda <Stokes.Amanda@flsenate.gov>
Subject: FW: Sexual Assault Kit Tracking System update

CAUTION: This email originated outside of FDLE. Please use caution when opening attachments, clicking links, or responding to this email.

Hey Miss Bobbie! Notice this is the SHORT interim?

I am sending (below) the last communication we had on this topic. Do you know whether this “roll-out” is complete?

From: Smith, Bobbie <BobbieSmith@fdle.state.fl.us>

Sent: Tuesday, January 3, 2023 4:52 PM

To: Cellon, Connie <CELLON.CONNIE@flsenate.gov>

Subject: Sexual Assault Kit Tracking System update

Connie,

Happy New Year! Hope you are doing well. Here’s the latest update for activities taking place July 1, 2022 – December 31, 2022.

In July 2022, with Phase 1 having begun June 8 in four counties, the joint application design meeting was held for database customizations needed for Phase 2 of implementation and the test environment was updated with Spanish translations for the Survivor portal. Phase 2 involved adding the stakeholders for an additional 37 counties, and included survivors beginning to access the tracking database. Information for all the law enforcement agencies, forensic medical exam providers, and laboratories in those counties was gathered and entered into the tracking database. In October 2022, 33 training sessions were held for the Phase 2 participants and the tracking database went online in those counties. In November, the phase two customizations were added to the test environment and system checks were completed by FDLE. The tracking database was then updated with the new features in December. An additional position, a senior program analyst, was hired in November to assist with the expanding tracking database. At the end of this period, there are 41 counties using the tracking database and 355 kits being tracked.

Let me know if you have any questions!



Bobbie Smith
Office of the Chief of Staff
Florida Department of Law Enforcement
850.410.7014 ofc
850.251.6392 cell



2024 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
BILL NUMBER:	SB0764
BILL TITLE:	Retention of Sexual Offense Evidence
BILL SPONSOR:	Senator Stewart
EFFECTIVE DATE:	July 1, 2024

COMMITTEES OF REFERENCE
1)
2)
3)
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	HB0607
SPONSOR:	Representative Plakon

PREVIOUS LEGISLATION	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
Yes

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	December 6, 2023
LEAD AGENCY ANALYST:	Lori Mizell
ADDITIONAL ANALYST(S):	Jason Bundy
LEGAL ANALYST:	Jim Martin, Phil Lindley
FISCAL ANALYST:	Elizabeth Martin

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Establishes a minimum time frame of eight years for retention of sexual assault offense evidence collected from non-reporting victims.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Sexual offense kits collected from victims who do not report to law enforcement have no statutorily defined retention time prior to destruction. Currently, retention time frames span from 60 days to indefinitely. Survivors who decide to change from non-reporting to reporting to law enforcement may find their kit was destroyed and cannot be tested.
2. **EFFECT OF THE BILL:** Amends s. 943.326, F.S., creating an eight-year retention period for sexual offense evidence kits collected from victims who do not report to law enforcement. Requires the sexual assault evidence kit to be stored anonymously and with a documented chain of custody.
3. **DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES?** Y N

If yes, explain:	
What is the expected impact to the agency's core mission?	
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	
Date Due:	
Bill Section Number:	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y N

Board:	
Board Purpose:	
Who Appointments:	
Appointee Term:	

Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y N

Revenues:	
Expenditures:	The number of kits required to be stored by individual agencies as a result of the change is not expected to require increased storage facilities or programs. Medical facilities that currently store kits may be able to utilize local law enforcement agencies for the storage of kits not reported to law enforcement.
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y N

Revenues:	
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

Revenues:	
Expenditures:	Medical facilities that cannot store kits for eight years could leverage local law enforcement to meet the requirement.
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	

Bill Section Number:	
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TECHNOLOGY IMPACT

1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	
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LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	
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ADDITIONAL COMMENTS

CourtSmart Tag Report

Room: SB 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 1/10/2024 8:34:53 AM

Ends: 1/10/2024 9:41:38 AM

Length: 01:06:46

8:34:52 AM Meeting called to order, roll call
8:35:06 AM Quorum is present
8:35:11 AM Chair Martin makes opening remarks
8:35:31 AM Tab 4- SB 450, Sheltering or Aiding Unmarried Minors by Senator Wright
8:35:35 AM Senator Wright explains the bill
8:37:16 AM Questions:
8:37:20 AM Senator Pizzo
8:37:48 AM Senator Pizzo
8:37:48 AM Senator Wright
8:37:57 AM Senator Wright
8:38:21 AM Senator Powell
8:38:41 AM Senator Wright
8:39:02 AM Senator Powell
8:39:09 AM Senator Wright
8:39:21 AM Bob Cortes
8:40:18 AM Chair Martin reads appearance cards waiving
8:40:33 AM Debate:
8:40:40 AM Senator Pizzo
8:42:18 AM Senator Powell
8:43:17 AM Senator Wright closes on the bill
8:43:32 AM Roll call on SB 450
8:43:44 AM Chair Martin reports the bill
8:43:50 AM Tab 6- SB 638, Lethality Assessments by Senator Grall
8:44:01 AM Senator Grall explains the bill
8:45:09 AM Amendment 691894
8:45:19 AM Senator Grall explains the amendment
8:46:02 AM Senator Grall waives close
8:46:05 AM Chair Martin reports the amendment
8:46:13 AM Questions:
8:46:17 AM Senator Pizzo
8:46:42 AM Senator Grall
8:48:12 AM Senator Pizzo
8:48:26 AM Senator Grall
8:48:43 AM Senator Ingoglia
8:49:02 AM Senator Grall
8:49:51 AM Senator Ingoglia
8:50:20 AM Senator Grall
8:51:06 AM Senator Ingoglia
8:51:28 AM Senator Grall
8:51:37 AM Senator Ingoglia
8:51:52 AM Senator Grall
8:52:08 AM Senator Ingoglia
8:53:15 AM Senator Grall
8:54:31 AM Senator Ingoglia
8:54:47 AM Senator Grall
8:55:17 AM Senator Powell
8:55:52 AM Senator Grall
8:56:25 AM Senator Powell
8:57:15 AM Senator Grall
8:58:14 AM Chair Martin reads appearance cards waiving
8:58:23 AM Chair Martin recognizes public testimony:
8:58:30 AM Joseph Petito, Gabby Petito Foundation

9:02:01 AM Debate:
9:02:02 AM Senator Pizzo
9:02:50 AM Senator Grall
9:03:27 AM Senator Pizzo
9:05:28 AM Senator Grall closes on the bill
9:08:01 AM Roll call on SB 638
9:08:17 AM Chair Martin reports the bill
9:08:23 AM Tab 5- SB 538, Traveling Across County Lines to Commit Criminal Offenses by Senator Harrell
9:08:31 AM Senator Harrell explains the bill
9:10:03 AM Questions:
9:10:04 AM Senator Powell
9:10:19 AM Senator Harrell
9:10:28 AM Chair Martin recognizes public testimony:
9:10:36 AM Johnathan Webber, SPLC Action Fund
9:12:11 AM Questions:
9:12:17 AM Senator Powell
9:12:59 AM Johnathan Webber
9:13:28 AM Senator Powell
9:14:20 AM Senator Harrell
9:15:23 AM Senator Polsky
9:15:51 AM Senator Harrell
9:16:48 AM Senator Pizzo
9:17:56 AM Senator Harrell
9:18:36 AM Senator Harrell closes on the bill
9:19:50 AM Roll call on SB 538
9:20:06 AM Chair Martin reports the bill
9:20:11 AM Tab 8- SB 764, Retention of Sexual Evidence by Senator Stewart
9:20:26 AM Senator Stewart explains the bill
9:23:33 AM Amendment 200146
9:23:51 AM Senator Stewart waives close
9:23:56 AM Chair Martin reports the amendment
9:24:03 AM Chair Martin reads appearance cards waiving
9:24:37 AM Senator Stewart closes on the bill
9:24:44 AM Roll call on SB 764
9:25:09 AM Chair Martin reports the bill
9:25:14 AM Tab 2- SB 312, Offenses Involving Children by Senator Collins
9:25:21 AM Senator Collins explains the bill
9:26:00 AM Amendment 530650
9:26:05 AM Senator Collins explains the amendment
9:26:54 AM Senator Collins waives close on the amendment
9:26:57 AM Chair Martin reports the amendment
9:27:04 AM Chair Martin reads appearance cards waiving
9:27:21 AM Senator Collins waives close
9:27:27 AM Roll call on SB 312
9:27:39 AM Chair Martin reports the bill
9:27:44 AM Tab 3- SB 340, Intentional Damage to Critical Infrastructure by Senator Yarborough
9:27:49 AM Senator Yarborough explains the bill
9:29:59 AM Amendment 167934
9:30:04 AM Senator Yarborough explains the amendment
9:30:41 AM Chair Martin reads appearance cards waiving
9:31:01 AM Senator Yarborough waives close
9:31:17 AM Chair Martin recognizes public testimony:
9:31:32 AM Dale Calhoun, Florida Natural Gas Association and Florida Propane Gas Association
9:32:28 AM Chair Martin reads appearance cards waiving
9:33:36 AM Senator Yarborough closes on the bill
9:34:38 AM Roll call on SB 340
9:34:52 AM Chair Martin reports the bill
9:34:58 AM Tab 1- SB 234, Disclosure of Grand Jury Testimony by Senator Polsky
9:35:06 AM Senator Polsky explains the bill
9:37:07 AM Chair Martin reads appearance cards waiving
9:37:23 AM Senator Polsky waives close
9:37:26 AM Roll call on SB 234

9:37:40 AM Chair Martin reports the bill
9:37:47 AM Chair Martin passes the chair to Vice Chair Bradley
9:37:54 AM Tab 7- SB 758, Tracking Devices and Applications by Senator Martin
9:37:59 AM Senator Martin explains the bill
9:38:42 AM Questions:
9:38:43 AM Senator Powell
9:39:11 AM Senator Martin
9:40:22 AM Chair Bradley reads appearance cards waiving
9:40:32 AM Senator Martin waives close
9:40:34 AM Roll call on SB 758
9:40:52 AM Chair Bradley reports the bill
9:40:56 AM Vice Chair Bradley passes chair to Chair Martin
9:41:04 AM Senator Ingoglia moves to record a missed vote
9:41:29 AM Meeting adjourned
9:41:38 AM
9:41:38 AM