Tab 1	**SB 96** by **Bean (CO-INTRODUCERS) Hutson, Book, Wright**; (Identical to H 00067) Police, Fire, and Search and Rescue Dogs

361560	A	S	RCS	CJ, Bean	Delete L.39 - 65:	02/11 06:25 PM
666876	A	S	RCS	CJ, Bean	Delete L.113 - 114:	02/11 06:25 PM

Tab 2	**SB 130** by **Stewart (CO-INTRODUCERS) Perry**; (Identical to H 00395) Sexual Battery Prosecution Time Limitation

Tab 3	**SB 132** by **Rouson**; (Compare to H 00075) Drones

688632	A	S	RCS	CJ, Rouson	In the directory clause	02/11 06:25 PM
470666	A	S	RCS	CJ, Rouson	Delete L.33:	02/11 06:25 PM

Tab 4	**SB 136** by **Rouson (CO-INTRODUCERS) Perry**; False Personation

Tab 5	**SB 160** by **Book**; Prohibited Acts in Connection with Obscene or Lewd Materials

891082	A	S	RCS	CJ, Book	btw L.43 - 44:	02/11 06:25 PM

Tab 6	**SB 186** by **Lee (CO-INTRODUCERS) Book**; (Similar to H 00577) Public Records/Victim of Mass Violence

Tab 7	**SB 204** by **Brandes**; Detention Facilities

487700	A	S	RCS	CJ, Brandes	Delete L.68:	02/11 06:25 PM

Tab 8	**SB 210** by **Brandes**; Searches of Cellular Phones and Other Electronic Devices

531094	D	S	RS	CJ, Brandes	Delete everything after	02/11 06:25 PM
651826	SD	S	RCS	CJ, Brandes	Delete everything after	02/11 06:25 PM

Tab 9	**SB 236** by **Book**; Public Records and Public Meetings

585814	A	S	RCS	CJ, Book	Delete L.46 - 103:	02/11 06:25 PM

Tab 10	**SB 248** by **Hooper (CO-INTRODUCERS) Baxley, Simpson**; (Similar to H 00203) Public Records/Civilian Personnel Employed by a Law Enforcement Agency

417100	T	S	RCS	CJ, Hooper	In title, delete L.3:	02/11 06:25 PM
730452	A	S	RCS	CJ, Hooper	Delete L.336:	02/11 06:25 PM

Tab 11	**SB 332** by **Pizzo (CO-INTRODUCERS) Rodriguez, Book, Thurston, Taddeo, Farmer, Brandes, Gibson, Torres**; (Similar to H 00049) Incarcerated Women

404354	A	S	RCS	CJ, Pizzo	Delete L.26 - 33:	02/11 06:25 PM

Tab 12	**SB 338** by **Brandes**; Extension of Confinement

240586	A	S	RCS	CJ, Brandes	Delete L.69 - 70:	02/11 06:25 PM

Tab 13	**SB 346** by **Brandes**; (Identical to H 00607) Conditional Medical Release

283408	A	S	RCS	CJ, Brandes	Delete L.32 - 51:	02/11 06:25 PM

Tab 14	**SB 370** by **Harrell**; (Identical to H 00219) Victims of Human Trafficking

672736	A	S	RS	CJ, Harrell	Delete L.40:	02/11 06:25 PM
363744	SA	S	RCS	CJ, Harrell	Delete L.40:	02/11 06:25 PM

Tab 15	**SB 406** by **Brandes (CO-INTRODUCERS) Pizzo, Perry**; (Compare to H 00589) Theft					
~~477870~~	A	S	WD	CJ, Brandes	Delete L.79 - 219:	02/11 06:25 PM

Tab 16	**SB 408** by **Brandes (CO-INTRODUCERS) Perry**; Drug Offenses					
447180	A	S		CJ, Brandes	Delete L.39 - 49.	02/08 02:13 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Perry, Chair
Senator Brandes, Vice Chair

MEETING DATE: Monday, February 11, 2019
TIME: 2:30—4:00 p.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Building

MEMBERS: Senator Perry, Chair; Senator Brandes, Vice Chair; Senators Bracy, Flores, and Pizzo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 96** Bean (Identical H 67)	Police, Fire, and Search and Rescue Dogs; Increasing the penalty for intentionally and knowingly causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, police canines, fire canines, or search and rescue canines, etc. CJ 02/04/2019 CJ 02/11/2019 Fav/CS JU RC	Fav/CS Yeas 4 Nays 0
2	**SB 130** Stewart (Identical H 395, Compare H 165)	Sexual Battery Prosecution Time Limitation; Creating an exception to the general time limitations which allows a prosecution to be commenced at any time for specified sexual battery offenses against victims younger than a certain age at the time the offense was committed, etc. CJ 02/04/2019 CJ 02/11/2019 Favorable JU ACJ AP	Favorable Yeas 4 Nays 0
3	**SB 132** Rouson (Compare H 75, S 766)	Drones; Defining the terms “dangerous or deadly weapon” and “large-scale event”; authorizing the use of a drone by a law enforcement agency to prepare for or monitor safety and security at a large-scale event; prohibiting a law enforcement agency using a drone in an authorized manner from equipping it with specified attachments or using it to fire projectiles, etc. CJ 02/11/2019 Fav/CS IS RC	Fav/CS Yeas 5 Nays 0
4	**SB 136** Rouson	False Personation; Adding school guardians to the list of officials the false personation of whom is prohibited and is subject to criminal penalties, etc. CJ 02/11/2019 Favorable IS RC	Favorable Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 160** Book	Prohibited Acts in Connection with Obscene or Lewd Materials; Prohibiting a person from knowingly selling, lending, giving away, distributing, transmitting, showing, or transmuting; offering to commit such actions; having in his or her possession, custody, or control with the intent to commit such actions; or advertising in any manner an obscene, child-like sex doll; providing criminal penalties, etc. CJ 02/11/2019 Fav/CS JU RC	Fav/CS Yeas 4 Nays 0
6	**SB 186** Lee (Similar H 577)	Public Records/Victim of Mass Violence; Defining the term “killing of a victim of mass violence”; expanding an existing exemption from public records requirements for a photograph or a video or audio recording held by an agency which depicts or records the killing of a law enforcement officer to include a photograph or a video or audio recording held by an agency which depicts or records the killing of a victim of mass violence; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 02/11/2019 Favorable GO RC	Favorable Yeas 5 Nays 0
7	**SB 204** Brandes	Detention Facilities; Requiring that a custodial interrogation at a place of detention be electronically recorded in its entirety in connection with certain offenses; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a place other than a place of detention to prepare a specified report; prohibiting introduction into or possession of any cellular telephone or other portable communication device on the grounds of any county detention facility, etc. CJ 02/04/2019 CJ 02/11/2019 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 210** Brandes	Searches of Cellular Phones and Other Electronic Devices; Revising the exceptions to conduct that constitutes unlawful access to stored communications; authorizing an investigative or law enforcement officer to apply to a judge of competent jurisdiction for a warrant, rather than an order, authorizing real-time location tracking or acquisition of historical location data; providing requirements for the return of the warrant to the judge and service of a copy of the warrant on the person who was tracked or whose property was tracked; authorizing any investigative or law enforcement officer who is specially designated by certain persons and who makes specified determinations to engage in real-time location tracking if a warrant is later obtained as specified, etc. CJ 02/11/2019 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0
9	**SB 236** Book	Public Records and Public Meetings; Providing an exception to the expiration of certain public records and public meetings exemptions under specified circumstances; prohibiting the disclosure of the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or information that could assist an individual in determining the identity of such alleged victim, in any portion of a proceeding conducted by the Commission on Ethics, a commission on ethics and public trust, or a county or a municipality that has established a local investigatory process which is open to the public; providing for future legislative review and repeal; providing statements of public necessity, etc. CJ 02/11/2019 Fav/CS GO RC	Fav/CS Yeas 4 Nays 0
10	**SB 248** Hooper (Similar H 203, Compare H 7009, S 7004)	Public Records/Civilian Personnel Employed by a Law Enforcement Agency; Defining the term “home addresses” for purposes of public records exemptions for personal identifying and location information of certain agency personnel and their family members; exempting personal identifying and location information of active or former civilian personnel employed by a law enforcement agency, and of spouses and children of such personnel, from public records requirements; providing for legislative review and repeal of the exemptions; providing statements of public necessity, etc. CJ 02/04/2019 CJ 02/11/2019 Fav/CS GO RC	Fav/CS Yeas 4 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SB 332** Pizzo (Similar H 49)	Incarcerated Women; Citing this act as the "Dignity for Incarcerated Women Act"; requiring correctional facilities to provide incarcerated women with certain health care products, subject to certain requirements; providing requirements for male correctional facility employees in certain circumstances; requiring documentation of certain incidents involving male correctional facility employees, etc. CJ 02/04/2019 CJ 02/11/2019 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
12	**SB 338** Brandes	Extension of Confinement; Authorizing the Department of Corrections to extend the limits of confinement to allow an inmate to participate in supervised community release, subject to certain requirements, as prescribed by the department by rule; requiring the department to administer a risk assessment instrument to appropriately determine an inmate's ability to be released; authorizing a law enforcement or probation officer to arrest an inmate without a warrant under certain circumstances, etc. CJ 02/04/2019 CJ 02/11/2019 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
13	**SB 346** Brandes (Identical H 607)	Conditional Medical Release; Defining the terms "conditional medical release" and "electronic monitoring device"; expanding eligibility for conditional medical release to include inmates with debilitating illnesses; defining the term "inmate with a debilitating illness"; redefining the term "terminally ill inmate", etc. CJ 02/04/2019 CJ 02/11/2019 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
14	**SB 370** Harrell (Identical H 219)	Victims of Human Trafficking; Requiring a mandatory minimum term of incarceration for solicitation of prostitution offenses involving victims of human trafficking, etc. CJ 02/04/2019 CJ 02/11/2019 Fav/CS ACJ AP	Fav/CS Yeas 3 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**SB 406** Brandes (Compare H 589)	Theft; Increasing threshold amounts for certain theft offenses; revising the list of items the theft of which constitutes theft of the third degree; providing that the value of taken property is based on fair market value at the time of the taking; revising the circumstances under which an offense of retail theft constitutes a felony of the second degree, etc. CJ 02/11/2019 Favorable ACJ AP	Favorable Yeas 5 Nays 0
16	**SB 408** Brandes	Drug Offenses; Prohibiting the use or possession of a pill press or similar device with the intent to unlawfully manufacture a pill, tablet, or capsule containing certain controlled substances; prohibiting the sale, purchase, delivery, bringing into this state, or actual or constructive possession of specified amounts of dosage units of certain controlled substances; creating the offense of “trafficking in pharmaceuticals”, etc. CJ 02/11/2019 Not Considered JU AP	Not Considered
	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 96
INTRODUCER:	Criminal Justice Committee and Senator Bean and others
SUBJECT:	Police, Fire, and Search and Rescue Dogs
DATE:	February 12, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 96 increases the penalty from a third degree felony to a second degree felony for intentionally and knowingly, without lawful cause or justification, causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, a police, fire, or search and rescue (SAR) canine, or a police horse. Additionally, the bill makes the corresponding changes to the offense severity ranking chart.

The bill also replaces the word "dog" with the word "canine" in ss. 767.16 and 843.19, F.S.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill would result in a "positive insignificant" prison bed impact (10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

Law enforcement and fire department special K-9 and mounted units

Specially-trained dogs are utilized by various agencies and departments throughout the state in their K-9 units. In 2017, there were 140 police departments and 65 sheriff's offices with active

canine units.[1] These departments employ dogs to assist with tracking and apprehending offenders, narcotics and bomb detection,[2] and building and article searches.[3] Additionally, some fire departments utilize dogs as part of arson detection programs.[4] Various non-profit organizations also use dogs for the purpose of SAR, such as the Community Emergency Response Team, which provides support to the Federal Emergency Management Agency.[5]

Though not as frequently used as K-9 units, select law enforcement agencies throughout the state have mounted units,[6] whereby specially-trained horses are used to assist with crowd control, special events, and additional patrol functions, among other tasks.[7]

Offenses against police animals

Intentional offenses against police animals most often occur while the animals are on duty. Because of this, such offenses against police horses are infrequent because mounted units are most commonly used for non-crime related purposes. However, one instance of intentional harm occurred several years ago when an attendee at the Gasparilla parade in Tampa punched a horse that was patrolling the event.[8]

In contrast, police dogs are frequently utilized in conjunction with high-intensity, criminal situations and are often deployed by their handlers to chase after fleeing felons. As a result, the dogs can be caught in the line of fire while on the job. Two recent incidents resulted in the death of a police dog while the dog was on duty. In September 2018, 3-year old Fang, a member of Jacksonville Sheriff's Office canine unit, was shot and killed by a teenager who was fleeing a scene after carjacking two women at a gas station minutes earlier.[9] Similarly, in December 2018,

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[1] Information provided by email from Amy Mercer, Executive Director, The Florida Police Chiefs Association (January 15, 2019) (on file with Senate Criminal Justice Committee).
[2] City of Orlando, *K-9 Unit*, available at http://www.cityoforlando.net/police/k-9-unit/ (last visited January 24, 2019).
[3] St. Petersburg Police Department, *K-9 Unit*, available at http://police.stpete.org/usb/k-9.html (last visited January 24, 2019).
[4] City of Orlando, *Accelerant Detection Canines*, available at http://www.cityoforlando.net/fire/accelerant-detection-canines/ (last visited January 24, 2019).
[5] Boondocks K9 SAR-CERT Unit, *Community Emergency Response Team (CERT)*, available at https://www.boondocksk9.org/ (last visited January 24, 2019).
[6] The following agencies have mounted units: Escambia County Sheriff's Office *see* http://www.escambiaso.com/mounted-unit/; Hillsborough County Sheriff's Office *see* http://www.hcso.tampa.fl.us/A-Z-Directory/M/Mounted-Unit.aspx; Key West Police Department *see* https://www.cityofkeywest-fl.gov/department/division.php?structureid=147; Marion County Sheriff's Office *see* http://www.marionso.com/mounted-unit/; Orlando Police Department *see* http://www.cityoforlando.net/police/mounted-patrol/; Palm Beach County Sheriff's Office *see* https://www.pbso.org/services/countywide-operations/mounted-unit/; Pinellas Park Police Department *see* https://www.pinellas-park.com/642/Mounted-Patrol; and St. Petersburg Police Department *see* http://police.stpete.org/usb/mounted-unit.html (last visited January 25, 2019).
[7] City of Orlando, *Mounted Patrol*, available at http://www.cityoforlando.net/police/mounted-patrol/ (last visited January 24, 2019).
[8] Anastasia Dawson, *Tampa police horse "Big Nasty" retiring his rein as "riderless horse,"* Tampa Bay Times, May 13, 2017, available at https://www.tampabay.com/news/publicsafety/big-nasty-performs-his-final-role-as-a-tampa-police-officer/2323760 (last visited February 11, 2019).
[9] Colette DuChanois and Tarik Minor, *Audio, video evidence released in case of teen held in K-9's death*, NEWS4JAX, November 12, 2018, available at https://www.news4jax.com/news/local/jacksonville/new-evidence-details-case-against-teen-accused-of-killing-jso-k-9 (last visited January 24, 2019).

Palm Beach County Sheriff's Office's canine, 3-year-old Cigo, was shot and killed by an attempted murder suspect outside of a shopping mall.[10]

Protecting police animals from intentional harm

In an effort to deter intentional harm toward police animals, legislation aimed at creating stiffer penalties for such crimes has been introduced at both the federal and state level. In August 2000, Congress passed the Federal Law Enforcement Animal Protection Act of 2000, which made it a crime to willfully and maliciously harm a police animal, or attempt or conspire to do so, resulting in a penalty of imprisonment for up to one year. Additionally, permanently disabling or causing serious bodily injury or death to a police animal would result in a term of imprisonment of up to 10 years under the act.[11]

Similar efforts to increase penalties for such crimes have been attempted at the state level as well. In Utah, legislation was introduced in 2018 to increase the penalty from a third degree felony to a second degree felony for intentionally or knowingly causing death to a police dog.[12] Additionally, in South Carolina, legislation in 2018 named after two police dogs that were killed in the line of duty[13] proposed to increase the penalty for harming a police animal to a maximum prison sentence of 10 years and a potential $10,000 fine.[14] Current Michigan law provides that a person who intentionally kills or causes serious physical harm to a police dog, police horse, or SAR dog is guilty of a felony punishable by imprisonment of up to 5 years, a fine of up to $10,000, or both.[15]

Currently, Florida law provides that it is a third degree felony[16] to intentionally and knowingly, without lawful cause or justification, cause great bodily harm, permanent disability, or death to, or use a deadly weapon upon a police dog, police horse, fire dog, or SAR dog. [17] Those animals have specific definitions in law and are defined in the following manner:

- "Police dog" and "police horse" means any dog or horse, respectively, that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders;
- "Fire dog" means any dog that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detention of flammable materials or the investigation of fires; and

[10] Mark Osborne and Jason M. Volack, *Suspect kills police dog in shootout outside mall on Christmas eve, police say*, ABC NEWS, December 25, 2018, available at https://abcnews.go.com/US/suspect-kills-police-dog-shootout-mall-christmas-eve/story?id=60007552 (last visited January 24, 2019).
[11] 18 U.S.C.A. s. 1368 (2002).
[12] 2018 General Session, state of Utah, S.B. 57 (2018).
[13] Tim Smith, *Police dog protection: Stiffer penalty proposed for harming K-9s*, GREENVILLE NEWS, February 13, 2018, available at https://www.greenvilleonline.com/story/news/local/south-carolina/2018/02/13/police-dog-protection-stiffer-penalty-proposed-harming-k-9-s/332391002/ (last visited January 24, 2019).
[14] 122nd Session, South Carolina General Assembly, S. 6 (2017-18).
[15] MICHIGAN COMPILED LAWS ANN. s. 750.50c.
[16] Section 843.19(2), F.S. A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding $5,000, or both. Sections 775.082(3)(e) and 775.083(1)(c), F.S.
[17] Section 843.19(2), F.S.

- "SAR dog" means any search and rescue dog that is owned, or the service of which is employed, by a fire department, a law enforcement agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.[18]

III. Effect of Proposed Changes:

The bill increases the penalty from a third degree felony to a second degree felony[19] for intentionally and knowingly, without lawful cause or justification, causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, a police, fire, or SAR canine, or a police horse.

The bill also makes these corresponding changes to the offense severity ranking chart.[20]

Additionally, the bill replaces the word "dog" with the word "canine" in ss. 767.16 and 843.19, F.S.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

[18] Section 843.19(1)(a)-(c), F.S.
[19] A second degree felony is punishable by a state prison term not exceeding 15 years, a fine not exceeding $10,000, or both. Sections 775.082(3)(d) and 775.083(1)(b), F.S.
[20] Section 921.0022, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed this bill. However, a preliminary estimate prepared by the Legislature's Office of Economic and Demographic Research (EDR) predicted that this bill would result in a "positive insignificant" prison bed impact (10 or fewer prison beds). In fiscal year 2017-18, one person was sentenced pursuant to s. 843.19, F.S., and no offenders were sentenced to prison.[21]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 767.16, 843.19, and 921.0022.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The Committee Substitute:

- Increases the penalty from a third degree felony to a second degree felony for intentionally and knowingly, without lawful cause or justification, causing great bodily harm or death, or using a deadly weapon upon, a police horse;
- Makes the corresponding revision to the offense severity ranking chart; and
- Replaces the term "dog" with "canine" in s. 767.16, F.S.

[21] Information provided by EDR staff (on file with the Senate Criminal Justice Committee).

B. Amendments:

None.

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

361560

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 39 - 65
and insert:
(2) Any person who intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to, or uses a deadly weapon upon, a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse commits a felony of the second ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

361560

(3) Any person who actually and intentionally maliciously touches, strikes, or causes bodily harm to a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse while the animal is in the performance of its duties commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) A person convicted of an offense under this section shall make restitution for injuries caused to the police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse and shall pay the replacement cost of the animal if, as a result of the offense, the animal can no longer perform its duties.

Section 2. Subsection (1) of section 767.16, Florida Statutes, is amended to read:

767.16 Police canine or service dog; exemption.—

(1) Any canine ~~dog~~ that is owned, or the service of which is employed, by a law enforcement agency, is exempt from this part.

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

And the title is amended as follows:

Delete lines 3 - 9

and insert:

dogs and police horses; amending s. 843.19, F.S.; revising the defined terms "police dog" to "police canine," "fire dog" to "fire canine," and "SAR dog" to

361560

"SAR canine"; increasing the penalty for intentionally and knowingly causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, police canines or horses, fire canines, or SAR canines; amending s. 767.16, F.S.; revising the term "dog" to "canine" to conform to changes made by the act;

666876

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 113 - 114

and insert:

843.19	2nd ~~3rd~~	Injure, disable, or kill police, fire, or SAR canine, ~~dog~~ or police horse.

666876

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

And the title is amended as follows:

Delete lines 10 - 11

and insert:

amending s. 921.0022, F.S.; conforming a provision to changes made by

By Senator Bean

4-00293B-19 201996__

A bill to be entitled

An act relating to police, fire, and search and rescue dogs; amending s. 843.19, F.S.; revising the defined terms "police dog" to "police canine," "fire dog" to "fire canine," and "SAR dog" to "SAR canine"; increasing the penalty for intentionally and knowingly causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, police canines, fire canines, or search and rescue canines; amending s. 921.0022, F.S.; updating a cross-reference; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 843.19, Florida Statutes, is amended to read:

843.19 Offenses against police canines ~~dogs~~, fire canines ~~dogs~~, SAR canines ~~dogs~~, or police horses.—

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

(a) "Police canine ~~dog~~" means any canine ~~dog~~, and "police horse" means any horse, that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

(b) "Fire canine ~~dog~~" means any canine ~~dog~~ that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of flammable

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

4-00293B-19 201996__

materials or the investigation of fires.

(c) "SAR canine ~~dog~~" means any search and rescue canine ~~dog~~ that is owned, or the service of which is employed ~~utilized~~, by a fire department, a law enforcement agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.

(2)(a) Any person who intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to, or uses a deadly weapon upon, a police canine ~~dog~~, fire canine ~~dog~~, or SAR canine ~~dog, or police horse~~ commits a felony of the second ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to, or uses a deadly weapon upon, a police horse commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who actually and intentionally maliciously touches, strikes, or causes bodily harm to a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse while the animal is in the performance of its duties

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commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) A person convicted of an offense under this section shall make restitution for injuries caused to the police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse and shall pay the replacement cost of the animal if, as a result of the offense, the animal can no longer perform its duties.

Section 2. Paragraph (c) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement

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		officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of

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		vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species

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		described in the Marine Turtle Protection Act.
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.

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624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.

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810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property

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		value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19(2)(a)	2nd ~~3rd~~	Injure, disable, or kill police, fire, or SAR canine

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		~~dog or horse~~.
843.19(2)(b)	3rd	Injure, disable, or kill police horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.

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893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

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893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a

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		controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

Section 3. This act shall take effect October 1, 2019.

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Police Department - Canine Units 2017

Agency	County Name	Dog Types	Trained For	Number of Canine Teams	Certified	Certifying Organizations
Alachua Police Department	Alachua	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), The National Police Canine Association (NPCA)
Altamonte Springs Police Department	Seminole	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), Other
Altha Police Department	Calhoun	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Apopka Police Department	Orange	Other:Malinois	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Arcadia Police Department	DeSoto	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Astatula Police Department	Lake	Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	No	Criminal Justice Standards and Training Commission (CJSTC)
Atlantic Beach Police Department	Duval	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Atlantis Police Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Auburndale Police Department	Polk	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Aventura Police Department	Dade	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Avon Park Police Department	Highlands	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Bal Harbour Village Police Department	Dade	German Shepherd, Labrador Retriever	Narcotics, Explosives, Patrol	2	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Bartow Police Department	Polk	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), The North American Police Work Dog Association (NAPWDA)
Bay Harbor Islands Police Department	Dade	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Belleair Police Department	Pinellas	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Belleview Police Department	Marion	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Biscayne Park Police Department	Dade	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Blountstown Police Department	Calhoun	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Boca Raton Police Services Department	Palm Beach	German Shepherd	Narcotics, Explosives, Patrol	3	Yes	The Florida Law Enforcement Canine Association (FLECA)
Bonifay Police Department	Holmes	Other:Border Collie	Narcotics	1	No	The North American Police Work Dog Association (NAPWDA)
Bowling Green Police Department	Hardee	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Boynton Beach Police Department	Palm Beach	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Bradenton Beach Police Department	Manatee	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Bradenton Police Department	Manatee	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Brooksville Police Department	Hernando	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	The North American Police Work Dog Association (NAPWDA), Other
Bunnell Police Department	Flagler	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable

Cape Coral Police Department	Lee	Belgian Malinois, Other:Dutch Shepherds	Narcotics, Patrol, Scent Trailing	7	Yes	The National Police Canine Association (NPCA)
Carrabelle Police Department	Franklin	Not Applicable		0	Not Applicable	Not Applicable
Casselberry Police Department	Seminole	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Cedar Key Police Department	Levy	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Center Hill Police Department	Sumter	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Chattahoochee Police Department	Gadsden	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Chiefland Police Department	Levy	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), Other
Chipley Police Department	Washington	Belgian Malinois	Narcotics	1	Yes	Other
City of Belle Isle Police Department	Orange	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Clearwater Police Department	Pinellas	German Shepherd, Belgian Malinois	Explosives, Patrol, Scent Trailing	5	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Clermont Police Department	Lake	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Clewiston Police Department	Hendry	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Cocoa Beach Police Department	Brevard	Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Cocoa Police Department	Brevard	Bloodhound, German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Coconut Creek Police Department	Broward	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	3	Yes	The Florida Law Enforcement Canine Association (FLECA)
Coral Gables Police Department	Dade	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	5	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Coral Springs Police Department	Broward	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	7	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Cottondale Police Department	Jackson	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Crescent City Police Department	Putnam	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Crestview Police Department	Okaloosa	German Shepherd	Narcotics, Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), Other
Dade City Police Department	Pasco	German Shepherd	Patrol	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Davenport Police Department	Polk	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Davie Police Department	Broward	German Shepherd, Belgian Malinois, Other:Malinois	Narcotics, Explosives, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Daytona Beach Police Department	Volusia	German Shepherd	Narcotics, Patrol, Scent Trailing	8	Yes	Criminal Justice Standards and Training Commission (CJSTC), Other
Daytona Beach Shores Public Safety Department	Volusia	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Defuniak Springs Police Department	Walton	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Deland Police Department	Volusia	German Shepherd, Labrador Retriever, Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Delray Beach Police Department	Palm Beach	Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	4	Yes	The Florida Law Enforcement Canine Association (FLECA)
Doral Police Department	Dade	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), The Florida Law Enforcement Canine Association (FLECA)
Dunnellon Police Department	Marion	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable

Eatonville Police Department	Orange	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Edgewater Police Department	Volusia	Belgian Malinois	Narcotics, Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC), Other
Edgewood Police Department	Orange	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
El Portal Police Department	Dade	Other:Siberian Huskey	Not Applicable	1	Yes	Other
Eustis Police Department	Lake	Labrador Retriever	Narcotics, Scent Trailing	1	Yes	The Florida Law Enforcement Canine Association (FLECA)
Fellsmere Police Department	Indian River	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Fernandina Beach Police Department	Nassau	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Flagler Beach Police Department	Flagler	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Florida City Police Department	Dade	Labrador Retriever	Narcotics	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Fort Lauderdale Police Department	Broward	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	19	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Fort Myers Police Department	Lee	German Shepherd	Narcotics, Patrol, Scent Trailing	6	Yes	The National Police Canine Association (NPCA)
Fort Pierce Police Department	St. Lucie	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The National Police Canine Association (NPCA)
Fort Walton Beach Police Department	Okaloosa	Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	No	The United States Police Canine Association (USPCA)
Fruitland Park Police Department	Lake	Labrador Retriever	Narcotics, Patrol, Scent Trailing	2	Yes	The North American Police Work Dog Association (NAPWDA)
Gainesville Police Department	Alachua	German Shepherd, Labrador Retriever	Narcotics, Patrol, Scent Trailing	10	Yes	The National Police Canine Association (NPCA), Other
Golden Beach Police Department	Dade	Other:Dutch Shephard	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Graceville Police Department	Jackson	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Green Cove Springs Police Department	Clay	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Gretna Police Department	Gadsden	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Groveland Police Department	Lake	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Gulf Breeze Police Department	Santa Rosa	German Shepherd	Narcotics, Patrol	1	Yes	The United States Police Canine Association (USPCA), Other
Gulf Stream Police Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Gulfport Police Department	Pinellas	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Haines City Police Department	Polk	German Shepherd	Narcotics, Patrol	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), The North American Police Work Dog Association (NAPWDA)
Hallandale Beach Police Department	Broward	Belgian Malinois	Narcotics, Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Havana Police Department	Gadsden	German Shepherd	Narcotics, Scent Trailing	1	Yes	The United States Police Canine Association (USPCA), The North American Police Work Dog Association (NAPWDA), The National Police Canine Association (NPCA)
Hialeah Gardens Police Department	Dade	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Hialeah Police Department	Dade	Bloodhound, German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	10	Yes	Criminal Justice Standards and Training Commission (CJSTC)
High Springs Police Department	Alachua	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	The United States Police Canine Association (USPCA)
Highland Beach Police Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Hillsboro Beach Police Department	Broward	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Holly Hill Police Department	Volusia	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable

Hollywood Police Department	Broward	German Shepherd, Belgian Malinois, Other:Dutch Shephard	Explosives, Patrol, Scent Trailing	5	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Holmes Beach Police Department	Manatee	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Homestead Police Department	Dade	German Shepherd, Labrador Retriever	Narcotics, Explosives, Patrol, Scent Trailing	8	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA), The Florida Law Enforcement Canine Association (FLECA)
Howey-In-The-Hills Police Department	Lake	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Indialantic Police Department	Brevard	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Indian Creek Village Public Safety Department	Dade	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Indian Harbour Beach Police Department	Brevard	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Indian River Shores Public Safety Department	Indian River	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Indian Shores Police Department	Pinellas	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Interlachen Police Department	Putnam	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Jacksonville Beach Police Department	Duval	Belgian Malinois	Narcotics, Patrol	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA), Other
Jasper Police Department	Hamilton	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Jennings Police Department	Hamilton	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Juno Beach Police Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Jupiter Inlet Colony Police Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Jupiter Island Public Safety Department	Martin	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Jupiter Police Department	Palm Beach	Bloodhound, German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	5	Yes	The Florida Law Enforcement Canine Association (FLECA), Other
Kenneth City Police Department	Pinellas	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Key Biscayne Police Department	Dade	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Key Colony Beach Police Department	Monroe	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Key West Police Department	Monroe	German Shepherd	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Kissimmee Police Department	Osceola	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Lady Lake Police Department	Lake	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), Other
Lake Alfred Police Department	Polk	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Lake City Police Department	Columbia	German Shepherd	Narcotics, Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Lake Clarke Shores Police Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Lake Hamilton Police Department	Polk	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Lake Helen Police Department	Volusia	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Lake Mary Police Department	Seminole	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Lake Placid Police Department	Highlands	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Lake Wales Police Department	Polk	German Shepherd, Other:Malinois	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), The North American Police Work Dog Association (NAPWDA)

Lakeland Police Department	Polk	German Shepherd	Narcotics, Explosives, Patrol	8	Yes	The United States Police Canine Association (USPCA), The National Police Canine Association (NPCA)
Lantana Police Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Largo Police Department	Pinellas	German Shepherd	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Lawtey Police Department	Bradford	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Leesburg Police Department	Lake	#REF!	#REF!	#REF!	#REF!	#REF!
Lighthouse Point Police Department	Broward	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Live Oak Police Department	Suwannee	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Longboat Key Police Department	Manatee	#REF!	#REF!	#REF!	#REF!	#REF!
Longwood Police Department	Seminole	Bloodhound, German Shepherd, Labrador Retriever	Narcotics, Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Lynn Haven Police Department	Bay	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Madison Police Department	Madison	Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	The Florida Law Enforcement Canine Association (FLECA)
Maitland Police Department	Orange	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Manalapan Police Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Marco Island Police Department	Collier	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Margate Police Department	Broward	German Shepherd	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Marianna Police Department	Jackson	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Mascotte Police Department	Lake	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Medley Police Department	Dade	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Melbourne Beach Police Department	Brevard	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Melbourne Police Department	Brevard	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Melbourne Village Police Department	Brevard	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Miami Beach Police Department	Dade	German Shepherd, Belgian Malinois, Other:Mixed breed for passive alert	Narcotics, Explosives, Patrol	12	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Miami Gardens Police Department	Dade	German Shepherd, Other:Malinois	Narcotics, Explosives, Patrol, Scent Trailing	5	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Miami Police Department	Dade	German Shepherd, Belgian Malinois, Other:Dutch Shepherd	Narcotics, Explosives, Patrol, Scent Trailing	13	Yes	The United States Police Canine Association (USPCA)
Miami Shores Police Department	Dade	Belgian Malinois	Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), Other
Miami Springs Police Department	Dade	German Shepherd	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Miccosukee Police Department	Dade	Other:Dutch Shepherd	Narcotics	2	Yes	The Florida Law Enforcement Canine Association (FLECA), The National Police Canine Association (NPCA)
Milton Police Department	Santa Rosa	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Miramar Police Department	Broward	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	5	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Mount Dora Police Department	Lake	Belgian Malinois	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Naples Police Department	Collier	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	The National Police Canine Association (NPCA)
Neptune Beach Public Safety Department	Duval	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
New Port Richey Police Department	Pasco	German Shepherd	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC)

New Smyrna Beach Police Department	Volusia	Other:Dutch Shepherd	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Niceville Police Department	Okaloosa	Belgian Malinois	Narcotics, Scent Trailing	1	Yes	Other
North Bay Village Police Department	Dade	Belgian Malinois	Narcotics, Patrol	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
North Miami Beach Police Department	Dade	German Shepherd, Belgian Malinois	Narcotics, Patrol	5	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA), Other
North Miami Police Department	Dade	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol	4	Yes	Criminal Justice Standards and Training Commission (CJSTC)
North Palm Beach Police Department	Palm Beach	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	The Florida Law Enforcement Canine Association (FLECA)
North Port Police Department	Sarasota	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Oakland Police Department	Orange	Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Ocala Police Department	Marion	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Ocean Ridge Police Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Ocoee Police Department	Orange	Belgian Malinois	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Okeechobee Police Department	Okeechobee	Labrador Retriever	Narcotics	1	Yes	The Florida Law Enforcement Canine Association (FLECA)
Opa Locka Police Department	Dade	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Orange City Police Department	Volusia	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Orange Park Police Department	Clay	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Orchid Police Department	Indian River	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Orlando Police Department	Orange	German Shepherd, Labrador Retriever, Belgian Malinois, Other:Dutch Shepherd	Narcotics, Explosives, Patrol, Scent Trailing	14	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Ormond Beach Police Department	Volusia	German Shepherd, Labrador Retriever	Narcotics	2	Not Applicable	The United States Police Canine Association (USPCA)
Oviedo Police Department	Seminole	German Shepherd, Labrador Retriever	Narcotics, Explosives, Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Palatka Police Department	Putnam	German Shepherd	Narcotics	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), Other
Palm Bay Police Department	Brevard	German Shepherd, Belgian Malinois, Other:Dutch Shepherd	Narcotics, Patrol, Scent Trailing	6	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA), Other
Palm Beach Gardens Police Department	Palm Beach	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	4	Yes	The Florida Law Enforcement Canine Association (FLECA)
Palm Beach Police Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Palm Beach Shores Public Safety Department	Palm Beach	Labrador Retriever	Narcotics	1	Yes	Other
Palm Springs Public Safety Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Palmetto Police Department	Manatee	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Panama City Beach Police Department	Bay	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	4	No	Other
Panama City Police Department	Bay	Belgian Malinois	Narcotics, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Parker Police Department	Bay	Belgian Malinois	Narcotics, Scent Trailing	1	Yes	The United States Police Canine Association (USPCA)

Pembroke Pines Police Department	Broward	German Shepherd, Belgian Malinois, Other:Belgian Mix, Dutch Shepherd	Narcotics, Explosives	5	Yes	The Florida Law Enforcement Canine Association (FLECA)
Pensacola Police Department	Escambia	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	6	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Perry Police Department	Taylor	German Shepherd, Other:Belgian Shepherd	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA), The Florida Law Enforcement Canine Association (FLECA)
Pinecrest Police Department	Dade	Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	The Florida Law Enforcement Canine Association (FLECA)
Pinellas Park Police Department	Pinellas	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Plant City Police Department	Hillsborough	German Shepherd, Other:Dutch Shepherd	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), The North American Police Work Dog Association (NAPWDA)
Plantation Police Department	Broward	Other:Mallinois	Narcotics, Explosives, Patrol, Scent Trailing	5	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Ponce Inlet Police Department	Volusia	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Port Orange Police Department	Volusia	German Shepherd	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), Other
Port Richey Police Department	Pasco	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Port St. Joe Police Department	Gulf	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Port St. Lucie Police Department	St. Lucie	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	5	Yes	The North American Police Work Dog Association (NAPWDA), The National Police Canine Association (NPCA)
Punta Gorda Police Department	Charlotte	Labrador Retriever	Narcotics, Scent Trailing	2	Yes	The United States Police Canine Association (USPCA), Other
Quincy Police Department	Gadsden	Other:Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Riviera Beach Police Department	Palm Beach	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	4	Yes	The Florida Law Enforcement Canine Association (FLECA)
Rockledge Police Department	Brevard	German Shepherd	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Sanford Police Department	Seminole	German Shepherd, Belgian Malinois	Narcotics, Patrol	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), Other
Sanibel Police Department	Lee	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Sarasota Police Department	Sarasota	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The National Police Canine Association (NPCA)
Satellite Beach Police Department	Brevard	German Shepherd	Narcotics, Patrol	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Sea Ranch Lakes Police Department	Broward	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Sebastian Police Department	Indian River	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA), The Florida Law Enforcement Canine Association (FLECA)
Sebring Police Department	Highlands	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Seminole Police Department	Broward	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable

Sewalls Point Police Department	Martin	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Shalimar Police Department	Okaloosa	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Sneads Police Department	Jackson	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
South Daytona Police Department	Volusia	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
South Miami Police Department	Dade	Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
South Palm Beach Police Department	Palm Beach	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Springfield Police Department	Bay	Labrador Retriever, Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	The North American Police Work Dog Association (NAPWDA), Other
St. Augustine Beach Police Department	St. Johns	German Shepherd	Narcotics, Patrol	1	Yes	Other
St. Augustine Police Department	St. Johns	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
St. Cloud Police Department	Osceola	German Shepherd	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA), The Florida Law Enforcement Canine Association (FLECA)
St. Petersburg Police Department	Pinellas	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	13	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Starke Police Department	Bradford	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Stuart Police Department	Martin	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	2	Yes	The Florida Law Enforcement Canine Association (FLECA)
Sunny Isles Beach Police Department	Dade	German Shepherd	Narcotics, Explosives, Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA), The Florida Law Enforcement Canine Association (FLECA)
Sunrise Police Department	Broward	Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	5	Yes	The Florida Law Enforcement Canine Association (FLECA)
Surfside Police Department	Dade	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Tallahassee Police Department	Leon	German Shepherd, Labrador Retriever	Narcotics, Scent Trailing	8	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Tampa Police Department	Hillsborough	German Shepherd, Labrador Retriever, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	21	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Tarpon Springs Police Department	Pinellas	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Tavares Police Department	Lake	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Temple Terrace Police Department	Hillsborough	German Shepherd	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Tequesta Police Department	Palm Beach	Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Titusville Police Department	Brevard	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	4	No	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Treasure Island Police Department	Pinellas	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Trenton Police Department	Gilchrist	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Umatilla Police Department	Lake	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Valparaiso Police Department	Okaloosa	Not Applicable	Not Applicable	0	Not Applicable	The National Police Canine Association (NPCA)
Venice Police Department	Sarasota	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)

Vero Beach Police Department	Indian River	German Shepherd	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Virginia Gardens Police Department	Dade	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Volusia County Beach Safety	Volusia	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Volusia County Department of Public Protection	Volusia	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Wauchula Police Department	Hardee	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Welaka Police Department	Putnam	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
West Melbourne Police Department	Brevard	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC)
West Miami Police Department	Dade	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
West Palm Beach Police Department	Palm Beach	German Shepherd, Labrador Retriever	Narcotics, Explosives, Patrol	4	Yes	Not Applicable
White Springs Police Department	Hamilton	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Wildwood Police Department	Sumter	German Shepherd	Narcotics, Patrol, Scent Trailing	1	No	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), The Florida Law Enforcement Canine Association (FLECA)
Williston Police Department	Levy	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Wilton Manors Police Department	Broward	Belgian Malinois	Narcotics	2	Yes	The Florida Law Enforcement Canine Association (FLECA)
Windermere Police Department	Orange	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Winter Garden Police Department	Orange	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Winter Haven Police Department	Polk	German Shepherd	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Winter Park Police Department	Orange	Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Winter Springs Police Department	Seminole	German Shepherd	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Zephyrhills Police Department	Pasco	German Shepherd	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)

Sheriff's Office, Law Enforcement - Canine Units 2017

Agency	County	Dog Types	Trained For	Number of Canine Teams	Certified	Certifying Organizations
Alachua County Sheriff's Office	Alachua	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	9	Yes	The Florida Law Enforcement Canine Association (FLECA)
Baker County Sheriff's Office	Baker	Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Bay County Sheriff's Office	Bay	Bloodhound, German Shepherd, Labrador Retriever, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	5	Yes	The North American Police Work Dog Association (NAPWDA)
Bradford County Sheriff's Office	Bradford	Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Brevard County Sheriff's Office	Brevard	German Shepherd, Belgian Malinois, Other:Dutch Shepherd	Narcotics, Explosives, Patrol, Scent Trailing	15	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Broward County Sheriff's Office	Broward	Bloodhound, German Shepherd, Labrador Retriever, Belgian Malinois, Other:Beagle	Narcotics, Explosives, Patrol, Scent Trailing	40	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), The Florida Law Enforcement Canine Association (FLECA), The National Police Canine Association (NPCA), Other
Calhoun County Sheriff's Office	Calhoun	Other: Shorthaired Pointer	Narcotics	1	Yes	The North American Police Work Dog Association (NAPWDA)
Charlotte County Sheriff's Office	Charlotte	Bloodhound, German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	9	Yes	The United States Police Canine Association (USPCA)
Citrus County Sheriff's Office	Citrus	Bloodhound, German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	9	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Clay County Sheriff's Office	Clay	Bloodhound, German Shepherd, Belgian Malinois, Other:Shepherd/malinois mix	Narcotics, Patrol, Scent Trailing	7	Yes	The Florida Law Enforcement Canine Association (FLECA), The National Police Canine Association (NPCA)
Collier County Sheriff's Office	Collier	German Shepherd, Labrador Retriever	Narcotics, Explosives, Patrol, Scent Trailing	11	Yes	The Florida Law Enforcement Canine Association (FLECA)
Columbia County Sheriff's Office	Columbia	German Shepherd	Narcotics, Patrol, Scent Trailing	2	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Desoto County Sheriff's Office	DeSoto	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Dixie County Sheriff's Office	Dixie	German Shepherd, Labrador Retriever	Narcotics, Patrol	2	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Escambia County Sheriff's Office	Escambia	German Shepherd	Narcotics, Explosives, Patrol, Scent Trailing	12	Yes	The United States Police Canine Association (USPCA)
Flagler County Sheriff's Office	Flagler	Belgian Malinois	Narcotics, Patrol, Scent Trailing	5	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Franklin County Sheriff's Office	Franklin	Other:pointer	Narcotics, Scent Trailing	3	Yes	The North American Police Work Dog Association (NAPWDA)
Gadsden County Sheriff's Office	Gadsden	Belgian Malinois	Narcotics, Patrol, Scent Trailing	1	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Gilchrist County Sheriff's Office	Gilchrist	German Shepherd	Narcotics, Patrol, Scent Trailing	4	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Glades County Sheriff's Office	Glades	Belgian Malinois	Narcotics	1	Yes	The United States Police Canine Association (USPCA), The North American Police Work Dog Association (NAPWDA)

Gulf County Sheriff's Office	Gulf	German Shepherd, Labrador Retriever	Narcotics, Patrol	2	Yes	The North American Police Work Dog Association (NAPWDA)
Hamilton County Sheriff's Office	Hamilton	German Shepherd	Narcotics, Explosives, Patrol	1	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Hardee County Sheriff's Office	Hardee	Bloodhound, German Shepherd, Labrador Retriever, Belgian Malinois	Narcotics, Patrol, Scent Trailing	4	Yes	The United States Police Canine Association (USPCA)
Hendry County Sheriff's Office	Hendry	Bloodhound, German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	4	Yes	The Florida Law Enforcement Canine Association (FLECA)
Hernando County Sheriff's Office	Hernando	German Shepherd	Narcotics, Patrol, Scent Trailing	5	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Highlands County Sheriff's Office	Highlands	Bloodhound, Belgian Malinois	Narcotics, Patrol, Scent Trailing	8	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Hillsborough County Sheriff's Office	Hillsborough	Bloodhound, German Shepherd, Labrador Retriever, Belgian Malinois, Other:German Shorthair Pointer	Narcotics, Explosives, Patrol, Scent Trailing	17	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Holmes County Sheriff's Office	Holmes	Belgian Malinois	Narcotics, Scent Trailing	2	Yes	The North American Police Work Dog Association (NAPWDA)
Indian River County Sheriff's Office	Indian River	Bloodhound, German Shepherd, Belgian Malinois, Other:German Shepard & Belgain Malin	Narcotics, Explosives, Patrol, Scent Trailing	7	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA), The National Police Canine Association (NPCA)
Jackson County Sheriff's Office	Jackson	German Shepherd, Belgian Malinois	Narcotics	3	Yes	The North American Police Work Dog Association (NAPWDA), The National Police Canine Association (NPCA)
Jacksonville Sheriff's Office	Duval	German Shepherd, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	18	Yes	Criminal Justice Standards and Training Commission (CJSTC), The National Police Canine Association (NPCA)
Jefferson County Sheriff's Office	Jefferson	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Lafayette County Sheriff's Office	Lafayette	Labrador Retriever	Narcotics	1	Yes	The Florida Law Enforcement Canine Association (FLECA)
Lake County Sheriff's Office	Lake	Bloodhound, German Shepherd, Labrador Retriever	Narcotics, Explosives, Patrol, Scent Trailing	15	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Lee County Sheriff's Office	Lee	German Shepherd, Labrador Retriever, Belgian Malinois, Other:Golden Retriever	Narcotics, Explosives, Patrol, Scent Trailing	26	Yes	The National Police Canine Association (NPCA)
Leon County Sheriff's Office	Leon	German Shepherd, Labrador Retriever	Narcotics, Explosives, Patrol, Scent Trailing	5	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), The Florida Law Enforcement Canine Association (FLECA)
Levy County Sheriff's Office	Levy	German Shepherd, Labrador Retriever	Narcotics, Explosives, Patrol	3	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Liberty County Sheriff's Office	Liberty	Labrador Retriever	Narcotics	1	Yes	Other
Madison County Sheriff's Office	Madison	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	6	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA), The Florida Law Enforcement Canine Association (FLECA)
Manatee County Sheriff's Office	Manatee	German Shepherd, Labrador Retriever, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	9	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Marion County Sheriff's Office	Marion	German Shepherd	Narcotics, Explosives, Patrol, Scent Trailing	9	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Martin County Sheriff's Office	Martin	German Shepherd, Labrador Retriever, Belgian Malinois, Other:Spaniel	Narcotics, Patrol, Scent Trailing	7	Yes	The Florida Law Enforcement Canine Association (FLECA)
Miami-Dade Police Department	Dade	Bloodhound, German Shepherd, Labrador Retriever, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	53	Yes	Criminal Justice Standards and Training Commission (CJSTC)

Monroe County Sheriff's Office	Monroe	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Nassau County Sheriff's Office	Nassau	German Shepherd, Belgian Malinois	Narcotics, Scent Trailing	4	Yes	The National Police Canine Association (NPCA)
Okaloosa County Sheriff's Office	Okaloosa	German Shepherd, Labrador Retriever, Other:Belgian Malinois	Narcotics, Patrol, Scent Trailing	8	Yes	The United States Police Canine Association (USPCA)
Okeechobee County Sheriff's Office	Okeechobee	Belgian Malinois, Other:Dutch Shep/Springer Spaniel	Narcotics, Patrol	6	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA), Other
Orange County Sheriff's Office	Orange	Bloodhound, German Shepherd, Labrador Retriever, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	29	Yes	Other
Osceola County Sheriff's Office	Osceola	Bloodhound, German Shepherd, Labrador Retriever, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	11	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Palm Beach County Sheriff's Office	Palm Beach	Bloodhound, German Shepherd, Labrador Retriever, Belgian Malinois, Other:Border Collies	Narcotics, Explosives, Patrol, Scent Trailing	53	Yes	The Florida Law Enforcement Canine Association (FLECA)
Pasco County Sheriff's Office	Pasco	Bloodhound, German Shepherd, Labrador Retriever	Narcotics, Explosives, Patrol, Scent Trailing	20	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Pinellas County Sheriff's Office	Pinellas	German Shepherd	Narcotics, Explosives, Patrol, Scent Trailing	13	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA), Other
Polk County Sheriff's Office	Polk	Bloodhound, German Shepherd, Labrador Retriever, Other:German Shorthair, Hanovarian H	Narcotics, Explosives, Patrol, Scent Trailing	26	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Putnam County Sheriff's Office	Putnam	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	5	Yes	Criminal Justice Standards and Training Commission (CJSTC), The Florida Law Enforcement Canine Association (FLECA)
Santa Rosa County Sheriff's Office	Santa Rosa	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	7	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Sarasota County Sheriff's Office	Sarasota	German Shepherd, Belgian Malinois, Other:Malinois/Shepherd Mix	Narcotics, Explosives, Patrol, Scent Trailing	6	Yes	Criminal Justice Standards and Training Commission (CJSTC), The National Police Canine Association (NPCA)
Seminole County Sheriff's Office	Seminole	Bloodhound, German Shepherd, Labrador Retriever, Belgian Malinois, Other:Hanover Hound	Narcotics, Explosives, Patrol, Scent Trailing	12	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
St. Johns County Sheriff's Office	St. Johns	Bloodhound, German Shepherd, Labrador Retriever, Other:Mallinois	Narcotics, Explosives, Patrol, Scent Trailing	10	Yes	Criminal Justice Standards and Training Commission (CJSTC), The National Police Canine Association (NPCA)
St. Lucie County Sheriff's Office	St. Lucie	German Shepherd, Labrador Retriever, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	10	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Sumter County Sheriff's Office	Sumter	Bloodhound, German Shepherd	Narcotics, Explosives, Scent Trailing	6	Yes	Criminal Justice Standards and Training Commission (CJSTC)
Suwannee County Sheriff's Office	Suwannee	Labrador Retriever	Narcotics, Patrol	2	Yes	The Florida Law Enforcement Canine Association (FLECA)
Taylor County Sheriff's Office	Taylor	Labrador Retriever	Narcotics	1	No	The North American Police Work Dog Association (NAPWDA)
Union County Sheriff's Office	Union	Not Applicable	Not Applicable	0	Not Applicable	Not Applicable
Volusia County Sheriff's Office	Volusia	German Shepherd, Labrador Retriever, Belgian Malinois	Narcotics, Explosives, Patrol, Scent Trailing	20	Yes	Criminal Justice Standards and Training Commission (CJSTC), The North American Police Work Dog Association (NAPWDA)
Wakulla County Sheriff's Office	Wakulla	Labrador Retriever	Narcotics	1	Yes	The United States Police Canine Association (USPCA)
Walton County Sheriff's Office	Walton	German Shepherd, Belgian Malinois	Narcotics, Patrol, Scent Trailing	3	Yes	Criminal Justice Standards and Training Commission (CJSTC), The United States Police Canine Association (USPCA)
Washington County Sheriff's Office	Washington	Belgian Malinois	Narcotics	2	Yes	Other

SB 96 – Police, Fire, and Search and Rescue Dogs (Identical HB 67)

This bill amends s. 843.19, F.S., inserting "canine" wherever the word dog was used and increasing the existing Level 3, 3rd degree felony so that "any person who intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to, or uses a deadly weapon upon, a police canine, fire canine, or SAR dog" now commits a **Level 3, 2nd degree felony** (s. 843.19(2)(a), F.S.). It does not increase this penalty for when such acts are committed against police horses, instead creating an additional subsection where these remain Level 3, 3rd degree felonies (s. 843.19(2)(b), F.S.).

Per DOC, in FY 17-18, 1 (adj.) offender was sentenced for the Level 3, 3rd degree felony under s. 843.19, F.S., with no offenders sentenced to prison. Given the available data, it is not known whether this offender committed the act against a canine as defined above, or against a police horse.

In FY 17-18, the incarceration rate for a Level 3, 2nd degree felony was 14.3%.

EDR PROPOSED ESTIMATE: Positive Insignificant

Requested by: Senate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

96
Bill Number (if applicable)

361560
Amendment Barcode (if applicable)

Topic Police, Fire, Search & Rescue Dogs

Name Gary Hester, Chief

Job Title Gov't Affairs

Address 2636 Mitcham Drive
Street

Phone 850-219-3631

Tallahassee FL 32308
City *State* *Zip*

Email ghester@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

96
Bill Number (if applicable)

Topic Police, Fire, Search & Rescue Dogs

Amendment Barcode (if applicable)

Name Gary Hester, Chief

Job Title Government Affairs

Address 2636 Mitcham Drive
Street

Phone 850-219-3631

Tallahassee FL 32308
City *State* *Zip*

Email ghester@fpca.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

96
Bill Number (if applicable)

Topic Police, Fire and Search and Rescue Dogs

Amendment Barcode (if applicable)

Name Mercer Fearington

Job Title SSG

Address PO Box 10570
Street

Phone 850 671 4401

Tallahassee FL 32302
City *State* *Zip*

Email fearington@sostrategy.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

96
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Police, fire Search Rescue Dogs

Name Kate MacFall

Job Title State director

Address 1624 Metropolitan Circle
Street
Tallahassee FL
City *State* *Zip*

Phone 850 508-1001

Email KMacFall@hsus.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Humane Society of the U.S.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.4.19
Meeting Date

96
Bill Number (if applicable)

Topic Police Dogs

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road
Street

Phone 850.510.9922

Tallahassee — *City* | FL — *State* | 32308 — *Zip*

Email barney@barneybishop.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 96
Bill Number (if applicable)

Topic SB 96 - Police, Fire and Search and Rescue Dogs *Amendment Barcode (if applicable)*

Name Chase Mitchell

Job Title Senior Management Analyst

Address Plaza Level 11, The Capitol
Street

Phone (850) 413-2866

Tallahassee *City* FL *State* 32399 *Zip*

Email chase.mitchell@myfloridacfo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CFO Jimmy Patronis

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2 / 11 /2019
Meeting Date

Topic _____ Bill Number 96 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 21, 2018

I respectfully request that **Senate Bill # 96**, relating to Police, Fire, and Search and Rescue Dogs, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

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 130
INTRODUCER:	Senator Stewart
SUBJECT:	Sexual Battery Prosecution Time Limitation
DATE:	February 1, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	**Favorable**
2.			JU	
3.			ACJ	
4.			AP	

I. Summary:

SB 130 provides that there is no time limitation for prosecuting offenses of sexual battery when the victim is younger than 18 years of age and the offense was not barred from prosecution on or before July 1, 2019. The bill creates a new exception to the general time limitations proscribed in s. 775.15, F.S.

Section 775.15, F.S., sets forth time limitations, or statutes of limitation, after which criminal prosecutions are barred. There are standard time limitations for initiating a criminal prosecution for felony offenses based on the degree of the offense as well as a number of exceptions that apply to certain offenses or victims. Section 794.011, F.S., related to sexual battery, is an offense to which many of these exceptions apply.

The bill is effective July 1, 2019.

II. Present Situation:

Statute of Limitations

Historical Perspective

At common law, there was no time limit restriction under which a criminal charge was barred from prosecution. Time limitations, or statutes of limitation, for criminal prosecutions exist only as a creation of statute and are considered to be acts of grace by the sovereign.[1]

[1] *State v. Hickman*, 189 So. 2d 254, 261 (Fla. 2d DCA 1966).

In *State v. Hickman*, the court stated:

> The only purpose of a Statute limiting the time within which a criminal charge may be prosecuted is to protect every person from being interminably under the threat or cloud of possible criminal prosecution, which otherwise might be indefinitely delayed until the time when defense witnesses might die, disappear or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper, an otherwise good defense.[2]

Since the creation of statutes of limitation, courts have held that:

- Generally, the statute of limitation that was in effect when a crime was committed controls.[3]
- Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.[4]
- The Legislature may extend the limitations period without violating the ex post facto clause of the State Constitution[5] if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.[6]

Existing Provisions

Section 775.15, F.S., sets forth time limitations, or statutes of limitation, after which criminal prosecutions are barred. The statute of limitation for prosecuting a criminal case begins to run on the day after the offense is committed, unless otherwise stated. An offense is deemed to have been committed when either every element of the offense has occurred or, if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.[7]

In part, s. 775.15, F.S., provides time limitations for initiating a criminal prosecution for a felony offense. The general provisions provide that there is:

- No time limitation for prosecuting a capital felony, a life felony, a felony resulting in death.[8]
- A 4-year time limitation for prosecuting a first degree felony.[9]
- A 3-year time limitation for prosecuting a second or third degree felony.[10]

However, a number of exceptions to the time limitation provisions mentioned above exist. Many of these exceptions are specific to certain offenses or types of victims. Section 794.011, F.S.,

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[2] *Id*.
[3] *Beyer v. State*, 76 So.3d 1132, 1135 (Fla. 4th DCA 2012).
[4] *Id*.
[5] FLA. CONST. art. I, s. 10.
[6] *Andrews v. State*, 392 So.2d 270, 271 (Fla. 2d DCA 1980).
[7] Section 775.15(3), F.S.
[8] Section 775.15(1), F.S.
[9] Section 775.15(2)(a), F.S. A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[10] Section 775.15(2)(b), F.S. A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine and a third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.

related to sexual battery, is an offense to which many of these exceptions apply, including that there is:

- No time limitation for prosecuting:
  - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003;[11]
  - Any felony sexual battery when the victim is younger than 16 years of age provided the offense was not barred from prosecution on or before July 1, 2010;[12]
  - A first or second degree felony sexual battery when the victim is under 18 years of age and he or she reports the crime to law enforcement within 72 hours provided the offense was not barred from prosecution on or before December 31, 1984;[13]
  - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours;[14]
- An eight-year time limitation on prosecuting a first or second degree felony sexual battery when the victim is 16 years of age or older at the time of the offense and he or she did not report the crime to law enforcement within 72 hours provided the offense was not barred from prosecution on or before July 1, 2015.[15]

In addition to these enumerated time periods, the prosecution for specified offenses,[16] including sexual battery, may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence collected at the time of the original investigation. The DNA sample for these prosecutions must be available for testing by the accused.[17]

Another exception provides that the applicable period of limitation does not begin to run until the victim of a sexual battery or other specified offense reaches the age of 18 years or the violation is reported to a law enforcement or governmental agency, whichever occurs first. This provision only applies to a victim who was younger than 18 years of age at the time of the offense.[18]

III. Effect of Proposed Changes:

The bill provides that there is no time limitation for prosecuting offenses of sexual battery when the victim is younger than 18 years of age and the offense was not barred from prosecution on or before July 1, 2019. This creates a new exception to the general time limitations proscribed in s. 775.15, F.S.

[11] Section 775.15(13)(b), F.S.
[12] Section 775.15(13)(c), F.S.
[13] Section 775.15(13)(a), F.S.
[14] Section 775.15(14)(a), F.S.
[15] Section 775.15(14)(b), F.S.
[16] The offenses that this provision apply to include aggravated battery or any felony battery offense under ch. 784, F.S.; kidnapping under s. 787.01, F.S.; an offense of sexual battery under ch. 794, F.S.; false imprisonment under s. 787.02, F.S.; lewd or lascivious offenses under s. 800.04, F.S., s. 825.1025, F.S., or s. 847.0135(5), F.S.; burglary offenses under s. 810.02, F.S.; robbery offenses under s. 812.13, F.S., s. 812.131, F.S., or s. 812.135, F.S.; carjacking under s. 812.133, F.S.; or aggravated child abuse under s. 827.03, F.S. Section 775.15(16)(a), F.S.
[17] Section 775.15(16)(a), F.S.
[18] Section 775.15(13)(a), F.S.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not heard the bill at this time. However, the bill creates a new exception to the time limitations for prosecuting sexual battery offenses against specified victims. To the extent that this increases the ability for felony sexual offenses to be prosecuted that would otherwise have been barred, the Department of Corrections will likely see a positive indeterminate prison bed impact.

Additionally, the bill will likely result in a positive indeterminate fiscal impact to the courts, State Attorneys, and Public Defenders due to additional resources necessary to litigate cases that would have otherwise been barred from prosecution.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.15 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.

By Senator Stewart

13-00249-19 2019130__

A bill to be entitled

An act relating to the sexual battery prosecution time limitation; amending s. 775.15, F.S.; creating an exception to the general time limitations which allows a prosecution to be commenced at any time for specified sexual battery offenses against victims younger than a certain age at the time the offense was committed; providing applicability; providing an effective date.

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

Section 1. Subsection (20) is added to section 775.15, Florida Statutes, and subsection (2) of that section is republished, to read:

775.15 Time limitations; general time limitations; exceptions.—

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony of the first degree must be commenced within 4 years after it is committed.

(b) A prosecution for any other felony must be commenced within 3 years after it is committed.

(c) A prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed.

(d) A prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

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

Florida Senate - 2019 **SB 130**

13-00249-19 2019130__

(20) If a victim is younger than 18 years of age at the time the offense was committed, a prosecution for a violation of s. 794.011 may be commenced at any time. This subsection applies to an offense that is not otherwise barred from prosecution on or before July 1, 2019.

Section 2. This act shall take effect July 1, 2019.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.4.19
Meeting Date

130
Bill Number (if applicable)

Topic Sexual Battery

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road
Street

Phone 850.510.9922

Tallahassee FL 32308
City *State* *Zip*

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-11-19
Meeting Date

130
Bill Number (if applicable)

Topic Sexual Battery Prosecution Time Limits

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title MS

Address 625 E. Brevard St
Street

Tallahassee FL 32308
City *State* *Zip*

Phone (850) 251-4380

Email barbaradevane1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

Topic _____ Bill Number 130 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 18, 2019

I respectfully request that **Senate Bill #: 130** relating to Sexual Battery Prosecution Time Limits, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Linda Stewart

Senator Linda Stewart
Florida Senate, District 13

File signed original with committee office

S-020 (03/2004)

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 132
INTRODUCER:	Criminal Justice Committee and Senator Rouson
SUBJECT:	Drones
DATE:	February 12, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Fav/CS**
2.			IS	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 132 amends s. 934.50(4), F.S., to create an additional exception to the general prohibition against law enforcement agencies using drones to gather evidence or other information.

The bill provides for law enforcement agencies to use drones to prepare for or monitor safety and security at a large-scale event, defined as having more than 100 persons in attendance, if the drone use is limited to legitimate public safety purposes including but not limited to:

- Evaluating crowd size, density, or movement;
- Assessing public safety vulnerabilities or weaknesses;
- Determining appropriate staffing levels for law enforcement or other public safety personnel; or
- Identifying possible criminal activity.

The bill prohibits law enforcement from arming the drone or firing a projectile from it.

The bill also creates definitions in s. 934.50(2), F.S.

Section 330.41(4), F.S., is reenacted by the bill.

The bill is effective July 1, 2019.

II. Present Situation:

A drone, also called Unmanned Aerial Vehicle (UAV) and Unmanned Aerial System (UAS), is defined in s. 934.50, F.S., as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.[1]

Drones range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.[2] They may be controlled manually or through an autopilot that uses a data link to connect the drone's pilot to the drone.[3] Drones can be equipped with infrared cameras,[4] and "LADAR" (laser radar).[5] In 2011, it was reported that the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.[6]

Law Enforcement Use of Drones in Florida – Section 934.50, F.S.

The Florida Sheriff's Association estimates that 12 sheriff's offices currently have drones.[7] Of the 139 police departments that responded to the question regarding whether their department has at least one drone, 32 said they do have a drone and 10 responded that they soon will have a drone.[8]

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[1] Section 934.50(2), F.S.
[2] 14 CFR Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 6, 2007.
[3] *Id*.
[4] Infrared cameras can see objects through walls based on the relative levels of heat produced by the objects. *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last viewed January 31, 2019); Search and rescue drones equipped with thermal imaging help first responders identify the location of people lost in chaotic scenes, and police departments have started using drones with thermal capabilities to identify the location of suspects while keeping an infrared eye on their officers. *Best Infrared Drones (Buying Guide)*, Spire Drones, available at https://buythebestdrone.com/best-infrared-drones/ (last viewed January 30, 2019).
[5] The research and development laboratory at the Massachusetts Institute of Technology has developed airborne ladar systems that generate detailed 3D imagery of terrain and structures, including those beneath dense foliage. The lab reports that the micro-ladar could be used under both clear and heavy foliage conditions for surveillance and reconnaissance missions as well as for humanitarian assistance and disaster relief operations. Lincoln Laboratory, Massachusetts Institute of Technology, R & D Projects, *Micro-ladar*, available at https://www.ll.mit.edu/r-d/projects/micro-ladar (last viewed January 31, 2019).
[6] Clay Dillow, Popular Science, *Army Developing Drones That Can Recognize Your Face From a Distance*, September 28, 2011, available at pops ci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind (last viewed January 31, 2019).
[7] E-mail from Florida Sheriff's Association Deputy Executive Director of Operations dated January 28, 2019 (on file with the Senate Committee on Criminal Justice).
[8] E-mail from Florida Police Chiefs Association Executive Director dated January 29, 2019 (on file with the Senate Committee on Criminal Justice).

Section 934.50, F.S., prohibits law enforcement agencies from using a drone to gather evidence or other information, with certain exceptions.[9] Evidence obtained or collected by a law enforcement agency using a drone is not admissible in a criminal prosecution in any court of law in this state unless it is permitted under one of the statute's exceptions.[10] An aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of s. 934.50, F.S.[11]

Additionally, a real property owner, tenant, occupant, invitee, or licensee of the property is presumed to have a reasonable expectation of privacy from drone surveillance of the property or the owner, tenant, occupant, invitee, or licensee by another person, state agency, or political subdivision, if he or she cannot be seen by persons at ground level who are in a place they have a legal right to be.[12] Surveillance is defined in. s. 934.50(2)(e), F.S.:

- With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or
- With respect to privately owned real property, the observation of such property's physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

The exceptions for law enforcement agencies using drones to gather evidence and other information are:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization and the drone is used to counter the risk;
- The law enforcement agency first obtains a search warrant authorizing the use of a drone; or
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.[13]

A law enforcement agency is defined in s. 934.50, F.S., as a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.[14]

Weaponized Drones Prohibited in Florida

In Florida, s. 330.411, F.S., prohibits a person from possessing or operating an unmanned aircraft or unmanned aircraft system as defined in s. 330.41, F.S., with an attached weapon, firearm,

[9] Section 934.50(3)(a), F.S.
[10] Section 934.50(6), F.S.
[11] Section 934.50(5)(a), F.S.
[12] Section 934.50(3)(b), F.S. See also s. 934.50(5)(b)-(d) F.S., providing for compensatory damages, injunctive relief, attorney fees, and punitive damages for a violation of s. 934.50(3)(b), F.S.
[13] Section 934.50(4)(a)-(c), F.S. Note that there are additional exceptions to the prohibition on the use of drones that are not law enforcement agency related. These exceptions can be found in s. 934.50(4)(d)-(j), F.S.
[14] Section 934.50(2)(d), F.S.

explosive, destructive device, or ammunition as defined in s. 790.001, F.S.[15] North Dakota is the only state that allows law enforcement agencies to utilize weaponized drones. The weapons are limited to the non-lethal variety such as tear gas, rubber bullets, beanbags, pepper spray, and tasers.[16]

Federal Aviation Authority

In February 2012, Congress passed the Federal Aviation Authority (FAA) Modernization and Reform Act of 2012 (Act), which required the FAA to safely open the nation's airspace to drones by September 2015.[17] The FAA regulates the use of drones as it does all aircraft in the national airspace, with an emphasis on safety, efficiency, and national security, but views considerations such as privacy beyond the scope of FAA authority.[18]

Under the authority granted in the 2012 Act, the FAA issued its regulations on the operation and certification of small (less than 55 pounds at take-off) unmanned aircraft systems in June 2016.[19] The 2016 small drone regulations are still in effect and include airspace restrictions and a waiver mechanism allowing for deviations from drone operational restrictions upon application and authorization by the FAA.[20]

FAA Drone Airspace Restrictions

The FAA has designated generally restricted airspace including drone flight around and over sports stadiums and wildfires at specified times or under specified conditions. Drone operators must educate themselves on these restrictions prior to flying.[21]

FAA Drone Operational Restrictions

The following are among the operational restrictions in the 2016 regulation:

- Small unmanned aircraft may not operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle;[22]

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[15] Section 330.41(2)(c), F.S., defines an unmanned aircraft system as a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently. Section 330.41(2)(b), F.S., specifies that drone has the same meaning as s. 934.50(2), F.S.

[16] North Dakota House Bill 1328 (2015), available at https://www.legis.nd.gov/assembly/64-2015/documents/15-0259-05000.pdf?20150501154934 (last viewed February 6, 2019).

[17] Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last viewed January 31, 2019).

[18] 14 CFR Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183, *Operation and Certification of Small Unmanned Aircraft Systems*, 81 FR 42064-01, June 28, 2016.

[19] *Id*.

[20] *Id*.

[21] *See* FAA, Unmanned Aircraft Systems, *Airspace Restrictions*, available at https://www.faa.gov/uas/where_to_fly/airspace_restrictions/#wildfires (last viewed February 4, 2019).

[22] The term "over" refers to the flight of the small unmanned aircraft directly over any part of a person. For example, a small UAS that hovers directly over a person's head, shoulders, or extended arms or legs would be an operation over people. Similarly, if a person is lying down, for example at a beach, an operation over that person's torso or toes would also constitute an operation over people. An operation during which a small UAS flies over any part of any person, regardless of the dwell time, if any, over the person, would be an operation over people. 14 CFR Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183, *Operation and Certification of Small Unmanned Aircraft Systems*, 81 FR 42064-01, June 28, 2016.

- Maximum altitude of 400 feet above ground level (AGL) or, if higher than 400 feet AGL, remain within 400 feet of a structure; and
- Daylight-only operations or civil twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anti-collision lighting.[23]

Both the Lakeland Police Department and the Polk County Sheriff's Office have recently obtained waivers of the daylight-only operational restriction from the FAA.[24]

Proposed Rule

The FAA announced a new proposed regulation for the use of drones on January 18, 2019.[25] The proposal, in its current form, appears to provide avenues that would allow drone operators to routinely fly over people and fly at night.[26]

The proposed regulation creates a risk-assessment model based upon the weight of the drone, and the design of the drone, with an eye toward any mitigation the drone design presents to prohibit serious injury or property damage should the drone make contact with a person or property on the ground.[27] The process of the FAA accepting public comment on the proposal, and then drafting a final rule has not begun at this time.[28]

III. Effect of Proposed Changes:

The bill amends s. 934.50(4), F.S., to create an additional exception to allow a law enforcement agency to use a drone to prepare for or monitor safety and security at a large-scale event, if the drone use is limited to legitimate public safety purposes, which includes but is not limited to:

- Evaluating crowd size, density, or movement;
- Assessing public safety vulnerabilities or weaknesses;
- Determining appropriate staffing levels for law enforcement or other public safety personnel; or
- Identifying possible criminal activity.

The law enforcement agency using the drone under the new exception may not:

- Fire a projectile from the drone; or
- Equip the drone with tear gas canisters, stun gun technology, or any other dangerous or deadly weapon.

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[23] *Id*.
[24] Certificates of Waiver 107W-2018-16741 (dated November 28, 2018) and 107W-2018-16274 (dated November 6, 2018); FAA, Unmanned Aircraft Systems, *Part 107 Waivers Issued*, available at https://www.faa.gov/uas/commercial_operators/part_107_waivers/waivers_issued/ (last viewed January 31, 2019).
[25] Department of Transportation, Office of the Secretary, FAA, 14 CFR Part 107, Notice of Proposed Rulemaking, *Operation of Small Unmanned Aircraft Systems over People*, Dates: To Be Announced. The proposed rule has not been published in the Federal Register or opened for public comment as of February 1, 2019 but the draft document is available at https://www.faa.gov/uas/programs_partnerships/DOT_initiatives/media/2120-AK85_NPRM_Operations_of_Small_UAS_Over_People.pdf (last viewed February 3, 2019).
[26] *Id*.
[27] *Id*.
[28] *Id*.

The bill defines a "large-scale event" to mean a public or private event attended by more than 100 persons at a:

- Sports or entertainment arena;
- Stadium;
- Convention hall;
- Special event center;
- Amusement facility;
- Outdoor concert venue;
- Special event area licensed or permitted for use under the authority of a unit of local government; or
- Event open to the public that takes place on a public way or on government-owned property.

The bill defines a "dangerous or deadly weapon" to mean a firearm or other weapon, device, instrument, material, or substance, whether animate or inanimate, which is used or intended to be used in a manner capable of causing death or serious bodily injury.

Additionally, the bill reenacts s. 330.41(4), F.S., to incorporate changes made by the bill.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Privacy

Although it is generally understood that a person does not currently have a reasonable expectation of privacy under the circumstances set forth in the bill, with the evolution of

technology as it relates to intrusion into a person's privacy interests, the law, too, may evolve.[29]

Preemption

The regulation of the national airspace and the aircraft that occupy it is a federal matter.[30] The FAA Chief Counsel issued a document in 2015 about state and local regulation of drones in which he said that state and local restrictions affecting UAS operations should be consistent with the extensive federal statutory and regulatory framework in order to "ensure the maintenance of a safe and sound air transportation system and of navigable airspace free from inconsistent restrictions."[31] However, given the Chief Counsel's acknowledgement that "laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation"[32] it appears that the bill would not be an encroachment into an area exclusively regulated by the federal government.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement anticipates no fiscal impact to the department resulting from the bill.[33]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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[29] *See Katz v. United States*, 389 U.S. 347 (1967) finding there is no reasonable expectation of privacy in the public view. *See also Carpenter v. United States*, 138 S.Ct. 2206 (2018) finding a reasonable expectation of privacy in historical cell phone location records.

[30] Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. 49 U.S.C. ss. 40103, 44502, and 44701-44735.

[31] FAA, Office of the Chief Counsel, *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet*, December 17, 2015, available at https://www.faa.gov/uas/resources/policy_library/media/UAS_Fact_Sheet_Final.pdf (last viewed February 4, 2019).

[32] *Id*., citing *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002).

[33] The Florida Department of Law Enforcement, *2019 Legislative Bill Analysis, SB 132* (December 14, 2018) (on file with the Senate Committee on Criminal Justice).

VIII. Statutes Affected:

This bill substantially amends section 934.50 of the Florida Statutes.

The bill reenacts section 330.41 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The Committee Substitute:

- Changes the number of persons attending a large-scale event from 10 to 100; and
- Corrects a scrivener's error in the directory clause.

B. Amendments:

None.

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

688632

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment

In the directory clause, delete line 18
and insert:
of subsection (2) of section 934.50, Florida Statutes, are

470666

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 33
and insert:
attended by more than 100 persons at a sports or entertainment

By Senator Rouson

19-00260-19 2019132__

A bill to be entitled

An act relating to drones; amending s. 934.50, F.S.; defining the terms "dangerous or deadly weapon" and "large-scale event"; authorizing the use of a drone by a law enforcement agency to prepare for or monitor safety and security at a large-scale event; prohibiting a law enforcement agency using a drone in an authorized manner from equipping it with specified attachments or using it to fire projectiles; reenacting s. 330.41(4), F.S., relating to the Unmanned Aircraft Systems Act, to incorporate the amendment made to s. 934.50, F.S., in a reference thereto; providing an effective date.

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

Section 1. Present paragraphs (a), (b), (c), (d), and (e) of subsection (2) of section 943.50, Florida Statutes, are redesignated as paragraphs (b), (c), (d), (f), and (g), respectively, and new paragraphs (a) and (e) are added to that subsection, paragraph (a) of subsection (3) of that section is amended, present paragraphs (d) through (j) of subsection (4) of that section are redesignated as paragraphs (e) through (k), respectively, and a new paragraph (d) is added to that subsection, to read:

934.50 Searches and seizure using a drone.—

(2) DEFINITIONS.—As used in this act, the term:

(a) "Dangerous or deadly weapon" means a firearm or other weapon, device, instrument, material, or substance, whether

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

19-00260-19 2019132__

animate or inanimate, which is used or is intended to be used in a manner capable of causing death or serious bodily injury.

(e) "Large-scale event" means a public or private event attended by more than 10 persons at a sports or entertainment arena, a stadium, a convention hall, a special event center, an amusement facility, an outdoor concert venue, a special event area licensed or permitted for use under the authority of a unit of local government, or an event open to the public that takes place on a public way or on government-owned property.

(3) PROHIBITED USE OF DRONES.—

(a) A law enforcement agency may not use a drone to gather evidence or other information, except as provided in subsection (4).

(4) EXCEPTIONS.—This section does not prohibit the use of a drone:

(d) If a law enforcement agency uses a drone to prepare for or monitor safety and security at a large-scale event and the drone use is limited to legitimate public safety purposes, including, but not limited to, evaluating crowd size, density, or movement; assessing public safety vulnerabilities or weaknesses; determining appropriate staffing levels for law enforcement or other public safety personnel; or identifying possible criminal activity. If a law enforcement agency is using a drone under this paragraph, the agency may not fire a projectile from the drone or equip the drone with tear gas canisters, stun gun technology, or any other dangerous or deadly weapon.

Section 2. For the purpose of incorporating the amendment made by this act to section 934.50, Florida Statutes, in a

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

reference thereto, subsection (4) of section 330.41, Florida Statutes, is reenacted to read:

330.41 Unmanned Aircraft Systems Act.—

(4) PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES.—

(a) A person may not knowingly or willfully:

1. Operate a drone over a critical infrastructure facility;

2. Allow a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or

3. Allow a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

(b) A person who violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who commits a second or subsequent violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) This subsection does not apply to actions identified in paragraph (a) which are committed by:

1. A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity.

2. A law enforcement agency that is in compliance with s. 934.50, or a person under contract with or otherwise acting under the direction of such law enforcement agency.

3. An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.

(d) Subparagraph (a)1. does not apply to a drone operating

in transit for commercial purposes in compliance with Federal Aviation Administration regulations, authorizations, or exemptions.

(e) This subsection shall sunset 60 days after the date that a process pursuant to s. 2209 of the FAA Extension, Safety and Security Act of 2016 becomes effective.

Section 3. This act shall take effect July 1, 2019.

SB 132

Cellon, Connie

From: Amy Mercer <amercer@fpca.com>
Sent: Tuesday, January 29, 2019 3:00 PM
To: Cellon, Connie; Matt Dunagan
Subject: FW: Drones List
Attachments: Drones PD Feedback.xlsx

Hi Connie, please see attached list. These are the agencies that responded to our inquiry. Hope this helps! Amy

Amy Mercer
Executive Director
The Florida Police Chiefs Association, FPCA
850-219-3631
www.fpca.com
amercer@fpca.com
Faithfully serving Florida Police Chiefs

From: Kendra Oates <KBriscoe@fpca.com>
Sent: Tuesday, January 29, 2019 2:56 PM
To: Amy Mercer <amercer@fpca.com>
Subject: Drones List

Agency	Drones?
CSX Railroad PD	Yes
Clearwater PD	Yes
Aventura PD	Yes
Medley PD	Yes
St. Petersburg PD	Yes
Lakeland PD	Yes
Naples PD	Yes
St. Cloud PD	Yes
FHP	Yes
Mount Dora PD	Yes
Winter Springs PD	Yes
Panama City Beach PD	Yes
Fort Lauderdale PD	Yes
Daytona Beach PD	Yes
Melbourne Beach PD	Yes
Miami Shores PD	Yes
Winter Park PD	Yes
Margate PD	Yes
Groveland PD	Yes
Palm Beach Gardens PD	Yes
Lake Wales PD	Yes
Boca Raton PD	Yes
Miami Beach PD	Yes
Panama City PD	Yes
Key West PD	Yes
Winter Haven PD	Yes
West Palm Beach PD	Yes
Daytona Beach Shores PD	Yes
Melbourne PD	Yes
Crestview PD	Yes
Treasure Island	Yes
Coral Springs PD	Yes
Miami-Dade PD	Will be using soon
Coconut Creek PD	Will be purchasing soon
Orange Park PD	Will be purchasing soon
Holly Hill PD	Will be purchasing soon
Bay Harbor Islands PD	Will be purchasing soon
Auburndale PD	Will be purchasing soon
USF PD	Will be purchasing soon

Bradenton PD	Will be purchasing soon
Lawtey PD	Will be purchasing soon
North Port PD	Will be purchasing soon
New College of Florida PD	No
Milton PD	No
Eustis PD	No
Edgewood PD	No
Sanford Airport PD	No
Marianna PD	No
Satellite Beach PD	No
North Palm Beach PD	No
Casselberry PD	No
TLH Community College PD	No
Vero Beach PD	No
Bunnell PD	No
Tampa PD	No
Clermont PD	No
Belle Air PD	No
University of North Florida PD	No
Palm Springs PD	No
Cape Coral PD	No
FL East Coast Railway	No
Lake City PD	No
Fernandina Beach PD	No
Capitol Police	No
FL Southwestern State College I	No
West Miami PD	No
West Melbourne PD	No
Punta Gorda PD	No
Orange City PD	No
Florida State University PD	No
Howey In the Hills PD	No
Sewalls Point PD	No
Seminole PD	No
Perry PD	No
Longwood PD	No
Pembroke Pines PD	No
Lake Mary PD	No
FL Gulf Coast University PD	No
Sanibel PD	No
FL Atlantic University PD	No
South Miami PD	No
Cocoa Beach PD	No
South Daytona PD	No

Lake Placid PD	No
Division of Alcoholic Bev. And Tobacco	No
Welaka PD	No
Lake Alfred PD	No
Lee County Port Authority PD	No
Winter Garden PD	No
Hillsboro Beach PD	No
Melbourne Airport PD	No
Ponce Inlet PD	No
Fellsmere PD	No
Temple Terrace PD	No
Windermere PD	No
Ocoee PD	No
Bal Harbour PD	No
Plantation PD	No
Sanford PD	No
Leesburg PD	No
Biscayne Park PD	No
University of Central FL PD	No
Fort Pierce PD	No
Santa Fe College PD	No
Sarasota County Schools PD	No
NW FL Beaches Airport PD	No
Boynton Beach PD	No
Sarasota PD	No
Ocean Ridge PD	No
Alachua PD	No
Cedar Key PD	No
Jennings PD	No
Lake Hamilton PD	No
Largo PD	No
Surfside PD	No
Kenneth City PD	No
FL Supreme Court	No
Ormond Beach PD	No
Pinellas Park PD	No
Pinecrest PD	No
DeFuniak Springs PD	No
Oviedo PD	No
Indian Shores PD	No
Dade City PD	No
Valparaiso PD	No
Jacksonville Airport PD	No
Maitland PD	No
Flagler Beach PD	No
FL International University PD	No

Umatilla PD	No
Mexico Beach PD	No
Tallahassee PD	No
Jupiter PD	No
Clewiston PD	No
Sneads PD	No
St. Augustine PD	No
Citrus County School Board PD	No
Palatka PD	No

SB 132

Cellon, Connie

From: Matt Dunagan <mdunagan@flsheriffs.org>
Sent: Monday, January 28, 2019 4:11 PM
To: Cellon, Connie
Subject: RE: today's seemingly random question is...

Firm...might be off one or two.

Matt Dunagan, Deputy Executive Director of Operations
(850) 877-2165 x. 212 (office)
(850) 274-3599 (cell)
FLORIDA SHERIFFS ASSOCIATION | Protecting, Leading & Uniting Since 1893.

From: Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Sent: Monday, January 28, 2019 2:55 PM
To: Matt Dunagan <mdunagan@flsheriffs.org>
Subject: RE: today's seemingly random question is...

Estimate or firm-ish?

From: Matt Dunagan <mdunagan@flsheriffs.org>
Sent: Monday, January 28, 2019 2:54 PM
To: Amy Mercer <amercer@fpca.com>; Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Subject: RE: today's seemingly random question is...

I would say about a dozen sheriffs offices.

Matt Dunagan, Deputy Executive Director of Operations
(850) 877-2165 x. 212 (office)
(850) 274-3599 (cell)
FLORIDA SHERIFFS ASSOCIATION | Protecting, Leading & Uniting Since 1893.

From: Amy Mercer <amercer@fpca.com>
Sent: Friday, January 25, 2019 11:50 AM
To: Cellon, Connie <CELLON.CONNIE@flsenate.gov>; Matt Dunagan <mdunagan@flsheriffs.org>
Subject: RE: today's seemingly random question is...

No but let me see what I can find out!

Amy Mercer
Executive Director
The Florida Police Chiefs Association, FPCA
850-219-3631
www.fpca.com
amercer@fpca.com
Faithfully serving Florida Police Chiefs

From: Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Sent: Friday, January 25, 2019 11:38 AM
To: Amy Mercer <amercer@fpca.com>; Matt Dunagan <mdunagan@flsheriffs.org>
Subject: today's seemingly random question is...

Any idea how many departments have drones?

Connie Cellon
Senate Criminal Justice
850-487-5192

SB 132

2019 FDLE LEGISLATIVE BILL ANALYSIS

BILL INFORMATION	
BILL NUMBER:	SB 132
BILL TITLE:	Drones
BILL SPONSOR:	Rouson
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE
1)
2)
3)
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

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

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	December 14, 2018
LEAD AGENCY ANALYST:	Sherry Gomez
ADDITIONAL ANALYST(S):	Grant Geyer
LEGAL ANALYST:	Jason Jones, Jeff Dambly
FISCAL ANALYST:	Cynthia Barr, Deshawn Byrd

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill authorizes the use of an unarmed drone by a law enforcement agency to prepare for or monitor safety and security at a large-scale event. Definitions are provided for large-scale event and dangerous or deadly weapon.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Currently section 934.50, F.S, prohibits the use of drones by law enforcement agencies to gather evidence or other information unless specified exceptions are met. Also, a person, a state agency, or a political subdivision as defined in section 11.45, F.S., may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent.

2. EFFECT OF THE BILL:

If passed, SB 132 prohibits law enforcement from using a drone to gather evidence or other information except as provided by exceptions delineated in subsection 934.50 (4). This bill adds an exception allowing a law enforcement agency to use a drone to prepare for or monitor safety and security at a large-scale event. Use is limited to legitimate safety purposes and acceptable scenarios are provided. If a law enforcement agency is using a drone under this exception, the agency may not fire a projectile from the drone or equip the drone with tear gas canisters, stun gun technology or any other dangerous or deadly weapon. Definitions of large-scale events and dangerous or deadly weapons are provided.

Currently, a law enforcement agency would not be able to use a drone to collect evidence or other information at a large-scale event absent a preexisting exemption, such as pursuant to a search warrant. This exception would allow law enforcement agencies to have better capabilities to ensure public safety at public events, while also respecting civil liberties considerations. The exception provided in this bill would aid agencies in gathering essential information in dangerous situations while saving manpower and money. This is a tool that can be used to protect the citizens of Florida and allows for a safer and more efficient method of protection and prevention.

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?	Y ☐ N ☒
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. REQURIED 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:	
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:	

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 IMPACTTHE 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.	

FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGECY 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:	Law enforcement agencies who act in accordance with this bill's authorization must still conduct activities consistent with FAA requirements, such as the prohibition on flying drones over persons or groups as found in 14 CFR 107.39.

ADDITIONAL COMMENTS

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

132
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Gary Hester, Chief

Job Title Gov't Affairs

Address 2636 Mitcham Drive
Street

Phone 850-219-3631

Tallahassee FL 32308
City *State* *Zip*

Email ghester@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 132
Bill Number (if applicable)

Topic SB 132

Amendment Barcode (if applicable)

Name Todd Sumner

Job Title Lobbyist

Address 1102 Mimosa Dr.
Street

Phone 850-591-6119

Tallahassee FL 32312
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Drone Technologist, LLC

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.11.19
Meeting Date

132
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road
Street

Phone 850.510.9922

Tallahassee — *City* | FL — *State* | 32308 — *Zip*

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Criminal Justice Committee

Subject: Committee Agenda Request

Date: January 23, 2019

I respectfully request that **Senate Bill # 132**, relating to Drones, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Darryl Rouson

Senator Darryl Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

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 136
INTRODUCER:	Senator Rouson
SUBJECT:	False Personation
DATE:	February 8, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Favorable**
2.			IS	
3.			RC	

I. Summary:

SB 136 amends s. 843.08, F.S., which criminalizes the false personation of law enforcement officers and other specified persons, to criminalize the false personation of a school guardian.

Currently, s. 843.08, F.S., prohibits false personation of a watchman (a person licensed as a security officer under ch. 493, F.S.). The bill replaces the term "watchman" with "security officer licensed under chapter 493" and removes a definition of "watchman."

False personation of a school guardian is generally a third degree felony. However, false personation is a second degree felony if committed during the course of the commission of a felony, unless the felony resulted in the death or personal injury of another human being, in which case false personation is a first degree felony.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds).

The bill is effective on October 1, 2019.

II. Present Situation:

School Guardian

Section 30.15(1)(k), F.S.,[1] authorizes sheriffs, in their respective counties, in person or by deputy, to establish a Coach Aaron Feis Guardian Program to aid in the prevention or abatement of active assailant incidents on school premises. A school guardian has no authority to act in any

[1] Section 30.15(1)(k), F.S., was created by the Marjory Stoneman Douglas High School Public Safety Act (ch. 2018-3, L.O.F.).

law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident on a school premises.[2]

Excluded from participating in the Coach Aaron Feis Guardian Program are individuals who exclusively perform classroom duties as classroom teachers as defined in s. 1012.01(2)(a), F.S. This limitation does not apply to classroom teachers of a Junior Reserve Officers' Training Corps program, a current servicemember, as defined in s. 250.01, F.S., or a current or former law enforcement officer, as defined in s. 943.10(1), (6), or (8), F.S.[3]

The sheriff who chooses to establish the program shall appoint as school guardians, without the power of arrest, school employees who volunteer and who do all of the following:

- Hold a valid license issued under s. 790.06, F.S. (license to carry a concealed firearm).
- Complete 132 total hours of comprehensive firearm safety and proficiency training conducted by Criminal Justice Standards and Training Commission-certified instructors, which must include:
  - Eighty hours of firearms instruction based on the Criminal Justice Standards and Training Commission's Law Enforcement Academy training model, which must include at least 10 percent but no more than 20 percent more rounds fired than associated with academy training. Program participants must achieve an 85 percent pass rate on the firearms training.
  - Sixteen hours of instruction in precision pistol.
  - Eight hours of discretionary shooting instruction using state-of-the-art simulator exercises.
  - Eight hours of instruction in active shooter or assailant scenarios.
  - Eight hours of instruction in defensive tactics.
  - Twelve hours of instruction in legal issues.
- Pass a psychological evaluation administered by a psychologist licensed under ch. 490, F.S., and designated by the Florida Department of Law Enforcement (FDLE) and submit the results of the evaluation to the sheriff's office. The FDLE may provide the sheriff's office with mental health and substance abuse data for compliance with this requirement.
- Submit to and pass an initial drug test and subsequent random drug tests in accordance with the requirements of s. 112.0455, F.S., and the sheriff's office.
- Successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis.
- Successfully complete at least 12 hours of a certified nationally recognized diversity training program.[4]

The sheriff shall issue a school guardian certificate to individuals who meet these requirements, and shall also maintain documentation of weapon and equipment inspections, as well as the training, certification, inspection, and qualification records of each school guardian appointed by the sheriff.[5]

[2] Section 30.15(1)(k), F.S.
[3] *Id.*
[4] *Id.*
[5] *Id.*

False Personation of Law Enforcement Officers and Other Specified Persons

Section 843.08, F.S., punishes false personation of any of the following law enforcement officers or other specified persons:

- A firefighter.
- Sheriff.
- Officer of the Florida Highway Patrol.
- Officer of the Fish and Wildlife Conservation Commission.
- Fire or arson investigator of the Department of Financial Services.
- Officer of the Department of Financial Services.
- Officer of the Department of Corrections.
- Correctional probation officer.
- Deputy sheriff.
- State attorney or assistant state attorney.
- Statewide prosecutor or assistant statewide prosecutor.
- State attorney investigator.
- Coroner.
- Police officer.
- Lottery special agent or lottery investigator.
- Beverage enforcement agent.
- Watchman (a security officer licensed under ch. 493, F.S.).
- Any member of the Florida Commission on Offender Review and any administrative aide or supervisor employed by the commission.
- Any personnel or representative of the FDLE.
- A federal law enforcement officer as defined in s. 901.1505, F.S.

A person commits the offense of false personation if he or she falsely assumes or pretends to be any person specified in s. 843.08, F.S., such as a police officer, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any person specified in s. 843.08, F.S.

False personation in violation of s. 843.08, F.S, is generally a third degree felony.[6] However, false personation is a second degree felony[7] if committed during the course of the commission of a felony, unless the felony resulted in the death or personal injury of another human being, in which case false personation is a first degree felony.[8]

[6] A third degree felony is punishable by up to 5 years in prison and a fine of up to $5,000. Sections 775.082 and 775.083, F.S. A third degree felony violation of s. 843.08, F.S., is ranked in Level 2 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(b), F.S.

[7] A second degree felony is punishable by up to 15 years in prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S.

[8] A first degree felony is generally punishable by up to 30 years in prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S.

III. Effect of Proposed Changes:

The bill amends s. 843.08, F.S., which criminalizes the false personation of law enforcement officers and other specified persons, to criminalize the false personation of a school guardian as described in s. 30.15(1)(k), F.S.

Currently, s. 843.08, F.S., prohibits false personation of a watchman (a security officer licensed under ch. 493, F.S.). The bill replaces the term "watchman" with "security officer licensed under chapter 493" and removes a definition of "watchman."

False personation of a school guardian is generally a third degree felony. However, false personation is a second degree felony if committed during the course of the commission of a felony, unless the felony resulted in the death or personal injury of another human being, in which case false personation is a first degree felony.

The bill also reenacts a part of the Criminal Punishment Code offense severity ranking chart (s. 921.0022(3)(b), F.S.) to incorporate the amendments made by the bill to s. 843.08, F.S.

The effective date of the bill is October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 843.08 of the Florida Statutes.

This bill also reenacts section 921.0022 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.

By Senator Rouson

19-00262-19 2019136__

A bill to be entitled

An act relating to false personation; amending s. 843.08, F.S.; adding school guardians to the list of officials the false personation of whom is prohibited and is subject to criminal penalties; making technical changes; reenacting s. 921.0022(3)(b), F.S., relating to the offense severity ranking chart of the Criminal Punishment Code, to incorporate the amendment made to s. 843.08, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation.—A person who falsely assumes or pretends to be a firefighter, a sheriff, an officer of the Florida Highway Patrol, an officer of the Fish and Wildlife Conservation Commission, a fire or arson investigator of the Department of Financial Services, an officer of the Department of Financial Services, an officer of the Department of Corrections, a correctional probation officer, a deputy sheriff, a state attorney or an assistant state attorney, a statewide prosecutor or an assistant statewide prosecutor, a state attorney investigator, a coroner, a police officer, a lottery special agent or lottery investigator, a beverage enforcement agent, a school guardian as described in s. 30.15(1)(k), a security officer licensed under chapter 493 ~~or watchman~~, ~~or~~ any member of the Florida Commission on Offender Review or ~~and~~ any

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

19-00262-19 2019136__

administrative aide or supervisor employed by the commission, ~~or~~ any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. ~~The term "watchman" means a security officer licensed under chapter 493.~~

Section 2. For the purpose of incorporating the amendment made by this act to section 843.08, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 921.0022, Florida Statutes, is reenacted to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431	3rd	Possession of 11 or

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(1)(e)3.		fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or

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

		death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $300, taken from

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		unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.

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817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01	3rd	Forgery.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes,

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

		bills, checks, drafts, or promissory notes.
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

Section 3. This act shall take effect October 1, 2019.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.11.19
Meeting Date

136
Bill Number (if applicable)

Topic False Impersonation

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road
Street

Phone 850.510.9922

Tallahassee FL 32308
City *State* *Zip*

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

Topic _____ Bill Number 136 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Criminal Justice Committee

Subject: Committee Agenda Request

Date: January 23, 2019

I respectfully request that **Senate Bill # 136**, relating to False Personation, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Darryl Rouson

Senator Darryl Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

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 160
INTRODUCER:	Criminal Justice Committee and Senator Book
SUBJECT:	Prohibited Acts in Connection with Obscene or Lewd Materials
DATE:	February 12, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 160 prohibits a person from knowingly doing any of the following with an obscene, child-like sex doll:

- Selling, lending, giving away, distributing, transmitting, showing, or transmuting;
- Offering to sell, lend, give away, distribute, transmit, show, or transmute;
- Having in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or
- Advertising in any manner.

The bill provides that a person who violates this provision commits a first degree misdemeanor, while a second or subsequent violation is a third degree felony.

The bill also prohibits a person from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise. A violation of this provision is punishable as a second degree misdemeanor and a subsequent violation is punishable as a first degree misdemeanor.

Additionally, multiple sections of law are reenacted by the bill to incorporate changes made by the bill.

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. To the extent that the felony and misdemeanor created in the bill results in persons being convicted,

the bill may result in a positive indeterminate fiscal impact on prisons and/or jails (i.e. an increase in prison and/or jail beds).

The bill is effective October 1, 2019.

II. Present Situation:

Obscenity and the Law

The First Amendment of the U.S. Constitution states that, "Congress shall make no law … abridging the freedom of speech…"[1] This language prohibits the government from having the ability to constrain the speech of citizens.[2]

However, there are some exceptions to this outright prohibition, the Supreme Court has ruled over time that some forms of speech are not protected by the First Amendment. Among the types of speech that are not protected are child pornography,[3] "fighting words," and obscenity.[4]

Case Law Prohibiting the Use of Obscenity

There have been numerous cases that have made it to the Supreme Court regarding the issue of obscenity. In 1957, the Court decided *Roth v. U.S.*, a case in which the defendant was challenging the constitutionality of a federal obscenity statute[5] that prohibited the mailing of "obscene, lewd, lascivious, indecent, filthy, or vile" materials.[6] The Court was faced with the pointed question of whether obscenity was protected speech.[7] In its analysis, the Court considered some states' laws that provided criminal punishments for using certain types of speech, such as libel and obscenity, and reasoned that it was clear that, "[T]he unconditional phrasing of the First Amendment was not intended to protect every utterance."[8]

The Court further explained that all ideas having even the slightest redeeming social importance have the full protection of the guaranties.[9] Obscenity, however, was not an essential part of any exposition of ideas and was of such slight social value that any benefit derived from its use was outweighed by the social interest in order and morality. As a result, the Court held that obscenity was not constitutionally protected speech.[10]

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[1] U.S. CONST. amend. I.
[2] Kathleen Ann Ruane, *Freedom of Speech and Press: Exceptions to the First Amendment*, Congressional Research Service, summary page, (September 8, 2014), available at https://fas.org/sgp/crs/misc/95-815.pdf (last visited January 31, 2019).
[3] "Child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical or other means, of sexually explicit conduct, where (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct. *See* 18 U.S.C.A. s. 2256.
[4] *Supra* n. 2.
[5] 18 U.S.C.A s. 1461.
[6] *Roth v. U.S.*, 354 U.S. 476, 479 (1957).
[7] *Id.* at 481.
[8] *Id.* at 482-83.
[9] *Id.* at 484.
[10] *Id.* at 485.

Though the Court had clearly declined to extend protection to obscenity, the more difficult question over time came in defining it. In *Roth*, the Court classified obscene material as that which "deals with sex in a manner appealing to *prurient* interest," and defined prurient as "material having a tendency to excite lustful thoughts."[11] Similar difficulties arose a few years later for the Court in *Jacobellis v. Ohio*, whereby a man's conviction for possession and exhibition of an obscene film hinged on whether the French film at issue was in fact obscene.[12] The Court held that the film was not obscene and it was in Justice Stewart's concurrence that he famously demonstrated the difficulty of explaining obscenity as being "indefinable" by noting, "…But I know it when I see it."[13]

It wasn't until the Court's decision of *Miller v. California* that clarity on obscenity was established with the creation of what is now commonly referred to as the Miller Test. [14] The three-prong test requires the trier of fact to consider the following factors to determine if something is obscene:

- Whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest;
- Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[15]

Obscenity Involving Minors

Federal law prohibits obscenity involving minors, and those who violate the law often face harsher penalties than if the offense involved adults only.[16] The law prohibits any individual from knowingly transferring or attempting to transfer an obscene material using any means to a minor under 16 years of age.[17] It is also prohibited for any person to knowingly produce, distribute, receive, or possess with intent to transfer or distribute material that appears to depict minors engaged in sexually explicit conduct and is deemed obscene.[18]

The test for determining whether matter involving minors is obscene is a slightly lower threshold than the *Miller* test. Material involving minors can be considered obscene if:

- It depicts an image that is, or appears to be a minor engaged in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse; and
- The image lacks serious literary, artistic, political, or scientific value.[19]

The Court tends to grant greater protections to minors, routinely upholding state statutes that penalize those who possess or disseminate obscene material relating to minors. In *New York v.*

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[11] *Id.* at 487 and n. 20.
[12] *Jacobellis v. Ohio*, 378 U.S. 184, 185-87 (1964).
[13] *Id.* at 197.
[14] *Miller v. California*, 413 U.S. 15, 24 (1973).
[15] *Id.*
[16] The United States Department of Justice, *Citizen's Guide to U.S. Federal Law on Obscenity*, available at https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-obscenity (last visited January 31, 2019).
[17] 18 U.S.C.A. s. 1470 (1998).
[18] 18 U.S.C.A. s. 1466A. (2003).
[19] *Id.*

Ferber, the defendant was convicted for distributing material that depicted a sexual performance by a minor under the age of 16 in violation of a state law that prohibited persons from knowingly promoting material that depicted such a performance. [20] In *Ferber*, the Court held that the statute at issue did not violate the First Amendment, explaining that the states have a compelling interest, and thus are granted more leeway, in regulating pornographic depictions of children.[21] The Court reasoned that such material bears so heavily on the welfare of children engaged in its production that a balance of compelling interests are struck and, therefore, these materials are not afforded the protections of the First Amendment.[22]

Florida Obscenity Laws

In *Miller*, the Court explained that state laws that regulate obscene material must be carefully limited, as written or construed, in order to adequately protect the values of the First Amendment.[23] Current Florida law defines "obscene" to mean the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct;[24] and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.[25]

The possession, custody, or control of an obscene material[26] by any person who knowingly sells, lends, gives away, distributes, transmits, shows, transmutes, offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner commits a first degree misdemeanor.[27] A subsequent violation is punishable as a third degree felony.[28]

Additionally, the possession, custody, or control of an obscene material by any person who does not have the intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise

[20] *New York v. Ferber*, 458 U.S. 747 (1982).
[21] *Ferber*, 458 U.S. at 756.
[22] *Id.* at 747-48.
[23] *Miller*, 413 U.S. 15, 24-25.
[24] "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct." Section 847.001(16), F.S.
[25] Section 847.001(10), F.S.
[26] The following materials are listed as examples of an obscene material: Any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose. Section 847.011(1)(a), F.S.
[27] Section 847.011(1)(a), F.S. A first degree misdemeanor is punishable by a state prison term not exceeding 1 year, a fine not exceeding $1,000, or both. Sections 775.082 and 775.083, F.S.
[28] Section 847.011(1)(a), F.S. A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding $5,000, or both. Sections 775.082 and 775.083, F.S.

commits a second degree misdemeanor.[29] A subsequent violation is punishable as a first degree misdemeanor.[30]

The courts have consistently held that the obscenity statute is not overbroad and that in light of the fact that obscenity is not protected by the First and Fourteenth Amendments, it is subject to limited regulation pursuant to the police power left to the states.[31]

If a violation of s. 847.011(1)(a) or (2)(b), F.S., is based on material that depicts a minor engaged in any act or conduct that is harmful to minors, such a violation is a third degree felony.[32] The penalty applies regardless of a person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent. Additionally, none of these circumstances may be raised as a defense in a prosecution.[33]

Sex Dolls

The sex toy industry is now a $15 billion industry, with projections that it will surpass $50 billion by 2020.[34] A main component in today's industry are sex dolls – a type of sex toy that is shaped and sized to resemble a human sexual partner.[35] Such dolls are engineered to warm to the human touch,[36] customizable to include accessories, and equipped with settings to change facial expressions.[37]

Sex dolls that resemble children are made overseas and imported into the U.S., where they are becoming increasingly prevalent.[38] Child-like sex dolls are robots that are made to look lifelike with prepubescent features and are engineered to warm to the human touch.[39] Such dolls are manufactured in China, Hong Kong, or Japan, and are shipped to the U.S. and labeled as clothing mannequins or models in order to avoid detection.[40] A few U.S.-based internet retailers offer these dolls for sale; however, in April 2018, Amazon announced that it will no longer sell child-like sex dolls.[41]

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[29] Section 847.011(2), F.S. A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, a fine not exceeding $500, or both. Sections 775.082 and 775.083, F.S.
[30] Section 847.011(2), F.S.
[31] *Johnson v. State*, 351 So. 2d 10, 11 (Fla. 1977).
[32] Section 847.011(1)(c), F.S.
[33] Section 847.011(1)(d), F.S.
[34] Janet Burns, *How the 'Niche' Sex Toy Market Grew Into an Unstoppable $15B Industry*, Forbes (July 15, 2016), available at https://www.forbes.com/sites/janetwburns/2016/07/15/adult-expo-founders-talk-15b-sex-toy-industry-after-20-years-in-the-fray/#49bad9be5bb9 (last visited February 1, 2019).
[35] Ally Donnelly, *Child Sex Dolls: Why Aren't They Illegal?*, NECN, (July 23, 2018), available at https://www.necn.com/news/new-england/Child-Sex-Dolls-Why-Arent-They-Illegal-488937711.html (last visited January 31, 2019).
[36] Alice B. Lloyd, *Congressman: Child Sex Dolls Are Coming – And We're Not Ready*, The Weekly Standard (March 15, 2018), available at https://www.weeklystandard.com/alice-b-lloyd/congressman-child-sex-dolls-are-coming-mdash-and-were-not-ready (last visited February 1, 2019).
[37] Alanna Vagianos, *House Passes Bill Banning Sex Dolls That Look Like Children*, Huffington Post (June 15, 2018), available at https://www.huffingtonpost.com/entry/house-passes-bill-banning-sex-dolls-that-look-like-children_us_5b23c2f7e4b07cb1712dcc7d (last visited January 31, 2019).
[38] *Supra* n. 36.
[39] *Id.*
[40] *Supra* n. 37.
[41] *Id.*

Banning Child-like Sex Dolls Outside of the U.S.

There is a growing trend toward banning both the importation and possession of child-like sex dolls. In July 2017, a judge in the United Kingdom ruled that a child-like sex doll that a man was attempting to import was obscene, which lead to his conviction for being in violation of a law banning the importation of obscene items. The judge explained that, "any right-thinking person" would consider the doll obscene.[42]

In Canada, there were at least 42 child-like sex dolls seized by Canadian border officials between January 2016 and August 2018. The dolls were seized and labeled as illegal child pornography. Despite there being no tangible scientific evidence to show child-like sex dolls lead to acts against children, a lawyer for the Canadian Centre for Child Protection explained that acting out a sexual fantasy on a realistic doll could lead someone to prey on a real child.[43]

Federal Laws Banning Child-like Sex Dolls

While there is no current ban in the U.S. on importation or private possession of child-like sex dolls, there is a federal law banning the importation of obscene matters. The law makes it a crime to bring into the U.S., or any place subject to the jurisdiction of the U.S., "[A]ny obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion picture film, paper, letter, writing, print, or other matter of indecent character…" A first-time offender of this provision shall be fined or imprisoned to a maximum term of 5 years, or both. A subsequent offense shall be subject to a fine or imprisonment of a maximum term of 10 years, or both.[44]

In 2018, legislation was passed in the House of Representatives that prohibited the importation of child-like sex dolls, robots, or mannequins.[45] The Curbing Realistic Exploitative Electronic Pedophilic Robots Act of 2017 (CREEPER Act) would have been the first law preventing the selling and distributing of child-like sex dolls and robots in the U.S.[46] Regulation of interstate commerce is within congressional power, which is why the CREEPER Act aims to stop the selling and distributing of these dolls in the U.S., rather than the possession of them. Critics of the legislation claimed that it did not go far enough, in part because the law did not criminalize possession of the dolls.[47] A similar law in the U.K. prohibits importation of the dolls, but does not prohibit possession.[48]

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[42] BBC, *Child sex doll an obscene item, judge rules*, (July 31, 2017), available at https://www.bbc.com/news/uk-40776622 (last visited February 1, 2019).
[43] Rita Celli and Kathleen Harris, *Dozens of child sex dolls seized by Canadian border agents*, CBC News, (December 12, 2018), available at https://www.cbc.ca/news/politics/cbsa-border-child-sex-dolls-1.4941213 (last visited February 1, 2019).
[44] 18 U.S.C.A. s. 1462 (1996).
[45] H.R. 4655, 115th Congress 2d Session (2017).
[46] *Supra* n. 37.
[47] *Supra* n. 35.
[48] Dr. Marie-Helen Maras and Dr. Lauren R. Shapiro, *Child Sex Dolls and Robots: More Than Just an Uncanny Valley*, Journal of Internet Law, pg. 14 (December 2017), available at https://www.researchgate.net/publication/321137227_Child_Sex_Dolls_and_Robots_More_Than_Just_an_Uncanny_Valley (last visited February 5, 2019).

The legislative findings of the CREEPER Act expressed concern that the dolls make rape easier by teaching the rapist how to subdue the victim and overcome resistance.[49] With this, some have expressed concern that the life-like nature of the dolls can serve as a stepping stone toward committing an actual rape by permitting those unsure about their desires to test them out on the dolls. Others have suggested that these child-like sex dolls can normalize a pedophile's behaviors and potentially shift society's norms to make pedophilia more socially acceptable.[50]

While possession and distribution of child pornography is criminalized in the U.S., both courts and experts alike have maintained that possession of a child-like sex doll is not considered to be child pornography. In Kentucky, a county judge dropped child pornography charges against a man who was arrested after police tracked a package from China to the man's home that contained two child-like sex dolls. The judge dismissed the case because there was no actual child involved.[51] In July 2018, police officers went to a man's home in Shirley, Massachusetts, after being notified by eBay that he had purchased a child-like sex doll. This purchase, coupled with a previous eBay purchase of "a doll with the height and weight of an average 8-year-old girl" prompted police to get a search warrant for the man's home. During the search, officers found the doll, which he was not charged for having, and child pornography, which lead to his arrest.[52]

III. Effect of Proposed Changes:

The bill prohibits a person from knowingly doing any of the following with an obscene, child-like sex doll:

- Selling, lending, giving away, distributing, transmitting, showing, or transmuting;
- Offering to sell, lend, give away, distribute, transmit, show, or transmute;
- Having in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or
- Advertising in any manner.

The bill provides that a person who violates this provision commits a first degree misdemeanor and a second or subsequent violation is a third degree felony.

The bill also prohibits a person from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise. A violation of this provision is punishable as a second degree misdemeanor and a subsequent violation is punishable as a first degree misdemeanor.

The bill reenacts ss. 772.102, 847.02, 847.03, 847.09, 895.02, 921.0022, 933.02, 933.03, and 943.325, F.S., for the purpose of incorporating the amendments made by the bill to s. 847.011, F.S., in reference to that statute.

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[49] H.R. 4655, 115th Congress 2d Session (2017).
[50] John F. Banzhaf, *House Bans Child Sex Dolls – As Legal Expert Suggested*, ValueWalk, (June 13, 2018), available at https://www.valuewalk.com/2018/06/house-bans-child-sex-dolls/ (last visited February 1, 2019).
[51] WKRC, *Kenton County man who police say bought child sex dolls no longer facing charges*, (October 4, 2018), available at https://local12.com/news/local/kenton-county-man-who-police-say-bought-child-sex-dolls-no-longer-facing-charges (last visited February 1, 2019).
[52] *Supra* n. 35.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The First Amendment of the U.S Constitution prevents the government from creating laws that restrict the speech of citizens. The bill makes it a crime to knowingly possess, intend to sell or lend, among other things, an obscene child-like sex doll. To the extent that this prohibition restricts a person's right to free speech, the bill may implicate the First Amendment. However, such a provision would likely be upheld as the courts have routinely not extended protection to obscene speech.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. To the extent that the felony and misdemeanor created in the bill results in persons being convicted for a felony or misdemeanor, the bill may result in a positive indeterminate fiscal impact on prisons and/or jails (i.e. an increase in prison and/or jail beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 847.011 of the Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 772.102, 847.02, 847.03, 847.09, 895.02, 921.0022, 933.02, 933.03, and 943.325.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The Committee Substitute provides that it is a second degree misdemeanor for a person to knowingly have possession, custody, or control of an obscene, child-like sex doll, with a subsequent violation being punishable as a first degree misdemeanor.

B. Amendments:

None.

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

891082

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
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	.	

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

Senate Amendment (with title amendment)

Between lines 43 and 44

insert:

(c) A person who knowingly has in his or her possession, custody, or control an obscene, child-like sex doll without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating

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this subsection, thereafter violates any of its provisions commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it is not necessary to allege or prove the absence of such intent.

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

And the title is amended as follows:

Delete line 10

and insert:

criminal penalties; prohibiting a person from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll without the intent to commit certain actions; providing criminal penalties; reenacting ss. 772.102(1)(a),

By Senator Book

32-00071-19 2019160__

A bill to be entitled

An act relating to prohibited acts in connection with obscene or lewd materials; amending s. 847.011, F.S.; prohibiting a person from knowingly selling, lending, giving away, distributing, transmitting, showing, or transmuting; offering to commit such actions; having in his or her possession, custody, or control with the intent to commit such actions; or advertising in any manner an obscene, child-like sex doll; providing criminal penalties; reenacting ss. 772.102(1)(a), 847.02, 847.03, 847.09(2), 895.02(8)(a), 921.0022(3)(f), 933.02, 933.03, and 943.325(2)(g), F.S., relating to the definition of the term "criminal activity," the confiscation of obscene material, an officer seizing obscene material, legislative intent, the definition of the term "racketeering activity," level 6 of the offense severity ranking chart, grounds for the issuance of a search warrant, destruction of obscene prints and literature, and the definition of the term "qualifying offender," respectively, to incorporate the amendment made to s. 847.011, F.S., in references thereto; providing an effective date.

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

Section 1. Present subsections (5) through (10) of section 847.011, Florida Statutes, are redesignated as subsections (6) through (11), respectively, and a new subsection (5) is added to that section, to read:

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

32-00071-19 2019160__

847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.—

(5)(a) A person may not knowingly sell, lend, give away, distribute, transmit, show, or transmute; offer to sell, lend, give away, distribute, transmit, show, or transmute; have in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or advertise in any manner an obscene, child-like sex doll. A person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who is convicted of violating paragraph (a) a second or subsequent time commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 772.102, Florida Statutes, is reenacted to read:

772.102 Definitions.—As used in this chapter, the term:

(1) "Criminal activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by indictment or information under the following provisions:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 414.39, relating to public assistance fraud.

3. Section 440.105 or s. 440.106, relating to workers' compensation.

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

4. Part IV of chapter 501, relating to telemarketing.

5. Chapter 517, relating to securities transactions.

6. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

7. Chapter 550, relating to jai alai frontons.

8. Chapter 552, relating to the manufacture, distribution, and use of explosives.

9. Chapter 562, relating to beverage law enforcement.

10. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

11. Chapter 687, relating to interest and usurious practices.

12. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

13. Chapter 782, relating to homicide.

14. Chapter 784, relating to assault and battery.

15. Chapter 787, relating to kidnapping or human trafficking.

16. Chapter 790, relating to weapons and firearms.

17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

18. Chapter 806, relating to arson.

19. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.

20. Chapter 812, relating to theft, robbery, and related crimes.

21. Chapter 815, relating to computer-related crimes.

22. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

23. Section 827.071, relating to commercial sexual exploitation of children.

24. Chapter 831, relating to forgery and counterfeiting.

25. Chapter 832, relating to issuance of worthless checks and drafts.

26. Section 836.05, relating to extortion.

27. Chapter 837, relating to perjury.

28. Chapter 838, relating to bribery and misuse of public office.

29. Chapter 843, relating to obstruction of justice.

30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

32. Chapter 893, relating to drug abuse prevention and control.

33. Section 914.22 or s. 914.23, relating to witnesses, victims, or informants.

34. Section 918.12 or s. 918.13, relating to tampering with jurors and evidence.

Section 3. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, section 847.02, Florida Statutes, is reenacted to read:

847.02 Confiscation of obscene material.—Whenever anyone is convicted under s. 847.011, the court in awarding sentence shall

make an order confiscating said obscene material and authorize the sheriff of the county in which the material is held to destroy the same. The sheriff shall file with the court a certificate of his or her compliance.

Section 4. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, section 847.03, Florida Statutes, is reenacted to read:

847.03 Officer to seize obscene material.—Whenever any officer arrests any person charged with any offense under s. 847.011, the officer shall seize said obscene material and take the same into his or her custody to await the sentence of the court upon the trial of the offender.

Section 5. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, subsection (2) of section 847.09, Florida Statutes, is reenacted to read:

847.09 Legislative intent.—

(2) Nothing in ss. 847.07-847.09 shall be construed to repeal or in any way supersede the provisions of s. 847.011, s. 847.012, or s. 847.013.

Section 6. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, paragraph (a) of subsection (8) of section 895.02, Florida Statutes, is reenacted to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(8) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or s. 440.106, relating to workers' compensation.

7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

9. Section 499.0051, relating to crimes involving contraband, adulterated, or misbranded drugs.

10. Part IV of chapter 501, relating to telemarketing.

11. Chapter 517, relating to sale of securities and investor protection.

12. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

13. Chapter 550, relating to jai alai frontons.

14. Section 551.109, relating to slot machine gaming.

15. Chapter 552, relating to the manufacture, distribution,

and use of explosives.

16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

17. Chapter 562, relating to beverage law enforcement.

18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

19. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

20. Chapter 687, relating to interest and usurious practices.

21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

23. Section 777.03, relating to commission of crimes by accessories after the fact.

24. Chapter 782, relating to homicide.

25. Chapter 784, relating to assault and battery.

26. Chapter 787, relating to kidnapping or human trafficking.

27. Chapter 790, relating to weapons and firearms.

28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of

increasing a criminal gang member's own standing or position within a criminal gang.

29. Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

30. Chapter 806, relating to arson and criminal mischief.

31. Chapter 810, relating to burglary and trespass.

32. Chapter 812, relating to theft, robbery, and related crimes.

33. Chapter 815, relating to computer-related crimes.

34. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, credit card crimes, and patient brokering.

35. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

36. Section 827.071, relating to commercial sexual exploitation of children.

37. Section 828.122, relating to fighting or baiting animals.

38. Chapter 831, relating to forgery and counterfeiting.

39. Chapter 832, relating to issuance of worthless checks and drafts.

40. Section 836.05, relating to extortion.

41. Chapter 837, relating to perjury.

42. Chapter 838, relating to bribery and misuse of public office.

43. Chapter 843, relating to obstruction of justice.

44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or

gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 7. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, paragraph (f) of subsection (3) of section 921.0022, Florida Statutes, is reenacted to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or

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		subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.

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784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.

784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.

790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.

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810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $300 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm

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		robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.

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827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.

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847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm,

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		weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

Section 8. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, section 933.02, Florida Statutes, is reenacted to read:

933.02 Grounds for issuance of search warrant.—Upon proper affidavits being made, a search warrant may be issued under the provisions of this chapter upon any of the following grounds:

(1) When the property shall have been stolen or embezzled in violation of law;

(2) When any property shall have been used:

(a) As a means to commit any crime;

(b) In connection with gambling, gambling implements and appliances; or

(c) In violation of s. 847.011 or other laws in reference to obscene prints and literature;

(3) When any property constitutes evidence relevant to proving that a felony has been committed;

(4) When any property is being held or possessed:

(a) In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;

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(b) In violation of the fish and game laws;

(c) In violation of the laws relative to food and drug; or

(d) In violation of the laws relative to citrus disease pursuant to s. 581.184; or

(5) When the laws in relation to cruelty to animals, as provided in chapter 828, have been or are violated in any particular building or place.

This section also applies to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.

Section 9. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, section 933.03, Florida Statutes, is reenacted to read:

933.03 Destruction of obscene prints and literature.—All obscene prints and literature, or other things mentioned in s. 847.011 found by an officer in executing a search warrant, or produced or brought into court, shall be safely kept so long as is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the case is brought.

Section 10. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, paragraph (g) of subsection (2) of section 943.325, Florida Statutes, is reenacted to read:

943.325 DNA database.—

(2) DEFINITIONS.—As used in this section, the term:

(g) "Qualifying offender" means any person, including

juveniles and adults, who is:

1.a. Committed to a county jail;

b. Committed to or under the supervision of the Department of Corrections, including persons incarcerated in a private correctional institution operated under contract pursuant to s. 944.105;

c. Committed to or under the supervision of the Department of Juvenile Justice;

d. Transferred to this state under the Interstate Compact on Juveniles, part XIII of chapter 985; or

e. Accepted under Article IV of the Interstate Corrections Compact, part III of chapter 941; and who is:

2.a. Convicted of any felony offense or attempted felony offense in this state or of a similar offense in another jurisdiction;

b. Convicted of a misdemeanor violation of s. 784.048, s. 810.14, s. 847.011, s. 847.013, s. 847.0135, or s. 877.26, or an offense that was found, pursuant to s. 874.04, to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03; or

c. Arrested for any felony offense or attempted felony offense in this state.

Section 11. This act shall take effect October 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.11.18
Meeting Date

160
Bill Number (if applicable)

Topic Prohibited Acts with Obscene or Lewd Materials

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road
Street

Phone 850.510.9922

Tallahassee *City* FL *State* 32308 *Zip*

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

Topic _____ Bill Number 160 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 186
INTRODUCER:	Senator Lee
SUBJECT:	Public Records/Victim of Mass Violence
DATE:	February 8, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Favorable**
2.			GO	
3.			RC	

I. Summary:

SB 186 amends s. 406.136, F.S., and transfers this section to s. 119.071, F.S. The bill expands an existing public records exemption to make confidential and exempt photographs and video and audio recordings that depict or record the killing of a victim of mass violence. Currently, s. 406.136, F.S., only makes confidential and exempt the photographs and video and audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties. The current exemption and the exemption created by the bill only apply to such photographs or recordings held by an agency.

The bill defines the term "killing of a victim of mass violence" as "all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which three or more people, not including the perpetrator, are killed by an intentional act of violence by another person."

The bill specifies who may obtain such photographs and recordings, the process of obtaining these materials pursuant to a court order when good cause is shown, and factors a court must consider in determining good cause.

The bill provides that it is a third degree felony for any custodian of such photographs and recordings to willfully and knowingly violate the exemption requirements. The Legislature's Office of Economic and Demographic Research preliminarily estimates this penalty provision will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).

The exemption is retroactive and applies to all such photographs or recordings. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of the act, which restrict or limit access to any such photographs or recordings.

The bill provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemptions in s. 119.071(4)(d), F.S., are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill is effective upon becoming a law.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.[3] The Public Records Act states

> [i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[4]

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.[5] Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Public records laws are found throughout the Florida Statutes.
[4] Section 119.01(1), F.S.
[5] *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

Only the Legislature may create an exemption to public records requirements.[10] An exemption must be created by general law and must specifically state the public necessity justifying the exemption.[11] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[12] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[13]

When creating or expanding a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[14] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[15]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,[16] with

[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).

[8] Section 119.07(1)(a), F.S.

[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

[10] FLA. CONST., art. I, s. 24(c).

[11] *Id.*

[12] The bill may, however, contain multiple exemptions that relate to one subject.

[13] FLA. CONST., art. I, s. 24(c).

[14] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

[16] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

specified exceptions.[17] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[18] The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[19]

Exemption for Photographs and Recordings Depicting the Killing of a Law Enforcement Officer

In 2011, the Legislature created s. 406.136, F.S., which provided a public record exemption for photographs and video and audio recordings that depict or record the killing of *a person*.[20] In 2016, the Legislature elected not to reenact the exemption as originally enacted but rather to narrow the exemption so that it applies only to photographs and video and audio recordings that depict the killing of *a law enforcement officer who was acting in accordance with his or her official duties.*[21] These photographs and video and audio recordings are confidential and exempt from public record requirements, except that the exemption permits a surviving spouse to view or copy any such photograph or video recording and listen to or copy any such audio recording.[22] If there is no surviving spouse, the deceased's surviving parents may access the records, and if there are no surviving parents, an adult child of the deceased may access the records.[23] The surviving relative who has the authority to access the records may designate in writing an agent to obtain them.[24]

In addition, a local governmental entity or a state or federal agency, in furtherance of its official duties and pursuant to a written request, may view or copy any such photograph or video recording and listen to or copy any such audio recording. Unless otherwise required in the performance of the entity's or agency's duties, the identity of the deceased must remain confidential and exempt.[25]

Persons other than those covered by these exceptions may only have access to such photographs and recordings if they obtain a court order. Upon a showing of good cause, a court may issue an order authorizing any person to view or copy any such photograph or video recording and listen to or copy any such audio recording. The court may prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider:

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[17] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[18] Section 119.15(3), F.S.
[19] Section 119.15(6)(b), F.S.
[20] Chapter 2011-115, L.O.F. (creating s. 406.136, F.S., effective July 1, 2011). "Killing of a person" was defined to mean all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death. Section 406.136(1), F.S. (2015).
[21] Chapter 2016-214, L.O.F. The term "killing of a law enforcement officer who was acting in accordance with his or her official duties" is defined to mean all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death. Section 406.136(1), F.S.
[22] Section 406.136(2), F.S.
[23] *Id.*
[24] Section 406.136(3)(a), F.S.
[25] Section 406.136(3)(b), F.S.

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.[26]

In all cases, the viewing, copying, listening to, or other handling of any such photograph or recording must be under the direct supervision of the custodian of the record or the custodian's designee.[27]

If a petition is filed with the court to view, listen to, or copy such photograph or recording, a surviving spouse must be given reasonable notice that the petition has been filed, a copy of the petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, notice must be given to the parents of the deceased and, if the deceased has no living parent, then to the adult children of the deceased.[28]

It is a third degree felony for any custodian of such photographs or recordings to willfully and knowingly violate these provisions.[29] The same penalty applies to anyone who willfully and knowingly violates a court order issued under these provisions.[30]

The exemption does not apply to photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, nothing prohibits a court in such proceedings, upon good cause shown, from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recording in the same manner as previously described.[31]

The exemption is retroactive and applies to all such photographs or recordings, regardless of whether the killing of the person occurred before, on, or after July 1, 2011. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of the act, which restrict or limit access to any such photographs or recordings.[32]

Exemptions Which May Apply to Murder Victims

Several existing public records exemptions may apply to certain records or information relating to murder victims:

[26] Section 406.136(4), F.S.
[27] Section 406.136(4)(c), F.S.
[28] Section 406.136(5), F.S.
[29] Section 406.136(6)(a), F.S. A third degree felony is punishable by a term of imprisonment up to 5 years, a fine up to $5,000, or both. Sections 775.082 and 775.083, F.S.
[30] Section 406.136(6)(b), F.S.
[31] Section 406.136(6)(c), F.S.
[32] Section 406.136(7), F.S.

- Active criminal intelligence information[33] and active criminal investigative information[34] are exempt from public disclosure;[35]
- The address of a victim of an incident of mass violence is exempt from public disclosure;[36] and
- A photograph or video or audio recording of an autopsy held by a medical examiner is confidential and exempt from public disclosure.[37]

III. Effect of Proposed Changes:

The bill amends s. 406.136, F.S., and transfers this section to s. 119.071, F.S.[38] The bill expands an existing public records exemption to make confidential and exempt photographs and video and audio recordings that depict or record *the killing of a victim of mass violence*. Currently, s. 406.136, F.S., makes confidential and exempt the photographs and video and audio recordings that depict or record the killing of *a law enforcement officer who was acting in accordance with his or her official duties*. The current exemption and the exemption created by the bill only apply to such photographs or recordings held by an agency.

The bill defines the term "killing of a victim of mass violence" as "all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which three or more people, not including the perpetrator, are killed by an intentional act of violence by another person."[39]

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[33] Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Such information is "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Section 119.011(3)(d)1., F.S.

[34] Section 119.011(3)(b), F.S., defines "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Such information is "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Section 119.011(3)(d)2., F.S.

[35] Criminal intelligence information and criminal investigative information does not include the name, sex, age, and address of a person arrested or of the victim of a crime. Section 119.011(3)(c) 2., F.S.

[36] Section 119.071(2)(o), F.S. For purposes of this paragraph, the term "incident of mass violence" means an incident in which four or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. *Id.*

[37] Section 406.135(2), F.S. The exemption contains an exception for the surviving spouse (and other designated persons if the spouse is deceased) and a local governmental entity, or a state or federal agency, in furtherance of its official duties, without a court order. Section 406.135(2) and (3), F.S. The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording of an autopsy and may prescribe any restrictions or stipulations that the court deems appropriate. Section 406.135(4)(a), F.S. A criminal or administrative proceeding is exempt from s. 406.135, F.S., but unless otherwise exempted, is subject to all other provisions of ch. 119, F.S., provided however that this section does not prohibit a court in such proceedings upon good cause shown from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner prescribed in this section. Section 406.135(7), F.S.

[38] Specifically, s. 406.136, F.S., is transferred , renumbered as s. 119.071(2)(p), F.S., and amended.

[39] This definition differs from the definition of "incident of mass violence" in s. 119.071(2)(o), F.S., which exempts from public disclosure the address of a victim of an incident of mass violence. *See* Footnote 36 of this analysis.

The bill also retains provisions relevant to the current exemption and applies them to the new exemption, including:

- Specifying who may obtain such photographs and recordings, the process of obtaining these materials pursuant to a court order when good cause is shown, and factors a court must consider in determining good cause;
- Providing that it is a third degree felony for any custodian of such photographs and recordings to willfully and knowingly violate the exemption requirements;
- Specifying that the exemption is retroactive and applies to all such photographs or recordings; and
- Providing that the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to such photographs or recordings.[40]

The bill provides a public necessity statement as required by the State Constitution. The statement includes legislative findings regarding photographs and video and audio recordings that depict or record the killing of a victim of mass violence. These findings indicate:

- Such photographs and recordings render a graphic and often disturbing visual or aural representation of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and detract from the memory of the deceased;
- Widespread unauthorized dissemination of such photographs and recordings would subject the immediate family of the deceased to continuous injury;
- Dissemination of such photographs and recordings is harmful to the public because terrorists will use them to attract followers, bring attention to their cause, and inspire others to kill, and such dissemination may also educe violent acts by the mentally ill or morally corrupt;
- There continues to be other types of available information, such as crime scene reports, which are available and which are less intrusive and injurious to the immediate family of the deceased and continue to provide for public oversight; and
- The exemption should be given retroactive application because it is remedial in nature.

The bill provides for repeal of the exemption on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill is effective upon becoming a law.[41]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[40] See "Present Situation" section of this analysis for a detailed discussion of these provisions.
[41] The bill also directs the Division of Law Revision to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. Because the bill expands a public record exemption, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

There are substantial legislative findings in the statement of public necessity in support of the public records exemption. Further, upon a showing of good cause, a court may issue an order authorizing any person to view or copy any such photograph or video or audio recording (subject to any restrictions or stipulations that the court deems appropriate). For these reasons, the bill appears to be no broader than necessary to accomplish its stated purpose.

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 agencies relating to training and redaction of exempt information. However, costs may be minimal if they can be absorbed by the agencies because training and redaction of exempt information are part of the day-to-day responsibilities of agencies.

The bill provides that it is a third degree felony for any custodian of photographs and video and audio recordings that depict or record the killing of a victim of mass violence to willfully and knowingly violate the exemption requirements.

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research preliminarily estimates this penalty provision will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 406.136 of the Florida Statutes, and transfers this section to section 119.071 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Lee

20-01583A-19 2019186__

A bill to be entitled

An act relating to public records; transferring, renumbering, and amending s. 406.136, F.S.; defining the term "killing of a victim of mass violence"; expanding an existing exemption from public records requirements for a photograph or a video or audio recording held by an agency which depicts or records the killing of a law enforcement officer to include a photograph or a video or audio recording held by an agency which depicts or records the killing of a victim of mass violence; providing criminal penalties; providing retroactive applicability; providing for future legislative review and repeal of the exemption; conforming provisions to changes made by the act; providing a statement of public necessity; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Section 406.136, Florida Statutes, is transferred, renumbered as paragraph (p) of subsection (2) of section 119.071, Florida Statutes, and amended, to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(p)1.~~(1)~~ As used in this paragraph ~~section~~, the term:

a. "Killing of a law enforcement officer who was acting in accordance with his or her official duties" means all acts or

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20-01583A-19 2019186__

events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

b. "Killing of a victim of mass violence" means all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which three or more people, not including the perpetrator, are killed by an intentional act of violence by another person.

2.~~(2)~~ A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, ~~then~~ the surviving parents shall have access to such records. If there is no surviving spouse or parent, the ~~then an~~ adult children ~~child~~ shall have access to such records.

3.a.~~(3)(a)~~ The deceased's surviving relative, with whom authority rests to obtain such records, may designate in writing an agent to obtain such records.

b.~~(b)~~ A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a law enforcement officer who was acting in

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accordance with his or her official duties or the killing of a victim of mass violence, and, unless otherwise required in the performance of its ~~their~~ duties, the identity of the deceased shall remain confidential and exempt.

c.~~(c)~~ The custodian of the record, or his or her designee, may not permit any other person to view or copy such photograph or video recording or listen to or copy such audio recording without a court order.

4.a.~~(4)(a)~~ The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, or to listen to or copy an audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, and may prescribe any restrictions or stipulations that the court deems appropriate.

b.~~(b)~~ In determining good cause, the court shall consider:

(I)~~1.~~ Whether such disclosure is necessary for the public evaluation of governmental performance;

(II)~~2.~~ The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and

(III)~~3.~~ The availability of similar information in other public records, regardless of form.

c.~~(c)~~ In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording that

depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence must be under the direct supervision of the custodian of the record or his or her designee.

5.~~(5)~~ A surviving spouse shall be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, or to listen to or copy any such audio recording, a copy of such petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, ~~then~~ such notice must be given to the parents of the deceased and, if the deceased has no surviving ~~living~~ parent, ~~then~~ to the adult children of the deceased.

6.a.~~(6)(a)~~ Any custodian of a photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence who willfully and knowingly violates this paragraph ~~section~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b.~~(b)~~ Any person who willfully and knowingly violates a court order issued pursuant to this paragraph ~~section~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

c.~~(c)~~ A criminal or administrative proceeding is exempt from this paragraph ~~section~~ but, unless otherwise exempted, is

subject to all other provisions of chapter 119;~~, provided~~ however~~,~~ ~~that~~ this paragraph ~~section~~ does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recording ~~recordings~~ in the manner prescribed in this paragraph ~~herein~~.

7.~~(7)~~ The ~~This~~ exemption in this paragraph shall be given retroactive application and shall apply to all photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, regardless of whether the killing of the person occurred before, on, or after the effective date of this act ~~July 1, 2011~~. However, nothing in this paragraph ~~herein~~ is intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence.

8.~~(8)~~ This paragraph ~~section only~~ applies only to such photographs and video and audio recordings held by an agency ~~as defined in s. 119.011~~.

9. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that photographs and video and audio recordings that depict or record the killing of a victim of mass violence be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that photographs and video and audio recordings that depict or record the killing of a victim of mass violence render a graphic and often disturbing visual or aural representation of the deceased. Such photographs and video and audio recordings provide a view of the deceased in the final moments of life, in which they are often bruised, bloodied, broken, baring bullet wounds or other wounds, lacerated, dismembered, or decapitated. As such, photographs and video and audio recordings that depict or record the killing of a victim of mass violence are highly sensitive representations of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and detract from the memory of the deceased. The Legislature recognizes that the existence of the Internet and the proliferation of personal computers and cellular telephones throughout the world encourages and promotes the wide dissemination of such photographs and video and audio recordings 24 hours a day and that widespread unauthorized dissemination of such photographs and video and audio recordings would subject the immediate family of the deceased to continuous injury.

(2) In addition to the emotional and mental injury that these photographs and video and audio recordings may cause family members, the Legislature is also concerned that

dissemination of photographs and video and audio recordings that depict or record the killing of a victim of mass shooting is harmful to the public. The Legislature is gravely concerned and saddened by the horrific mass killings perpetrated at the Pulse nightclub in Orlando, at the Fort Lauderdale-Hollywood International Airport, and at Marjory Stoneman Douglas High School. The Legislature is concerned that, if these photographs and video and audio recordings are released, terrorists will use them to attract followers, bring attention to their causes, and inspire others to kill. The Legislature also finds that dissemination of these photographs and video and audio recordings may also educe violent acts by persons who have a mental illness or who are morally corrupt.

(3) The Legislature further recognizes that other types of information, such as crime scene reports, continue to be available which are less intrusive and injurious to the immediate family of the deceased and continue to provide for public oversight. The Legislature further finds that the exemption provided in this act should be given retroactive application because it is remedial in nature.

Section 3. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 4. This act shall take effect upon becoming a law.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

SB 186
Bill Number (if applicable)

Topic Pulbic Records/Vicitm of Mass Violence

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788
Street

Phone 850-521-3042

Tallahassee FL 32302
City *State* *Zip*

Email scott.mccoy@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

186
Bill Number (if applicable)

Topic Public Record - Victims of Mass Violence
Amendment Barcode (if applicable)

Name Monica Hofheinz

Job Title Assistant State Attorney

Address 17th Judicial Circuit - Broward County
Street

Fort Lauderdale FL 33301
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Phone 954-831-8543

Email hofsa17@sao17.state.fl.us

Speaking: ☑ For ☐ Against ☐ Information

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

Representing State Attorney Mike Satz

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.11.19
Meeting Date

186
Bill Number (if applicable)

Topic Public Records/Victim of Mass Violence

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road
Street

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Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

186
Bill Number (if applicable)

Topic Public Records of Mass Violence

Amendment Barcode (if applicable)

Name Mercer Fearington

Job Title SSA

Address PO Box 10570
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Phone 671 4401

Tallahassee FL 32302
City *State* *Zip*

Email fearington@sostrategy.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19	186
Meeting Date	*Bill Number (if applicable)*

Topic Public Records/Victims of Mass Violence	*Amendment Barcode (if applicable)*

Name Daphnee Sainvil

Job Title Legislative Policy Advisor

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Phone 954-253-7320

Fort Lauderdale	FL	33301
City	*State*	*Zip*

Email dsainvil@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County Board of County Commissioners

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)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 1, 2019

I respectfully request that **Senate Bill #186**, relating to Public Records/ Victim of Mass Violence, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom Lee

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

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 204
INTRODUCER:	Criminal Justice Committee and Senator Brandes
SUBJECT:	Detention Facilities
DATE:	February 12, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 204 requires a law enforcement officer to electronically record the entirety of a custodial interrogation if it:

- Takes place at a place of detention; and
- Relates to a covered offense.

A place of detention is defined to mean a police station, sheriff's office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual.

The covered offenses specified by the bill include arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, the unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, aggravated stalking, home-invasion robbery, and carjacking.

Other provisions of the bill:

- Define terms;
- Provide exceptions to the recording requirement;

- Require a court to consider an officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a statement;
- Require a law enforcement officer to write a report explaining why he or she did not record the custodial interrogation;
- Require a law enforcement officer to write a report explaining why a custodial interrogation was conducted at a place *other than a place of detention*;
- Allow a defendant to request and receive a cautionary jury instruction when a non-recorded statement from a custodial interrogation is admitted into evidence;
- Make a law enforcement agency immune from civil liability for a violation of the requirement to record an interrogation if the agency enforces rules that are reasonably designed to insure compliance with the requirement;
- Specify that the bill does not create a cause of action against a law enforcement officer;
- Add cellular telephones and portable communications devices to the list of articles that are considered contraband at a county detention facility; and
- Reduce the penalty for smuggling or possessing less serious types of contraband articles on the grounds of a county detention facility.

The bill is effective January 1, 2020.

II. Present Situation:

Constitutional Protections and Court Decisions Interpreting and Applying Those Protections

The Fifth Amendment of the United States Constitution states that "No person . . . shall be compelled in any criminal case to be a witness against himself."[1] Likewise, the Florida Constitution extends the same protection.[2] The voluntariness of a defendant's statement and the admissibility of the statement against him or her in court is a creature of both case law and statutory law in Florida.

Custodial Interrogation

Whether a person is in custody and under interrogation is the threshold question that determines the need for a law enforcement officer to advise the person of his or her *Miranda* rights.[3] In *Traylor v. State*, the Supreme Court of Florida found that "[T]o ensure the voluntariness of confessions, the Self–Incrimination Clause of Article I, Section 9, Florida Constitution, requires that prior to custodial interrogation in Florida suspects must be told that they have a right to remain silent, that anything they say will be used against them in court . . . ."[4]

[1] U.S. Const. amend. V.
[2] "No person shall be . . . compelled in any criminal matter to be a witness against himself." FLA. CONST. article I, s. 9.
[3] In *Miranda v. Arizona,* 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.
[4] 596 So. 2d 957, 965-966 (Fla. 1992).

The test to determine if a person is in custody for the purposes of one's *Miranda* rights, is whether "a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest."[5]

An interrogation occurs "when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response."[6]

Waiver of the Right to Remain Silent

A person subjected to a custodial interrogation is entitled to the protections of *Miranda*.[7] The warning must include the right to remain silent as well as the explanation that anything a person says can be used against them in court. The warning includes both parts because it is important for a person to be aware of his or her right and the consequences of waving such a right.[8]

Admissibility of a Defendant's Statement as Evidence

The admissibility of a defendant's statement is a mixed question of fact and law decided by the court during a pretrial hearing or during the trial outside the presence of the jury.[9] For a defendant's statement to become evidence in a criminal case, the judge must first determine whether the statement was freely and voluntarily given to a law enforcement officer during the custodial interrogation of the defendant. The court looks to the totality of the circumstances of the statement to determine if it was voluntarily given.[10]

The court can consider testimony from the defendant and any law enforcement officers involved, their reports, and any additional evidence such as audio or video recordings of the custodial interrogation.

As discussed above, the courts use a "reasonable person" standard in making the determination of whether the defendant was in custody at the time he or she made a statement.[11] The court considers, given the totality of the circumstances, whether a reasonable person in the defendant's position would have believed he or she was free to terminate the encounter with law enforcement and, therefore, was not in custody.[12] Among the circumstances or factors the courts have considered are:

- The manner in which the police summon the suspect for questioning;
- The purpose, place, and manner of the interrogation;
- The extent to which the suspect is confronted with evidence of his or her guilt; and
- Whether the suspect is informed that he or she is free to leave the place of questioning.[13]

[5] *Id.* at 966 at n. 16.
[6] *Id.* at 966 at n. 17.
[7] *See Miranda v. Arizona,* 384 U.S. 436, 444 (1966).
[8] *Sliney v. State*, 699 So. 2d 662, 669 (Fla. 1997), *cert. denied,* 522 U.S. 1129 (1998).
[9] *Nickels v. State*, 90 Fla. 659, 668 (1925).
[10] *Supra* n. 8 at 667.
[11] *Supra* n. 5.
[12] *Voorhees v. State*, 699 So. 2d 602, 608 (Fla. 1997).
[13] *Ramirez v. State*, 739 So. 2d 568, 574 (Fla. 1999).

The court will also determine whether the defendant was made aware of his or her *Miranda* rights and whether he or she knowingly, voluntarily, and intelligently elected to waive those rights and give a statement.[14]

Even if the court deems the statement admissible and the jury hears the evidence, defense counsel will be able to cross-examine any witnesses who testify and have knowledge of the circumstances surrounding the defendant's statement. Additionally, counsel may argue to the jury in closing argument that the statement was coerced in some way by a law enforcement officer.

Interrogation Recording in Florida

Law enforcement agencies in Florida are not currently required to record the custodial interrogation of a crime suspect, either by audio, video, or a combination of means. Fifty-seven agencies in Florida voluntarily record custodial interrogations, at least to some extent.[15]

Other States

Currently twenty-three states and the District of Columbia record custodial interrogations statewide.[16] These states have statutes, court rules, or court cases that require law enforcement officers to make the recordings or allow the court to consider the failure to record a statement in determining the admissibility of a statement.[17]

Contraband Articles at County Detention Facilities

Existing law declares that a number of items are contraband when a person smuggles or possesses them on the grounds of a county detention facility. These articles include: written or recorded communications, currency and coins, food and clothing, tobacco products, including cigarettes and cigars, intoxicating beverages, various drugs and controlled substances, firearms and dangerous weapons, and items that may aid escape attempts.[18] A person who smuggles or

[14] *Supra* n. 8 at 668.
[15] *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 36-37, August 2016, National Association of Criminal Defense Lawyers, https://www.nacdl.org/electronicrecordingproject (last viewed January 24, 2019). *See also Electronic Recording of Suspect Interrogations*, Interim Report 2004-123, Florida Senate Committee on Criminal Justice, http://archive.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-123cj.pdf (last viewed January 28, 2019).
[16] *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 7-8, August 2016, National Association of Criminal Defense Lawyers, https://www.nacdl.org/electronicrecordingproject (last viewed January 24, 2019).
[17] *See Stephan v. State*, 711 P.2d 1156 (AK 1985); Ark. R. Crim. P. Rule 4.7 (2012); Cal Pen Code s. 859.5 (2016) and Cal Wel & Inst Code s. 626.8 (2014); C.R.S. 16-3-601 (2016); CT Gen. Stat. s. 54-1*o* (2011); D.C. Code s. 5-116.01 (2005); Hawaii was verified by the four departments that govern law enforcement in the state; 705 ILCS 405/5-401.5 (2016), 725 ILCS 5/103-2.1 (2017); Ind. R. Evid. 617 (2014); 25 M.R.S. s. 2803-B(1)(K) (2015); Md. CRIMINAL PROCEDURE Code Ann. ss. 2-401 – 2-402 (2008); MCLS ss. 763.7 – 763.9 (2013)**;** *State v. Scales*, 518 N.W.2d 587 (MN 1994); MO Rev. Stat. s. 590.700 (2017); MT Code Ann. ss. 46-4-406 – 46-4-411 (2009); NE Rev. Stat. Ann. ss. 29-4501 – 29-4508 (2008); NJ Court Rules, R. 3:17 (2006); N.M. Stat. Ann. s. 29-1-16 (2006); N.C. Gen. Stat. s. 15A-211 (2011); OR Rev. Stat. s. 133.400 (2009); RIPAC, Accreditation Standards Manual, ch. 8, s. 8.10 (Rev. 2015); Utah R. Evid. Rule 616 (2016); 13 V.S.A. s. 5585 (2015); *State v. Jerrell C.J.*, 699 N.W.2d 110 (WI 2005); Wis. Stat. ss. 968.073 and 972.115 (2005); *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, August, 2016, National Association of Criminal Defense Lawyers, available at https://www.nacdl.org/electronicrecordingproject (last viewed January 24, 2019).
[18] Section 951.22, F.S.

possesses any article of contraband on the grounds of a county detention facility commits a third degree felony.[19]

III. Effect of Proposed Changes:

Custodial Interrogations

The bill creates a statutory requirement, and exceptions to the requirement, that a law enforcement officer conducting a custodial interrogation must record the interrogation in its entirety.

The bill provides definitions for terms used in the bill. These are:

- "Custodial interrogation" which means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency;
- "Electronic recording" which means an audio recording or an audio and video recording that accurately records a custodial interrogation;
- "Covered offense" which lists the following criminal offenses:
  - Arson.
  - Sexual battery.
  - Robbery.
  - Kidnapping.
  - Aggravated child abuse.
  - Aggravated abuse of an elderly person or disabled adult.
  - Aggravated assault with a deadly weapon.
  - Murder.
  - Manslaughter.
  - Aggravated manslaughter of an elderly person or disabled adult.
  - Aggravated manslaughter of a child.
  - The unlawful throwing, placing, or discharging of a destructive device or bomb.
  - Armed burglary.
  - Aggravated battery.
  - Aggravated stalking.
  - Home-invasion robbery.
  - Carjacking.
- "Place of detention" which means a police station, sheriff's office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual; and
- "Statement" which means a communication that is oral, written, electronic, nonverbal, or in sign language.

[19] A person who commits a third degree felony may be imprisoned for up to 5 years and fined up to $5,000. Sections 775.082 and 775.083, F.S.

The bill requires a custodial interrogation related to a covered offense that is conducted at a place of detention be electronically recorded in its entirety. The recording must include:

- The giving of a required warning;
- The advisement of rights; and
- The waiver of rights by the individual being questioned.

If the custodial interrogation at the place of detention is not recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for the noncompliance.

If a law enforcement officer conducts a custodial interrogation at a place other than a place of detention, the officer must prepare a written report as soon as practicable. The report must explain the circumstances of the interrogation in that place, and summarize the custodial interrogation process and the individual's statements.

The general recording requirement does not apply under the following circumstances:

- If there is an unforeseen equipment malfunction that prevents recording the custodial interrogation in its entirety;
- If a suspect refuses to participate in a custodial interrogation if his or her statements are electronically recorded;
- Due to an equipment operator error that prevents the recording of the custodial interrogation in its entirety;
- If the statement is made spontaneously and not in response to a custodial interrogation question;
- If a statement is made during the processing of the arrest of a suspect;
- If the custodial interrogation occurs when the law enforcement officer participating in the interrogation does not have any knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;
- If the law enforcement officer conducting the custodial interrogation reasonably believes that electronic recording would jeopardize the safety of the officer, individual being interrogated, or others; or
- If the custodial interrogation is conducted outside of the state.

Unless a court finds that one or more of the enumerated exceptions applies, the court must consider the officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a defendant's statement made during the interrogation. If the court decides to admit the statement, the defendant may request and the court must give a cautionary jury instruction regarding the officer's failure to comply with the recording requirement.

Finally, if a law enforcement agency has enforced rules that are adopted pursuant to the bill and that are reasonably designed to comply with the bill's requirements, the agency is not subject to civil liability for damages arising from a violation of the bill's requirements. The bill does not create a cause of action against a law enforcement officer.

Contraband Articles at County Detention Facilities

Currently, a person who smuggles or possesses any article of contraband on the grounds of a county detention facility commits a third degree felony. The bill reduces the penalty for smuggling or possessing some of the less dangerous types of contraband articles to a first degree misdemeanor.

The bill retains the third degree felony status for various drugs and controlled substances, firearms and dangerous weapons, and items that may aid escape attempts. The bill also adds cellular phones and portable communications devices to the list of contraband articles that are a third degree felony.

The bill makes smuggling or possessing the following contraband on the grounds of a county detention facility a first degree misdemeanor: written or recorded communications, currency and coins, food and clothing, tobacco products, including cigarettes and cigars, and intoxicating beverages.[20]

Effective Date

The bill is effective January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

It is possible that the requirements of the bill related to electronic recording could result in local fund expenditures for equipment, maintenance, and operation. However, because any such local funding resulting from the requirements of the bill will directly relate to the defense and prosecution of criminal offenses, under article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

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.

[20] A first degree misdemeanor is punishable by up to 1 year in the county detention facility and a $1,000 fine. Sections 775.082 and 775.083, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although local law enforcement agencies may incur costs related to the electronic recording requirement in the bill, that cost is indeterminate.

In a preliminary estimate of the prison bed impact of the bill, the Office of Economic and Demographic Research determined that the impact of the bill is indeterminate.[21]

The Florida Department of Law Enforcement anticipates no fiscal impact to the department resulting from the provisions of the bill relating to custodial interrogations.[22]

The Florida Department of Corrections states that the bill does not have a direct fiscal impact on the department.[23]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 951.22 and 921.0022.

This bill creates section 900.06 of the Florida Statutes.

[21] E-mail from the Office of Economic and Demographic Research (January 25, 2019) (on file with the Senate Committee on Criminal Justice).
[22] Florida Department of Law Enforcement, *2019 Legislative Bill Analysis, SB 204* (December 21, 2018; revised January 28, 2019) (on file with the Senate Committee on Criminal Justice).
[23] Florida Department of Corrections, *Memorandum, SB 204* (January 31, 2019) (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The committee substitute adds "county detention facility" to list of locations defining the term "place of detention."

B. Amendments:

None.

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

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 68
and insert:
office, correctional facility, prisoner holding facility, county detention facility, or

By Senator Brandes

24-00398-19 2019204__

A bill to be entitled

An act relating to detention facilities; creating s. 900.06, F.S.; defining terms and specifying covered offenses; requiring that a custodial interrogation at a place of detention be electronically recorded in its entirety in connection with certain offenses; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a place other than a place of detention to prepare a specified report; providing exceptions to the electronic recording requirement; requiring a court to consider a law enforcement officer's failure to comply with the electronic recording requirements in determining the admissibility of a statement, unless an exception applies; requiring a court, upon the request of a defendant, to give cautionary instructions to a jury under certain circumstances; providing immunity from civil liability to law enforcement agencies that enforce certain rules; providing that no cause of action is created against a law enforcement officer; amending s. 951.22, F.S.; prohibiting introduction into or possession of any cellular telephone or other portable communication device on the grounds of any county detention facility; defining the term "portable communication device"; providing criminal penalties; amending s. 921.0022, F.S.; conforming a cross-reference; conforming a provision to changes made by the act; providing an effective date.

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

24-00398-19 2019204__

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

Section 1. Section 900.06, Florida Statutes, is created to read:

900.06 Recording of custodial interrogations for certain offenses.—

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

(a) "Custodial interrogation" means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency.

(b) "Electronic recording" means an audio recording or an audio and video recording that accurately records a custodial interrogation.

(c) "Covered offense" includes:

1. Arson.

2. Sexual battery.

3. Robbery.

4. Kidnapping.

5. Aggravated child abuse.

6. Aggravated abuse of an elderly person or disabled adult.

7. Aggravated assault with a deadly weapon.

8. Murder.

9. Manslaughter.

10. Aggravated manslaughter of an elderly person or disabled adult.

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11. Aggravated manslaughter of a child.

12. The unlawful throwing, placing, or discharging of a destructive device or bomb.

13. Armed burglary.

14. Aggravated battery.

15. Aggravated stalking.

16. Home-invasion robbery.

17. Carjacking.

(d) "Place of detention" means a police station, sheriff's office, correctional facility, prisoner holding facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual.

(e) "Statement" means a communication that is oral, written, electronic, nonverbal, or in sign language.

(2)(a) A custodial interrogation at a place of detention, including the giving of a required warning, the advisement of the rights of the individual being questioned, and the waiver of any rights by the individual, must be electronically recorded in its entirety if the interrogation is related to a covered offense.

(b) If a law enforcement officer conducts a custodial interrogation at a place of detention without electronically recording the interrogation, the officer must prepare a written report explaining the reason why he or she did not record the interrogation.

(c) As soon as practicable, a law enforcement officer who conducts a custodial interrogation at a place other than a place of detention shall prepare a written report explaining the

circumstances of the interrogation at that place and summarizing the custodial interrogation process and the individual's statements made at that place.

(d) Paragraph (a) does not apply:

1. If an unforeseen equipment malfunction prevents recording the custodial interrogation in its entirety;

2. If a suspect refuses to participate in a custodial interrogation if his or her statements are to be electronically recorded;

3. If an equipment operator error prevents recording the custodial interrogation in its entirety;

4. If the statement is made spontaneously and not in response to a custodial interrogation question;

5. If the statement is made during the processing of the arrest of a suspect;

6. If the custodial interrogation occurs when the law enforcement officer participating in the interrogation does not have any knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;

7. If the law enforcement officer conducting the custodial interrogation reasonably believes that making an electronic recording would jeopardize the safety of the officer, the individual being interrogated, or others; or

8. If the custodial interrogation is conducted outside of this state.

(3) Unless a court finds that one or more of the circumstances specified in paragraph (2)(d) apply, the court must consider the circumstances of an interrogation conducted by

a law enforcement officer in which he or she did not electronically record all or part of a custodial interrogation in determining whether a statement made during the interrogation is admissible. If the court admits into evidence a statement made during a custodial interrogation that was not electronically recorded as required under paragraph (2)(a), the court must, upon request of the defendant, give cautionary instructions to the jury regarding the law enforcement officer's failure to comply with that requirement.

(4) A law enforcement agency in this state which has enforced rules adopted pursuant to this section which are reasonably designed to ensure compliance with the requirements of this section is not subject to civil liability for damages arising from a violation of this section. This section does not create a cause of action against a law enforcement officer.

Section 2. Section 951.22, Florida Statutes, is amended to read:

951.22 County detention facilities; contraband articles.—

(1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles, which are ~~hereby declared to be~~ contraband:

(a) ~~for the purposes of this act, to wit:~~ Any written or recorded communication.~~;~~

(b) Any currency or coin.~~;~~

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(c) Any article of food or clothing.~~;~~

(d) Any tobacco products as defined in s. 210.25(12).~~;~~

(e) Any cigarette as defined in s. 210.01(1).~~;~~

(f) Any cigar.~~;~~

(g) Any intoxicating beverage or beverage that ~~which~~ causes or may cause an intoxicating effect.~~;~~

(h) Any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s. 893.02(4).~~;~~

(i) Any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon.~~; and~~

(j) Any instrumentality of any nature which ~~that~~ may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.

(k) Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of a county detention facility without prior authorization or consent from the sheriff or officer in charge of such detention facility. As used in this paragraph, the term "portable communication device" means any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet, or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, handheld radios, cellular telephones, Blackberry-type devices, personal digital assistants, laptop computers, or any components of these devices which are intended to be used to assemble such

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devices. The term also includes any new technology that is developed for similar purposes. The term does not include any device that has communication capabilities which has been approved or issued by the sheriff or officer in charge for investigative or institutional security purposes or for conducting other official business.

(2) A person who ~~Whoever~~ violates paragraph (1)(a), paragraph (1)(b), paragraph (1)(c), paragraph (1)(d), paragraph (1)(e), paragraph (1)(f), or paragraph (1)(g) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates paragraph (1)(h), paragraph (1)(i), paragraph (1)(j), or paragraph (1)(k) commits ~~subsection (1) shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Paragraph (f) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic

		battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining

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		with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.

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800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen

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		$300 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is

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		valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.

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847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22 (1)(h)-(k) ~~951.22(1)~~	3rd	Introduction of contraband into county detention facility ~~Intoxicating drug, firearm, or weapon introduced into county facility~~.

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Section 4. This act shall take effect January 1, 2020.

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SB 204

Cellon, Connie

From: Hasbrouck, Matthew
Sent: Friday, January 25, 2019 2:49 PM
To: Cellon, Connie
Cc: Baker, Amy
Subject: SB 204 Preliminary Estimate
Attachments: SB 204 Preliminary Estimate.pdf

Hey Connie,

See attached for a preliminary estimate of SB 204. It's possible that I will get some more supplementary data from DOC on tobacco as contraband, but it wouldn't affect the current estimate.

-Matt

Matthew B. Hasbrouck, Ph.D.
Office of Economic and Demographic Research
The Florida Legislature
111 W. Madison St., Suite 574
Tallahassee, FL 32399
850-717-0454

SB 204 – Detention Facilities

This bill amends s. 951.22, F.S., removing the following acts of introducing contraband into detention facilities from the current Level 6, 3rd degree felony and making each a **1st degree misdemeanor**: any written or recorded communication, any currency or coin, any article of food or clothing, any tobacco products, any cigarette, any cigar, any intoxicating beverage or beverage which causes or may cause an intoxicating effect. It also adds "any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of a county detention facility without prior authorization or consent from the sheriff or officer in charge of such detention facility" as contraband subject to the current Level 6, 3rd degree felony.

Per DOC, in FY 17-18, there were 1,015 (adj.) offenders sentenced under s. 951.22, F.S. Of those sentenced, 333 (adj.) of these offenders were sentenced to prison (mean sentence length=24.9 m, incarceration rate: 32.8% adj.-32.8% unadj.).

Per DOC, in FY 17-18, there were 161 (adj.) offenders sentenced under introducing contraband into or possessing contraband in a correctional facility (s. 944.47, F.S.). Of those sentenced, 51 (adj.) of these offenders were sentenced to prison (mean sentence length=26.2 m, incarceration rate: 31.7% adj.-32.0% unadj.). Within this group, there were 27 (adj.) offenders sentenced for any written or recorded communication or any currency or coin (Level 3, 3rd degree felony), with 10 (adj.) receiving a prison sentence (mean sentence length=25.9 m, incarceration rate: 37.0% adj.-36.0% unadj.). Also, there were 6 (adj.) offenders sentenced for any intoxicating beverage or beverage which causes or may cause an intoxicating effect (Level 4, 2nd degree), with none receiving a prison sentence. For cell phones or portable communication devices as contraband (Level 1, 3rd degree), there were 24 (adj.) offenders sentenced, with 13 (adj.) receiving a prison sentence (mean sentence length=24.6 m, incarceration rate: 54.2% adj.-50.0% unadj.). Nobody was sentenced for any article of food or clothing.

Currently, DOC has a ban on tobacco in correctional facilities, so it is considered contraband to introduce/possess tobacco products. However, s. 944.47, F.S. does not list it as contraband, so there is no data available on the number of offenses occurring in these facilities. However, contraband data indicates that DOC recovered 1,784 pounds of tobacco in FY 17-18.

Given the current structure of s. 955.21, F.S., a specific offense breakdown that is similar to correctional institutions cannot be conducted, so it is not known if each contraband offense contributes comparable shares of prison sentences in county detention centers. If the proportions were the same, the number of offenders sentenced to prison could be shifted in similar directions with the passage of this bill. Furthermore, sentencing data is not available for tobacco, while data on contraband recovery indicate

a high level of demand at correctional facilities, so it is not known how reducing it to a misdemeanor might impact prison sentences at county detention facilities. Therefore, the quantity and the direction of the prison bed impact cannot be determined.

EDR PROPOSED ESTIMATE: Positive/Negative Indeterminate

Requested by: Senate

SB 204

2019 FDLE LEGISLATIVE BILL ANALYSIS

BILL INFORMATION	
BILL NUMBER:	SB 204
BILL TITLE:	**Detention Facilities**
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	January 1, 2020

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Rules
3) Judiciary
4)
5)

CURRENT COMMITTEE
Rules

SIMILAR BILLS	
BILL NUMBER:	SB 1220 (2018)
SPONSOR:	

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

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	**REVISED 01/28/2019** December 21, 2018
LEAD AGENCY ANALYST:	Sherry Gomez
ADDITIONAL ANALYST(S):	John Burke
LEGAL ANALYST:	Jason Jones, Jeff Dambly
FISCAL ANALYST:	Cynthia Barr, Deshawn Byrd

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Requiring that a custodial interrogation at a place of detention be electronically recorded in its entirety in connection with certain offenses; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a place other than a place of detention to prepare a specified report; providing immunity from civil liability to law enforcement agencies that enforce certain rules.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:**
   Presently, law enforcement officers are permitted to detain and interrogate individuals suspected of the covered offenses listed in SB 204 without restriction.

2. **EFFECT OF THE BILL:**
   Absent exemptions, this bill would require law enforcement to make an audio or video recording of a custodial interrogation when taking a statement from an individual suspected of the covered offense listed in this bill. The custodial interrogation would be required to take place in a fixed location under control of law enforcement; i.e. place of detention. A place of detention excludes law enforcement vehicles.

   See General Counsel Review section for additional comments.

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?	Y ☐ N ☒
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. REQURIED 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:	
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:	
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 IMPACTTHE 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.	

FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGECY 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:	• It appears unclear if any attempt by a law enforcement officer to speak with a subject when he or she is detained, however short that detention may be, could constitute a "custodial interview" for purposes of this bill. Further defining or narrowing the scope of "custodial interrogation" may be worthwhile. • Section (2)(c) requires a law enforcement officer who conducts a custodial interrogation outside of a place of detention to prepare a written report documenting why the officer did not comply with the requirements of (2)(a); yet section (2)(a) only applies to custodial interrogations *within* a place of detention. This is an indication that what constitutes a "custodial interrogation" under this proposal may be considered a "field interview" by those involved, thus potentially subjecting the language to effectively eliminate the locus requirement. • Often an initial contact can evolve into an interview which supports an arrest without ever fulfilling the conditions that constitute what is generally accepted as a "custodial interview." • Section (3) requires courts to consider the failure to record custodial statements a factor to consider regarding admissibility. The test for admissibility under F.S. 90.403 is that "relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." The standard provided in section (3) conflicts with F.S. 90.403, and could lead to a wide, unpredictable array of judicial determinations in admissibility.

ADDITIONAL COMMENTS

- Many agencies, the FBI being the preeminent, have policies that discourage/forbid recording in many circumstances contemplated by this bill. Collaboration with those agencies would be complicated if this bill were to become law.
- For small departments with limited manpower and those with limited technological resources, this requirement could be burdensome to the point where the effectiveness of interviews is impacted by delay as additional witnesses and/or recording equipment is brought to bear.
- The focus on recording as a "protection" for both interviewer and interviewee is speculative at best. In jurisdictions and agencies where that practice is already followed, the recorded statements remain subject to attack with the subject often claiming that threats/coercion/promises took place prior, following or even during "breaks" in the recording.
- The measure further disparages the value of law enforcement personnel as credible witnesses. A law enforcement witness is always subject to aggressive cross-examination on the results of interviews or confessions with both the facts of the current case as well as their entire professional history.
- The defense in a criminal case is already the beneficiary of Standard Jury Instructions that enable and encourage jurors to judge the credibility of witnesses, including law enforcement. This leaves the possibility that additional instructions as considered in this bill will convey to the jury the false impression that law enforcement testimony alone is not sufficiently trustworthy to prove many of the matters asserted at trial.

FLORIDA
DEPARTMENT of
CORRECTIONS

Governor
RON DESANTIS
Secretary
MARK S. INCH

501 South Calhoun Street, Tallahassee, FL 32399-2500

www.dc.state.fl.us

To whom it may concern:

A request was made to the Florida Department of Corrections to complete an analysis of SB 204– Detention Facilities. Please be advised that SB 204 does not have direct impact on the Florida Department of Corrections.

THE FLORIDA SENATE

APPEARANCE RECORD

2-11-19
Meeting Date

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

204
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810
Street

MIAMI FL 33128
City *State* *Zip*

Phone 305-979-7110

Email JMM2@MIAMIDADE.GOV

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MIAMI-DADE COUNTY

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

SB 204
Bill Number (if applicable)

Topic Detention Facilities

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788
Street

Phone 850-521-3042

Tallahassee FL 32302
City *State* *Zip*

Email scott.mccoy@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 204
Bill Number (if applicable)

Topic Detention Facilities

Amendment Barcode (if applicable)

Name Seth Miller

Job Title Executive Director - Innocence Project of Florida

Address 1100 E. Park Avenue
Street

Phone 850-561-6767

Tallahassee FL 32301
City *State* *Zip*

Email smiller@floridainnocence.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Innocence Project of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.4.19
Meeting Date

204
Bill Number (if applicable)

Topic Detention Facilities

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road
Street

Phone 850.510.9922

Taqllahassee FL 32308
City *State* *Zip*

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 204
Bill Number (if applicable)

Topic Detention Facilities / Recording Statements

Amendment Barcode (if applicable)

Name ANDY THOMAS

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St. Ste 401
Street

Phone 850-606-1000

Tallahassee FL 32301
City *State* *Zip*

Email andy.thomas@flpd2.com

Speaking: [X] For [ ] Against [ ] Information

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

Representing Florida Public Defender Association

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

204
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic County Detention Facilities

Name Mark Jeffries

Job Title Legistative Administrator - Orange County

Address 201 S. Rosalind Ave.
Street

Orlando FL 32801
City *State* *Zip*

Phone 407-836-5909

Email mark.jeffries@ocfl.net

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Orange County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

204
Bill Number (if applicable)

Topic Felony Interrogation

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 101 South Monroe Street
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 681-0024

Email jorge@flapartners.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Fla Association of Crim. Defense Lawyers

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-11-2019
Meeting Date

204
Bill Number (if applicable)

Topic Detention Facilitates

Amendment Barcode (if applicable)

Name Mercer Fecrington

Job Title SSG

Address PO Box 10570
Street

Phone 850 671 4481

Tallahassee FL 32302
City *State* *Zip*

Email fecrington@SoStrategy.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 204
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Detention Facilities

Name Demetrius Minor

Job Title Dir of Coalitions

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2 / 11 /2019
Meeting Date

Topic _____ Bill Number 204 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 11, 2019

I respectfully request that **Senate Bill #204**, relating to **Detention Facilities**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

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 210
INTRODUCER:	Criminal Justice Committee and Senator Brandes
SUBJECT:	Searches of Cellular Phones and Other Electronic Devices
DATE:	February 13, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 210 amends chs. 933 and 934, F.S., relating to search warrants and the security of communications, to address privacy issues related to the use of communication technology and the contents of stored electronic communications.

The bill amends ch. 933, F.S., by:

- Codifying the Constitutional provision that extends the security against unreasonable searches or seizures to the interception of private communications by any means; and
- Expanding the reasons for law enforcement to obtain a search warrant to include the content within certain communication devices.

The bill amends ch. 934, F.S., by:

- Providing legislative intent;
- Defining the terms "portable electronic communication device," "microphone-enabled household device," "mobile tracking device," "real-time location tracking," and "historical location data";
- Amending the definition of oral communication to include the use of a microphone-enabled household device;
- Requiring a search warrant for the interception of wire, oral, or electronic communications, or the use of a tracking device;
- Setting forth time constraints under which a tracking device must be used and when notice must be provided to the person tracked;

- Allowing for emergency tracking or the interception of oral communications under certain circumstances; and
- Clarifying that certain conduct relating to access to stored communications is not a criminal offense.

The bill also reenacts certain sections in ch. 934, F.S.

The bill is effective July 1, 2019.

II. Present Situation:

The Fourth Amendment of the United States Constitution guarantees:
- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and
- No warrants shall issue without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[1]

Under Fourth Amendment jurisprudence, a search occurs whenever the government intrudes upon an area in which a person has a reasonable expectation of privacy, such as one's home.[2] A warrantless search is generally per se unreasonable,[3] unless an exception to the warrant requirement applies.[4]

The Florida Constitution similarly protects the people against unreasonable searches and seizures, and that right is construed in conformity with the Fourth Amendment of the U.S. Constitution.[5] The Florida Constitution also explicitly protects against the "unreasonable interception of private communications by any means."[6]

Both the Florida and federal constitutions require a search warrant to be supported by probable cause, as established by oath or affirmation, and to particularly describe the place to be searched and the persons or things to be seized.[7]

Advancing technology has presented law enforcement with new means of investigation and surveillance, and the courts with new questions about the Fourth Amendment implications of this technology.[8]

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[1] U.S. CONST. AMEND. IV.
[2] *Katz v. United States*, 389 U.S. 347 (1967).
[3] *United States v. Harrison*, 689 F.3d 301, 306 (3d Cir. 2012).
[4] Examples of exceptions to the warrant requirement include exigent circumstances, searches of motor vehicles, and searches incident to arrest.
[5] FLA. CONST. art. I, s. 12.
[6] "No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained." *Id*.
[7] *Id*. and *supra*, n. 1.
[8] *See also United States v. Jones*, 565 U.S. 400 (2012), where, in a 5-4 decision the Court found (in a narrow holding eschewing the "reasonable expectation of privacy" analysis most often used by the Court) that attaching a GPS real-time tracker on the suspect's vehicle for the purpose of tracking his whereabouts was a "trespass" upon his "effects" by the Government and therefore a warrant is required; *Smallwood v. State*, 113 So.3d 724, 741 (Fla. 2013), in which the Court, in

Chapter 933, F.S., Search Warrants

Chapter 933, F.S., contains grounds related to when and why a search warrant may be issued to a law enforcement officer by a judge authorizing the search and seizure of evidence, and the procedures for executing the search warrant.[9]

The issuance of a search warrant is based upon probable cause therefore an application made under oath to a judge for a search warrant must "set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist."[10] The application must particularly describe the place to be searched and the person and thing to be seized.[11] If the judge finds that probable cause exists for the issuance of the search warrant the judge must issue the search warrant.[12]

The grounds for the issuance of a search warrant include:
- When the property has been stolen or embezzled in violation of law;
- When any property has been used:
  - As a means to commit any crime;
  - In connection with gambling, gambling implements and appliances; or
  - In violation of s. 847.011, F.S., or other laws in reference to obscene prints and literature;
- When any property constitutes evidence relevant to proving that a felony has been committed;
- When any property is being held or possessed:
  - In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;
  - In violation of the fish and game laws;
  - In violation of the laws relative to food and drug; or
  - In violation of the laws relative to citrus disease pursuant to s. 581.184, F.S.; or
- When the laws in relation to cruelty to animals, as provided in ch. 828, F.S., have been or are violated in any particular building or place.[13]

A search warrant may also be issued for the search for and seizure of "any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state."[14] Section 933.18, F.S., limits the grounds for the issuance of a search warrant for a private

---

what it called a decision "narrowly limited to the legal question and facts with which we were presented," decided that for a search incident to arrest of the contents of a suspect's cell phone, a warrant is required if there are no search incident to arrest justifications (officer protection or evidence preservation) for searching the contents; *Tracey v. State*, 152 So.3d 504 (Fla. 2014), is a case involving real-time cell site location information, where the Court determined that the use of Tracey's cell site location information to track him in real-time was a search for which probable cause was required. (Further, the Court held that the exclusionary rule was not applicable under the facts of the case therefore the evidence derived from the real-time tracking should be excluded as evidence in the case.); *Carpenter v. United States*, 138 S.Ct. 2206 (2018), found that obtaining a court order, rather than a warrant requiring a showing of probable cause, to access historical cell-site records implicates the Fourth Amendment therefore the Government will generally need a warrant.

[9] Sections 933.01- 933.19, F.S.

[10] Section 933.06, F.S.

[11] Section 933.04, F.S.

[12] Section 933.07, F.S.

[13] Section 933.02(1)-(5), F.S.

[14] Section 933.02, F.S.

dwelling to particular circumstances. No search warrant may be issued for a private dwelling under ch. 933, F.S., or any other law of the state unless:

- It is being used for the unlawful sale, possession, or manufacture of intoxicating liquor;
- Stolen or embezzled property is contained therein;
- It is being used to carry on gambling;
- It is being used to perpetrate frauds and swindles;
- The law relating to narcotics or drug abuse is being violated therein;
- A weapon, instrumentality, or means by which a felony has been committed, or evidence relevant to proving said felony has been committed, is contained therein;
- One or more of the following child abuse offenses is being committed there:
  - Interference with custody, in violation of s. 787.03, F.S.;
  - Commission of an unnatural and lascivious act with a child, in violation of s. 800.02, F.S.; or
  - Exposure of sexual organs to a child, in violation of s. 800.03, F.S.
- It is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, boardinghouse, or lodginghouse;
- It is being used for the unlawful sale, possession, or purchase of wildlife, saltwater products, or freshwater fish being unlawfully kept therein;
- The laws in relation to cruelty to animals, as provided in ch. 828, F.S., have been or are being violated therein; or
- An instrumentality or means by which sexual cyberharassment has been committed in violation of s. 784.049, F.S., or evidence relevant to proving that sexual cyberharassment has been committed in violation of s. 784.049, F.S., is contained therein.[15]

After a law enforcement officer executes a search warrant, he or she must then bring the property seized and any person arrested in connection with the property before the judge or another court having jurisdiction of the offense.[16] A copy of the search warrant and an inventory of any property seized during the execution of the warrant must either be delivered to the person whose property is the subject of the search warrant, or may be left upon the premises if no one is there.[17] The search warrant and a sworn copy of any required inventory must be returned to the judge.[18]

Chapter 934 - Security of Communications – Interception of Wire, Oral, or Electronic Communications

Sections 934.03-934.09, F.S., govern the interception of wire, oral, or electronic communications. “Intercept” is defined as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.[19] These sections of law are patterned after federal law, and address the relationships

[15] Section 933.18, F.S.
[16] Section 933.07(1), F.S.
[17] Section 933.11, F.S.
[18] Section 933.12, F.S.
[19] Section 934.02(3), F.S.

between citizens, communications service providers, and investigative and law enforcement officers with respect to the obtainment and use of wire, oral, or electronic communications.[20]

Intentionally intercepting another person's wire, oral, or electronic communication is generally prohibited under s. 934.03, F.S. However, under circumstances where a communications service provider is served with a court order, the service provider is allowed to provide information, facilities, or technical assistance to a person who is authorized to intercept wire, oral, or electronic communications.[21] If a person's wire or oral communications are intercepted under circumstances not permitted in ss. 934.03-934.09, F.S., none of the content or evidence derived from the content may be used as evidence.[22]

The Governor, Attorney General, statewide prosecutor, or any state attorney can authorize a law enforcement agency to apply to a judge for a court order permitting the interception of wire, oral, or electronic communications.[23] Intercepting the communication is authorized when the interception may provide or has provided evidence of the commission of the crimes enumerated in s. 934.07(1), F.S.[24]

Section 934.09, F.S., contains the procedures related to the interception of wire, oral, or electronic communications. The procedures include what the application for a court order for the interception must contain, the time limitations for the interception, extensions of time, notice to the person whose communication has been intercepted, and special procedures in emergency situations.

To issue an order authorizing the interception, a court must determine that there is probable cause for belief that an individual is committing, has committed, or is about to commit an offense as listed in s. 934.07, F.S., and that there is probable cause for belief that particular communications concerning that offense will be obtained through such interception.[25]

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[20] Electronic Communications Privacy Act of 1986 (ECPA), 18 U.S.C. s. 2510-22. The ECPA updated the Federal Wiretap Act of 1968, which addressed interception of conversations using "hard" telephone lines, but did not apply to interception of computer and other digital and electronic communications. *See* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Justice Information Sharing, Privacy & Civil Liberties*, available at https://it.ojp.gov/PrivacyLiberty/authorities/statutes/1285 (last viewed February 12, 2019).

[21] Section 934.03(2)(a), F.S.

[22] The content of the wire or oral communications or evidence derived from the content may not be admitted as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof. Section 934.06, F.S.

[23] Section 934.07(1), F.S.

[24] The crimes are murder, kidnapping, aircraft piracy, arson, gambling, robbery, burglary, theft, dealing in stolen property, criminal usury, bribery, or extortion; any felony violation of ss. 790.161-790.166, F.S. (offenses for destructive devices); inclusive; any violation of s. 787.06, F.S. (human trafficking); any violation of ch. 893, F.S. (drug abuse prevention and control); any violation of the provisions of the Florida Anti-Fencing Act; any violation of ch. 895, F.S., (offenses concerning racketeering and illegal debts); any violation of ch. 896, F.S. (offenses related to financial transactions); any violation of ch. 815, F.S. (computer-related crimes); any violation of ch. 847, F.S. (offenses related to obscenity); any violation of s. 827.071. F.S. (sexual performance by a child); any violation of s. 944.40, F.S. (offenses related to escape); or any conspiracy or solicitation to commit any violation of the laws of this state relating to the crimes listed.

[25] Section 934.09(3), F.S.

Section 934.10, F.S., contains the civil remedies available to a person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09, F.S.

Advancing Technology - Location Tracking

Cell phones, smartphones, laptops, and tablets are all mobile devices that can be located whenever they are turned on.[26] There are essentially three methods of locating a mobile device:

- *Network-based location*, which occurs when a mobile device communicates with nearby cell sites. The mobile device communicates through a process called registration even when the device is idle. The service provider of the mobile device[27] can also initiate the registration of a device. This information is stored in provider databases in order to route calls. The smaller the cell site, the more precise the location data.
- *Handset-based location*, which uses information transmitted by the device itself, such as global positioning system (GPS) data.
- *Third-party methods*, which facilitate real-time tracking of a mobile signal directly by using technology that mimics a wireless carrier's network.[28]

Mobile Tracking Devices

Mobile tracking devices can also be used to track a person's location. This broad category of devices includes radio frequency (RF)-enabled tracking devices (commonly referred to as "beepers"), satellite-based tracking devices, and cell-site tracking devices. Satellite-based tracking devices are commonly referred to as "GPS devices."[29]

Florida law defines a "tracking device" as an electronic or mechanical device which permits the tracking of movement of a person or object.[30] Section 934.42, F.S., requires a law enforcement officer to apply to a judge for a court order approving the "installation and use of a mobile tracking device."[31] If the court grants the order, the officer installs and uses the device.[32] The application for such an order must include:

- A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation;
- A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency;
- A statement of the offense to which the information likely to be obtained relates; and
- A statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.[33]

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[26] *Locational Privacy, Cell Phone Tracking Methods*, Electronic Privacy Information Center, available at https://epic.org/privacy/location (last viewed February 5, 2019).
[27] A service provider is the company that provides the internet to the mobile device. *Id.*
[28] *Id.*
[29] Ian Herbert, *Where We are with Location Tracking: A Look at the Current Technology and the Implications on Fourth Amendment Jurisprudence*, Berkley J. of Crim. Law, Vol. 16, Issue 2, p. 442, n. 1 (Fall 2011), available at http://www.bjcl.org/articles/16_2%20herbert_formatted.pdf (last viewed February 5, 2019).
[30] Section 934.42(6), F.S.
[31] Section 934.42(1)-(2), F.S.
[32] Section 934.42(3), F.S.
[33] Section 934.42(2), F.S.

The court then must review the application and if it finds that the above-described requirements are met, the court will order the authorization of the installation and use of a mobile tracking device. The court is not allowed to require greater specificity or additional information then the information listed above.[34]

The installation and the monitoring of a mobile tracking device are governed by the standards established by the United States Supreme Court.[35]

Cellular-Site Location Data

In the United States, it has been reported that there are 327.6 million cell phones in use, which is more than the current U.S. population (315 million people).[36] "As the cell phone travels, it connects to various cell phone towers, which means an electronic record of its location is created[.]"[37] The cell phone's location record is held by the telecommunications company that services the device.[38]

Cellular-site location information (CSLI) is information generated when a cell phone connects and identifies its location to a nearby cell tower that, in turn, processes the phone call or text message made by the cell phone. "CSLI can be 'historic,' in which case the record is of a cell phone's past movements, or it can be 'real-time' or prospective, in which case the information reveals the phone's current location."[39] Historic CSLI enables law enforcement to piece together past events by connecting a suspect to the location of a past crime.[40] Real-time location information helps law enforcement trace the current whereabouts of a suspect.[41]

GPS Location Data

A cell phone's GPS capabilities allow it to be tracked to within 5 to 10 feet.[42] GPS provides users with positioning, navigation, and timing services based on data available from satellites orbiting the earth.[43] If a mobile device is equipped with GPS technology, significantly more precise location information is then sent from the handset to the carrier.[44]

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[34] Section 934.42(3) and (4), F.S.
[35] Section 934.42(5), F.S.
[36] Mana Azarmi, *Location Data: The More They Know*, Center for Democracy and Technology (November 27, 2017), available at https://cdt.org/blog/location-data-the-more-they-know/ (last viewed February 5, 2019).
[37] *Id*.
[38] *Id*.
[39] *Id*.
[40] *Cell Phone Location Tracking*, National Association of Criminal Defense Lawyers, available at https://www.law.berkeley.edu/wp-content/uploads/2015/04/2016-06-07_Cell-Tracking-Primer_Final.pdf (last viewed February 5, 2019).
[41] *Id*.
[42] *Id*.
[43] *GPS Location Privacy*, GPS.gov (October 31, 2018), available at https://www.gps.gov/policy/privacy (last viewed February 5, 2019).
[44] Patrick Bertagna, *How does a GPS tracking system work?* (October 26, 2010), EE Times, available at https://www.eetimes.com/document.asp?doc_id=1278363&page_number=2 (last viewed February 5, 2019). Cell phone service providers were required by the Federal Communications Commission in 1996 to begin providing location data to 911 operators for a program called Enhanced 911 (E911) which ultimately required a high level of handset location accuracy. As a result, many cell service providers began putting GPS chips inside the handsets. *Supra*, n. 11.

Microphone-Enabled Household Devices

Another emerging technology raising privacy concerns is the smart speaker. Smart speakers, like the Google Home[45] or Amazon Echo,[46] are devices that use voice-activated artificial intelligence technology to respond to commands. They are designed as virtual home assistants and intended to be used in as many different ways as possible.[47]

Although the term "always on" is often used to describe smart speakers, this is not entirely accurate. Speech activated devices use the power of energy efficient processors to remain in an inert state of passive processing, or "listening," for the "wake words." The device buffers and re-records locally, without transmitting or storing any information, until it detects the word or phrase that triggers the device to begin actively recording and transmitting audio outside of the device to the service provider.[48]

Chapter 934, F.S., Security of Communications Definitions

Several definitions in ch. 934, F.S., are pertinent to the bill:

- "Contents," when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.[49]
- "Electronic communication" means the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce. The definition does not include: any wire or oral communication; any communication made through a tone-only paging device; any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.[50]
- "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.[51]
- "Electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.[52]

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[45] *Google Home*, Google Store, available at https://store.google.com/product/google_home (last viewed February 5, 2019).
[46] *Echo & Alexa*, Amazon, available at https://www.amazon.com/all-new-amazon-echo-speaker-with-wifi-alexa-dark-charcoal/dp/B06XCM9LJ4 (last viewed February 5, 2019).
[47] Jocelyn Baird, *Smart Speakers and Voice Recognition: Is Your Privacy at Risk?*, NextAdvisor (April 4, 2017), available at https://www.nextadvisor.com/blog/2017/04/04/smart-speakers-and-voice-recognition-is-your-privacy-at-risk/ (last viewed February 5, 2019).
[48] *Id*. *See also* Stacey Gray, *Always On: Privacy Implications Of Microphone-Enabled Devices*, The Future of Privacy Forum (April 2016), available at https://fpf.org/wp-content/uploads/2016/04/FPF_Always_On_WP.pdf (last viewed February 5, 2019).
[49] Section 934.02(7), F.S.
[50] Section 934.02(12), F.S.
[51] Section 934.02(15), F.S.
[52] Section 934.02(14), F.S.

- "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than any telephone or telegraph instrument, equipment, or facility, or any component thereof:
  - Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or
  - Being used by a provider of wire or electronic communications service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of her or his duties.[53]
- "Electronic storage" means any temporary intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof, and any storage of a wire or electronic communication by an electronic communication service for purposes of backup protection of such communication.[54]
- "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.[55]
- "Investigative or law enforcement officer" means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct on behalf of the Government investigations of, or to make arrests for, offenses enumerated in this chapter or similar federal offenses, any attorney authorized by law to prosecute or participate in the prosecution of such offenses, or any other attorney representing the state or political subdivision thereof in any civil, regulatory, disciplinary, or forfeiture action relating to, based upon, or derived from such offenses.[56]
- "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.[57]
- "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.[58]
- "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce.[59]

[53] Section 934.02(4), F.S.
[54] Section 934.02(17), F.S.
[55] Section 934.02(3), F.S.
[56] Section 934.02(6), F.S.
[57] Section 934.02(2), F.S.
[58] Section 934.02(19), F.S.
[59] Section 934.02(1), F.S.

Prohibited Access to Stored Communications

Under certain circumstances, Florida law prohibits accessing stored communications. It is unlawful for a person to:

- Intentionally access a facility through which an electronic communication service is provided; or
- Intentionally exceed an authorization to access; and
- Obtain, alter, or prevent authorized access to a wire or electronic communication while it is in electronic storage in such a system.[60]

The penalties for this offense vary based on the specific intent and the number of offenses.[61] It is a first degree misdemeanor[62] if the above described offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain.[63] Any subsequent offense with this intent is a third degree felony.[64] If the person did not have the above-described intent then the above-described offense is a second degree misdemeanor.[65]

III. Effect of Proposed Changes:

Chapter 933, F.S., Search Warrants (Sections 1 and 2)

The bill amends s. 933.02, F.S., to incorporate content held within a cellular phone, portable electronic communication device, or microphone-enabled household device as among the grounds upon which a search warrant may be issued by a judge, if the content constitutes evidence relevant to proving that a felony has been committed.

Section 933.04, F.S., is amended to add the constitutional provision found in Article I, section 12 of the Constitution of Florida that protects private communications from unreasonable interception just as persons, houses, and effects are protected from unreasonable searches and seizures.

Legislative Findings for Chapter 934, F.S. (Section 3)

The bill amends s. 934.01, F.S., by adding the term "electronic" to the current terminology of "wire and oral" communications in the legislative findings.

The bill also creates new legislative findings:

- Recognizing a subjective and objectively reasonable expectation of privacy in real-time cell-site location data, real-time precise GPS location data, and historical precise GPS location data. As such, the law enforcement collection of the precise location of a person, cellular

[60] Section 934.21(1), F.S.
[61] *See* s. 934.21(2), F.S.
[62] A first degree misdemeanor is punishable by up to one year in jail, a fine of up $1,000, or both. Sections 775.082 and 775.083, F.S.
[63] Section 934.21(2), F.S.
[64] A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S.
[65] A second degree misdemeanor is punishable by up to 60 days in county jail, a fine of up to $500, or both. Sections 775.082 and 775.083, F.S.

phone, or portable electronic communication device[66] without the consent of the device owner should be allowed only when authorized by a warrant issued by a court and should remain under the control and supervision of the authorizing court.

- Recognizing that the use of portable electronic devices is growing at a rapidly increasing rate. These devices can store, and encourage the storage of, an almost limitless amount of personal and private information. Further recognizing that these devices are commonly used to access personal and business information and other data stored in computers and servers that can be located anywhere in the world. Recognizing a person who uses a portable electronic device has a reasonable and justifiable expectation of privacy in the information contained in the portable electronic device.
- Recognizing that microphone-enabled household devices[67] often contain microphones that listen for and respond to environmental triggers. Further recognizing that these devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility of daily household information in a device itself or in a remote computing service. Finding that an individual should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one's home.

Chapter 934, F.S., Security of Communications Definitions (Section 4)

The bill amends s. 934.02, F.S., by amending a current definition, and creating new definitions:

- The current definition of "oral communication" is amended to include the use of a microphone-enabled household device.
- The definition of "microphone-enabled household device" is created and is defined as a device, sensor, or other physical object within a residence:
  - Capable of connecting to the Internet, directly or indirectly, or to another connected device;
  - Capable of creating, receiving, accessing, processing, or storing electronic data or communications;
  - Which communicates with, by any means, another device, entity, or individual; and
  - Which contains a microphone designed to listen for and respond to environmental cues.
- The definition of "portable electronic communication device" is created and is defined as an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, or storing electronic data or communications and which communicates with, by any means, another device, entity, or individual.

Interception of Wire, Oral, or Electronic Communications (Sections 5 – 9)

Section 5: The bill amends s. 934.03(2)(a), F.S., to require a search warrant, rather than a court order, for a law enforcement officer authorized by law to intercept wire, oral, or electronic communications to obtain information, facilities, or technical assistance from a wire, oral, or electronic communication service provider.

[66] The term "portable electronic communication device" is defined in Section 2 of the bill.
[67] The term "microphone-enabled household device" is defined in Section 2 of the bill.

Section 6: Section 934.06, F.S., currently prohibits the use of intercepted wire or oral communication as evidence if the disclosure of that information would violate a provision of ch. 934, F.S. The bill adds the content of a cellular phone, microphone-enabled household device, or portable electronic communication device to this prohibition, and requires a search warrant to obtain that content. The bill also specifically provides that the communication may be used as evidence if the communication is lawfully obtained under circumstances where a search warrant is not required.

Section 7: The bill amends s. 934.07(1) and (2), F.S., to require a search warrant, rather than a court order, for the interception of wire, oral, or electronic communications.

Section 8: The bill amends the procedures found in s. 934.09, F.S., for intercepting the contents of wire, oral, or electronic communications to require that a judge issue a search warrant, rather than a court order. This section retains the procedure an investigative or law enforcement officer would currently follow to by-pass obtaining a search warrant for up to 48 hours under certain emergency circumstances.

Section 9: The bill retains current law relating to the civil remedies available to a person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09, F.S., while replacing the terms court order, subpoena, and legislative authorization with the term search warrant.

Penalties for Accessing Stored Communications (Section 10)

The bill amends s. 934.21, F.S., to clarify that the penalty for accessing a facility through which an electronic communication service is provided without authorization to obtain, alter, or prevent authorized access to a wire or electronic communication does not apply to conduct authorized:

- By the provider[68] or user[69] of wire, oral, or electronic communications services through cellular phones, portable electronic communication devices, or microphone-enabled household devices;
- Under ch. 933, F.S.;[70] or
- For legitimate business purposes that do not identify the user.

Location Tracking (Section 11)

The bill creates new definitions related to location tracking in s. 934.42, F.S. The bill provides that:

- "Mobile tracking device" means an electronic or mechanical device that permits the tracking of a person's or an object's movements.
- "Real-time location tracking" means the:
  - Installation and use of a mobile tracking device on the object to be tracked;
  - Acquisition of real-time cell-site location data; or
  - Acquisition of real-time precise GPS location data.

[68] Section 934.21(3)(a), F.S.
[69] Section 934.21(3)(b), F.S.
[70] Chapter 933, F.S., authorizes search and inspection warrants.

- "Historical location data" means historical precise GPS location data in the possession of a provider.

The bill also amends s. 934.42, F.S., to require a search warrant rather than a court order for an investigative or law enforcement officer to engage in real-time location tracking or to acquire historical location data in the possession of a provider. This means that an investigative or law enforcement officer must meet the higher standard of having probable cause for purposes of a search warrant rather than the lower standard of having a reasonable, articulable suspicion.

The bill requires that the application for a search warrant set forth a reasonable length of time that the mobile tracking device may be used or the location data may be obtained in real-time. This time period may not exceed 45 days from the date the search warrant is issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. When seeking historical location data the applicant must specify a date range for the data sought.

If the court issues a search warrant, the search warrant must also require the investigative or law enforcement officer to complete any authorized installation within a specified time-frame no longer than 10 days. A search warrant that permits the use of a mobile tracking device must be returned to the issuing judge within 10 days of the time period specified in the search warrant ending. Additionally, a search warrant authorizing the collection of historical GPS data must be returned to the issuing judge within 10 days after receiving the records.

Also, within 10 days after the use of the tracking device has ended or the historical location has been received from the service provider, the investigative or law enforcement officer executing the search warrant must serve a copy of the search warrant on the person who was tracked, whose property was tracked, or whose historical location data was received.[71] Upon a showing of good cause for postponement, the court may grant a postponement of this notice in 90 day increments.

The bill requires that, in addition to the United States Supreme Court standards, standards established by Florida courts apply to the installation, use, or monitoring of any mobile tracking device as authorized by s. 934.42, F.S.

The bill retains current provisions for real-time tracking without a search warrant if an emergency exists which:

- Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner;
- Requires the real-time tracking before a warrant authorizing such tracking can, with due diligence, be obtained; and if
- There are grounds upon which a warrant could be issued to authorize the real-time tracking.[72]

[71] Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or data obtained; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address.

[72] This exception is similar to that found in s. 934.09(7), F.S., related to intercepting wire, oral, or electronic communication.

Within 48 hours after the tracking has occurred or begins to occur, a search warrant approving the real-time tracking must be issued in accordance with s. 934.42, F.S. When an application for a search warrant is denied, when the information sought has been obtained, or when 48 hours have lapsed since the tracking began, whichever is earlier, the tracking must be terminated immediately.

Sections 12 – 17

Sections 12-17 of the bill reenact ss. 934.22, 934.23, 934.24, 934.25, 934.27, and 934.28, F.S., to incorporate the changes made by the act.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement anticipates no fiscal impact to the department resulting from the bill.[73]

It is unknown at this time whether local law enforcement agencies will experience a fiscal impact resulting from this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 933.02, 933.04, 934.01, 934.02, 934.03, 934.06, 934.07, 934.08, 934.09, 934.10, 934.21, and 934.42.

The bill reenacts the following sections of Florida Statutes: 934.22, 934.23, 934.24, 934.25, 934.27, and 934.28.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The Committee Substitute:

- Amends s. 933.02, F.S., to require a search warrant for the content in certain communication devices if such content constitutes evidence relevant to proving a felony has been committed.
- Codifies in s. 933.04, F.S., the provision in Art. I, s. 12 of the State Constitution that extends the security against unreasonable searches or seizures to the interception of private communications by any means.
- Requires a search warrant for the interception of wire, oral, or electronic communications in ch. 934, F.S.
- Requires a search warrant for a law enforcement officer to obtain information, facilities, or technical assistance from a wire, oral, or electronic communication service provider under certain circumstances.
- Amends s. 934.06, F.S., which currently prohibits the use of intercepted wire or oral communication as evidence if the disclosure of that information would violate a provision of ch. 934, F.S.

[73] The Florida Department of Law Enforcement, *2019 Legislative Bill Analysis, SB 210* (January 7, 2019) (on file with the Senate Committee on Criminal Justice).

- Sets forth time constraints under which a tracking device must be used and when notice must be provided to the person tracked.
- Provides for emergency tracking or the interception of oral communications without a search warrant under certain circumstances.
- The bill reenacts ss. 934.22, 934.23, 934.24, 934.25, 934.27, and 934.28, F.S.

B. Amendments:

None.

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

531094

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/11/2019	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 933.02, Florida Statutes, is amended to read:

933.02 Grounds for issuance of search warrant.—Upon proper affidavits being made, a search warrant may be issued under the provisions of this chapter upon any of the following grounds:

(3) When any property, or when content held within a

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cellular phone, portable electronic communication device, or microphone-enabled household device as defined in s. 934.02, F.S., constitutes evidence relevant to proving that a felony has been committed;

This section also applies to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.

Section 2. Section 933.04, Florida Statutes, is amended to read

933.04 Affidavits.—The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches and against the unreasonable interception of private communications by any means shall not be violated and no search warrant shall be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person and thing to be seized.

Section 3. Section 934.01, Florida Statutes, is amended to read:

934.01 Legislative findings.—On the basis of its own investigations and of published studies, the Legislature makes the following findings:

(1) Wire communications are normally conducted through the use of facilities which form part of an intrastate network. The same facilities are used for interstate and intrastate communications.

(2) In order to protect effectively the privacy of wire, ~~and~~ oral, and electronic communications, to protect the integrity of court and administrative proceedings, and to

prevent the obstruction of intrastate commerce, it is necessary for the Legislature to define the circumstances and conditions under which the interception of wire, ~~and~~ oral, and electronic communications may be authorized and to prohibit any unauthorized interception of such communications and the use of the contents thereof in evidence in courts and administrative proceedings.

(3) Organized criminals make extensive use of wire, ~~and~~ oral, and electronic communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

(4) To safeguard the privacy of innocent persons, the interception of wire, ~~or~~ oral, or electronic communications when none of the parties to the communication has consented to the interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire, ~~and~~ oral, and electronic communications should further be limited to certain major types of offenses and specific categories of crime with assurance that the interception is justified and that the information obtained thereby will not be misused.

(5) To safeguard the privacy of innocent persons, the Legislature recognizes that the subjective expectation of privacy in real-time cell-site location data, real-time precise global positioning system location data, and historical precise global positioning system location data which society is now

prepared to accept is objectively reasonable. As such, the law enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the person or owner of the cellular phone or portable electronic communication device should be allowed only when authorized by a search warrant issued by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court.

(6) The Legislature recognizes that the use of portable electronic communication devices is growing at a rapidly increasing rate. These devices can store, and encourage the storing of, an almost limitless amount of personal and private information. Often linked to the Internet, these devices are commonly used to access personal and business information and databases in computers and servers that can be located anywhere in the world. The user of a portable electronic communication device has a reasonable and justifiable expectation of privacy in the information that these devices contain.

(7) The Legislature recognizes that the use of household electronic devices, including microphone-enabled household devices, is growing at a rapidly increasing rate. These devices often contain microphones that listen for and respond to environmental cues. These household devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility to daily household information in a device itself or in a remote computing service. Persons should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one's home.

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Section 4. Subsection (2) of section 934.02, Florida Statutes, is amended, and subsections (27) and (28) are added to that section, to read:

934.02 Definitions.—As used in this chapter:

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, including the use of a microphone-enabled household device, and does not mean any public oral communication uttered at a public meeting or any electronic communication.

(27) "Microphone-enabled household device" means a device, sensor, or other physical object within a residence:

(a) Capable of connecting to the Internet, directly or indirectly, or to another connected device;

(b) Capable of creating, receiving, accessing, processing, or storing electronic data or communications;

(c) Which communicates with, by any means, another entity or individual; and

(d) Which contains a microphone designed to listen for and respond to environmental cues.

(28) "Portable electronic communication device" means an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, processing, or storing electronic data or communications and which communicates with, by any means, another device, entity, or individual.

Section 5. Subsection (2) of section 934.03, Florida Statutes, is amended to read

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(2)(a)1. It is lawful under this section and ss. 934.04-934.09 for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

2. Notwithstanding any other law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person, may provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if such provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with:

~~a. A court order directing such assistance signed by the authorizing judge; or~~

a.~~b.~~ A certification in writing by a person specified in s. 934.09(7) that no search warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of

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time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required; or

b. A search warrant issued by a judge of competent jurisdiction as required by law.

3. A provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person may not disclose the existence of any interception or the device used to accomplish the interception with respect to which the person has been served with a search warrant ~~furnished an order under this section and ss. 934.04-934.09~~, except as may otherwise be required by legal process and then only after prior notice to the Governor, the Attorney General, the statewide prosecutor, or a state attorney, as may be appropriate. Any such disclosure renders such person liable for the civil damages provided under s. 934.10, and such person may be prosecuted under s. 934.43. An action may not be brought against any provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person for providing information, facilities, or assistance in accordance with the terms of a search warrant ~~court order under this section and ss. 934.04-934.09~~.

(b) It is lawful under this section and ss. 934.04-934.09 for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his or her employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. chapter 5, to intercept a wire, oral, or electronic communication transmitted

by radio or to disclose or use the information thereby obtained.

(c) It is lawful under this section and ss. 934.04-934.09 for an investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

(d) It is lawful under this section and ss. 934.04-934.09 for a person to intercept a wire, oral, or electronic communication when all of the parties to the communication have given prior consent to such interception.

(e) It is unlawful to intercept any wire, oral, or electronic communication for the purpose of committing any criminal act.

(f) It is lawful under this section and ss. 934.04-934.09 for an employee of a telephone company to intercept a wire communication for the sole purpose of tracing the origin of such communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The individual conducting the interception shall notify local police authorities within 48 hours after the time of the interception.

(g) It is lawful under this section and ss. 934.04-934.09 for an employee of:

1. An ambulance service licensed pursuant to s. 401.25, a fire station employing firefighters as defined by s. 633.102, a

public utility, a law enforcement agency as defined by s. 934.02(10), or any other entity with published emergency telephone numbers;

2. An agency operating an emergency telephone number "911" system established pursuant to s. 365.171; or

3. The central abuse hotline operated pursuant to s. 39.201

to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated "911" telephone numbers and published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested. For the purpose of this paragraph, the term "public utility" has the same meaning as provided in s. 366.02 and includes a person, partnership, association, or corporation now or hereafter owning or operating equipment or facilities in the state for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(h) It shall not be unlawful under this section and ss. 934.04-934.09 for any person:

1. To intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public.

2. To intercept any radio communication which is

transmitted:

a. By any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including any police or fire communications system, readily accessible to the general public;

c. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

d. By any marine or aeronautical communications system.

3. To engage in any conduct which:

a. Is prohibited by s. 633 of the Communications Act of 1934; or

b. Is excepted from the application of s. 705(a) of the Communications Act of 1934 by s. 705(b) of that act.

4. To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station of consumer electronic equipment to the extent necessary to identify the source of such interference.

5. To intercept, if such person is another user of the same frequency, any radio communication that is not scrambled or encrypted made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system.

6. To intercept a satellite transmission that is not scrambled or encrypted and that is transmitted:

a. To a broadcasting station for purposes of retransmission to the general public; or

b. As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, when such interception is not for the purposes of direct or indirect commercial advantage or private financial gain.

7. To intercept and privately view a private satellite video communication that is not scrambled or encrypted or to intercept a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted, if such interception is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

(i) It shall not be unlawful under this section and ss. 934.04-934.09:

1. To use a pen register or a trap and trace device as authorized under ss. 934.31-934.34 or under federal law; or

2. For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.

(j) It is not unlawful under this section and ss. 934.04-934.09 for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser which are transmitted to, through, or from a protected computer if:

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1. The owner or operator of the protected computer authorizes the interception of the communications of the computer trespasser;

2. The person acting under color of law is lawfully engaged in an investigation;

3. The person acting under color of law has reasonable grounds to believe that the contents of the communications of the computer trespasser will be relevant to the investigation; and

4. The interception does not acquire communications other than those transmitted to, through, or from the computer trespasser.

(k) It is lawful under this section and ss. 934.04-934.09 for a child under 18 years of age to intercept and record an oral communication if the child is a party to the communication and has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child.

Section 6. Section 934.06, Florida Statutes, is amended to read:

934.06 Prohibition of use as evidence of intercepted wire or oral communications; content of cellular phone, microphone-enabled household device, or portable electronic communication device; exceptions.—Whenever any wire or oral communication has been intercepted, or when the content of a cellular phone, microphone-enabled household device, or portable electronic communication device is obtained without a search warrant

supported by probable cause no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter, or in cases where the content of a cellular phone, microphone-enabled household device, or portable electronic communication device is lawfully obtained under circumstance where a search warrant is not required.

Section 7. Subsections (1) and (2) of section 934.07, Florida Statutes, are amended to read:

934.07 Authorization for interception of wire, oral, or electronic communications.—

(1) The Governor, the Attorney General, the statewide prosecutor, or any state attorney may authorize an application to a judge of competent jurisdiction for, and such judge may issue ~~grant in conformity with ss. 934.03-934.09~~ a search warrant as required by law ~~an order~~ authorizing or approving the interception of, wire, oral, or electronic communications by:

(a) The Department of Law Enforcement or any law enforcement agency as defined in s. 934.02 having responsibility for the investigation of the offense as to which the application is made when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping,

aircraft piracy, arson, gambling, robbery, burglary, theft, dealing in stolen property, criminal usury, bribery, or extortion; any felony violation of ss. 790.161-790.166, inclusive; any violation of s. 787.06; any violation of chapter 893; any violation of the provisions of the Florida Anti-Fencing Act; any violation of chapter 895; any violation of chapter 896; any violation of chapter 815; any violation of chapter 847; any violation of s. 827.071; any violation of s. 944.40; or any conspiracy or solicitation to commit any violation of the laws of this state relating to the crimes specifically enumerated in this paragraph.

(b) The Department of Law Enforcement, together with other assisting personnel as authorized and requested by the department under s. 934.09(5), for the investigation of the offense as to which the application is made when such interception may provide or has provided evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism or evidence of any conspiracy or solicitation to commit any such violation.

(2)(a) If, during the course of an interception of communications by a law enforcement agency as authorized under paragraph (1)(a), the law enforcement agency finds that the intercepted communications may provide or have provided evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism, or evidence of any conspiracy or solicitation to commit any such violation, the law enforcement agency shall promptly notify the Department of Law Enforcement and apprise the department of the contents of the intercepted communications. The agency notifying the department

may continue its previously authorized interception with appropriate minimization, as applicable, and may otherwise assist the department as provided in this section.

(b) Upon its receipt of information of the contents of an intercepted communications from a law enforcement agency, the Department of Law Enforcement shall promptly review the information to determine whether the information relates to an actual or anticipated act of terrorism as defined in this section. If, after reviewing the contents of the intercepted communications, there is probable cause that the contents of the intercepted communications meet the criteria of paragraph (1)(b), the Department of Law Enforcement may make application for the interception of wire, oral, or electronic communications consistent with paragraph (1)(b). The department may make an independent new application for interception based on the contents of the intercepted communications. Alternatively, the department may request the law enforcement agency that provided the information to join with the department in seeking a new search warrant as required by law or an amendment of the original interception search warrant ~~order~~, or may seek additional authority to continue intercepting communications under the direction of the department. In carrying out its duties under this section, the department may use the provisions for an emergency interception provided in s. 934.09(7) if applicable under statutory criteria.

Section 8. Section 934.09, Florida Statutes, is amended to read:

934.09 Procedure for interception of wire, oral, or electronic communications.—

(1) Each application for a search warrant ~~an order~~ authorizing or approving the interception of a wire, oral, or electronic communication under ss. 934.03-934.09 shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the investigative or law enforcement officer making the application and the officer authorizing the application.

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that a search warrant ~~an order~~ should be issued, including:

1. Details as to the particular offense that has been, is being, or is about to be committed.

2. Except as provided in subsection (11), a particular description of the nature and location of the facilities from which, or the place where, the communications are to be intercepted.

3. A particular description of the type of communications sought to be intercepted.

4. The identity of the person, if known, committing the offense and whose communications are to be intercepted.

(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

(d) A statement of the period of time for which the

interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(e) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application.

(f) When the application is for the extension of a search warrant ~~an order~~, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application, the judge may authorize a search warrant ~~enter an~~ ex parte ~~order~~, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting, and outside such jurisdiction but within the State of Florida in the case of a mobile interception device authorized by the judge within such jurisdiction, if the judge determines on the basis of the facts

submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense as provided in s. 934.07.

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception.

(c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.

(d) Except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each search warrant ~~order~~ authorizing or approving the interception of any wire, oral, or electronic communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted.

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

(c) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates.

(d) The identity of the agency authorized to intercept the communications and of the person authorizing the application.

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(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

A search warrant ~~An order~~ authorizing the interception of a wire, oral, or electronic communication shall, upon the request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. The obligation of a provider of wire, oral, or electronic communication service under such a search warrant ~~an order~~ may include, but is not limited to, conducting an in-progress trace during an interception, or providing other assistance to support the investigation as may be specified in the search warrant ~~order~~. Any provider of wire or electronic communication service, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance.

(5) No search warrant ~~order~~ entered under this section may authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization or in any event

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longer than 30 days. Such 30-day period begins on the day on which the agent or officer of the law enforcement agency first begins to conduct an interception under the search warrant ~~order~~ or 10 days after the search warrant is approved ~~order is entered~~, whichever occurs earlier. Extensions of a search warrant ~~an order~~ may be granted but only upon application for an extension made in accordance with subsection (1) and upon the court making the findings required by subsection (3). The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than 30 days. Every search warrant ~~order~~ and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under ss. 934.03-934.09, and must terminate upon attainment of the authorized objective or in any event in 30 days. If the intercepted communication is in code or foreign language and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under ss. 934.03-934.09 may be conducted in whole or in part by government personnel or by an individual operating under a contract with the government, acting under the supervision of an agent or officer of the law enforcement agency authorized to conduct the interception.

(6) Whenever a search warrant ~~an order~~ authorizing interception is granted ~~entered~~ pursuant to ss. 934.03-934.09, the search warrant ~~order~~ may require reports to be made to the

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judge who issued the search warrant ~~order~~ showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer specially designated by the Governor, the Attorney General, the statewide prosecutor, or a state attorney acting under this chapter, who reasonably determines that:

(a) An emergency exists that:

1. Involves immediate danger of death or serious physical injury to any person, the danger of escape of a prisoner, or conspiratorial activities threatening the security interest of the nation or state; and

2. Requires that a wire, oral, or electronic communication be intercepted before a search warrant ~~an order~~ authorizing such interception can, with due diligence, be obtained; and

(b) There are grounds upon which a search warrant ~~an order~~ could be entered under this chapter to authorize such interception

may intercept such wire, oral, or electronic communication if an application for a search warrant ~~an order~~ approving the interception is made in accordance with this section within 48 hours after the interception has occurred or begins to occur. In the absence of a search warrant ~~an order~~, such interception shall immediately terminate when the communication sought is obtained or when the application for the search warrant ~~order~~ is denied, whichever is earlier. If such application for approval

is denied, or in any other case in which the interception is terminated without a search warrant ~~an order~~ having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of s. 934.03(4), and an inventory shall be served as provided for in paragraph (8)(e) on the person named in the application.

(8)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by ss. 934.03-934.09 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be kept in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the search warrant ~~order~~, or extensions thereof, such recordings shall be made available to the judge approving the search warrant ~~issuing such order~~ and sealed under his or her directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge, or that judge's successor in office, and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of s. 934.08(1) and (2) for investigations, or for purposes of discovery as required by law.

(b) The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under s. 934.08(3), as required by

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federal law.

(c) Applications made and search warrants ~~orders~~ granted under ss. 934.03-934.09 shall be sealed by the judge. Custody of the applications and search warrants ~~orders~~ shall be wherever the judge directs. As required by ~~federal~~ law, such applications and search warrants ~~orders~~ shall be disclosed only for purposes of discovery or upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, or that judge's successor in office, and in any event shall be kept for 10 years.

(d) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(e) Within a reasonable time but not later than 90 days after the termination of the period of a search warrant ~~an order~~ or extensions thereof, the issuing or denying judge shall cause to be served on the persons named in the search warrant ~~order~~ or the application, and such other parties to intercepted communications as the judge may determine in his or her discretion to be in the interest of justice, an inventory which shall include notice of:

1. The fact of the approval of the search warrant ~~entry of the order~~ or the application.

2. The date of the approval of the search warrant ~~entry~~ and the period of authorized, approved, or disapproved interception, or the denial of the application.

3. The fact that during the period wire, oral, or electronic communications were or were not intercepted.

The judge, upon the filing of a motion, may make available to

such person or the person's counsel for inspection such portions of the intercepted communications, applications, and search warrants ~~orders~~ as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by this paragraph may be postponed.

(9) ~~As required by federal law,~~ The contents of any intercepted wire, oral, or electronic communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the search warrant ~~court order~~ and accompanying application under which the interception was authorized or approved. This 10-day period may be waived by the judge if he or she finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) An ~~Any~~ aggrieved person before or in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that:

1. The communication was unlawfully intercepted;

2. The search warrant ~~order of authorization or approval~~ under which it was intercepted is insufficient on its face; or

3. The interception was not made in conformity with the search warrant ~~order of authorization or approval~~.

(b) Except as otherwise provided in the applicable Florida Rules of Criminal Procedure, in a criminal matter:

1. Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion.

2. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of ss. 934.03-934.09 and are not admissible as evidence.

3. The judge, upon the filing of such motion by the aggrieved person, may make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

(c) ~~(b)~~ In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) or the denial of an application for a search warrant ~~an order of approval~~ if the attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted.

(d) ~~(c)~~ The remedies and sanctions described in ss. 934.03-934.10 with respect to the interception of electronic communications are the only judicial remedies and sanctions for violations of those sections involving such communications.

(11) The requirements of subparagraph (1)(b)2. and paragraph (3)(d) relating to the specification of the facilities

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from which, or the place where, the communication is to be intercepted do not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.

2. The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted.

3. The judge finds that such specification is not practical.

(b) In the case of an application with respect to a wire or electronic communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.

2. The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person’s actions could have the effect of thwarting interception from a specified facility or that the person whose communications are to be intercepted has removed, or is likely to remove, himself or herself to another judicial circuit within the state.

3. The judge finds that such showing has been adequately made.

4. The search warrant ~~order~~ authorizing or approving the

interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

~~Consistent with this paragraph, a judge of competent jurisdiction may authorize interception within this state, whether the interception is within or outside the court's jurisdiction, if the application for the interception makes a showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the order is being sought.~~

(12) If an interception of a communication is to be carried out pursuant to subsection (11), such interception may not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception search warrant ~~order~~. A provider of wire or electronic communications service that has received a ~~an~~ search warrant ~~order~~ as provided under paragraph (11)(b) may petition the court to modify or quash the search warrant ~~order~~ on the ground that the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the state, shall decide such a petition expeditiously.

(13) Consistent with this section, a judge of competent jurisdiction may authorize interception within this state, whether the interception is within or outside the court's

jurisdiction, if the application for the interception makes a showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the search warrant is being sought.

Section 9. Subsection (2) of section 934.10, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

934.10 Civil remedies.—

(1) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09 shall have a civil cause of action against any person or entity who intercepts, discloses, or uses, or procures any other person or entity to intercept, disclose, or use, such communications and shall be entitled to recover from any such person or entity which engaged in that violation such relief as may be appropriate, including:

(a) Preliminary or equitable or declaratory relief as may be appropriate;

(b) Actual damages, but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(c) Punitive damages; and

(d) A reasonable attorney’s fee and other litigation costs reasonably incurred.

(2) A good faith reliance on:

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(a) A search warrant ~~court order, subpoena, or legislative authorization~~ as provided in ss. 934.03-934.09;~~,~~

(b) A request of an investigative or law enforcement officer under s. 934.09(7);~~,~~ or

(c) A good faith determination that Florida or federal law, other than 18 U.S.C. s. 2511(2)(d), authorized ~~permitted~~ the conduct complained of,

~~shall~~ constitutes ~~constitute~~ a complete defense to any civil or criminal, or administrative action arising out of such conduct under the laws of this state.

Section 10. Section 934.21, Florida Statutes, is amended to read:

934.21 Unlawful access to stored communications; penalties.—

(1) Except as provided in subsection (3), whoever:

(a) Intentionally accesses without authorization a facility through which an electronic communication service is provided, or

(b) Intentionally exceeds an authorization to access such facility,

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (2).

(2) The punishment for an offense under subsection (1) is as follows:

(a) If the offense is committed for purposes of commercial

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advantage, malicious destruction or damage, or private commercial gain, the person ~~is~~:

1. In the case of a first offense under this subsection, commits ~~guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 934.41.

2. In the case of any subsequent offense under this subsection, commits ~~guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41.

(b) In any other case, the person commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Subsection (1) does not apply with respect to conduct authorized:

(a) By the person or entity providing a wire, oral, or electronic communications service, including through cellular phones, microphone-enabled household devices, or portable electronic communication devices;

(b) By a user of a wire, oral, or electronic communications service, including through cellular phones, microphone-enabled household devices, or portable electronic communication devices, with respect to a communication of or intended for that user; ~~or~~

(c) In s. 934.09 or~~,~~ s. 934.23, or s. 934.24;

(d) In chapter 933; or

(e) For accessing for a legitimate business purpose information that is not personally identifiable or that has been collected in a way that prevents identification of the user of the device.

Section 11. Section 934.42, Florida Statutes, is amended to

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read:

934.42 Mobile tracking device and location tracking authorization.—

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

(a) "Mobile tracking device" means an electronic or mechanical device that permits the tracking of the movement of a person or an object.

(b) "Real-time location tracking" means:

1. Installation and use of a mobile tracking device on the object to be tracked;

2. Acquisition of real-time cell-site location data; or

3. Acquisition of real-time precise global positioning system location data.

(c) "Historical location data" means historical precise global positioning system location data in the possession of a provider.

(2) ~~(1)~~ An investigative or law enforcement officer may make application to a judge of competent jurisdiction for a search warrant ~~an order~~ authorizing or approving real-time location tracking or the acquisition of historical location data in the possession of the provider ~~the installation and use of a mobile tracking device~~.

(3) ~~(2)~~ An application under subsection (2) ~~(1) of this section~~ must include:

(a) A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation.

(b) A statement setting forth a reasonable period of time that the mobile tracking device may be used or the location data

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may be obtained in real time, not to exceed 45 days from the date the search warrant is issued. The court may, for good cause, grant one or more extensions for a reasonable period of time, not to exceed 45 days each. When seeking historical location data, the applicant must specify a date range for the data sought ~~certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency~~.

(c) A statement of the offense to which the information likely to be obtained relates.

(d) A statement as to whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.

(4)~~(3)~~ Upon application made as provided under subsection (3) ~~(2)~~, the court, if it finds probable cause ~~that the certification~~ and finds that the statements required by subsection (3) ~~(2)~~ have been made in the application, must grant a search warrant ~~shall enter an~~ ex parte ~~order~~ authorizing real-time location tracking ~~the installation and use of a mobile tracking device~~ or the acquisition of historical location data. Such search warrant ~~order~~ may authorize the location tracking ~~use of the device~~ within the jurisdiction of the court and outside that jurisdiction but within the State of Florida if the location tracking ~~device~~ is initiated ~~installed~~ within the jurisdiction of the court. The search warrant must command the investigative or law enforcement officer to complete any initiation of the location tracking or execution of the search warrant for historical location data authorized by the search warrant within a specified period of time not to exceed 10

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calendar days.

(5)~~(4)~~ A court may not require greater specificity or additional information beyond that which is required by law and this section as a requisite for issuing a search warrant ~~an order~~.

(6) Within 10 days after the time period specified in paragraph (3)(b) has ended, the investigative or law enforcement officer executing a search warrant must return the search warrant to the issuing judge. When the search warrant is authorizing the acquisition of historical location data, the investigative or law enforcement officer executing the search warrant must return the search warrant to the issuing judge within 10 days after receipt of the records. The investigative or law enforcement officer may do so by reliable electronic means.

(7) Within 10 days after the time period specified in paragraph (3)(b) has ended, the investigative or law enforcement officer executing a search warrant must serve a copy of the search warrant on the person who, or whose property, was tracked. When the search warrant is authorizing the acquisition of historical location data, the investigative or law enforcement officer executing the search warrant must serve a copy of the search warrant on the person whose data was obtained within 10 days after receipt of the records. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or data obtained or by leaving a copy at the person’s residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person’s last known

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address. Upon a showing of good cause to a court of competent jurisdiction, the court may grant one or more postponements of this notice for a period of 90 days each.

(8) ~~(5)~~ The standards established by Florida courts and the United States Supreme Court for the installation, use, or ~~and~~ monitoring of mobile tracking devices and the acquisition of location data shall apply to the installation, use, or monitoring ~~and use~~ of any device and the acquisition of location data as authorized by this section.

~~(6) As used in this section, a "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.~~

(9)(a) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer specially designated by the Governor, the Attorney General, the statewide prosecutor, or a state attorney acting pursuant to this chapter who reasonably determines that:

1. An emergency exists which:

a. Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner; and

b. Requires real-time location tracking before a search warrant authorizing such tracking can, with due diligence, be obtained; and

2. There are grounds upon which a search warrant could be issued under this chapter to authorize such tracking,

may engage in real-time location tracking if, within 48 hours after the tracking has occurred or begins to occur, a search warrant approving the tracking is issued in accordance with this

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section.

(b) In the absence of an authorizing search warrant, such tracking must immediately terminate when the information sought is obtained, when the application for the search warrant is denied, or when 48 hours have lapsed since the tracking began, whichever is earlier.

Section 12. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to searches of cellular phones and other electronic devices; amending s. 933.02, F.S.; expanding the grounds for issuance of a search warrant; providing that content held within a cellular phone, microphone-enabled household device, or portable electronic communication device may constitute evidence relevant to proving that a felony has been committed; amending s. 933.04, F.S.; adopting the constitutional protection against unreasonable interception of private communications by any means for purposes of obtaining a search warrant; amending s. 934.01, F.S.; revising and providing legislative findings; amending s. 934.02, F.S.; redefining the term "oral communication"; defining the terms "microphone-enabled household device" and "portable electronic communication device"; amending s. 934.03,

F.S.; authorizing specified persons to provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if the person has been provided with a search warrant; prohibiting specified persons from disclosing the existence of any interception of a wire, oral, or electronic communication with respect to which the person has been served with a search warrant; amending s. 934.06, F.S.; to requiring a search warrant to obtain certain communication content; amending s. 934.07, F.S.; authorizing a judge to issue, instead of granting, a search warrant in conformity with specified provisions; authorizing the Department of Law Enforcement to request a law enforcement agency that provided it with certain information to join with the department in seeking a new search warrant; amending s. 934.08, F.S.; authorizing certain disclosure or use when an investigative or law enforcement officer intercepts wire, oral, or electronic communications relating to offenses other than those specified in a search warrant; amending s. 934.09, F.S.; requiring that each application for a search warrant, rather than an order, authorizing or approving the interception of wire, oral, or electronic communications be made in writing and state the applicant’s authority; authorizing a judge to authorize a search warrant ex parte, rather than an ex parte order, based on the application under certain

circumstances; specifying requirements for search warrants, rather than orders, issued under certain circumstances; authorizing an aggrieved person to move to suppress the contents of certain wire, oral, or electronic communications before, as well as during, a trial, hearing, or proceeding; providing for inadmissibility of certain evidence if a certain motion is granted; authorizing a judge of competent jurisdiction to authorize interception within this state under specified circumstances; amending s. 934.10, F.S.; providing that a good faith reliance on a search warrant issued under certain provisions constitutes a complete defense against specified actions; amending s. 934.21, F.S.; revising the exceptions to conduct that constitutes unlawful access to stored communications; conforming a provision to changes made by the act; amending s. 934.42, F.S.; defining the terms “mobile tracking device,” “real-time location tracking,” and “historical location data”; authorizing an investigative or law enforcement officer to apply to a judge of competent jurisdiction for a search warrant, rather than an order, authorizing real-time location tracking or acquisition of historical location data; requiring an application for a search warrant to include a statement of a reasonable period of time that the mobile tracking device may be used or the location data may be obtained in real time, not to exceed a specified limit; authorizing a court to grant extensions that do

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not individually exceed a specified limit, for good cause; deleting a provision requiring a certification to be included in the application; providing that the court, if it finds probable cause and finds the required statements in the application, must grant a search warrant; specifying the search warrant may authorize real-time location tracking or acquisition of historical location data; providing the search warrant may authorize the tracking as specified; requiring the search warrant to command the officer to complete any initiation of the location tracking authorized by the search warrant within a certain timeframe; providing requirements for the return of the search warrant to the judge and service of a copy of the search warrant on the person who was tracked or whose property was tracked; specifying how a search warrant authorizing the acquisition of historical location data must be returned and served; authorizing a court, for good cause, to postpone the notice requirement for a specified time period; requiring that the standards established by Florida courts for the installation, use, or monitoring of mobile tracking devices and the acquisition of location data apply to the installation, use, or monitoring of any devices and the acquisition of location data as authorized; deleting the definition of "tracking device"; authorizing any investigative or law enforcement officer who is specially designated by certain persons and who makes specified determinations

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to engage in real-time location tracking if a search warrant is later obtained as specified; providing requirements for engaging in real-time location tracking; specifying when real-time location tracking must terminate; reenacting s. 934.22(2)(b), F.S., relating to voluntary disclosure of customer communications or records, to incorporate the amendments made to ss. 934.03 and 934.07, F.S., in references thereto; reenacting s. 934.27(1) and (4), F.S., relating to relief, damages, and defenses for certain civil actions, to incorporate the amendments made to ss. 934.09 and 934.21, F.S., in references thereto; reenacting ss. 934.23(6), 934.24(6) and (7), 934.25(5), and 934.28, F.S., relating to required disclosures of customer communications or records, a subscriber or customer filing a motion for certain relief and customer notification, delayed notice, and the exclusivity of remedies and sanctions for certain violations, respectively, to incorporate the amendment made to s. 934.21, F.S., in references thereto; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

Senate Substitute for Amendment (531094) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 933.02, Florida Statutes, is amended to read:

933.02 Grounds for issuance of search warrant.—Upon proper affidavits being made, a search warrant may be issued under the provisions of this chapter upon any of the following grounds:

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(3) When any property, or when content held within a cellular phone, portable electronic communication device, or microphone-enabled household device as defined in s. 934.02, F.S., constitutes evidence relevant to proving that a felony has been committed;

This section also applies to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.

Section 2. Section 933.04, Florida Statutes, is amended to read

933.04 Affidavits.—The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches and against the unreasonable interception of private communications by any means shall not be violated and no search warrant shall be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person and thing to be seized.

Section 3. Section 934.01, Florida Statutes, is amended to read:

934.01 Legislative findings.—On the basis of its own investigations and of published studies, the Legislature makes the following findings:

(1) Wire communications are normally conducted through the use of facilities which form part of an intrastate network. The same facilities are used for interstate and intrastate communications.

(2) In order to protect effectively the privacy of wire, ~~and~~ oral, and electronic communications, to protect the

integrity of court and administrative proceedings, and to prevent the obstruction of intrastate commerce, it is necessary for the Legislature to define the circumstances and conditions under which the interception of wire, ~~and~~ oral, and electronic communications may be authorized and to prohibit any unauthorized interception of such communications and the use of the contents thereof in evidence in courts and administrative proceedings.

(3) Organized criminals make extensive use of wire, ~~and~~ oral, and electronic communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

(4) To safeguard the privacy of innocent persons, the interception of wire, ~~or~~ oral, or electronic communications when none of the parties to the communication has consented to the interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire, ~~and~~ oral, and electronic communications should further be limited to certain major types of offenses and specific categories of crime with assurance that the interception is justified and that the information obtained thereby will not be misused.

(5) To safeguard the privacy of innocent persons, the Legislature recognizes that the subjective expectation of privacy in real-time cell-site location data, real-time precise global positioning system location data, and historical precise

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global positioning system location data which society is now prepared to accept is objectively reasonable. As such, the law enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the person or owner of the cellular phone or portable electronic communication device should be allowed only when authorized by a search warrant issued by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court.

(6) The Legislature recognizes that the use of portable electronic communication devices is growing at a rapidly increasing rate. These devices can store, and encourage the storing of, an almost limitless amount of personal and private information. Often linked to the Internet, these devices are commonly used to access personal and business information and databases in computers and servers that can be located anywhere in the world. The user of a portable electronic communication device has a reasonable and justifiable expectation of privacy in the information that these devices contain.

(7) The Legislature recognizes that the use of household electronic devices, including microphone-enabled household devices, is growing at a rapidly increasing rate. These devices often contain microphones that listen for and respond to environmental cues. These household devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility to daily household information in a device itself or in a remote computing service. Persons should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy

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in one's home.

Section 4. Subsection (2) of section 934.02, Florida Statutes, is amended, and subsections (27) and (28) are added to that section, to read:

934.02 Definitions.—As used in this chapter:

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, including the use of a microphone-enabled household device, and does not mean any public oral communication uttered at a public meeting or any electronic communication.

(27) "Microphone-enabled household device" means a device, sensor, or other physical object within a residence:

(a) Capable of connecting to the Internet, directly or indirectly, or to another connected device;

(b) Capable of creating, receiving, accessing, processing, or storing electronic data or communications;

(c) Which communicates with, by any means, another entity or individual; and

(d) Which contains a microphone designed to listen for and respond to environmental cues.

(28) "Portable electronic communication device" means an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, processing, or storing electronic data or communications and which communicates with, by any means, another device, entity, or individual.

Section 5. Subsection (2) of section 934.03, Florida

Statutes, is amended to read

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(2)(a)1. It is lawful under this section and ss. 934.04-934.09 for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

2. Notwithstanding any other law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person, may provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if such provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with:

~~a. A court order directing such assistance signed by the authorizing judge; or~~

a.~~b.~~ A certification in writing by a person specified in s. 934.09(7) that no search warrant or court order is required by law, that all statutory requirements have been met, and that the

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specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required; or

b. A search warrant issued by a judge of competent jurisdiction as required by law.

3. A provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person may not disclose the existence of any interception or the device used to accomplish the interception with respect to which the person has been served with a search warrant ~~furnished an order under this section and ss. 934.04-934.09~~, except as may otherwise be required by legal process and then only after prior notice to the Governor, the Attorney General, the statewide prosecutor, or a state attorney, as may be appropriate. Any such disclosure renders such person liable for the civil damages provided under s. 934.10, and such person may be prosecuted under s. 934.43. An action may not be brought against any provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person for providing information, facilities, or assistance in accordance with the terms of a search warrant ~~court order under this section and ss. 934.04-934.09~~.

(b) It is lawful under this section and ss. 934.04-934.09 for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his or her employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. chapter 5, to

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intercept a wire, oral, or electronic communication transmitted by radio or to disclose or use the information thereby obtained.

(c) It is lawful under this section and ss. 934.04-934.09 for an investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

(d) It is lawful under this section and ss. 934.04-934.09 for a person to intercept a wire, oral, or electronic communication when all of the parties to the communication have given prior consent to such interception.

(e) It is unlawful to intercept any wire, oral, or electronic communication for the purpose of committing any criminal act.

(f) It is lawful under this section and ss. 934.04-934.09 for an employee of a telephone company to intercept a wire communication for the sole purpose of tracing the origin of such communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The individual conducting the interception shall notify local police authorities within 48 hours after the time of the interception.

(g) It is lawful under this section and ss. 934.04-934.09 for an employee of:

1. An ambulance service licensed pursuant to s. 401.25, a

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fire station employing firefighters as defined by s. 633.102, a public utility, a law enforcement agency as defined by s. 934.02(10), or any other entity with published emergency telephone numbers;

2. An agency operating an emergency telephone number "911" system established pursuant to s. 365.171; or

3. The central abuse hotline operated pursuant to s. 39.201

to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated "911" telephone numbers and published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested. For the purpose of this paragraph, the term "public utility" has the same meaning as provided in s. 366.02 and includes a person, partnership, association, or corporation now or hereafter owning or operating equipment or facilities in the state for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(h) It shall not be unlawful under this section and ss. 934.04-934.09 for any person:

1. To intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public.

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2. To intercept any radio communication which is transmitted:

a. By any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including any police or fire communications system, readily accessible to the general public;

c. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

d. By any marine or aeronautical communications system.

3. To engage in any conduct which:

a. Is prohibited by s. 633 of the Communications Act of 1934; or

b. Is excepted from the application of s. 705(a) of the Communications Act of 1934 by s. 705(b) of that act.

4. To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station of consumer electronic equipment to the extent necessary to identify the source of such interference.

5. To intercept, if such person is another user of the same frequency, any radio communication that is not scrambled or encrypted made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system.

6. To intercept a satellite transmission that is not

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scrambled or encrypted and that is transmitted:

a. To a broadcasting station for purposes of retransmission to the general public; or

b. As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, when such interception is not for the purposes of direct or indirect commercial advantage or private financial gain.

7. To intercept and privately view a private satellite video communication that is not scrambled or encrypted or to intercept a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted, if such interception is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

(i) It shall not be unlawful under this section and ss. 934.04-934.09:

1. To use a pen register or a trap and trace device as authorized under ss. 934.31-934.34 or under federal law; or

2. For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.

(j) It is not unlawful under this section and ss. 934.04-934.09 for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser which

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are transmitted to, through, or from a protected computer if:

1. The owner or operator of the protected computer authorizes the interception of the communications of the computer trespasser;

2. The person acting under color of law is lawfully engaged in an investigation;

3. The person acting under color of law has reasonable grounds to believe that the contents of the communications of the computer trespasser will be relevant to the investigation; and

4. The interception does not acquire communications other than those transmitted to, through, or from the computer trespasser.

(k) It is lawful under this section and ss. 934.04-934.09 for a child under 18 years of age to intercept and record an oral communication if the child is a party to the communication and has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child.

Section 6. Section 934.06, Florida Statutes, is amended to read:

934.06 Prohibition of use as evidence of intercepted wire or oral communications; content of cellular phone, microphone-enabled household device, or portable electronic communication device; exceptions.—Whenever any wire or oral communication has been intercepted, or when the content of a cellular phone, microphone-enabled household device, or portable electronic

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communication device is obtained without a search warrant supported by probable cause no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter, or in cases where the content of a cellular phone, microphone-enabled household device, or portable electronic communication device is lawfully obtained under circumstances where a search warrant is not required.

Section 7. Subsections (1) and (2) of section 934.07, Florida Statutes, are amended to read:

934.07 Authorization for interception of wire, oral, or electronic communications.—

(1) The Governor, the Attorney General, the statewide prosecutor, or any state attorney may authorize an application to a judge of competent jurisdiction for, and such judge may issue ~~grant in conformity with ss. 934.03-934.09~~ a search warrant as required by law ~~an order~~ authorizing or approving the interception of, wire, oral, or electronic communications by:

(a) The Department of Law Enforcement or any law enforcement agency as defined in s. 934.02 having responsibility for the investigation of the offense as to which the application is made when such interception may provide or has provided

evidence of the commission of the offense of murder, kidnapping, aircraft piracy, arson, gambling, robbery, burglary, theft, dealing in stolen property, criminal usury, bribery, or extortion; any felony violation of ss. 790.161-790.166, inclusive; any violation of s. 787.06; any violation of chapter 893; any violation of the provisions of the Florida Anti-Fencing Act; any violation of chapter 895; any violation of chapter 896; any violation of chapter 815; any violation of chapter 847; any violation of s. 827.071; any violation of s. 944.40; or any conspiracy or solicitation to commit any violation of the laws of this state relating to the crimes specifically enumerated in this paragraph.

(b) The Department of Law Enforcement, together with other assisting personnel as authorized and requested by the department under s. 934.09(5), for the investigation of the offense as to which the application is made when such interception may provide or has provided evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism or evidence of any conspiracy or solicitation to commit any such violation.

(2)(a) If, during the course of an interception of communications by a law enforcement agency as authorized under paragraph (1)(a), the law enforcement agency finds that the intercepted communications may provide or have provided evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism, or evidence of any conspiracy or solicitation to commit any such violation, the law enforcement agency shall promptly notify the Department of Law Enforcement and apprise the department of the contents of the

intercepted communications. The agency notifying the department may continue its previously authorized interception with appropriate minimization, as applicable, and may otherwise assist the department as provided in this section.

(b) Upon its receipt of information of the contents of an intercepted communications from a law enforcement agency, the Department of Law Enforcement shall promptly review the information to determine whether the information relates to an actual or anticipated act of terrorism as defined in this section. If, after reviewing the contents of the intercepted communications, there is probable cause that the contents of the intercepted communications meet the criteria of paragraph (1)(b), the Department of Law Enforcement may make application for the interception of wire, oral, or electronic communications consistent with paragraph (1)(b). The department may make an independent new application for interception based on the contents of the intercepted communications. Alternatively, the department may request the law enforcement agency that provided the information to join with the department in seeking a new search warrant as required by law or an amendment of the original interception search warrant ~~order~~, or may seek additional authority to continue intercepting communications under the direction of the department. In carrying out its duties under this section, the department may use the provisions for an emergency interception provided in s. 934.09(7) if applicable under statutory criteria.

Section 8. Section 934.09, Florida Statutes, is amended to read:

934.09 Procedure for interception of wire, oral, or

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electronic communications.—

(1) Each application for a search warrant ~~an order~~ authorizing or approving the interception of a wire, oral, or electronic communication under ss. 934.03-934.09 shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the investigative or law enforcement officer making the application and the officer authorizing the application.

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that a search warrant ~~an order~~ should be issued, including:

1. Details as to the particular offense that has been, is being, or is about to be committed.

2. Except as provided in subsection (11), a particular description of the nature and location of the facilities from which, or the place where, the communications are to be intercepted.

3. A particular description of the type of communications sought to be intercepted.

4. The identity of the person, if known, committing the offense and whose communications are to be intercepted.

(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

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(d) A statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(e) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application.

(f) When the application is for the extension of a search warrant ~~an order~~, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application, the judge may authorize a search warrant ~~enter an~~ ex parte ~~order~~, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting, and outside such jurisdiction but within the State of Florida in the case of a mobile interception device authorized by the judge within such

jurisdiction, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense as provided in s. 934.07.

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception.

(c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.

(d) Except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each search warrant ~~order~~ authorizing or approving the interception of any wire, oral, or electronic communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted.

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

(c) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates.

(d) The identity of the agency authorized to intercept the

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communications and of the person authorizing the application.

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

A search warrant ~~An order~~ authorizing the interception of a wire, oral, or electronic communication shall, upon the request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. The obligation of a provider of wire, oral, or electronic communication service under such a search warrant ~~an order~~ may include, but is not limited to, conducting an in-progress trace during an interception, or providing other assistance to support the investigation as may be specified in the search warrant ~~order~~. Any provider of wire or electronic communication service, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance.

(5) No search warrant ~~order~~ entered under this section may authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary

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to achieve the objective of the authorization or in any event longer than 30 days. Such 30-day period begins on the day on which the agent or officer of the law enforcement agency first begins to conduct an interception under the search warrant ~~order~~ or 10 days after the search warrant is approved ~~order is entered~~, whichever occurs earlier. Extensions of a search warrant ~~an order~~ may be granted but only upon application for an extension made in accordance with subsection (1) and upon the court making the findings required by subsection (3). The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than 30 days. Every search warrant ~~order~~ and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under ss. 934.03-934.09, and must terminate upon attainment of the authorized objective or in any event in 30 days. If the intercepted communication is in code or foreign language and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under ss. 934.03-934.09 may be conducted in whole or in part by government personnel or by an individual operating under a contract with the government, acting under the supervision of an agent or officer of the law enforcement agency authorized to conduct the interception.

(6) Whenever a search warrant ~~an order~~ authorizing interception is granted ~~entered~~ pursuant to ss. 934.03-934.09,

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the search warrant ~~order~~ may require reports to be made to the judge who issued the search warrant ~~order~~ showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer specially designated by the Governor, the Attorney General, the statewide prosecutor, or a state attorney acting under this chapter, who reasonably determines that:

(a) An emergency exists that:

1. Involves immediate danger of death or serious physical injury to any person, the danger of escape of a prisoner, or conspiratorial activities threatening the security interest of the nation or state; and

2. Requires that a wire, oral, or electronic communication be intercepted before a search warrant ~~an order~~ authorizing such interception can, with due diligence, be obtained; and

(b) There are grounds upon which a search warrant ~~an order~~ could be entered under this chapter to authorize such interception

may intercept such wire, oral, or electronic communication if an application for a search warrant ~~an order~~ approving the interception is made in accordance with this section within 48 hours after the interception has occurred or begins to occur. In the absence of a search warrant ~~an order~~, such interception shall immediately terminate when the communication sought is obtained or when the application for the search warrant ~~order~~ is

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denied, whichever is earlier. If such application for approval is denied, or in any other case in which the interception is terminated without a search warrant ~~an order~~ having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of s. 934.03(4), and an inventory shall be served as provided for in paragraph (8)(e) on the person named in the application.

(8)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by ss. 934.03-934.09 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be kept in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the search warrant ~~order~~, or extensions thereof, such recordings shall be made available to the judge approving the search warrant ~~issuing such order~~ and sealed under his or her directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge, or that judge's successor in office, and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of s. 934.08(1) and (2) for investigations, or for purposes of discovery as required by law.

(b) The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or

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evidence derived therefrom under s. 934.08(3), as required by federal law.

(c) Applications made and search warrants ~~orders~~ granted under ss. 934.03-934.09 shall be sealed by the judge. Custody of the applications and search warrants ~~orders~~ shall be wherever the judge directs. As required by ~~federal~~ law, such applications and search warrants ~~orders~~ shall be disclosed only for purposes of discovery or upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, or that judge's successor in office, and in any event shall be kept for 10 years.

(d) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(e) Within a reasonable time but not later than 90 days after the termination of the period of a search warrant ~~an order~~ or extensions thereof, the issuing or denying judge shall cause to be served on the persons named in the search warrant ~~order~~ or the application, and such other parties to intercepted communications as the judge may determine in his or her discretion to be in the interest of justice, an inventory which shall include notice of:

1. The fact of the approval of the search warrant ~~entry of the order~~ or the application.

2. The date of the approval of the search warrant ~~entry~~ and the period of authorized, approved, or disapproved interception, or the denial of the application.

3. The fact that during the period wire, oral, or electronic communications were or were not intercepted.

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The judge, upon the filing of a motion, may make available to such person or the person's counsel for inspection such portions of the intercepted communications, applications, and search warrants ~~orders~~ as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by this paragraph may be postponed.

(9) ~~As required by federal law,~~ The contents of any intercepted wire, oral, or electronic communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the search warrant ~~court order~~ and accompanying application under which the interception was authorized or approved. This 10-day period may be waived by the judge if he or she finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) An ~~Any~~ aggrieved person before or in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that:

1. The communication was unlawfully intercepted;

2. The search warrant ~~order of authorization or approval~~ under which it was intercepted is insufficient on its face; or

3. The interception was not made in conformity with the

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search warrant ~~order of authorization or approval~~.

(b) Except as otherwise provided in the applicable Florida Rules of Criminal Procedure, in a criminal matter:

1. Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion.

2. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of ss. 934.03-934.09 and are not admissible as evidence.

3. The judge, upon the filing of such motion by the aggrieved person, may make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

(c) ~~(b)~~ In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) or the denial of an application for a search warrant ~~an order of approval~~ if the attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted.

(d) ~~(c)~~ The remedies and sanctions described in ss. 934.03-934.10 with respect to the interception of electronic communications are the only judicial remedies and sanctions for violations of those sections involving such communications.

(11) The requirements of subparagraph (1)(b)2. and

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paragraph (3)(d) relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.

2. The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted.

3. The judge finds that such specification is not practical.

(b) In the case of an application with respect to a wire or electronic communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.

2. The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person’s actions could have the effect of thwarting interception from a specified facility or that the person whose communications are to be intercepted has removed, or is likely to remove, himself or herself to another judicial circuit within the state.

3. The judge finds that such showing has been adequately made.

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4. The search warrant ~~order~~ authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

~~Consistent with this paragraph, a judge of competent jurisdiction may authorize interception within this state, whether the interception is within or outside the court's jurisdiction, if the application for the interception makes a showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the order is being sought.~~

(12) If an interception of a communication is to be carried out pursuant to subsection (11), such interception may not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception search warrant ~~order~~. A provider of wire or electronic communications service that has received a ~~an~~ search warrant ~~order~~ as provided under paragraph (11)(b) may petition the court to modify or quash the search warrant ~~order~~ on the ground that the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the state, shall decide such a petition expeditiously.

(13) Consistent with this section, a judge of competent jurisdiction may authorize interception within this state,

whether the interception is within or outside the court's jurisdiction, if the application for the interception makes a showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the search warrant is being sought.

Section 9. Subsection (2) of section 934.10, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

934.10 Civil remedies.—

(1) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09 shall have a civil cause of action against any person or entity who intercepts, discloses, or uses, or procures any other person or entity to intercept, disclose, or use, such communications and shall be entitled to recover from any such person or entity which engaged in that violation such relief as may be appropriate, including:

(a) Preliminary or equitable or declaratory relief as may be appropriate;

(b) Actual damages, but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(c) Punitive damages; and

(d) A reasonable attorney's fee and other litigation costs reasonably incurred.

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(2) A good faith reliance on:

(a) A search warrant ~~court order, subpoena, or legislative authorization~~ as provided in ss. 934.03-934.09;~~,~~

(b) A request of an investigative or law enforcement officer under s. 934.09(7);~~,~~ or

(c) A good faith determination that Florida or federal law, other than 18 U.S.C. s. 2511(2)(d), authorized ~~permitted~~ the conduct complained of,

~~shall~~ constitutes ~~constitute~~ a complete defense to any civil or criminal, or administrative action arising out of such conduct under the laws of this state.

Section 10. Section 934.21, Florida Statutes, is amended to read:

934.21 Unlawful access to stored communications; penalties.—

(1) Except as provided in subsection (3), whoever:

(a) Intentionally accesses without authorization a facility through which an electronic communication service is provided, or

(b) Intentionally exceeds an authorization to access such facility,

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (2).

(2) The punishment for an offense under subsection (1) is as follows:

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(a) If the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, the person ~~is~~:

1. In the case of a first offense under this subsection, commits ~~guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 934.41.

2. In the case of any subsequent offense under this subsection, commits ~~guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41.

(b) In any other case, the person commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Subsection (1) does not apply with respect to conduct authorized:

(a) By the person or entity providing a wire, oral, or electronic communications service, including through cellular phones, microphone-enabled household devices, or portable electronic communication devices;

(b) By a user of a wire, oral, or electronic communications service, including through cellular phones, microphone-enabled household devices, or portable electronic communication devices, with respect to a communication of or intended for that user; ~~or~~

(c) In s. 934.09, s. 934.23, or s. 934.24;

(d) In chapter 933; or

(e) For accessing for a legitimate business purpose information that is not personally identifiable or that has been collected in a way that prevents identification of the user of the device.

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Section 11. Section 934.42, Florida Statutes, is amended to read:

934.42 Mobile tracking device and location tracking authorization.—

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

(a) "Mobile tracking device" means an electronic or mechanical device that permits the tracking of the movement of a person or an object.

(b) "Real-time location tracking" means:

1. Installation and use of a mobile tracking device on the object to be tracked;

2. Acquisition of real-time cell-site location data; or

3. Acquisition of real-time precise global positioning system location data.

(c) "Historical location data" means historical precise global positioning system location data in the possession of a provider.

(2)~~(1)~~ An investigative or law enforcement officer may make application to a judge of competent jurisdiction for a search warrant ~~an order~~ authorizing or approving real-time location tracking or the acquisition of historical location data in the possession of the provider ~~the installation and use of a mobile tracking device~~.

(3)~~(2)~~ An application under subsection (2) ~~(1) of this section~~ must include:

(a) A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation.

(b) A statement setting forth a reasonable period of time

that the mobile tracking device may be used or the location data may be obtained in real time, not to exceed 45 days from the date the search warrant is issued. The court may, for good cause, grant one or more extensions for a reasonable period of time, not to exceed 45 days each. When seeking historical location data, the applicant must specify a date range for the data sought ~~certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency~~.

(c) A statement of the offense to which the information likely to be obtained relates.

(d) A statement as to whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.

(4)~~(3)~~ Upon application made as provided under subsection (3) ~~(2)~~, the court, if it finds probable cause ~~that the certification~~ and finds that the statements required by subsection (3) ~~(2)~~ have been made in the application, must grant a search warrant ~~shall enter an~~ ex parte ~~order~~ authorizing real-time location tracking ~~the installation and use of a mobile tracking device~~ or the acquisition of historical location data. Such search warrant ~~order~~ may authorize the location tracking ~~use of the device~~ within the jurisdiction of the court and outside that jurisdiction but within the State of Florida if the location tracking ~~device~~ is initiated ~~installed~~ within the jurisdiction of the court. The search warrant must command the investigative or law enforcement officer to complete any initiation of the location tracking or execution of the search warrant for historical location data authorized by the search

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warrant within a specified period of time not to exceed 10 calendar days.

(5) ~~(4)~~ A court may not require greater specificity or additional information beyond that which is required by law and this section as a requisite for issuing a search warrant ~~an order~~.

(6) Within 10 days after the time period specified in paragraph (3)(b) has ended, the investigative or law enforcement officer executing a search warrant must return the search warrant to the issuing judge. When the search warrant is authorizing the acquisition of historical location data, the investigative or law enforcement officer executing the search warrant must return the search warrant to the issuing judge within 10 days after receipt of the records. The investigative or law enforcement officer may do so by reliable electronic means.

(7) Within 10 days after the time period specified in paragraph (3)(b) has ended, the investigative or law enforcement officer executing a search warrant must serve a copy of the search warrant on the person who, or whose property, was tracked. When the search warrant is authorizing the acquisition of historical location data, the investigative or law enforcement officer executing the search warrant must serve a copy of the search warrant on the person whose data was obtained within 10 days after receipt of the records. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or data obtained or by leaving a copy at the person’s residence or usual place of abode with an individual of suitable age and discretion who resides at that

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location and by mailing a copy to the person's last known address. Upon a showing of good cause to a court of competent jurisdiction, the court may grant one or more postponements of this notice for a period of 90 days each.

(8)~~(5)~~ The standards established by Florida courts and the United States Supreme Court for the installation, use, or ~~and~~ monitoring of mobile tracking devices and the acquisition of location data shall apply to the installation, use, or monitoring ~~and use~~ of any device and the acquisition of location data as authorized by this section.

~~(6) As used in this section, a "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.~~

(9)(a) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer specially designated by the Governor, the Attorney General, the statewide prosecutor, or a state attorney acting pursuant to this chapter who reasonably determines that:

1. An emergency exists which:

a. Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner; and

b. Requires real-time location tracking before a search warrant authorizing such tracking can, with due diligence, be obtained; and

2. There are grounds upon which a search warrant could be issued under this chapter to authorize such tracking,

may engage in real-time location tracking if, within 48 hours after the tracking has occurred or begins to occur, a search

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warrant approving the tracking is issued in accordance with this section.

(b) In the absence of an authorizing search warrant, such tracking must immediately terminate when the information sought is obtained, when the application for the search warrant is denied, or when 48 hours have lapsed since the tracking began, whichever is earlier.

Section 12. For the purpose of incorporating the amendments made by this act to sections 934.03 and 934.07, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 934.22, Florida Statutes, is reenacted to read:

934.22 Voluntary disclosure of customer communications or records.—

(2) A provider described in subsection (1) may divulge the contents of a communication:

(b) As otherwise authorized in s. 934.03(2)(a), s. 934.07, or s. 934.23.

Section 13. For the purpose of incorporating the amendments made by this act to sections 934.09 and 934.21, Florida Statutes, in references thereto, subsections (1) and (4) of section 934.27, Florida Statutes, are reenacted to read:

934.27 Civil action: relief; damages; defenses.—

(1) Except as provided in s. 934.23(5), any provider of electronic communication service, or subscriber or customer thereof, aggrieved by any violation of ss. 934.21-934.28 in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as is appropriate.

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(4) A good faith reliance on any of the following is a complete defense to any civil or criminal action brought under ss. 934.21-934.28:

(a) A court warrant or order, a subpoena, or a statutory authorization, including, but not limited to, a request of an investigative or law enforcement officer to preserve records or other evidence, as provided in s. 934.23(7).

(b) A request of an investigative or law enforcement officer under s. 934.09(7).

(c) A good faith determination that s. 934.03(3) permitted the conduct complained of.

Section 14. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in a reference thereto, subsection (6) of section 934.23, Florida Statutes, is reenacted to read:

934.23 Required disclosure of customer communications or records.—

(6) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under ss. 934.21-934.28.

Section 15. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in references thereto, subsections (6) and (7) of section 934.24, Florida Statutes, are reenacted to read:

934.24 Backup preservation; customer notification; challenges by customer.—

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(6) Within 14 days after notice by the investigative or law enforcement officer to the subscriber or customer under subsection (2), the subscriber or customer may file a motion to quash the subpoena or vacate the court order seeking contents of electronic communications, with copies served upon the investigative or law enforcement officer and with written notice of such challenge to the service provider. A motion to vacate a court order must be filed in the court which issued the order. A motion to quash a subpoena must be filed in the circuit court in the circuit from which the subpoena issued. Such motion or application must contain an affidavit or sworn statement:

(a) Stating that the applicant is a subscriber or customer of the service from which the contents of electronic communications maintained for her or him have been sought, and

(b) Stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of ss. 934.21-934.28 in some other respect.

(7) Except as otherwise obtained under paragraph (3)(a), service must be made under this section upon an investigative or law enforcement officer by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the subscriber or customer has received pursuant to ss. 934.21-934.28. For the purposes of this subsection, the term "delivering" shall be construed in accordance with the definition of "delivery" as provided in Rule 1.080, Florida Rules of Civil Procedure.

Section 16. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in a

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reference thereto, subsection (5) of section 934.25, Florida Statutes, is reenacted to read:

934.25 Delayed notice.—

(5) Upon the expiration of the period of delay of notification under subsection (1) or subsection (4), the investigative or law enforcement officer must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request together with notice which:

(a) States with reasonable specificity the nature of the law enforcement inquiry, and

(b) Informs the subscriber or customer:

1. That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested.

2. That notification of such subscriber or customer was delayed.

3. What investigative or law enforcement officer or what court made the certification or determination pursuant to which that delay was made.

4. Which provision of ss. 934.21-934.28 allowed such delay.

Section 17. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in a reference thereto, section 934.28, Florida Statutes, is reenacted to read:

934.28 Exclusivity of remedies and sanctions.—The remedies and sanctions described in ss. 934.21-934.27 are the only

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judicial remedies and sanctions for violation of those sections.

Section 18. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to searches of cellular phones and other electronic devices; amending s. 933.02, F.S.; expanding the grounds for issuance of a search warrant; providing that content held within a cellular phone, microphone-enabled household device, or portable electronic communication device may constitute evidence relevant to proving that a felony has been committed; amending s. 933.04, F.S.; adopting the constitutional protection against unreasonable interception of private communications by any means for purposes of obtaining a search warrant; amending s. 934.01, F.S.; revising and providing legislative findings; amending s. 934.02, F.S.; redefining the term "oral communication"; defining the terms "microphone-enabled household device" and "portable electronic communication device"; amending s. 934.03, F.S.; authorizing specified persons to provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if the person has been provided with a search warrant; prohibiting specified

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persons from disclosing the existence of any interception of a wire, oral, or electronic communication with respect to which the person has been served with a search warrant; amending s. 934.06, F.S.; to requiring a search warrant to obtain certain communication content; amending s. 934.07, F.S.; authorizing a judge to issue, instead of granting, a search warrant in conformity with specified provisions; authorizing the Department of Law Enforcement to request a law enforcement agency that provided it with certain information to join with the department in seeking a new search warrant; amending s. 934.08, F.S.; authorizing certain disclosure or use when an investigative or law enforcement officer intercepts wire, oral, or electronic communications relating to offenses other than those specified in a search warrant; amending s. 934.09, F.S.; requiring that each application for a search warrant, rather than an order, authorizing or approving the interception of wire, oral, or electronic communications be made in writing and state the applicant's authority; authorizing a judge to authorize a search warrant ex parte, rather than an ex parte order, based on the application under certain circumstances; specifying requirements for search warrants, rather than orders, issued under certain circumstances; authorizing an aggrieved person to move to suppress the contents of certain wire, oral, or electronic communications before, as well as during, a

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trial, hearing, or proceeding; providing for inadmissibility of certain evidence if a certain motion is granted; authorizing a judge of competent jurisdiction to authorize interception within this state under specified circumstances; amending s. 934.10, F.S.; providing that a good faith reliance on a search warrant issued under certain provisions constitutes a complete defense against specified actions; amending s. 934.21, F.S.; revising the exceptions to conduct that constitutes unlawful access to stored communications; conforming a provision to changes made by the act; amending s. 934.42, F.S.; defining the terms "mobile tracking device," "real-time location tracking," and "historical location data"; authorizing an investigative or law enforcement officer to apply to a judge of competent jurisdiction for a search warrant, rather than an order, authorizing real-time location tracking or acquisition of historical location data; requiring an application for a search warrant to include a statement of a reasonable period of time that the mobile tracking device may be used or the location data may be obtained in real time, not to exceed a specified limit; authorizing a court to grant extensions that do not individually exceed a specified limit, for good cause; deleting a provision requiring a certification to be included in the application; providing that the court, if it finds probable cause and finds the required statements in the application, must grant a

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search warrant; specifying the search warrant may authorize real-time location tracking or acquisition of historical location data; providing the search warrant may authorize the tracking as specified; requiring the search warrant to command the officer to complete any initiation of the location tracking authorized by the search warrant within a certain timeframe; providing requirements for the return of the search warrant to the judge and service of a copy of the search warrant on the person who was tracked or whose property was tracked; specifying how a search warrant authorizing the acquisition of historical location data must be returned and served; authorizing a court, for good cause, to postpone the notice requirement for a specified time period; requiring that the standards established by Florida courts for the installation, use, or monitoring of mobile tracking devices and the acquisition of location data apply to the installation, use, or monitoring of any devices and the acquisition of location data as authorized; deleting the definition of "tracking device"; authorizing any investigative or law enforcement officer who is specially designated by certain persons and who makes specified determinations to engage in real-time location tracking if a search warrant is later obtained as specified; providing requirements for engaging in real-time location tracking; specifying when real-time location tracking must terminate; reenacting s. 934.22(2)(b), F.S.,

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relating to voluntary disclosure of customer communications or records, to incorporate the amendments made to ss. 934.03 and 934.07, F.S., in references thereto; reenacting s. 934.27(1) and (4), F.S., relating to relief, damages, and defenses for certain civil actions, to incorporate the amendments made to ss. 934.09 and 934.21, F.S., in references thereto; reenacting ss. 934.23(6), 934.24(6) and (7), 934.25(5), and 934.28, F.S., relating to required disclosures of customer communications or records, a subscriber or customer filing a motion for certain relief and customer notification, delayed notice, and the exclusivity of remedies and sanctions for certain violations, respectively, to incorporate the amendment made to s. 934.21, F.S., in references thereto; providing an effective date.

By Senator Brandes

24-00393A-19 2019210__

A bill to be entitled

An act relating to searches of cellular phones and other electronic devices; amending s. 934.01, F.S.; revising and providing legislative findings; amending s. 934.02, F.S.; redefining the term "oral communication"; defining the terms "microphone-enabled household device" and "portable electronic communication device"; amending s. 934.21, F.S.; revising the exceptions to conduct that constitutes unlawful access to stored communications; conforming a provision to changes made by the act; amending s. 934.42, F.S.; defining the terms "mobile tracking device," "real-time location tracking," and "historical location data"; authorizing an investigative or law enforcement officer to apply to a judge of competent jurisdiction for a warrant, rather than an order, authorizing real-time location tracking or acquisition of historical location data; requiring an application for a warrant to include a statement of a reasonable period of time that the mobile tracking device may be used or the location data may be obtained in real time, not to exceed a specified limit; authorizing a court to grant extensions that do not individually exceed a specified limit, for good cause; deleting a provision requiring a certification to be included in the application; providing that the court, if it finds probable cause and finds the required statements in the application, must grant a warrant; specifying the warrant may authorize real-

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24-00393A-19 2019210__

time location tracking or acquisition of historical location data; providing the warrant may authorize the use of the mobile tracking device as specified; requiring the warrant to command the officer to complete any installation authorized by the warrant within a certain timeframe; providing requirements for the return of the warrant to the judge and service of a copy of the warrant on the person who was tracked or whose property was tracked; specifying how a warrant authorizing the acquisition of historical location data must be returned and served; authorizing a court, for good cause, to postpone the notice requirement for a specified time period; requiring that the standards established by Florida courts for the installation, use, or monitoring of mobile tracking devices and the acquisition of location data apply to the installation, use, or monitoring of any devices and the acquisition of location data as authorized; deleting the definition of "tracking device"; authorizing any investigative or law enforcement officer who is specially designated by certain persons and who makes specified determinations to engage in real-time location tracking if a warrant is later obtained as specified; providing requirements for engaging in real-time location tracking; specifying when real-time location tracking must terminate; providing an effective date.

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

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

Section 1. Section 934.01, Florida Statutes, is amended to read:

934.01 Legislative findings.—On the basis of its own investigations and of published studies, the Legislature makes the following findings:

(1) Wire communications are normally conducted through the use of facilities which form part of an intrastate network. The same facilities are used for interstate and intrastate communications.

(2) In order to protect effectively the privacy of wire, ~~and~~ oral, and electronic communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of intrastate commerce, it is necessary for the Legislature to define the circumstances and conditions under which the interception of wire, ~~and~~ oral, and electronic communications may be authorized and to prohibit any unauthorized interception of such communications and the use of the contents thereof in evidence in courts and administrative proceedings.

(3) Organized criminals make extensive use of wire, ~~and~~ oral, and electronic communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

(4) To safeguard the privacy of innocent persons, the interception of wire, ~~or~~ oral, or electronic communications when none of the parties to the communication has consented to the

interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire, ~~and~~ oral, and electronic communications should further be limited to certain major types of offenses and specific categories of crime with assurance that the interception is justified and that the information obtained thereby will not be misused.

(5) To safeguard the privacy of innocent persons, the Legislature recognizes that the subjective expectation of privacy in real-time cell-site location data, real-time precise global positioning system location data, and historical precise global positioning system location data which society is now prepared to accept is objectively reasonable. As such, the law enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the person or owner of the cellular phone or portable electronic communication device should be allowed only when authorized by a warrant issued by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court.

(6) The Legislature recognizes that the use of portable electronic communication devices is growing at a rapidly increasing rate. These devices can store, and encourage the storing of, an almost limitless amount of personal and private information. Often linked to the Internet, these devices are commonly used to access personal and business information and databases in computers and servers that can be located anywhere in the world. The user of a portable electronic communication

device has a reasonable and justifiable expectation of privacy in the information that these devices contain.

(7) The Legislature recognizes that the use of household electronic devices, including microphone-enabled household devices, is growing at a rapidly increasing rate. These devices often contain microphones that listen for and respond to environmental cues. These household devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility to daily household information in a device itself or in a remote computing service. Persons should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one's home.

Section 2. Subsection (2) of section 934.02, Florida Statutes, is amended, and subsections (27) and (28) are added to that section, to read:

934.02 Definitions.—As used in this chapter:

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, including the use of a microphone-enabled household device, and does not mean any public oral communication uttered at a public meeting or any electronic communication.

(27) "Microphone-enabled household device" means a device, sensor, or other physical object within a residence:

(a) Capable of connecting to the Internet, directly or indirectly, or to another connected device;

(b) Capable of creating, receiving, accessing, processing,

or storing electronic data or communications;

(c) Which communicates with, by any means, another entity or individual; and

(d) Which contains a microphone designed to listen for and respond to environmental cues.

(28) "Portable electronic communication device" means an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, processing, or storing electronic data or communications and which communicates with, by any means, another device, entity, or individual.

Section 3. Section 934.21, Florida Statutes, is amended to read:

934.21 Unlawful access to stored communications; penalties.—

(1) Except as provided in subsection (3), whoever:

(a) Intentionally accesses without authorization a facility through which an electronic communication service is provided, or

(b) Intentionally exceeds an authorization to access such facility,

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (2).

(2) The punishment for an offense under subsection (1) is as follows:

(a) If the offense is committed for purposes of commercial

advantage, malicious destruction or damage, or private commercial gain, the person ~~is~~:

1. In the case of a first offense under this subsection, commits ~~guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 934.41.

2. In the case of any subsequent offense under this subsection, commits ~~guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41.

(b) In any other case, the person commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Subsection (1) does not apply with respect to conduct authorized:

(a) By the person or entity providing a wire, oral, or electronic communications service, including through cellular phones, portable electronic communication devices, or microphone-enabled household devices;

(b) By a user of a wire, oral, or electronic communications service, including through cellular phones, portable electronic communication devices, or microphone-enabled household devices, with respect to a communication of or intended for that user; ~~or~~

(c) In s. 934.09 or~~,~~ s. 934.23~~;, or s. 934.24~~

(d) In chapter 933; or

(e) For accessing for a legitimate business purpose information that is not personally identifiable or that has been collected in a way that prevents identification of the user of the device.

Section 4. Section 934.42, Florida Statutes, is amended to

read:

934.42 Mobile tracking device and location tracking authorization.—

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

(a) "Mobile tracking device" means an electronic or mechanical device that permits the tracking of the movement of a person or an object.

(b) "Real-time location tracking" means:

1. Installation and use of a mobile tracking device on the object to be tracked;

2. Acquisition of real-time cell-site location data; or

3. Acquisition of real-time precise global positioning system location data.

(c) "Historical location data" means historical precise global positioning system location data in the possession of a provider.

(2) ~~(1)~~ An investigative or law enforcement officer may make application to a judge of competent jurisdiction for a warrant ~~an order~~ authorizing or approving real-time location tracking or the acquisition of historical location data in the possession of the provider ~~the installation and use of a mobile tracking device~~.

(3) ~~(2)~~ An application under subsection (2) ~~(1) of this section~~ must include:

(a) A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation.

(b) A statement setting forth a reasonable period of time that the mobile tracking device may be used or the location data

may be obtained in real time, not to exceed 45 days from the date the warrant is issued. The court may, for good cause, grant one or more extensions for a reasonable period of time, not to exceed 45 days each. When seeking historical location data, the applicant must specify a date range for the data sought ~~certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency~~.

(c) A statement of the offense to which the information likely to be obtained relates.

(d) A statement as to whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.

(4)~~(3)~~ Upon application made as provided under subsection (3) ~~(2)~~, the court, if it finds probable cause ~~that the certification~~ and finds that the statements required by subsection (3) ~~(2)~~ have been made in the application, must grant a warrant ~~shall enter an~~ ex parte ~~order~~ authorizing real-time location tracking ~~the installation and use of a mobile tracking device~~ or the acquisition of historical location data. Such warrant ~~order~~ may authorize the use of the mobile tracking device within the jurisdiction of the court and outside that jurisdiction but within the State of Florida if the mobile tracking device is installed within the jurisdiction of the court. The warrant must command the officer to complete any installation authorized by the warrant within a specified period of time not to exceed 10 calendar days.

(5)~~(4)~~ A court may not require greater specificity or additional information beyond that which is required by law and

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this section as a requisite for issuing a warrant ~~an order~~.

(6) Within 10 days after the time period specified in paragraph (3)(b) has ended, the officer executing a warrant must return the warrant to the issuing judge. When the warrant is authorizing the acquisition of historical location data, the officer executing the warrant must return the warrant to the issuing judge within 10 days after receipt of the records. The officer may do so by reliable electronic means.

(7) Within 10 days after the time period specified in paragraph (3)(b) has ended, the officer executing a warrant must serve a copy of the warrant on the person who, or whose property, was tracked. When the warrant is authorizing the acquisition of historical location data, the officer executing the warrant must serve a copy of the warrant on the person whose data was obtained within 10 days after receipt of the records. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or data obtained or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon a showing of good cause to a court of competent jurisdiction, the court may grant one or more postponements of this notice for a period of 90 days each.

(8)~~(5)~~ The standards established by Florida courts and the United States Supreme Court for the installation, use, or ~~and~~ monitoring of mobile tracking devices and the acquisition of location data shall apply to the installation, use, or monitoring ~~and use~~ of any device and the acquisition of location data as authorized by this section.

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~~(6) As used in this section, a "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.~~

(9)(a) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer specially designated by the Governor, the Attorney General, the statewide prosecutor, or a state attorney acting pursuant to this chapter who reasonably determines that:

1. An emergency exists which:

a. Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner; and

b. Requires real-time location tracking before a warrant authorizing such tracking can, with due diligence, be obtained; and

2. There are grounds upon which a warrant could be issued under this chapter to authorize such tracking,

may engage in real-time location tracking if, within 48 hours after the tracking has occurred or begins to occur, a warrant approving the tracking is issued in accordance with this section.

(b) In the absence of an authorizing warrant, such tracking must immediately terminate when the information sought is obtained, when the application for the warrant is denied, or when 48 hours have lapsed since the tracking began, whichever is earlier.

Section 5. This act shall take effect July 1, 2019.

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SB 210

2019 FDLE LEGISLATIVE BILL ANALYSIS

BILL INFORMATION	
BILL NUMBER:	SB0210
BILL TITLE:	Searches of Cellular Phones and Other Electronic Devices
BILL SPONSOR:	Senator Jeff Brandes
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Judiciary
3) Rules
4)
5)

CURRENT COMMITTEE
Criminal Justice

SIMILAR BILLS	
BILL NUMBER:	SB1256 (2018)
SPONSOR:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

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

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 07, 2019
LEAD AGENCY ANALYST:	Sherry Gomez
ADDITIONAL ANALYST(S):	Mike Duffey, Becky Bezemek
LEGAL ANALYST:	Jason Jones; Greg Cowsert
FISCAL ANALYST:	Cynthia Barr, Deshawn Byrd

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Authorizes law enforcement to obtain the contents of electronic communications, other specific data and tracking device information by warrant, The bill adds "microphone-enabled household device" to the definition of "oral communication" and adds definitions for "portable electronic communications device" and "microphone-enabled household device". This bill requires law enforcement to obtain warrant instead of an order to intercept wire, oral or electronic communication. This bill adds a notice requirement following the use of a tracking device and allows for law enforcement to delay notice. This bill provides criminal penalties for the intentional and unlawful access without authorization of certain devices and obtainment of wire, oral, or electronic communications stored within those devices or installing or using a tracking device in violation of s. 934.42, FS.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Currently, by statute law enforcement may apply for an order authorizing the interception of wire, oral or electronic communication, but a warrant is required by case law. Law enforcement may also apply for an order authorizing the installation of a mobile tracking device. Law enforcement is not required to provide notification to the subject of a criminal investigation when an order to install a mobile tracking device has been obtained.

2. EFFECT OF THE BILL:

Requires law enforcement to obtain a warrant instead of an order to intercept wire, oral or electronic communication. The bill changes the substantive requirements to obtain the courts' authorization and raises the burden of proof to the level of probable cause. Adds several new requirements when law enforcement seeks authorization to install a mobile tracking device or obtain location information:

- A mobile tracking device may not be used for more than 45 days without an extension by the court.
- A mobile tracking device must be installed by law enforcement within a specified timeframe after issuance of a warrant, not to exceed 10 calendar days.
- Within 10 days after the use of the tracking device has ended, law enforcement must return the warrant to the issuing judge and serve a copy of the warrant to the tracked subject. The court may delay this notice for 90 days.
- There are also provisions which allow the installation of a mobile tracking device in emergencies for 48 hours prior to an authorizing warrant.
- Lines 205 – 219 expand the definitions found in s. 934.42, FS. The definitions are more inclusive and now require a warrant for information such as historical data that is currently available by subpoena.

Provides criminal penalties if a person intentionally and unlawfully accesses stored communications date or location information without authorization.

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?	Y ☐ N ☐
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:	
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:	
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 IMPACTTHE 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.	

FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGECY 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:	• The use of the word "warrant" in the bill may also be problematic, without adding a specific definition for the term 'in the context of CH 934'. In the absence of a "specialized" definition of the term "warrant" for purposes of FS CH 934, it might be argued that provisions of CH 933, Florida's primary law dealing with search warrants, might apply. • Lines 35-36 and 263-265 require law enforcement to return the warrant to the issuing judge within 10 days after the authorized time has ended. This requirement has potential for early disclosure while the investigation is ongoing. Perhaps there should be separate extension language for 'filing.' • Lines 36-38 and 270-273 require law enforcement to serve a copy of the warrant to the person whose property was tracked. In doing so, this also has the likelihood of compromising an ongoing investigation through early disclosure.

ADDITIONAL COMMENTS

- Providing notification to a subject of a criminal investigation when using technical surveillance against them can cause investigative limitations, specifically regarding long-term investigations. Additionally, criminals would be informed of law enforcement investigative techniques used to apprehend and convict them and may begin using alternative methods to perform crimes. This concern also exists with the return of the warrant to the issuing judge. There is no mechanism to delay return of the warrant so the warrant is on file in the clerk's office.

- The bill eliminates law enforcement's ability to obtain content older than 180 days via a subpoena or court order. By eliminating the ability to seek content older than 180 days via a subpoena or court order the bill, removes a tool currently available to law enforcement at the beginning of an investigation when the evidence may not yet reach the level of probable cause required to obtain a search warrant. Access to content older than 180 days may help law enforcement obtain enough information to establish probable cause and obtain a search warrant for newer content.

  While FDLE does not support this change, the department requests if it were to stay in the bill in its current form, certain crimes would still allow for the use of a subpoena or court order for content older than 180 days. The carve out would need to be offense specific rather than for exigent circumstances due to the fact the exigent circumstances exceptions make the assumption that there is probable cause but there is not enough time to obtain the required warrant. In creating the list of offenses, we tried to limit it to crimes that involve threats of future violence.

  Provide a carve-out for the following offenses:
  - 784.048. Stalking; definitions; penalties (Mostly concerned with Aggravated Stalking and Cyberstalking)
  - 836.10. Written threats to kill or do bodily injury; punishment
  - 775.30. Terrorism; defined; penalties
  - 775.31. Facilitating or furthering terrorism; felony or misdemeanor reclassification
  - 775.33. Providing material support or resources for terrorism or to terrorist organizations
  - 775.35. Agroterrorism; penalties

  Possibly
  - 790.163. False report concerning planting a bomb, an explosive, or a weapon of mass destruction, or concerning the use of firearms in a violent manner; penalty
  - 836.05. Threats; extortion
  - 836.12. Threats

- All electronics and app providers, email services and basically anything with an electronic presence falls under this bill. If it touches the Internet or cell service, it tracks you and collects data on you, including almost all vehicles beginning in 2008, newer Xbox devices, PlayStations, children's toys, Fitbits, etc. This will have a large impact on future legal process. Bill definitions are very expansive and may have some unintended consequences.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2015
Meeting Date

210
Bill Number (if applicable)

Topic Searches of Electronic Devices

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 105 South Monroe Street
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 681-0024

Email jorge@flapartners.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Fla Assoc. of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.11.19
Meeting Date

210
Bill Number (if applicable)

Topic Searches of Cellular Phones

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road
Street

Phone 850.510.9922

Tallahassee FL 32308
City *State* *Zip*

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 210
Bill Number (if applicable)

Topic Searches Cellular Phones / Elec. Devices

Amendment Barcode (if applicable)

Name ANDY THOMAS

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St. Ste 401
Street

Phone 850 606-1000

TLH FL 32301
City *State* *Zip*

Email andy.thomas@flpdz.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

	SB 210
Meeting Date	*Bill Number (if applicable)*
	Amendment Barcode (if applicable)

Topic Searches of Cellular Phones

Name Demetrius Minor

Job Title Dir of Coalitions

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

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)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 11, 2019

I respectfully request that **Senate Bill #210**, relating to **Search of Cellular Phones and Other Electronic Devices**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

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 236
INTRODUCER:	Criminal Justice Committee and Senator Book
SUBJECT:	Public Records and Public Meetings
DATE:	February 12, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	**Fav/CS**
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 236 creates a new public records exemption that makes confidential and exempt the complaints, referrals, and reports that allege sexual harassment or sexual misconduct. The bill also creates a new public meetings exemption that exempts proceedings that would reveal records involving alleged sexual harassment or sexual misconduct.

The bill expands existing public records and public meetings exemptions to provide that a written request by the alleged violator to make records and proceedings public will not result in the loss of confidential and exempt or exempt status of these records if the complaint or referral involves allegations of sexual harassment or sexual misconduct.

The bill expands an existing public records exemption for the personal identifying information of an alleged victim in an allegation of sexual harassment to include the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or any information that could assist an individual in determining the identity of such alleged victim.

The bill provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates new public records and public meetings exemptions, and expands a current public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill may have an indeterminate fiscal impact on the Commission on Ethics (COE) and possibly other agencies relating to training and redaction of confidential and exempt information. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming a law.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.[3] The Public Records Act states that

> [i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[4]

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.[5] Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted public records as being

[1] FLA CONST., art. I, s. 24(a).
[2] *Id*.
[3] Public records laws are found throughout the Florida Statutes.
[4] Section 119.01(1), F.S.
[5] *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of

"any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

Only the Legislature may create an exemption to public records requirements.[10] An exemption must be created by general law and must specifically state the public necessity justifying the exemption.[11] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[12] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[13]

When creating or expanding a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[14] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[15]

Open Meetings Law

The Florida Constitution provides that the public has a right to access governmental meetings.[16] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.[17] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.[18]

Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).

[8] Section 119.07(1)(a), F.S.

[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

[10] FLA. CONST., art. I, s. 24(c).

[11] *Id.*

[12] The bill may, however, contain multiple exemptions that relate to one subject.

[13] FLA. CONST., art. I, s. 24(c).

[14] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

[16] FLA CONST.., art. I, s. 24(b).

[17] *Id*.

[18] FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the "Government in the Sunshine Law,"[19] or the "Sunshine Law,"[20] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[21] The board or commission must provide the public reasonable notice of such meetings.[22] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[23] Minutes of a public meeting must be promptly recorded and open to public inspection.[24] Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.[25] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[26]

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.[27] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[28] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[29]

The following are general exemptions from the requirement that all meetings of any state agency or authority be open to the public:

- That portion of a meeting that would reveal a security or fire safety system plan; and
- Any portion of a team meeting at which negotiation strategies are discussed.[30]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or public meetings exemptions,[31] with

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time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

[19] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

[20] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

[21] Section 286.011(1)-(2), F.S.

[22] *Id*.

[23] Section 286.011(6), F.S.

[24] Section 286.011(2), F.S.

[25] Section 286.011(1), F.S.

[26] Section 286.011(3), F.S.

[27] FLA CONST., art. I, s. 24(c).

[28] *Id*.

[29] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

[30] Section 286.0113, F.S.

[31] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the

specified exceptions.[32] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[33] The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[34]

The Commission on Ethics

The State Constitution provides that, "There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission."[35] Section 112.320, F.S., creates the Commission on Ethics (COE). The purpose of the COE is to serve as guardian of the standards of conduct for the officers and employees of the state, and of a county, city, or other political subdivision of the state, as defined in part III of ch. 112, F.S., and to serve as the independent commission provided for by the State Constitution.[36]

The nine-member COE is responsible for investigating and issuing public reports on complaints of breach of public trust by public officers and employees.[37] A "breach of the public trust" is defined as a violation of a provision of the State Constitution of part III of ch. 112, F.S., which establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests, including, without limitation, a violation of s. 8, art. II of the State Constitution or of part III of ch. 112, F.S.[38] Some examples of a breach of public trust are solicitation or acceptance of gifts, unauthorized compensation, or conflicting employment or contractual relationship.[39]

The law requires the COE to investigate an alleged violation of part III of ch. 112, F.S., or other alleged breach of the public trust within its jurisdiction:

- Upon a written complaint executed on a form prescribed by the COE and signed under oath or affirmation by any person; or
- Upon receipt of a written referral of a possible violation of this part or other possible breach of the public trust from the Governor, the Department of Law Enforcement, a state attorney, or a U.S. Attorney which at least six members of the COE determine is sufficient to indicate a violation of this part or any other breach of the public trust.[40]

Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

[32] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

[33] Section 119.15(3), F.S.

[34] Section 119.15(6)(b), F.S.

[35] FLA. CONST., art. II, s. 8(f).

[36] Section 112.320, F.S.

[37] Florida Commission on Ethics, *About Us*, available at http://www.ethics.state.fl.us/AboutUs/Index.aspx (last visited February 4, 2019).

[38] Section 112.312(3), F.S.

[39] *See generally* Section 112.313, F.S.

[40] Section 112.324(1)(a)-(b), F.S.

A copy of the complaint or referral must be sent to the alleged violator within five days after the receipt of such complaint or a determination that the referral received is sufficient to indicate a violation of part III of ch. 112, F.S., or any other breach of the public trust.[41]

Following receipt of a legally sufficient complaint or referral, the COE will conduct a preliminary investigation to determine whether there is probable cause to believe that a violation has occurred. If at the conclusion of such preliminary investigation the COE finds no probable cause to believe there is a violation or breach of public trust committed, the COE must dismiss the complaint or referral. At that point, the complaint or referral becomes a matter of public record.[42]

In contrast, if the COE finds probable cause to believe there is a violation or breach of public trust, the complainant and the alleged violator must be notified in writing. Following such notification, the notice and all documents made or received in the disposition of the complaint or referral then become public record. Any person who the COE finds probable cause to believe has committed a violation or breach of public trust is entitled to a public hearing. On its own motion, the COE may require a public hearing, conduct such further investigation as it deems necessary, or enter into stipulations and settlements as it finds just and in the best interest of the state.[43]

Section 112.324, F.S., provides that the following are confidential and exempt from public records laws:

- The complaint and records relating to the complaint or to any preliminary investigation held by the COE or its agents, by a commission on ethics and public trust established by any county defined in s. 125.011(1), F.S., or by any municipality defined in s. 165.031, F.S., or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326, F.S; and
- Written referrals and records relating to such referrals held by the COE or its agents, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the COE or its agents.[44]

The law also provides that the following are exempt from public meetings laws:

- Any portion of a proceeding conducted by the COE, a commission on ethics and public trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation; and
- Any portion of a proceeding of the COE in which a determination regarding a referral is discussed or acted upon.[45]

The above-discussed public records and public meetings exemptions apply until:

- The complaint is dismissed as legally insufficient;
- The alleged violator requests in writing that such records and proceedings be made public;

[41] Section 112.324(1), F.S.
[42] Section 112.324(3), F.S.
[43] *Id.*
[44] Section 112.324(2)(a)-(b), F.S.
[45] Section 112.324(2)(c)-(d), F.S.

- The COE determines that it will not investigate the referral; or
- The COE, a commission on ethics and public trust, or a county or municipality that has established such local investigatory process determines, based on such investigation, whether probable cause exists to believe that a violation has occurred.[46]

Personal Identifying Information of a Victim

Current law provides that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities.[47]

III. Effect of Proposed Changes:

Public Records Exemptions

Agencies Subject to Ch. 119, F.S.

The bill creates a public records exemption to make confidential and exempt the complaints, referrals, and reports that allege sexual harassment or sexual misconduct, and any related records that are held by an agency. The bill specifies that such information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities.

The bill provides that the exemption applies until:
- The agency determines that it will not investigate the allegation;
- The agency takes disciplinary action against the subject of the allegation and determines that it will take no further action in the matter; or
- A finding is made as to whether probable cause exists.

The bill expands an existing public records exemption for the personal identifying information of an alleged victim in an allegation of sexual harassment to include the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or any information that could assist an individual in determining the identity of such alleged victim. Such personal identifying information remains confidential and exempt even in the event that the complaint, referral, or report containing the information becomes public record. The bill provides, however, that such information may be disclosed to another governmental entity in the furtherance of the agency's official duties and responsibilities or to the parties to the allegation and their attorneys.

The Commission on Ethics

Currently, the complaint and records relating to the complaint, as well as written referrals and records relating to such referrals that are confidential and exempt pursuant to s. 112.324(2)(a)-(b), F.S., are no longer confidential and exempt if the alleged violator of the complaint at issue submits a written request to make such documents public record. The bill expands these existing public records exemptions and provides that such a written request will not result in the loss of

[46] Section 112.324(2)(e), F.S.
[47] Section 119.071(2)(n), F.S.

confidential and exempt status if the complaint or referral involves allegations of sexual harassment or sexual misconduct.

Additionally, the public records expansion in ch. 119, F.S., for the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or any information that could assist an individual in determining the identity of such alleged victim applies to records held by the COE or any other entity listed in s. 112.324, F.S. Such personal identifying information must remain confidential and exempt even in the event that the complaint, referral, or report containing the information becomes public record.

Public Meetings Exemptions

Agencies, Boards, or Commissions Subject to Ch. 286, F.S.

The bill creates a new public meetings exemption to make exempt any portion of a proceeding that would reveal any records involving an allegation of sexual harassment or sexual misconduct until:

- The agency determines that it will not investigate the allegation;
- The agency takes disciplinary action against the subject of the allegation and determines that it will take no further action in the matter; or
- A finding is made as to whether probable cause exists.

The bill requires that the personal identifying information of an alleged victim of sexual harassment or sexual misconduct that is confidential and exempt pursuant to ch. 119, F.S., is to remain confidential and exempt during any proceeding that is open to the public.

The Commission on Ethics

Currently, any portion of a proceeding that is exempt pursuant to s. 112.324(2)(c)-(d), F.S., is no longer exempt if the alleged violator of the complaint in which the proceeding pertains to submits a written request to make such proceedings public and open to the public. The bill expands these existing public meetings exemptions and provides that such a written request will not result in the proceeding being made public if it relates to a complaint or referral that involves allegations of sexual harassment or sexual misconduct.

The bill requires that the personal identifying information of an alleged victim of sexual harassment or sexual misconduct that is confidential and exempt pursuant to ch. 119, F.S., to remain confidential and exempt during any proceeding conducted by the COE or any other entity listed in s. 112.324, F.S., that is open to the public.

Public Necessity Statement

The required public necessity statement provides as justification for the exemption of complaints, referrals, and reports alleging sexual harassment or sexual misconduct, and any related records, that the release of such information could potentially be defamatory to an individual under investigation, could subject alleged victims to further sexual harassment or retaliation, or could significantly impair the integrity of any investigation of such allegations. The public necessity statement also states that disclosure of such information could create a

disincentive for alleged victims to report instances of alleged sexual harassment or sexual misconduct.

The public necessity statement provides justification for the exemptions of any portion of a meeting that would reveal any records involving an allegation of sexual harassment or sexual misconduct and the disclosure of personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or any information that could assist an individual in determining the identity of such alleged victim, by noting that a victim may remain at risk of further harassment and retaliation, and the disclosure of the victim's identity may cause damage to his or her reputation.

The public records and public meetings exemptions are subject to the Act pursuant to s. 119.15, F.S., and will be repealed October 2, 2024, unless the Legislature reviews and reenacts the exemptions before that date.

Because the bill creates a new public records and public meetings exemption, and expands a current public record exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Public Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding exemptions to the public records and public meetings requirements. This bill enacts new exemptions and expands a current exemption. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding exemptions to the public records and public meetings requirements to state with specificity the public necessity justifying the exemption. Section 4 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires exemptions to the public records and public meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect victims of sexual harassment or

sexual misconduct. The law protects such victims by narrowly expanding the public records exemption to apply to the personal identifying information of an alleged victim of sexual harassment or sexual misconduct. There are substantial legislative findings in the statement of public necessity in support of the public records and public meetings exemptions. For these reasons, the bill appears to be no broader than necessary to accomplish its stated purpose.

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 COE and possibly other agencies relating to training and redaction of confidential and exempt information. However, costs may be minimal if they can be absorbed by the COE and other agencies because training and redaction of confidential and exempt information are part of the day-to-day responsibilities of the COE and other agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.324, 119.071, and 286.0113.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The Committee Substitute:

- Clarifies that the Open Government Sunset Review Act applies to the public records and public meetings exemptions in s. 112.324, F.S., that are expanded by the bill; and
- Specifies that the public record exemption expanded by ch. 119, F.S., applies to the personal identifying information of an alleged victim *of sexual harassment or sexual misconduct.*

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 46 - 103
and insert:
Section 1. Subsection (2) of section 112.324, Florida Statutes, is amended to read:
112.324 Procedures on complaints of violations and referrals; public records and meeting exemptions.—
(2)(a) The complaint and records relating to the complaint or to any preliminary investigation held by the commission or

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its agents, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Written referrals and records relating to such referrals held by the commission or its agents, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission or its agents, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) Any portion of a proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525.

(d) Any portion of a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, and s. 120.525.

(e) The exemptions in paragraphs (a)-(d) apply until:

1. The complaint is dismissed as legally insufficient;

2. Except in connection with complaints or referrals that involve allegations of sexual harassment or sexual misconduct,

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the alleged violator requests in writing that such records and proceedings be made public;

3. The commission determines that it will not investigate the referral; or

4. The commission, a commission on ethics and public trust, or a county or municipality that has established such local investigatory process determines, based on such investigation, whether probable cause exists to believe that a violation has occurred.

(f) Notwithstanding paragraph (e), the personal identifying information of an alleged victim of sexual harassment or sexual misconduct or any information that could assist an individual in determining the identity of such alleged victim remains confidential and exempt as provided under s. 119.071(2)(n)3. and may not be disclosed in a portion of a proceeding conducted by the commission, a commission on ethics and public trust, or a county or municipality that has established such local investigatory process which is open to the public.

(g) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

(h) ~~(f)~~ A complaint or referral under this part against a candidate in any general, special, or primary election may not be filed nor may any intention of filing such a complaint or referral be disclosed on the day of any such election or within the 30 days immediately preceding the date of the election, unless the complaint or referral is based upon personal information or information other than hearsay.

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Section 2. Paragraph (n) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(n)1. Complaints, referrals, and reports that allege sexual harassment or sexual misconduct, including allegations of sexual harassment or sexual misconduct in violation of part III of chapter 112, and any related records that are held by an agency are ~~Personal identifying information of the alleged victim in an allegation of sexual harassment is~~ confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities.

2. Except as provided in subparagraph 3., the exemption in subparagraph 1. applies until:

a. The agency determines that it will not investigate the allegation;

b. The agency takes disciplinary action against the subject of the allegation and determines that it will take no further action in the matter; or

c. A finding is made as to whether probable cause exists.

3. Notwithstanding the release of any record pursuant to subparagraph 2., the personal identifying information of an alleged victim of sexual harassment or sexual misconduct or any information that could assist an

By Senator Book

32-00631-19 2019236__

A bill to be entitled

An act relating to public records and public meetings; amending s. 112.324, F.S.; providing an exception to the expiration of certain public records and public meetings exemptions under specified circumstances; prohibiting the disclosure of the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or information that could assist an individual in determining the identity of such alleged victim, in any portion of a proceeding conducted by the Commission on Ethics, a commission on ethics and public trust, or a county or a municipality that has established a local investigatory process which is open to the public; providing for future legislative review and repeal; amending s. 119.071, F.S.; providing an exemption from public records requirements for complaints, referrals, and reports alleging sexual harassment or sexual misconduct, and any related records, which are held by an agency; specifying conditions upon which the exemption expires; providing that the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or information that could assist an individual in determining the identity of such alleged victim, remains confidential and exempt from public records requirements; authorizing disclosure under specified circumstances; providing for future legislative review and repeal; amending s. 286.0113, F.S.; providing an exemption from public meetings

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

32-00631-19 2019236__

requirements for any portion of a meeting that would reveal records involving an allegation of sexual harassment or sexual misconduct made confidential and exempt under the act; specifying conditions upon which the exemption expires; prohibiting the disclosure of the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or information that could assist an individual in determining the identity of such alleged victim, in any portion of a meeting open to the public; providing for future legislative review and repeal; providing statements of public necessity; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2) of section 112.324, Florida Statutes, is amended, present paragraph (f) of that subsection is redesignated as paragraph (g), and a new paragraph (f) is added to that subsection, to read:

112.324 Procedures on complaints of violations and referrals; public records and meeting exemptions.—

(2)

(e) The exemptions in paragraphs (a)-(d) apply until:

1. The complaint is dismissed as legally insufficient;

2. Except in connection with complaints or referrals that involve allegations of sexual harassment or sexual misconduct, the alleged violator requests in writing that such records and proceedings be made public;

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3. The commission determines that it will not investigate the referral; or

4. The commission, a commission on ethics and public trust, or a county or municipality that has established such local investigatory process determines, based on such investigation, whether probable cause exists to believe that a violation has occurred.

(f) Notwithstanding paragraph (e), the personal identifying information of an alleged victim of sexual harassment or sexual misconduct or any information that could assist an individual in determining the identity of such alleged victim remains confidential and exempt as provided under s. 119.071(2)(n)3. and may not be disclosed in a portion of a proceeding conducted by the commission, a commission on ethics and public trust, or a county or municipality that has established such local investigatory process which is open to the public. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Paragraph (n) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(n)1. Complaints, referrals, and reports that allege sexual harassment or sexual misconduct, including allegations of sexual harassment or sexual misconduct in violation of part III of chapter 112, and any related records that are held by an agency

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are ~~Personal identifying information of the alleged victim in an allegation of sexual harassment is~~ confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities.

2. Except as provided in subparagraph 3., the exemption in subparagraph 1. applies until:

a. The agency determines that it will not investigate the allegation;

b. The agency takes disciplinary action against the subject of the allegation and determines that it will take no further action in the matter; or

c. A finding is made as to whether probable cause exists.

3. Notwithstanding the release of any record pursuant to subparagraph 2., any personal identifying information of an alleged victim, or any information that could assist an individual in determining the identity of such alleged victim, shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information may be disclosed to another governmental entity in the furtherance of the agency's official duties and responsibilities or to the parties to the allegation and their attorneys.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024 ~~2022~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. Subsection (3) is added to section 286.0113, Florida Statutes, to read:

286.0113 General exemptions from public meetings.—

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(3)(a) Any portion of a meeting that would reveal any records involving an allegation of sexual harassment or sexual misconduct which are made confidential and exempt by s. 119.071(2)(n)1. is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution until the agency:

1. Determines it will not investigate the allegation;

2. Takes disciplinary action against the subject of the allegation and determines it will take no further action; or

3. Makes a finding as to probable cause.

(b) Notwithstanding paragraph (a), the personal identifying information of an alleged victim of sexual harassment or sexual misconduct or any information that could assist an individual in determining the identity of such alleged victim remains confidential and exempt as provided under s. 119.071(2)(n)3. and may not be disclosed in a portion of a meeting that is open to the public.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. (1) The Legislature finds that it is a public necessity that complaints, referrals, and reports alleging sexual harassment or sexual misconduct, and any related records that are held by an agency, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until the agency determines that it will not investigate the allegation; takes disciplinary action against the subject of the allegation and determines it will take no further action; or makes a finding as to probable cause. This

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exemption is necessary because the release of such information could potentially be defamatory to an individual under investigation; could subject alleged victims to further sexual harassment or retaliation; or could significantly impair the integrity of any investigation of such allegations. Additionally, the potential for disclosure of such information could create a disincentive for alleged victims to report instances of alleged harassment or misconduct. The Legislature finds that the potential harm that may result from the release of such information outweighs any public benefit that may be derived from the disclosure of such information.

(2) The Legislature also finds that it is a public necessity that any portion of a meeting that would reveal any records involving an allegation of sexual harassment or sexual misconduct which are made confidential and exempt under s. 119.071(2)(n)1., Florida Statutes, be made exempt under s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution until the agency determines that it will not investigate the allegation; takes disciplinary action against the subject of the allegation and determines it will take no further action; or makes a finding as to probable cause. Furthermore, the Legislature finds that it is a public necessity to prohibit the disclosure of the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or any information that could assist an individual in determining the identity of such alleged victim, in any portion of a proceeding conducted by the Commission on Ethics, a commission on ethics and public trust, or a county or municipality that has established a local investigatory process

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which is open to the public, or any portion of a meeting of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision which is open to the public. The failure to close a meeting at which records involving an allegation of sexual harassment or sexual misconduct are discussed or acted upon would defeat the purpose of the public records exemption. The Legislature also finds that it is necessary to maintain the confidentiality of an alleged victim's identity after an agency determines that it will not investigate the allegation; takes disciplinary action against the subject of the allegation and determines it will take no further action; or makes a finding as to probable cause, because a victim may remain at risk of further harassment and retaliation, and the disclosure of the victim's identity may cause damage to his or her reputation.

Section 5. This act shall take effect upon becoming a law.

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

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 248
INTRODUCER:	Criminal Justice Committee and Senator Hooper and others
SUBJECT:	Public Records/Civilian Personnel Employed by a Law Enforcement Agency
DATE:	February 11, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Fav/CS**
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 248 amends s. 119.071(4)(d), F.S., which contains several public records exemptions for home addresses and various other information identifying specified agency personnel and their families. The term "home addresses" is currently undefined. The bill expands these exemptions by defining the term "home addresses" to include various location information.

The bill also amends s. 119.071(4)(d)2.a., F.S., to create a new public records exemption for:

- Home addresses, telephone numbers, dates of birth, and photographs of active or former civilian personnel employed by a law enforcement agency;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemptions in s. 119.071(4)(d), F.S., are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill is effective July 1, 2019.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.[3] The Public Records Act states

> [i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[4]

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.[5] Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Public records laws are found throughout the Florida Statutes.
[4] Section 119.01(1), F.S.
[5] *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).

under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

Only the Legislature may create an exemption to public records requirements.[10] An exemption must be created by general law and must specifically state the public necessity justifying the exemption.[11] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[12] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[13]

When creating or expanding a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[14] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[15]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,[16] with specified exceptions.[17] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[18] The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[19]

Public Records Exemptions for Specified Agency Personnel and Their Families (s. 119.071(4)(d), F.S)

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include:

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST., art. I, s. 24(c).
[11] *Id.*
[12] The bill may, however, contain multiple exemptions that relate to one subject.
[13] FLA. CONST., art. I, s. 24(c).
[14] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[16] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).
[17] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[18] Section 119.15(3), F.S.
[19] Section 119.15(6)(b), F.S.

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;[20]
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;[21]
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;[22]
- Current or former certified firefighters;[23]
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;[24]
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;[25]
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;[26]
- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;[27]
- Current or former code enforcement officers;[28]
- Current or former guardians ad litem;[29]
- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;[30]
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;[31]
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;[32]

[20] Section 119.071(4)(d)2.a., F.S.
[21] Section 119.071(4)(d)2.b., F.S.
[22] Section 119.071(4)(d)2.c., F.S.
[23] Section 119.071(4)(d)2.d., F.S.
[24] Section 119.071(4)(d)2.e., F.S.
[25] Section 119.071(4)(d)2.f., F.S.
[26] Section 119.071(4)(d)2.g., F.S.
[27] Section 119.071(4)(d)2.h., F.S.
[28] Section 119.071(4)(d)2.i., F.S.
[29] Section 119.071(4)(d)2.j., F.S.
[30] Section 119.071(4)(d)2.k., F.S.
[31] Section 119.071(4)(d)2.l., F.S.
[32] Section 119.071(4)(d)2.m., F.S.

- County tax collectors;[33]
- Certain current or former personnel of the Department of Health;[34]
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;[35]
- Current or former certified emergency medical technicians and paramedics;[36]
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;[37]
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;[38] and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.[39]

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.[40] Further, all of these exemptions have retroactive application.[41]

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses, telephone numbers, and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

Section 119.071(4)(d)2., F.S., also exempts from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and names and locations of children's schools and day care facilities. However, exemptions are not uniform for names, dates of birth, and photographs of families members.

In addition, some of the provisions exempt information from ch. 119, F.S., but not from Article I, s. 24(a), of the State Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Finally, certain exemptions have different Open Government Sunset Review sunset dates.

Law Enforcement and Other Specified Personnel (s. 119.071(4)(d)2.a., F.S.)

The public record exemption in s. 119.071(4)(d)2.a., F.S., covers current or former personnel from several agencies engaged in law enforcement, corrections, certain crime-related

[33] Section 119.071(4)(d)2.n., F.S.
[34] Section 119.071(4)(d)2.o., F.S.
[35] Section 119.071(4)(d)2.p., F.S.
[36] Section 119.071(4)(d)2.q., F.S.
[37] Section 119.071(4)(d)2.r., F.S.
[38] Section 119.071(4)(d)2.s., F.S.
[39] Section 119.071(4)(d)2.t., F.S.
[40] Section 119.071(4)(d)3., F.S.
[41] Section 119.071(4)(d)4., F.S.

investigations or child abuse or neglect investigations, revenue collection, and revenue and child support enforcement. Specifically, the exemption covers:

- Home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including:
  - Correctional and correctional probation officers,
  - Personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities,
  - Personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and
  - Personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

III. Effect of Proposed Changes:

The bill amends s. 119.071(4)(d), F.S., which contains several public records exemptions for home addresses and various other information identifying specified agency personnel and their families. The term "home addresses" is currently undefined. The bill expands these exemptions by defining the term "home addresses" to include various location information.

The bill defines the term "home addresses" to mean

> the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

The bill also amends s. 119.071(4)(d)2.a., F.S., to create a new public records exemption for:

- Home addresses, telephone numbers, dates of birth, and photographs of active or former civilian personnel employed by a law enforcement agency;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides a statement of public necessity as required by the State Constitution. Currently, s. 119.071(4)(d), F.S., exempts from public disclosure home addresses of certain agency personnel and their families. The public necessity statement states that the term "home addresses" needs to be defined "so that the safety and privacy of various personnel and their family members are not compromised." This statement notes

> [t]he Legislature has previously recognized that such personnel and their family members are at a heightened risk of physical and emotional harm from disgruntled individuals who have contentious reactions to actions taken by such personnel, or whose business or

> professional practices have come under scrutiny of such personnel, and, as a result, has enacted various public records exemptions.[42]

Further, the public necessity statement indicates

> the current exemptions do not provide protection for various forms of descriptive property information that may be used on its own, or in conjunction with other information, to reveal the home addresses that otherwise should be protected from public disclosure.

The public necessity statement also identifies a similar public safety rationale for exempting various identifying information and location information (see discussion, *supra*) regarding civilian personnel of law enforcement agencies and their families.

> The civilian personnel of law enforcement agencies perform a variety of important duties that ensure public safety and welfare and encourage safe and secure communities. As a result of such duties, these civilian personnel often come into close contact with individuals who not only may be a threat to those personnel, but who might also seek to take revenge against them by harming their spouses and children.

The bill provides that the exemptions in s. 119.071(4)(d), F.S., are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.[43]

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill expands several existing exemptions and creates a new exemption. Therefore, the bill requires a two-thirds vote to be enacted.

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[42] For example, s. 119.071(4)(d), F.S., exempts from public disclosure telephone numbers of certain agency personnel and their families. In 2012, the Legislature defined "telephone number" to include personal pager numbers because personnel and their families "could potentially be identified, located, and put at risk" if personal pager numbers were subject to public disclosure. Ch. 2012-149, L.O.F.

[43] The bill also removes current sunset dates relevant to particular exemptions in s. 119.071(4)(d), F.S.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

The public necessity statement identifies the public safety rationales for defining "home addresses" for purposes of the exemptions in s. 119.071(4)(d), F.S., and for creating an exemption in this paragraph for various identifying information and location information regarding civilian personnel of law enforcement agencies and their families. (See "Effect of Proposed Changes" section of this analysis.) The exemptions are based upon public safety rationales which have supported previous exemptions relating to information identifying agency personnel and their families. Further, an exemption only occurs upon written request of a covered employee or his or her agency. For these reasons, the exemptions do not appear broader than necessary to accomplish the stated purpose of the law.

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:

The bill may reduce financial losses caused or aided by the fraudulent use of public information on home addresses of agency personnel.

Any individual or business that currently obtains location information that is covered by the definition of "home addresses" in the bill will not be able to obtain that information

from the records custodian if the employee or the employee's agency requests that the home address information be exempted.

C. Government Sector Impact:

Indeterminate. Agencies or records custodians may incur costs to comply with requests to remove location information covered by the definition of "home addresses" in the bill if that information is currently available to the public on their websites. If a record requested by the public contains information that is subject to public disclosure and home address information that cannot be publicly disclosed, the records custodian may incur costs in redacting the home address information.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The Committee Substitute:

- Clarifies in the title of the bill that the bill is expanding exemptions from public records requirements for agency personnel information by defining the term "home addresses."
- Changes the year of the sunset date for the public records exemptions from 2023 to 2024.

B. Amendments:

None.

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

417100

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment

In title, delete line 3
and insert:
119.071, F.S.; expanding exemptions from public records requirements for agency personnel information by defining the term “home addresses” for

730452

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 336
and insert:
on October 2, 2024, unless reviewed and saved from repeal

By Senator Hooper

16-00556-19 2019248__

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; defining the term "home addresses" for purposes of public records exemptions for personal identifying and location information of certain agency personnel and their family members; exempting personal identifying and location information of active or former civilian personnel employed by a law enforcement agency, and of spouses and children of such personnel, from public records requirements; providing for legislative review and repeal of the exemptions; providing statements of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

b. "Telephone numbers" includes home telephone numbers,

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personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn ~~or civilian~~ law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal

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

activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment

of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools

and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or

other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention

superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

m. The home addresses, telephone numbers, dates of birth,

and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health

care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.~~

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and

places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the

spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this sub-subparagraph, the term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26). ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.~~

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1) and fulfills the screening requirement of s. 39.3035(2), and the members of a child protection team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review~~

~~Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.~~

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

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

5. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity to define the term "home addresses" for purposes of the public records exemptions for agency personnel information under s. 119.071(4)(d), Florida Statutes. The public records exemptions for agency personnel information protect identifying and location information of numerous types of personnel, including, but not limited to, current or former law enforcement officers, investigative personnel, state attorneys and prosecutors, public defenders, guardians ad litem, Supreme Court justices, various judges, and the spouses and children of such personnel. The Legislature has previously recognized that such

personnel and their family members are at a heightened risk of physical and emotional harm from disgruntled individuals who have contentious reactions to actions taken by such personnel, or whose business or professional practices have come under scrutiny of such personnel, and, as a result, has enacted various public records exemptions. While home addresses of such personnel and their family members are already exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, the current exemptions do not provide protection for various forms of descriptive property information that may be used on its own, or in conjunction with other information, to reveal the home addresses that otherwise should be protected from public disclosure. Therefore, the Legislature finds that it is a public necessity to specifically define the term "home addresses" so that the safety and privacy of various personnel and their family members are not compromised.

(2) The Legislature further finds that it is a public necessity that the home addresses, telephone numbers, dates of birth, and photographs of active or former civilian personnel employed by a law enforcement agency; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel be exempt from public records requirements. Existing law already provides that the identifying and location information of active or former civilian law enforcement personnel and their spouses and children are exempt from public records requirements. The amendment made by this act further specifies that any active or

former civilian personnel employed by a law enforcement agency and their spouses and children are entitled to the protections of the public records exemption. The civilian personnel of law enforcement agencies perform a variety of important duties that ensure public safety and welfare and encourage safe and secure communities. As a result of such duties, these civilian personnel often come into close contact with individuals who not only may be a threat to those personnel, but who might also seek to take revenge against them by harming their spouses and children. The Legislature finds that modifying the public records exemption to apply to all active or former civilian personnel employed by a law enforcement agency and their spouses and children will serve the public interest by further ensuring the safety of such personnel.

Section 3. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

248
Bill Number (if applicable)

Topic Civilian Personnel Employed by LE Agency

Amendment Barcode (if applicable)

Name Gary Hester, Chief

Job Title Gov't Affairs

Address 2636 Mitcham Drive
Street

Phone 850-219-3631

Tallahassee FL 32308
City *State* *Zip*

Email ghester@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2 / 14 /2019
Meeting Date

Topic _____ Bill Number 248 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.4.19
Meeting Date

248
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Public Records/LEA Civilian Employees

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road
Street

Phone 850.510.9922

Tallahassee FL 32308
City *State* *Zip*

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 248
Bill Number (if applicable)

Topic SB 248 - Public Records

Amendment Barcode (if applicable)

Name Chase Mitchell

Job Title Senior Management Analyst

Address Plaza Level II, The Capitol
Street

Phone (850) 413-2866

Tallahassee FL 32399
City *State* *Zip*

Email chase.mitchell@myfloridacfo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Financial Services

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

248
Bill Number (if applicable)

Topic Public Records/ ~~of~~ Civilian Personnel

Amendment Barcode (if applicable)

Name Mercer Feamster

Job Title SSG

Address PO Box 10570
Street

Phone 850-671-4401

Tallahassee FL 32302
City *State* *Zip*

Email feamster@sostrategy.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 248
Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name DOUGLAS MANG

Job Title

Address 1424 PIEDMONT DR.
Street

TALLAHASSEE
City *State* *Zip*

Phone 509-2511

Email DMANG@MANGLAW.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FIRST AMERICAN TITLE INS. CO.

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

February 11, 2019
Meeting Date

SB 248
Bill Number (if applicable)

Topic Public Records / Civilian Employed by a Law Enforcement Agency
Amendment Barcode (if applicable)

Name Scott Merritt

Job Title Executive Director

Address 249 E. Virginia St
Street

Phone ~~(904)~~ (850) 681-6422

Tallahassee FL 32301
City *State* *Zip*

Email Scott@FLTA.ORG

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Land Title Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

248
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title

Address 311 EAST PARK AVE
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 224-5081

Email ddaniel@landtitlelaw.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FLORIDA LAND TITLE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

248
Bill Number (if applicable)

Topic Public Records Exemption

Amendment Barcode (if applicable)

Name Chase Daniels

Job Title Assistant Executive Director

Address 8700 Citizens Dr
Street

New Port Richey FL 34654
City *State* *Zip*

Phone 727-844-7734

Email cdaniels@pascosheriff.org

Speaking: [X] For [ ] Against [ ] Information

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

Representing Pasco Sheriff's Office

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

Lobbyist registered with Legislature: [X] 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)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, Chair
Appropriations Subcommittee on Agriculture, Environment, and General Government
Appropriations Subcommittee on Health and Human Services
Health Policy
Infrastructure and Security
Joint Select Committee on Collective Bargaining, Alternating Chair
Joint Administrative Procedures Committee

SENATOR ED HOOPER
16th District

February 5th, 2019

The Honorable Keith Perry, Chair
Criminal Justice Committee
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Perry:

I am writing to request that Senate Bill 248, Public Records/Civilian Personnel Employed by a Law Enforcement Agency, be placed on the next meeting agenda of the Criminal Justice Committee.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

Ed Hooper

CC: Lauren Jones, Staff Director
Sue Arnold, Administrative Assistant

REPLY TO:
❒ 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
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 332
INTRODUCER:	Criminal Justice Committee and Senator Pizzo and others
SUBJECT:	Incarcerated Women
DATE:	February 12, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	**Fav/CS**
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 332, which is cited as the "Dignity for Incarcerated Women Act," creates new statutory language to address how correctional facilities handle certain procedural and administrative circumstances that are unique to the incarceration of women inmates.

Legislation to ensure access to various health care products has been filed in Congress, as well as in a number of states, to address other health care concerns that have been raised by inmates. Additionally, many correctional facility systems, including the Federal Bureau of Prisons, have promulgated new rules to address these policy concerns.

First, the bill requires all correctional facilities, including county detention facilities and the Department of Juvenile Justice (DJJ) facilities, to make "health care products" available to each incarcerated woman. These items must be available in common housing areas and medical care facilities, at no cost, and in a quantity that is appropriate to the needs of the woman. The Department of Corrections (DOC) and DJJ report that many of these policy concerns are contemplated in current rules.

Over the last several years, various entities throughout the nation have reported about unique challenges that are presented by the incarceration of women and how these circumstances are addressed in correctional facilities across the nation. The Federal Prison Rape Elimination Act of 2003 (PREA) was one of the first attempts in recent years to attempt to address concerns raised by these women. The PREA Act provided standards for cross-gender pat-down searches of

female inmates in adult prisons, jails, and community confinement facilities and prohibited such searches absent exigent circumstances.

Additionally, the bill provides that a male correctional facility employee:

- Is prohibited from conducting a pat-down or body cavity search on an incarcerated woman except in situations where the incarcerated woman is presenting an immediate risk of harm and a female correctional facility employee is not available to do the search;
- Must announce his presence upon entering a housing unit for incarcerated women; and
- With the exception of specified circumstances, must not enter specified areas of the correctional facility in which an incarcerated woman may be in a state of undress or an area where an incarcerated woman in a state of undress may be viewed.

The bill requires male correctional employees to document any incident that violates the above-mentioned provisions within three days. Such documentation must include details of the circumstances that necessitated the employee's actions.

The bill defines several terms to provide clarity to the provisions of the act, including "correctional facility," "correctional facility employee," "health care products," and "state of undress."

To the extent that the bill requires any of the specified facilities to provide additional or different products than are currently being offered, the bill will likely have a positive fiscal impact (i.e., unquantifiable increase in costs) to the correctional facilities. See Section V. Fiscal Impact Statement.

The bill is effective on July 1, 2019.

II. Present Situation:

Over the last several years, various entities throughout the nation have reported about unique challenges that are presented by the incarceration of women and how these circumstances are addressed in correctional facilities across the nation.[1] Many women who have been incarcerated have claimed that access to feminine hygiene products and other hygiene products is inconsistent and sometimes inadequate.[2]

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[1] Vera Institute for Justice, *Overlooked: Women and Jails in an Era of Reform*, August 2016, available at https://www.vera.org/publications/overlooked-women-and-jails-report (last visited January 31, 2019); CNN, *Why women in Arizona are sending a state representative pads and tampons*, Amir Vera, February 13, 2018, available at https://www.cnn.com/2018/02/13/health/women-pads-arizona-state-representative-trnd/index.html (last visited January 31, 2019); Fox 40, *Movement Focuses on the Mistreatment of Incarcerated Women*, March 10, 2018, available at https://fox40.com/2018/03/10/movement-focuses-on-the-mistreatment-of-incarcerated-women/ (last visited January 31, 2019); CNN, *The powerful movement for incarcerated women*, Van Jones and Topeka K. Sam, March 10, 2018, available at https://www.cnn.com/2018/03/09/opinions/justice-for-female-prisoners-jones-sam-opinion/index.html (last visited January 31, 2019); *The Baltimore Sun, Female prisoners deserve dignity*, Nila Bala, June 18, 2018, available at https://www.baltimoresun.com/news/opinion/oped/bs-ed-op-0619-prisoner-dignity-20180618-story.html (last visited January 31, 2019); and The New York Times, *In Jail, Pads and Tampons as Bargaining Chips*, Zoe Greenberg, April 20, 2017, available at https://www.nytimes.com/2017/04/20/nyregion/pads-tampons-new-york-womens-prisons.html (last visited January 31, 2019).

[2] *See Id.*

In 2017, United States Senators Booker, Warren, Durbin, and Harris introduced a federal "Dignity for Incarcerated Women Act." The bill, in part, provided access to health care products free of charge to female inmates and restricted Federal Bureau of Prisons (BOP) employees from entering restrooms of incarcerated individuals of the opposite sex except in exigent circumstances. The bill did not become law.[3]

At the same time that the "Dignity for Incarcerated Women Act" was pending, the BOP issued new policies regarding the access to feminine hygiene products.[4] Before the policy change, the BOP only broadly required "sanitary products" to be made available for free, and the specific type of products available at no cost varied depending on the BOP facility. The new policy required wardens to ensure inmates were provided with specified products at no cost to the inmates, including:

- Tampons, regular and super-size;
- Maxi pads with wings, regular and super-size; and
- Panty liners, regular.[5]

Additionally, the "First Step Act of 2018," which became law in December, 2018, in part, requires the Director of BOP to make tampons and sanitary napkins "available to prisoners for free, in a quantity that is appropriate to the healthcare needs of each prisoner." The Director must also ensure that the quality of these products conform to applicable industry standards.[6]

In addition to federal facilities, many states have evaluated their policies on these issues after reports surfaced about inconsistencies. Several states have made changes either statutorily or through procedural rules changes.[7]

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[3] United States SB 1524 – 115th Congress (2017-2018), available at https://www.congress.gov/bill/115th-congress/senate-bill/1524?q=%7B%22search%22%3A%5B%22dignity+for+incarcerated+women%22%5D%7D&s=1&r=3 (last visited January 31, 2019). *See also* Cory Booker, *Senators Booker, Warren, Durbin, Harris Introduce Landmark Bill to Reform the Way Women Are Treated Behind Bars*, July 11, 2017, available at https://www.booker.senate.gov/?p=press_release&id=629 (last visited January 30, 2019).

[4] United States Department of Justice, Federal Bureau of Prisons, *Provision of Feminine Hygiene Products*, August 1, 2017, available at https://www.bop.gov/policy/om/001_2017.pdf (last visited January 31, 2019)(hereinafter cited as "BOP Policy"); *See also* Cory Booker, *Booker Commends New Bureau of Prisons Policy Requiring Certain Feminine Health Care Products to be Provided to Women Free of Charge*, August 16, 2017, available at https://www.booker.senate.gov/?p=press_release&id=654 (last visited January 31, 2019).

[5] BOP Policy.

[6] First Step Act of 2018, Pub. L. No. 115-391, s. 611 (2018).

[7] NPR, *Arizona Department Of Corrections Changes Sanitary Pad Policy Following Backlash*, Amy Held, February 15, 2018, available at https://www.npr.org/sections/thetwo-way/2018/02/15/586134335/arizona-department-of-corrections-changes-sanitary-pad-policy-following-backlash (last visited January 31, 2019)(Arizona Department of Corrections modified its policy from limiting female inmates' access to sanitary napkins from 12 to 36 per month); The Washington Post, *'They're as necessary as toilet paper': New York City Council approves free tampon program*, Katie Mettler, June 23, 2016, available at https://www.washingtonpost.com/news/morning-mix/wp/2016/06/23/menstrual-equity-ny-city-council-approves-giving-away-tampons-to-women-in-schools-prisons-and-homeless-shelters/?utm_term=.b410efb4ff12 (last visited January 31, 2019)(New York City council approved a measure that would give all women in public schools, prisons, and homeless shelters access to feminine hygiene products free of charge).

Prison Rape Elimination Act

The United States Congress passed the "Prison Rape Elimination Act of 2003" (PREA) to provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide resources and recommendations to protect individuals from prison rape. In addition to providing resources, funding was provided to all levels of correctional facilities to assist facilities throughout the nation with implementing standards to reduce the occurrence of prison rape.[8] The statute applies to any confinement facility, including jails, police lockups, and juvenile facilities,[9] and defines "rape" to include a broad range of unwanted sexual activity.[10]

In passing the PREA, Congress noted that the nation was "largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates."[11] The legislation also established a National Prison Rape Elimination Commission (Commission) to perform a comprehensive legal and factual study on various impacts of prison rape in the United States and to recommend to the Attorney General national standards for detecting, preventing, reducing, and punishing prison rape.[12]

The PREA standards adopted by the Commission included a phased-in ban on cross-gender pat-down searches of female inmates in adult prisons, jails, and community confinement facilities absent exigent circumstances.[13] The PREA standards also:

- Prohibit cross-gender strip searches and visual body cavity searches in all facilities, except in exigent circumstances or when performed by medical practitioners;[14]
- Require facilities to implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks;
- Require staff of the opposite gender to announce their presence when entering an inmate housing unit; and
- Prohibit cross-gender pat-down searches of both female and male residents in juvenile facilities.[15]

Both the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ) are in compliance with the PREA Guidelines and have adopted zero tolerance policies regarding actions that are prohibited by the PREA standards. Additionally, each agency employs a

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[8] Prison Rape Elimination Act of 2003, Pub. L. No. 108-79 (2003); National PREA Resource Center, *Prison Rape Elimination Act*, *About Page*, available at https://www.prearesourcecenter.org/about/prison-rape-elimination-act-prea (last visited January 31, 2019).
[9] 42 U.S.C. s. 15609(7)
[10] 42 U.S.C. s. 15609(9).
[11] 42 U.S.C. 15601(12). *See* Department of Justice, *National Standards to Prevent, Detect, and Respond to Prison Rape Executive Summary*, p. 1, May 16, 2012, available at https://ojp.gov/programs/pdfs/prea_executive_summary.pdf (last visited January 30, 2019)(hereinafter cited as "PREA Executive Summary").
[12] 42 U.S.C. s. 15606(d)(1), (e)(1).
[13] PREA Executive Summary, p. 5. The PREA standards specifically prohibit compliance with the cross-gender search provision from restricting female inmates' access to programming and out-of-cell opportunities.
[14] *Id*. If a cross-gender search is conducted in this manner it must be documented.
[15] *Id*.

designated PREA Coordinator responsible for the development, implementation, and oversight of the agency's efforts to comply with the PREA standards.[16] Additionally, s. 901.211, F.S., and the Florida Model Jail Standards (FMJS), provide the minimum standards that Florida's jails must meet and contain similar search standards as the PREA standards.

Policies Related to Florida's Incarcerated Women

Department of Corrections

Section 944.09(1), F.S., provides the DOC with broad rule making authority to implement its statutory responsibilities, including, in part, the:

- Operation and management of the correctional institution or facility and its personnel and functions;
- Conduct of custodial and other personnel; and
- Furnishing of health and comfort items to indigent prisoners.

The DOC has promulgated several rules that address these specific operational areas. Inmate health and comfort items must be provided in accordance with the guidelines in the Inmate Health and Comfort Items – Issuance, Form NI1-071 (Form).[17] The Form addresses, in part, the provision of health care items such as toothbrushes,[18] toothpaste,[19] disposable razors,[20] bath soap,[21] toilet paper,[22] and feminine hygiene products.[23] This procedure provides consistency with the issuance of these types of products.

Searches of inmates are to be made with discretion and conducted to control the introduction and movement of contraband and to prevent escapes.[24] Clothed searches of female inmates may only be performed by male staff during an emergency situation as determined by the shift supervisor, except for:

- Instances when time and circumstances do not permit the arrival of female staff; or

[16] DOC, *PREA*, available at http://www.dc.state.fl.us/PREA/index.html (last visited January 30, 2019); DJJ, *PREA*, available at http://www.djj.state.fl.us/partners/prison-rape-elimination-act-%28prea%29 (last visited January 30, 2019).
[17] Fla. Admin. Code R. 33-602.101(12). Form NI1-071, Inmate Health and Comfort Items – Issuance can be accessed at http://www.flrules.org/Gateway/reference.asp?No=Ref-09985 (last visited on January 31, 2019).
[18] *Id*. The Form provides that each inmate is provided one tooth brush upon initial arrival. The housing officers/sergeant on the shift designated in the institutional schedule must also issue toothbrushes on a one-for-one exchange basis, once every 30 days.
[19] *Id*. Each inmate is provided one tube upon initial arrival and can be replaced when empty or once every 30 days.
[20] *Id*. This provision only applies to female inmates who are part of the general population and provides that one razor is issued upon initial arrival and once every seven days.
[21] *Supra*, n. 16. Each inmate is provided one bar of soap upon initial arrival, which may be replaced once every seven days. The DOC states that the bath soap provided by the DOC is a soap whose ingredient is to moisturize, but it is called a deodorizing soap. The Department of Corrections, SB 332 Agency Analysis, p. 4, January 23, 2019 (on file with Senate Criminal Justice Staff)(hereinafter cited as "The DOC SB 332 Analysis").
[22] *Id*. Each inmate is provided one roll upon initial arrival and can be provided outside of a seven day interval in certain instances.
[23] *Id*. Each inmate will be issued feminine hygiene products on an as needed basis and in accordance with Fla. Admin. Code R 33-602.101, which requires the inmate to make a medical request.
[24] Fla. Admin. Code R. 33-602.204.

- In the event of an imminent threat of physical violence and a search is needed to secure the inmate to prevent injury to staff or inmates, provided there is consultation with the shift supervisor prior to conducting the search.[25]

Strip searches of inmates must be conducted only by correctional officers who are the same sex as the inmate, except in emergency circumstances. The Rule details specified circumstances when strip searches are appropriate.[26] Internal examination of the body orifices, when required, will be made by medical personnel only, as well as examination of any bandages or casts.[27]

The DOC reports that as of June 30, 2018, there were 6,658 female inmates accounting for 6.9 percent of the overall total inmate population.[28]

Department of Juvenile Justice

Section 985.64, F.S., provides the DJJ with rulemaking authority to implement all provisions of ch. 985, F.S. All rules and policies must conform to accepted standards of care and treatment.[29] Specifically, the DJJ must adopt rules to ensure the effective provision of health services, including ordinary medical care, to youth in facilities or programs operated or contracted by the DJJ.[30]

The DJJ reports that it provides all female youth with basic health products.[31] The DJJ is required to provide youth with individual hygiene supplies, including:
- Toothbrush and toothpaste;
- Soap;
- Shampoo;
- Combs or brushes;
- Shaving supplies;
- Body lotion; and
- Feminine hygiene supplies for females.[32]

[25] Fla. Admin. Code R. 33-602.204(1)(a).
[26] Fla. Admin. Code R. 33-602.204(2)(a) and (b). The instances include upon an inmate's arrival at the institution from court, other institutions, or from any other place where they may have come in contact with the public; when an inmate is apprehended after an escape, attempted escape or hideout, they will also be given a strip search. There may be other occasions for a strip search, such as before they are admitted to confinement or at any time when they are suspected of carrying contraband.
[27] Fla. Admin. Code R. 33-602.204(2)(e)4.
[28] The DOC SB 332 Analysis, p. 2.
[29] Section 985.64(1), F.S.
[30] Section 985.64(2)(a), F.S.
[31] The DJJ, HB 49 Agency Analysis, January 16, 2019, p. 2 (on file with the Senate Criminal justice Committee)(hereinafter cited as "The DJJ HB 49 Analysis")(HB 49 is substantially similar to the current bill). The products specifically mentioned in the analysis include body wash, shampoo, maxi pads, deodorant, toothbrushes, toothpaste, hair combs, hair brushes, body lotion, hair ties, and any health products as needed by youth or prescribed by a doctor.
[32] Fla. Admin. Code R. 63E-7.007 (residential commitment programs) and Fla. Admin. Code R. 63G-2.025 (detention centers)(This Rule uses the phrase "sanitary napkins" instead of "feminine hygiene supplies."). Additionally, Fla. Admin. Code R. 63E-7.006, requires the residential commitment programs to address the needs of a targeted gender group and that health and hygiene, in part, are key components in providing a gender specific program.

The DJJ also has established rules for both its residential[33] and detention[34] youth populations detailing when different types of searches, including frisk,[35] strip,[36] and cavity searches, are necessary and the appropriate conditions under which such searches can occur. All searches must be documented in designated logs, the Facility Management System[37] or a manual logbook used for these recordings, and on the shift report.[38] Frisk searches must be conducted during specified times[39] and an officer of the same sex as the youth being searched must conduct a frisk search.[40]

Strip searches must be conducted during admission or if there is a reasonable suspicion a youth is harboring contraband. These searches must occur in a private area in the presence of two staff members of the same gender as the youth being searched. However, if two staff of the same gender as the youth are not available, one staff of the same gender as the youth may conduct the strip search while a staff of the opposite gender is positioned to observe the staff person conducting the search. However, in these instances, the cross-gender employee cannot view the youth.[41]

Cavity searches must be approved by the Superintendent or designee when it is strongly suspected that a youth has concealed contraband in a body cavity. Trained medical personnel must conduct a cavity search in a hospital setting and detention staff are not authorized to conduct cavity searches.[42]

The DJJ reports that there were 2,871 female youth served in secure detention and 554 female youths committed to residential programs during FY 2017-18.[43]

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[33] Section 985.43, F.S., provides that upon adjudication of a delinquency case a court may commit a youth to the DJJ for placement in a residential commitment program. Section 985.03(44), F.S., which defines "restrictiveness level," addresses the different levels of commitment programs, including "minimum-risk nonresidential," "nonsecure residential," and "high-risk residential."

[34] Section 985.03(18), F.S., provides "detention care" means the temporary care of a child in secure or nonsecure detention, pending a court adjudication or disposition or execution of a court order. Further, it provides that "Secure detention" means temporary custody of the child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement and "Nonsecure detention" means temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication, disposition, or placement.

[35] Fla. Admin. Code R. 63G-2.014(32). Frisk searches are defined as a physical search of the person involving the passing of hands over the person's outer clothing.

[36] Fla. Admin. Code R. 63G-2.014(63). Strip searches are defined as a visual check of a youth without clothing. A strip search shall be conducted in a private area with two staff members present, both of the same sex as the youth being searched.

[37] Fla. Admin. Code R. 63G-2.014(29). The computer based system used by state-operated juvenile detention centers as the primary source of documentation and reporting for facility operations. Forms and reports generated by the Facility Management System are considered to be both the official and original documentation.

[38] Fla. Admin. Code R. 63G-2.019.

[39] These include during admission, following activities outside the secure area of the facility, following visitation with a person(s) from outside of the facility (visitation, attorney, clergy, etc.), prior to and after transportation, if there is a reasonable suspicion that a youth is harboring contraband, or prior to being placed in behavioral confinement. Fla. Admin. Code R. 63G-2.019(11)(e)1.-3. *See also* Fla. Admin. Code R. 63E-7.013(10)(b) and (11), for slight variations to these circumstances applicable to residential commitment programs.

[40] *Id*.

[41] Fla. Admin. Code R. 63G-2.019(11)(e)4. and 5. (detention facilities); Fla. Admin. Code R. 63E-7.004(1)(a) (residential commitment programs).

[42] Fla. Admin. Code R. 63G-2.019(11)(e)8.; Fla. Admin. Code R. 63E-7.013(10)(c).

[43] Email from Rachel Moscoso, Legislative Affairs Director, DJJ, Re: SB 332 (on file with Senate Criminal Justice Committee)(January 30, 2019).

Local Correctional Facilities

Section 901.211, F.S., provides procedures for conducting searches of any person arrested in Florida. A person arrested for a traffic, regulatory, or misdemeanor offense, except in a case which is violent in nature, which involves a weapon, or which involves a controlled substance, cannot be subjected to a strip search[44] unless:

- There is probable cause to believe that the individual is concealing a weapon, a controlled substance, or stolen property; or
- A judge at first appearance has found that the person arrested cannot be released either on recognizance or bond and therefore shall be incarcerated in the county jail.[45]

Each strip search must be performed by a person of the same gender as the arrested person and on premises where the search cannot be observed by persons not physically conducting or observing the search. A person observing a search must be of the same gender as the arrested person.[46] Any body cavity search must be performed under sanitary conditions.[47]

Additionally, the Florida Model Jail Standards (FMJS) are minimum standards which jails across Florida must meet to ensure the constitutional rights of those incarcerated are upheld.[48] The FMJS Committee is required to develop and continually enforce model standards adopted by the group. There are six subcommittees each having distinct missions and objectives, which, in part, include a Medical Subcommittee and a PREA Subcommittee.

As it relates to searches, the FMJS outlines that an inmate must be examined for contraband upon admission and booking.[49] The FMJS specifies that a body cavity search must only be conducted by licensed medical personnel and a written report documenting such action must be submitted to the Officer-in-Charge or designee. The FMJS requires that inmates be searched by certified staff when being admitted to a detention facility. However, FMJS provides that an inmate being admitted to the facility for traffic, regulatory, or non-violent misdemeanor offenses will be strip searched only for cause. The FMJS specifies that a strip search must be conducted by a person of the same gender as the arrested person and in such a manner that the search cannot be seen by persons not physically conducting or observing the search. Additionally, any person observing the search must be of the same gender as the arrested person. The FMSJ provides that a body cavity search must only be made for cause and be conducted by licensed medical personnel.[50]

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[44] Section 901.211(1), F.S., defines strip search to mean having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual or manual inspection of the genitals; buttocks; anus; breasts, in the case of a female; or undergarments of such person.
[45] Section 901.211(2), F.S. Additionally, a law enforcement officer must not order a strip search within the agency or facility without obtaining the written authorization of the supervising officer on duty. Section 901.211(5), F.S.
[46] Section 901.211(3), F.S.
[47] Section 901.211(4), F.S.
[48] Florida Sheriff's Association (FSA), *Florida Model Jail Standards, What is FMJS?*, available at https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards (last visited January 30, 2019) (hereinafter cited as "FMJS Rule").
[49] FMJS Rule 4.2.
[50] FMJS Rule 4.3.

It is unclear whether there are consistent rules throughout the Sheriff's entities regarding the manner, type, and frequency of the provision of health care products, including, but not limited to, feminine hygiene products. Statutes and the FMJS are silent on this issue. One example of a local correctional facility's policy has been reported on in response to recent legislation. David Teems, spokesman for the Leon County Sheriff's Office, reports that the feminine hygiene product offered at the Leon County Jail is one that is "more universally used" and "there is no limit to how many are provided to inmates. There is no charge to the inmates for the product."[51]

III. Effect of Proposed Changes:

The bill creates new statutory language to address how correctional facilities must handle certain procedural and administrative processes that are unique to the incarceration of women. The bill provides that the act may be cited as the "Dignity for Incarcerated Women Act."

Definitions

The bill defines various terms, including:

- "Correctional facility," which means any part of the correctional system[52] and any county detention facility,[53] juvenile detention center[54] or facility,[55] temporary holding center, or other criminal detention facility operated by or on behalf of the state or any political subdivision.
- "Correctional facility employee," which means a correctional officer employed by a correctional facility.
- "Health Care products," which is defined as:
  - Feminine hygiene products, including tampons;
  - Moisturizing soap that is not lye-based;
  - Toothbrushes and toothpaste; and
  - Any other health care product the correctional facility deems appropriate.
- "State of undress," which means not dressed or not fully dressed.

Access to Health Care Products

The bill requires "health care products" to be made available to each incarcerated woman at no cost and in a quantity that is appropriate to the needs of the woman. Additionally, the bill

[51] Tallahassee Democrat*, Florida lawmakers demand 'dignity for incarcerated women'*, James Call, January 26, 2019, available at https://www.tallahassee.com/story/news/2019/01/26/florida-lawmakers-demand-dignity-incarcerated-women-sanitary-napkins-tampons/2676725002/ (last visited January 30, 2019).
[52] Sections 944.02(2) and 945.01(1), F.S., provide "correctional system" means all prisons and other state correctional institutions now existing or hereafter created under the jurisdiction of the DOC.
[53] Section 951.23(1)(a), F.S., provides that "county detention facility" means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.
[54] Section 985.03(19), F.S., provides that "detention care facility" means a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents shall not be considered a detention center or facility.
[55] *Supra*, n. 33.

requires that health care products be made available in common housing areas and medical care facilities. The bill prohibits a correctional facility from requiring a medical:

- Referral for an inmate to be provided such health care products; or
- Diagnosis for an incarcerated woman to access health care products.

Limitations on Male Correctional Facility Employees

The bill also requires certain conduct to be followed by male correctional facility employees in times when such employees are supervising women inmates. Specifically, the bill provides that a male correctional facility employee:

- Is prohibited from conducting a pat-down or body cavity search on an incarcerated woman except in situations where the incarcerated woman is presenting an immediate risk of harm and a female correctional facility employee is not available to conduct the search; and
- Must announce his presence upon entering a housing unit for incarcerated women.

Additionally, with the exception of specified circumstances, a male correctional facility employee is prohibited from entering an area of the correctional facility in which an incarcerated woman may be in a state of undress or an area where an incarcerated woman in a state of undress may be viewed. The bill provides that such areas include, but are not limited to restrooms, shower areas, and medical treatment areas. The exceptions provided in the bill specific to this provision include when there is a medical emergency or when an incarcerated woman is presenting a danger to herself or others. If one of these limited circumstances is presented, a male correctional facility employee may enter an area where incarcerated women may be in a state of undress, if:

- A female correctional facility employee is unavailable; or
- A female correctional facility employee requires assistance.

A male correctional facility employee must document any incident, including the circumstances that necessitated the employee's actions, where the male employee either performs a search of an incarcerated woman or enters a prohibited area within three days of the incident.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires all correctional facilities, including local county detention facilities and detention centers, to provide specific health care products. It is possible that the requirements of the bill related to the provision of health care products could result in local fund expenditures. However, because any such local funding resulting from the requirements of the bill will directly relate to the detention and imprisonment of persons who have been arrested or convicted of criminal offenses, under article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

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:

Private companies that currently have contracts with state and local correctional facilities to provide certain health care products that do not meet the criteria laid out in the bill may have a negative fiscal impact (i.e., decrease in profits) if the current contracts have to be cancelled or modified.

Additionally, private companies that can supply products that do meet the criteria of the products defined in this bill could have a positive fiscal impact (i.e., increase in profits) if the bill results in new contracts for such products or modifications to current contracts to offer these additional or different types of products.

C. Government Sector Impact:

The bill requires specified health care products to be provided at no cost to female inmates in all correctional facilities in the state. To the extent that the bill requires any of the specified facilities to provide additional or different products than are currently being offered, the bill will likely have a positive fiscal impact (i.e., unquantifiable increase in costs) to the correctional facilities.

The DOC states that the fiscal impact of the bill is indeterminate at this time.[56] The DOC is in substantial compliance with the provisions of the bill related to male correctional facility employees and female inmates. However, there will likely be a positive fiscal impact (i.e., unquantifiable increase in costs) if the DOC is required to provide health care products outside of the products it is currently providing through its contracted

[56] The DOC SB 332 Analysis, p. 4.

vendors. The DOC estimates that the transition to tampons *exclusively* from sanitary napkins will result in a cost increase of 408 percent annually (from $110,954 annually to $563,372 annually).[57] However, the bill does not require correctional facilities to transition exclusively to any particular type of feminine hygiene product.

The DJJ reports that it currently meets all requirements of the proposed bill and therefore the bill will not result in a fiscal impact.[58]

The Florida Sheriff's Association has not submitted an analysis on the impact this bill will have on its members. As mentioned above, it is unclear what types of health care products are currently being offered to female inmates in local correctional facilities. To the extent that this bill requires the facilities to modify the products they are currently offering free of charge to female inmates, the bill will likely result in a positive fiscal impact (i.e., unquantifiable increase in costs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 944.242 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The Committee Substitute modifies the definitions of:

- "Correctional facility" to include the term county detention center, rather than jail, providing consistency with definitions found in other sections of law;
- "Correctional facility employee" to only apply to correctional officers, rather than all correctional facility staff; and
- "Health care products" to specifically include tampons as a type of feminine hygiene product.

[57] The Department of Corrections, SB 332 Agency Analysis Updated for Amendment 404354, p. 6, February 11, 2019 (on file with Senate Criminal Justice Staff).
[58] The DJJ HB 49 Analysis, p. 3.

B. Amendments:

None.

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

404354

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 26 - 33
and insert:
correctional system, any county detention facility, juvenile detention center or residential facility, temporary holding center, or other criminal detention facility operated by or on behalf of the state or any political subdivision.

(b) "Correctional facility employee" means a correctional officer employed by a correctional facility.

404354

(c) "Health care products" includes the following:

1. Feminine hygiene products, including tampons.

By Senator Pizzo

38-00800-19 2019332__

A bill to be entitled

An act relating to incarcerated women; providing a short title; creating s. 944.242, F.S.; providing definitions; requiring correctional facilities to provide incarcerated women with certain health care products, subject to certain requirements; requiring a correctional facility to make health care products available in common housing areas and in medical care facilities; providing requirements for male correctional facility employees in certain circumstances; requiring documentation of certain incidents involving male correctional facility employees; requiring the correctional facility to review and retain such documentation; providing an effective date.

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

Section 1. This act may be cited as the "Dignity for Incarcerated Women Act."

Section 2. Section 944.242, Florida Statutes, is created to read:

944.242 Dignity for women in correctional facilities.—

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

(a) "Correctional facility" means any part of the correctional system and any jail, juvenile detention center or facility, temporary holding center, or other criminal detention facility operated by or on behalf of the state or any political subdivision.

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

38-00800-19 2019332__

(b) "Correctional facility employee" means any employee of a correctional facility.

(c) "Health care products" includes the following:

1. Feminine hygiene products.

2. Moisturizing soap that is not lye-based.

3. Toothbrushes.

4. Toothpaste.

5. Any other health care product the correctional facility deems appropriate.

(d) "State of undress" means not dressed or not fully dressed.

(2) HEALTH CARE PRODUCTS.—A correctional facility shall make available health care products to each woman incarcerated in the facility at no cost to the woman in a quantity that is appropriate to the needs of the woman without a medical referral. A correctional facility may not require that a woman be diagnosed with an illness in order to access health care products. A correctional facility shall make health care products available in common housing areas and in medical care facilities.

(3) MALE CORRECTIONAL FACILITY EMPLOYEES.—

(a) A male correctional facility employee may not conduct a pat-down search or body cavity search on an incarcerated woman unless the woman presents an immediate risk of harm to herself or others and a female correctional facility employee is not available to do the search.

(b) A male correctional facility employee shall announce his presence upon entering a housing unit for incarcerated women.

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

(c) A male correctional facility employee may not enter an area of the correctional facility in which an incarcerated woman may be in a state of undress or an area where an incarcerated woman in a state of undress may be viewed, including, but not limited to, restrooms, shower areas, and medical treatment areas. If a female correctional facility employee is not available or if a female correctional facility employee requires assistance, a male correctional facility employee may enter such area only in the event of a medical emergency or if an incarcerated woman presents an immediate risk of harm to herself or others.

(d) If a male correctional facility employee conducts a pat-down search or body cavity search or enters a prohibited area in an emergency situation as provided in paragraph (a) or paragraph (c), the male correctional facility employee shall document the incident, including the circumstances necessitating the male correctional facility employee's actions, no later than 3 days after the incident. The correctional facility shall review and retain all documentation.

Section 3. This act shall take effect July 1, 2019.

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

SB 332

2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

BILL INFORMATION	
BILL NUMBER:	SB 332
BILL TITLE:	Incarcerated Women
BILL SPONSOR:	Senator Pizzo
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE
1)
2)
3)
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	HB 49
SPONSOR:	Representative Jones

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

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 23, 2019
LEAD AGENCY ANALYST:	Jeff Bryan
ADDITIONAL ANALYST(S):	Wes Kirkland, Sibyle Walker
LEGAL ANALYST:	Philip Fowler
FISCAL ANALYST:	Emma Dugger

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill designated the "Dignity for Incarcerated Women Act", creates Section 944.242, Florida Statutes.

- requires correctional facilities to provide incarcerated women with certain healthcare products;
- provides requirements for male correctional employees in certain circumstances; and
- requires documentation of certain incidents involving male correctional employees.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

As of June 30, 2018, there were 6,658 female inmates accounting for 6.9% of the overall total population.

HEALTHCARE PRODUCTS

S. 944.09(1)(p), F.S., provides the Department of Corrections (FDC or Department) with the authority to adopt rules for "The feeding of prisoners, including diet and menus, and the furnishing of health and comfort items to indigent prisoners."

Presently, Rule 33-602.101, Florida Administrative Code, Care of Inmates provides "Inmate health and comfort items shall be provided in accordance with the guidelines in the Inmate Health and Comfort Items – Issuance, Form NI1-071." This form, incorporated within the rule, lists the health and comfort items for issuance as well as provides for exchange schedules, some of which may be a one to one exchange. This does not preclude the inmate from being issued the item if they fail to turn one in. The following items are provided to inmates at no cost:

- Tooth Brushes;
- Tooth Paste;
- Disposable Razors (general population) female inmates only;
- Bath Soap;
- Toilet Paper; and
- Feminine Hygiene Products.

The bath soap provided by the Department is a soap which contains an ingredient whose function is to moisturize, but the actual bath soap is labeled as deodorizing bar soap. It does not contain any lye.

The NI1-071 form further provides "Security staff assigned to housing areas are responsible for carefully monitoring the issue of these items and, through routine searches and daily inmate supervision, insuring that none of these items are wasted, possessed in quantities exceeding that authorized or used for purposes other than that for which they are intended."

The institutional schedule for the issuance of the above items may be temporarily altered by the Warden in the event of an emergency or other unavoidable situation that necessitates a temporary change to the issuance schedule or quantity of items provided.

However, the above listed items are not the only healthcare products available to inmates. The Department currently does not provide these items for free; however, the following items are also offered for purchase through our inmate canteens:

- Baby powder;
- Original lip balm;
- Always, maxi pads;
- Good Sense, Douche, Vinegar and Water;
- Tampax, Tampons;
- Softee Signature, conditioners and shampoos;
- Perm Kits;
- Freshscent, baby lotion;
- Freshscent, Cocoa Butter Lotion; and
- Next 1, moisturizing bar soap.

MALE CORRECTIONAL FACILITY EMPLOYEES

Clothed Searches

The Department conducts searches of inmates to control the introduction and movement of contraband; to ensure the safety and security of our staff, the inmate population, and the public; as well as to prevent escapes. All searches are made with discretion. Rule 33-602.204, F.A.C. Searches of Inmates requires that "Searches of clothed male inmates may be conducted by staff who are of the opposite sex from the inmates. Clothed searches of female inmates by male staff will only be conducted during an emergency situation as determined by the shift supervisor. The only exception to this provision is an instance when time and circumstances do not permit the arrival of female staff or consultation with the shift supervisor prior to conducting the search due to an imminent threat of physical violence and a search is needed to secure the inmate to prevent injury to staff or inmates."

Afterwards, the staff performing the search must submit an "Incident Report" explaining the urgency justifying the search exception.

Body Cavity Searches

Also per Rule 33-602.204, F.A.C., "Body cavity searches of inmates shall be conducted only by appropriate Health Services staff who may be of the opposite sex from the inmates. Body orifice and cavity searches shall be conducted only when authorized by the warden, Assistant warden or the Correctional Officer Chief upon a finding that there exists reasonable cause to believe that an inmate has contraband secreted in a body cavity."

Complete and detailed documentation of all body cavity searches other than visual or metal detector searches are to be submitted to the warden. This report includes the following information:

- Chronology of events leading to the search and escalation of the search process.
- Name and rank of all persons participating in the search process or supplying information which justified the search.
- All evidence and information regarding the justification for each degree of the search.
- Results at the conclusion of the search.

Announcing Presence of the Opposite Gender

The Department requires staff of the opposite gender to announce at the beginning of each shift that they will be present in the housing unit at any time during the course of the shift. This announcement is documented on the Housing Unit Log.

Per procedure, inmates will not be supervised by officers of the opposite gender while inmates are showering or in the toilet area unless appropriate privacy screening is provided.

Inmates are required to cover themselves appropriately in accordance with institutional rules and requirements when not in the shower or not utilizing toilets and while in route to and from these areas.

2. EFFECT OF THE BILL:

Section 1 (lines 19 - 20): Establishes "This act may be cited as the "Dignity for Incarcerated Women Act.""

Section 2 (lines 21 - 77): Creates s. 944.242, F.S.

HEALTHCARE PRODUCTS

Line 23 – The new s. 944.242, F.S., is titled "Dignity for women in correctional facilities". Please note that a legal definition nor standard of what would constitute "Dignity" is not provided.

Line 30 – "Correctional facility employee" means any employee of a correctional facility. Based on the wording of the definition, it would include all employees of a correctional facility, inclusive of health care professionals.

Lines 32-36 – With the possible exception of moisturizing soap (please see line 34 comment below), the Department currently provides these items at no cost to inmates. Please note that moisturizing soap is currently available for purchase by inmates.

Line 33 – "Feminine hygiene products" is undefined and is broad and open to interpretation. The Department currently provides maxi pads to all female inmates, however without clarity provided here, there is latitude for separate, distinct interpretations as to the products intended and those ultimately provided.

Line 34 – The bath soap provided by the Department is a soap which contains an ingredient whose function is to moisturize but it's considered a deodorizing bar soap. It does not contain any lye. (Please note that an alternative moisturizing soap is currently available for purchase by inmates in the Inmate Canteen.) It is unclear as to whether the current Department issued soap would be a sufficient option if it contains a moisturizing ingredient but is not labeled as a moisturizing soap. If not statutorily acceptable, there will likely be a cost associated with a switch from the current deodorizing soap to a new moisturizing soap to meet the "moisturizing" standard detailed by the bill. Any cost would be indeterminate, but would likely result in an increase, subject to a new procurement action, approved vendor pricing, population of female inmates, etc.

Lines 41-45 – Making the healthcare items available to women at "no cost" leads to a potential for statutory conflict with s.944.09(1)(p), F.S., which only requires: "...the furnishing of health and comfort items to indigent prisoners."

Lines 43-44 – As to "quantity as is appropriate" is effectuated by existing policy: The NI1-071 form, incorporated within Rule 33-602.101, F.A.C., provides "Security staff assigned to housing areas are responsible for carefully monitoring the issue of these items and, through routine searches and daily inmate supervision, insuring that none of these items are wasted, possessed in quantities exceeding that authorized or used for purposes other than that for which they are intended."

MALE CORRECTIONAL FACILITY EMPLOYEES

Lines 50-77 – There is zero effect from this section of the bill. The new statutory requirements created by the bill are currently standard Department practice and are codified within our rules, procedures, and post orders. However, it must be noted and clarified that Department policy does not currently permit just any male correctional facility employee to conduct a body cavity search upon a female inmate as it appears this bill intends to rectify. Rule 33-602.204, F.A.C. provides: "Body cavity searches of inmates shall be conducted only by appropriate Health Services staff who may be of the opposite sex from the inmates."

Section 3 (line 78): The bill provides an effective date of July 1, 2019.

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

If yes, explain:	
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	

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

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

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

If yes, provide a description:	N/A
Date Due:	N/A

Bill Section Number(s):	N/A

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

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

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, explain.	
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:	N/A
Expenditures:	Indeterminate at this time.
Does the legislation contain a State Government appropriation?	No
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☒

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL 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.	

FEDERAL IMPACT

1. DOES THE BILL 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.	

ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	N/A

SB 332

2018 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Juvenile Justice

BILL INFORMATION	
BILL NUMBER:	HB 49
BILL TITLE:	Incarcerated Women
BILL SPONSOR:	Rep. Jones
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE
1) Criminal Justice Subcommittee
2) Justice Appropriations Subcommittee
3) Judiciary Committee
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
Criminal Justice Subcommittee

SIMILAR BILLS	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

PREVIOUS LEGISLATION	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
Click or tap here to enter text.

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	1/16/2019
LEAD AGENCY ANALYST:	Rachel Moscoso, Legislative Affairs Director, (850) 717-2716
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	John Mila, Asst. General Counsel
FISCAL ANALYST:	Click or tap here to enter text.

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill adds to statute certain basic rights and essentials for women who are incarcerated in the state of Florida, including facilities operated by the Department of Juvenile Justice or its contractors. These rights include access to certain feminine hygiene products and include procedures surrounding pat-downs and searches from guards of the opposite gender.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 1: Naming the act "Dignity for Incarcerated Women Act."

Section 2: **Hygiene:** Currently the Department of Juvenile Justice provides all female youth with basic health products including body wash, shampoo, maxi pads, deodorant, toothbrushes, toothpaste, hair combs, hair brushes, body lotion, hair ties, and any health products as needed by youth or prescribed by a doctor. This is described in Residential Rule 63E-7.007 Youth Hygiene and Dress Code and Detention Rule 63G-2.025 Hygiene.

Searches and Gross Gender Viewing: The Department of Juvenile Justice ensures that our youth are provided a safe and secure atmosphere that allows them to work towards rehabilitation. The Department's Administrative Rules for detention and residential layout the process for conducting searches and cross gender viewing. The rules are Detention Rule 63G-2.019 Security, Residential Rule 63E-7.004 Youth Intake, and Residential Rule 63E-7.013 Safety and Security.

The Department also bases much of the practice surrounding searches on the Federal Guidelines found in the Prison Rape Elimination Act (PREA):

Section 2 though PREA Standard 115.315 – Limits to cross-gender viewing and searching. The language applies to both male and female youth and staff.

115.315 – Limits to cross-gender viewing and searching

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) The agency shall not conduct cross-gender pat-down searches except in exigent circumstances.

(c) The facility shall document and justify all cross-gender strip searches, cross-gender visual body cavity searches, and cross-gender pat-down searches.

(d) The facility shall implement policies and procedures that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering a resident housing unit. In facilities (such as group homes) that do not contain discrete housing units, staff of the opposite gender shall be required to announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing.

(e) The facility shall not search or physically examine a transgender or intersex resident for the sole purpose of determining the resident's genital status. If the resident's genital status is unknown, it may be determined during conversations with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

2. EFFECT OF THE BILL:

Section 1: Naming the act "Dignity for Incarcerated Women Act."

Section 2: The Department of Juvenile Justice currently meets all requirements of the proposed bill; therefore, the bill will not have an impact to the Department, but instead will codify existing practice into Florida Statute.

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

If yes, explain:	Click or tap here to enter text.
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	Click or tap here to enter text.

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

Proponents and summary of position:	Unknown.
Opponents and summary of position:	Unknown.

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

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

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

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

FISCAL ANALYSIS

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

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation increase local taxes or fees? If yes, explain.	Click or tap here to enter text.
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?	Click or tap here to enter text.

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

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation contain a State Government appropriation?	Click or tap here to enter text.
If yes, was this appropriated last year?	Click or tap here to enter text.

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

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Other:	Click or tap here to enter text.

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

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. **DOES THE BILL 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	Click or tap here to enter text.

agency including any fiscal impact.	

FEDERAL IMPACT

1. **DOES THE BILL 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.	Click or tap here to enter text.

ADDITIONAL COMMENTS

Click or tap here to enter text.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Click or tap here to enter text.

SB 332

Cox, Ryan

From: Moscoso, Rachel <Rachel.Moscoso@djj.state.fl.us>
Sent: Wednesday, January 30, 2019 3:22 PM
To: Cox, Ryan
Subject: RE: SB 332

Ryan,

The commitment numbers from the profile are youth *disposed* during the FY and not necessarily placed into residential facility. I think for the purpose of your analysis the following numbers will be more helpful (these were pulled directly from the CAR).

- Female youth served in secure detention FY 2017-18: 2,871
- Female youth served in residential commitment FY 2017-18: 554

Let me know if you have questions.

Thanks,

Rachel Moscoso
Legislative Affairs Director
Florida Department of Juvenile Justice
Office: (850) 717-2716
Cell: (850) 322-9572

From: Cox, Ryan <Cox.Ryan@flsenate.gov>
Sent: Wednesday, January 30, 2019 2:53 PM
To: Moscoso, Rachel <Rachel.Moscoso@djj.state.fl.us>
Subject: RE: SB 332

Rachel,

Just to clarify, I only need the numbers of female youth that were placed in detention last fiscal year. The number of female youth that were committed to residential programs is easily accessible, but I couldn't find numbers outside of total intakes for the other data point. Thank you!

Sincerely,

Ryan C. Cox

Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

From: Moscoso, Rachel <Rachel.Moscoso@djj.state.fl.us>
Sent: Wednesday, January 30, 2019 1:55 PM
To: Cox, Ryan <Cox.Ryan@flsenate.gov>
Subject: RE: SB 332

Hi Ryan,

Good afternoon! I hope you're doing well ☺ I've attached our analysis on HB 49, which is nearly identical to SB 332. The Department currently meets all requirements of the proposed bill. I think our analysis will answer your questions but please let me know if you would still like us to determine the average number of females in detention and residential facilities.

Thanks,

Rachel Moscoso
Legislative Affairs Director
Florida Department of Juvenile Justice
Office: (850) 717-2716
Cell: (850) 322-9572

From: Cox, Ryan <Cox.Ryan@flsenate.gov>
Sent: Wednesday, January 30, 2019 11:49 AM
To: Moscoso, Rachel <Rachel.Moscoso@djj.state.fl.us>
Subject: SB 332

Good morning, Rachel! I am working on SB 332, which provides certain policies specific to the incarceration of females. After reviewing the language, it does apply to females in juvenile facilities as well. Have you all had a chance to look at the language and do an agency analysis? If so, can you get me it as soon as possible today? If not, can you send me some info in a quick email? Specifically, it would be great to have:

1) The number of females you have in detention centers and residential facilities on average.
2) What the current procedures are for providing access to "health care products" and interaction between male officers and females in the custody of DJJ.

I apologize for the late notice and I appreciate your help! Please call me if you have any questions. My direct line is 487-5196. Thanks!

Sincerely,

Ryan C. Cox

Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

SB 332 updated w/ amendment

2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

BILL INFORMATION	
BILL NUMBER:	SB 332 – Updated for Amendment 404354
BILL TITLE:	Incarcerated Women
BILL SPONSOR:	Senator Pizzo
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	HB 49
SPONSOR:	Representative Jones

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

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No.

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	February 11, 2019
LEAD AGENCY ANALYST:	Jeff Bryan
ADDITIONAL ANALYST(S):	Wes Kirkland, Mike Harrell, Trueby Bodiford, Sibyle Walker
LEGAL ANALYST:	Philip Fowler
FISCAL ANALYST:	Emma Dugger / Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill designated the "Dignity for Incarcerated Women Act", creates Section 944.242, Florida Statutes.

- requires correctional facilities to provide incarcerated women with certain healthcare products;
- provides requirements for male correctional employees in certain circumstances; and
- requires documentation of certain incidents involving male correctional employees.

The Florida Department of Corrections (FDC or Department) previously completed and submitted an analysis dated January 23, 2019. This is an updated analysis to address Amendment #404354. This amendment deletes lines 26 – 33 of the original bill. The content inserted (lines 5 – 12 of the amendment) includes:

- an updated definition of "Correctional facility employee";
- a requirement for correctional facilities to provide incarcerated women with certain healthcare products, inclusive of tampons.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

As of June 30, 2018, there were 6,658 female inmates accounting for 6.9% of the overall total population. This number includes females in both public and private facilities.

HEALTHCARE PRODUCTS

S. 944.09(1)(p), F.S., provides the Department with the authority to adopt rules for "The feeding of prisoners, including diet and menus, and the furnishing of health and comfort items to indigent prisoners."

Presently, Rule 33-602.101, Florida Administrative Code, Care of Inmates provides "Inmate health and comfort items shall be provided in accordance with the guidelines in the Inmate Health and Comfort Items – Issuance, Form NI1-071." This form, incorporated within the rule, lists the health and comfort items for issuance as well as provides for exchange schedules, some of which may be a one to one exchange. This does not preclude the inmate from being issued the item if they fail to turn one in. The following items are provided to inmates at no cost:

- Tooth Brushes;
- Tooth Paste;
- Disposable Razors (general population) female inmates only;
- Bath Soap;
- Toilet Paper; and
- Feminine Hygiene Products.

The bath soap provided by the Department is a soap which contains an ingredient whose function is to moisturize, but the actual bath soap is labeled as deodorizing bar soap. It does not contain any lye.

The NI1-071 form further provides "Security staff assigned to housing areas are responsible for carefully monitoring the issue of these items and, through routine searches and daily inmate supervision, insuring that none of these items are wasted, possessed in quantities exceeding that authorized or used for purposes other than that for which they are intended."

The institutional schedule for the issuance of the above items may be temporarily altered by the Warden in the event of an emergency or other unavoidable situation that necessitates a temporary change to the issuance schedule or quantity of items provided.

However, the above listed items are not the only healthcare products available to inmates. The Department currently does not provide these items for free; however, the following items are also offered for purchase through our inmate canteens:

- Baby powder;
- Original lip balm;
- Always, maxi pads;
- Good Sense, Douche, Vinegar and Water;

- Tampax, Tampons;
- Softee Signature, conditioners and shampoos;
- Perm Kits;
- Freshscent, baby lotion;
- Freshscent, Cocoa Butter Lotion; and
- Next 1, moisturizing bar soap.

MALE CORRECTIONAL FACILITY EMPLOYEES

Clothed Searches

The Department conducts searches of inmates to control the introduction and movement of contraband; to ensure the safety and security of our staff, the inmate population, and the public; as well as to prevent escapes. All searches are made with discretion. Rule 33-602.204, F.A.C. Searches of Inmates requires that "Searches of clothed male inmates may be conducted by staff who are of the opposite sex from the inmates. Clothed searches of female inmates by male staff will only be conducted during an emergency situation as determined by the shift supervisor. The only exception to this provision is an instance when time and circumstances do not permit the arrival of female staff or consultation with the shift supervisor prior to conducting the search due to an imminent threat of physical violence and a search is needed to secure the inmate to prevent injury to staff or inmates."

Afterwards, the staff performing the search must submit an "Incident Report" explaining the urgency justifying the search exception.

Body Cavity Searches

Also per Rule 33-602.204, F.A.C., "Body cavity searches of inmates shall be conducted only by appropriate Health Services staff who may be of the opposite sex from the inmates. Body orifice and cavity searches shall be conducted only when authorized by the warden, Assistant warden or the Correctional Officer Chief upon a finding that there exists reasonable cause to believe that an inmate has contraband secreted in a body cavity."

Complete and detailed documentation of all body cavity searches other than visual or metal detector searches are to be submitted to the warden. This report includes the following information:

- Chronology of events leading to the search and escalation of the search process.
- Name and rank of all persons participating in the search process or supplying information which justified the search.
- All evidence and information regarding the justification for each degree of the search.
- Results at the conclusion of the search.

Announcing Presence of the Opposite Gender

The Department requires staff of the opposite gender to announce at the beginning of each shift that they will be present in the housing unit at any time during the course of the shift. This announcement is documented on the Housing Unit Log.

Per procedure, inmates will not be supervised by officers of the opposite gender while inmates are showering or in the toilet area unless appropriate privacy screening is provided.

Inmates are required to cover themselves appropriately in accordance with institutional rules and requirements when not in the shower or not utilizing toilets and while in route to and from these areas.

2. EFFECT OF THE BILL:

Section 1 (lines 19 - 20): Establishes "This act may be cited as the "Dignity for Incarcerated Women Act.""

Section 2 (lines 21 - 77): Creates s. 944.242, F.S.

Amendment #404354 deletes lines 26-33 of the original bill and inserts new language. The content inserted (lines 5 – 12 of the amendment) includes:

- an updated definition of "Correctional facility employee";

- a requirement for correctional facilities to provide incarcerated women with certain healthcare products, inclusive of tampons.

HEALTHCARE PRODUCTS

Line 23 – The new s.944.242, F.S., is titled "Dignity for women in correctional facilities". Please note that a legal definition nor standard of what would constitute "Dignity" is not provided.

Amendment #404354 Lines 9-10 (formerly lines 30-31) – revises definition. "Correctional facility employee" means a correctional officer employed by a correctional facility.

Lines 32-36 – With the possible exception of moisturizing soap (please see line 34 comment below) and tampons (please see Amendment #404354 Lines 11-12 comments below), the Department currently provides these items at no cost to inmates. Please note that moisturizing soap and tampons are currently available for purchase by inmates.

Amendment #404354 Lines 11-12 (formerly 32-33) – revises language to state: "Feminine hygiene products, including tampons." Otherwise "Feminine hygiene products" is undefined and is broad and open to interpretation. The Department currently provides maxi pads to all female inmates, however without clarity provided here, there is still latitude for separate, distinct interpretations as to the products intended and those ultimately provided. The inclusion of tampons as an item to be provided at no cost to the inmate will create a fiscal impact subject to a new procurement action, approved vendor pricing, population of female inmates, etc.

Line 34 – The bath soap provided by the Department is a soap which contains an ingredient whose function is to moisturize but it's considered a deodorizing bar soap. It does not contain any lye. (Please note that an alternative moisturizing soap is currently available for purchase by inmates in the Inmate Canteen.) It is unclear as to whether the current Department issued soap would be a sufficient option if it contains a moisturizing ingredient but is not labeled as a moisturizing soap. If not statutorily acceptable, there will likely be a cost associated with a switch from the current deodorizing soap to a new moisturizing soap to meet the "moisturizing" standard detailed by the bill. Any cost would be indeterminate, but would likely result in an increase, subject to a new procurement action, approved vendor pricing, population of female inmates, etc.

Lines 41-45 – Making the healthcare items available to women at "no cost" leads to a potential for statutory conflict with s.944.09(1)(p), F.S., which only requires: "...the furnishing of health and comfort items to indigent prisoners."

Lines 43-44 – As to "quantity as is appropriate" is effectuated by existing policy: The NI1-071 form, incorporated within Rule 33-602.101, F.A.C., provides "Security staff assigned to housing areas are responsible for carefully monitoring the issue of these items and, through routine searches and daily inmate supervision, insuring that none of these items are wasted, possessed in quantities exceeding that authorized or used for purposes other than that for which they are intended."

MALE CORRECTIONAL FACILITY EMPLOYEES

Lines 50-77 – There is zero effect from this section of the bill. The new statutory requirements created by the bill are currently standard Department practice and are codified within our rules, procedures, and post orders. However, it must be noted and clarified that Department policy does not currently permit just any male correctional facility employee to conduct a body cavity search upon a female inmate as it appears this bill intends to rectify. Rule 33-602.204, F.A.C. provides: "Body cavity searches of inmates shall be conducted only by appropriate Health Services staff who may be of the opposite sex from the inmates."

Section 3 (line 78): The bill provides an effective date of July 1, 2019.

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

If yes, explain:	
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	

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

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

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

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

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

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

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, explain.	
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:	N/A

Expenditures:	The overall fiscal impact to the Department is indeterminate at this time. However, if the Department transitioned to tampons exclusively from sanitary napkins, it is estimated that there would be a cost increase of 408% (from $110,954 annually to $563,372 annually), per chart below. The projected cost is based on an average daily population of 5,103 female inmates in state operated facilities only, as of December 31, 2018. It should also be noted that the bill allows flexibility of choice between tampons or sanitary napkins. Therefore, there is a possibility that both products would be chosen and therefore additional costs would be realized. Finally, please note that this fiscal analysis is based on inmates at state operated facilities only.
Does the legislation contain a State Government appropriation ?	No
If yes, was this appropriated last year?	

DATA PROVIDED BY PURCHASING							*** 6.6 PADS PER DAY - BASED ON 7 DAY CYCLE				
CURRENT	REGULAR PADS PER CASE	SUPER PADS PER CASE	COST PER CASE	ANNUAL CASES	TOTAL COST	COST PER PAD	ANNUAL PADS NEEDED/ADP	ANNUAL CASES	ANNUAL COST	AVG # OF PADS/ INMATE/ YEAR	AVG # OF PADS/ MONTH
Napkin, Sanitary, Feminine Hygiene, Disposable, Regular Absorbency Maxi with Wings, Unscented, 24 Individual Napkins Per Box, 10 Boxes Per Case	576		$22.69	3,650	$82,819	$0.039	2,816,856	4,890	$110,954	552	46
ANNUAL TOTAL				3,650	$82,819		2,816,856	4,890	$110,954	552	46

DATA PROVIDED BY PURCHASING							*** 6.6 TAMPAX PER DAY - BASED ON 7 DAY CYCLE				
PROPOSED	REGULAR TAMPAX PER CASE	SUPER TAMPAX PER CASE	COST PER CASE	ANNUAL CASES	TOTAL COST	COST PER TAMPAX	ANNUAL TAMPAX NEEDED/ADP	ANNUAL CASES	ANNUAL COST	AVG # OF TAMPAX/ INMATE/ YEAR	AVG # OF TAMPAX/ MONTH
Regular Absorbency, Unscented with Open End, Flushable, Cardboard Applicator, Individually Wrapped in Paper, 20 Per Box, 10 Boxes Per Case	200		$40.00	650	$26,000	$0.200	1,408,428	7,042.14	$281,686	276	23
Super Absorbency, Unscented with Open End, Flushable, Cardboard Applicator, Individually Wrapped in Paper, 20 Per Box, 10 Boxes Per Case		200	$40.00	650	$26,000	$0.200	1,408,428	7,042.14	$281,686	276	23
ANNUAL TOTAL				1,300	$52,000		2,816,856	14,084	$563,372	552	46

ANNUAL COST VARIANCE 100% use $452,418

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☒

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL 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.	

FEDERAL IMPACT

1. DOES THE BILL 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.	

ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	The implementation of the bill may require revision to existing agency rule(s).

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

332
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Incarcerated Women

Name Marcus L. Dixon

Job Title Political Director, SEIU Florida

Address 2881 Corporate Way
Street
Miramar FL 33025
City *State* *Zip*

Phone (305) 720-1627

Email Marcus.Dixon@seiufl.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing SEIU Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

332
Bill Number (if applicable)

Topic Dignity Bill

Amendment Barcode (if applicable)

Name Joe Saunders

Job Title Senior Political Director

Address 201 E Park Ave Ste. 200
Street

Tallahassee FL 32301
City *State* *Zip*

Phone

Email joe@equalityflorida.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

332
Bill Number (if applicable)

Topic DIGNITY FOR INCARCERATED WOMEN

Amendment Barcode (if applicable)

Name JON HARRIS MAUER

Job Title PUBLIC POLICY DIRECTOR

Address 201 E PARK AVE STE 200
Street

Phone

TALLAHASSEE FL 32301
City *State* *Zip*

Email JONHARRIS@EQUALITYFLORIDA.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing EQUALITY FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-11-19
Meeting Date

332
Bill Number (if applicable)

Topic Dignity for Incarcerated Women

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title MS

Address 625 E Brevard St
Street

Phone 850-251-4280

City *State* *Zip*

Email barbra-devane1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

332
Bill Number (if applicable)

Topic Dignity Bill

Amendment Barcode (if applicable)

Name Annie Filkowski

Job Title

Address 103 Westridge Dr.
Street

Tallahassee FL
City *State* *Zip*

Phone (239) 849-2644

Email afilkowski@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

SB 332
Bill Number (if applicable)

Topic Dignity for Incarcerated Women Act
Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title Public Affairs, New Florida Majority

Address 126 N. Mills Ave
Street

Phone 407-376-4801

Orlando FL 32801
City *State* *Zip*

Email Ida.eskamani@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing New Florida Majority

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.11.19
Meeting Date

SB 332
Bill Number (if applicable)

Topic Dignity Bill

Amendment Barcode (if applicable)

Name Laura Hernandez

Job Title Legislative Representative for the Florida Alliance of Planned Parenthood Affiliates

Address 261 S W Tennessee St
Street

Tallahassee FL 32304
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Alliance of Planned Parenthood Affiliate

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/18
Meeting Date

SB 332
Bill Number (if applicable)

Topic Dignity Act

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title

Address 579 E. Call St.
Street

Phone 850-321-9386

Tallahassee, FL 32301
City *State* *Zip*

Email fcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-11-19
Meeting Date

332
Bill Number (if applicable)

Topic GT

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title VP Policy

Address 100 N Duval
Street

Tall. FL 32301
City *State* *Zip*

Phone 850 322-9941

Email SNuzzo@JamesMadison.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The James Madison Inst.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2 / H /2019
Meeting Date

Topic _____ Bill Number 332 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-11-19
Meeting Date

SB 332
Bill Number (if applicable)

Topic Incarcerated Women

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933 *Street*

Phone 352.682.2542

Gainesville FL 32614
City *State* *Zip*

Email gnewburn@famm.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FAMM

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.11.19
Meeting Date

332
Bill Number (if applicable)

Topic CJ.

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 605 Middle Brooks Cir
Street

Phone

TLH FL 32312
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

332
Bill Number (if applicable)

Topic Incarcerated Women

Amendment Barcode (if applicable)

Name Daphnee Sainvil

Job Title Legislative Policy Advisor

Address 100 S. Andrews Ave., Main Library, 8th Floor
Street

Phone 954-253-7320

Fort Lauderdale | FL | 33301
City | *State* | *Zip*

Email dsainvil@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/18
Meeting Date

SB 332
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic DIGNITY FOR INCARCERATED WOMEN

Name CHIARA VALERO

Job Title STATE POLICY DIRECTOR

Address 1951 NW 7TH AVE
Street

Phone 786 442 8199

MIAMI FL 33136
City *State* *Zip*

Email CHIARO@LATINAINSTITUTE.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA LATINA ADVOCACY NETWORK

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

332
Bill Number (if applicable)

Topic Dignity Bill

Amendment Barcode (if applicable)

Name Jasmen Rogers-Shaw

Job Title Staff & Policy Director

Address 745 NW 54th Str
Street
Miami FL 33127
City *State* *Zip*

Phone (954) 201-1380

Email jasmen@theworkerscenter.org

Speaking: [X] For [ ] Against [ ] Information

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

Representing Miami Workers Center

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

SB332
Bill Number (if applicable)

Topic Dignity for Incarcerated Women

Amendment Barcode (if applicable)

Name Christina D'Agostino

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Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/19
Meeting Date

SB332
Bill Number (if applicable)

Topic Dignity for Incarcerated Women

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/19
Meeting Date

SB332
Bill Number (if applicable)

Topic Dignity for Incarcerated Women

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/19
Meeting Date

SB332
Bill Number (if applicable)

Topic Dignity for Incarcerated Women

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/19
Meeting Date

SB 332
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Incarcerated Women

Name Demetrius Minor

Job Title Dir of Coalitions

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Street

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/19
Meeting Date

SB 332
Bill Number (if applicable)

Topic Incarcerated Women

Amendment Barcode (if applicable)

Name ANDY THOMAS

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.4.19
Meeting Date

332
Bill Number (if applicable)

Topic Incarerated Women

Amendment Barcode (if applicable)

Name Barney Bishop III

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Street

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Tallahassee — *City* | FL — *State* | 32308 — *Zip*

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

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2/11/2019
Meeting Date

SB 332
Bill Number (if applicable)

Topic Incarcerated Women

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/19
Meeting Date

SB 332
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Dignity Act - Incarcerated Women

Name Kara Gross

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Civil Liberties Union of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 1, 2019

I respectfully request that **Senate Bill #332**, relating to Incarcerated Women, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jason W.B. Pizzo
Florida Senate, District 38

File signed original with committee office

S-020 (03/2004)

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 338
INTRODUCER:	Criminal Justice Committee and Senator Brandes
SUBJECT:	Extension of Confinement
DATE:	February 12, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	**Fav/CS**
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 338 amends s. 945.091, F.S., authorizing the Department of Corrections (DOC) to consider an inmate to participate in a supervised community release program (Program) up to 180 days before the inmate's tentative release date as an extension of the inmate's confinement. The DOC must also administer a risk assessment tool to determine eligibility for this program. The Program must include active electronic monitoring and community control as defined in s. 948.001, F.S.

An inmate's participation in the Program may be terminated by the DOC if the inmate fails to comply with any of the terms of the Program as proscribed by the rules promulgated under this act. If an inmate is terminated from the supervision, he or she must be recommitted to the DOC.

If there is reasonable grounds to believe that the inmate violated his or her supervised community release, the bill authorizes a law enforcement officer or probation officer to arrest the inmate in accordance with s. 948.06, F.S. An alleged violation of the conditions of the supervised community release program must be reported to the supervising probation office or the DOC's emergency action center for disposition of disciplinary charges as proscribed in the DOC rules.

The bill also reenacts several sections of law to incorporate changes made by the act.

The bill likely has a negative indeterminate fiscal impact (i.e., a decrease in prison beds) on the DOC due to certain eligible participants being released from correctional facilities. In addition,

the DOC will likely see cost savings due to paying the per diem rate for electronic monitoring, rather than the variable per diem rate for a prison bed. The DOC also requests one full-time equivalent position, entitled "Correctional Programs Consultant," to provide statewide implementation and oversight of the Program. The DOC requests $69,949 recurring General Revenue funds and $4,429 nonrecurring General Revenue funds for the position. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

The Criminal Punishment Code[1] (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.[2] The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is five years.[3]

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time, and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.[4]

Extension on the Limits of Confinement

There are a limited number of instances where an inmate who is in the custody of the DOC may continue serving his or her sentence outside the physical walls of a prison. When a reasonable belief exists that an inmate will adhere to conditions placed upon him or her, s. 945.091, F.S., authorizes the DOC to allow an inmate to leave the confines of a physical facility unaccompanied for a specified period of time to:

- Visit a:
  - Dying relative or attend a funeral of a relative;
  - Specified location to arrange for employment or for a suitable residence for use upon release;
  - Specified place to aide in the successful transition back into the community;
  - Specifically designated location for any other compelling reason;[5]
- Work at paid employment;[6]

[1] Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F.
[2] Section 921.0022(1), F.S.
[3] Section 775.082(3), F.S.
[4] Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.
[5] Section 945.091(1)(a), F.S. An inmate released from the custody of a facility under this subsection must return to the same or another facility as designated by the DOC. *See also* Department of Corrections, *Senate Bill 1206 (2018) Analysis*, at p. 3 (January 8, 2018) (on file with the Senate Committee on Criminal Justice) [hereinafter cited as "The DOC SB 1206 (2018) Analysis"].
[6] This provision is commonly referred to as "Work Release." Section 945.091(1)(b), F.S., further provides that this form of release occurs while the inmate continues as an inmate of the institution or facility in which the inmate is confined. The only time in which the inmate is released unaccompanied is during the hours of his or her employment, education, training, or service and traveling to and from such approved activity. An inmate is permitted to travel to and from the place of

- Participate in an educational or training program;[7]
- Voluntarily serve a public or nonprofit agency or faith-based service group in the community;[8] or
- Participate in a residential or nonresidential rehabilitative program.[9]

The DOC must perform an investigation to determine whether the inmate is suitable for consideration of extension of his or her confinement prior to being approved for one of the provisions described above.[10]

Prior to July 1, 1996, a fourth provision, known as the Supervised Community Release Program, existed that allowed inmates to be released on an extension of confinement to participate in a rehabilitative community reentry program on conditional release.[11] This release was for a period of no more than 90 days prior to the termination of his or her confinement. The inmate was released and placed on community supervision, but was not considered to be in the custody or care of the DOC or in confinement. If the inmate did not demonstrate sufficient progress with the reentry program, the DOC was able to terminate the inmate's participation and return the inmate to the prior institution or a new facility as designated by the DOC.[12]

Gain-time

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.[13] An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.[14]

employment, education, or training by walking, bicycling, or using public transportation or transportation that is provided by a family member or employer.

[7] *Id*.

[8] *Id*.

[9] Section 945.091(1)(c), F.S. The treatment program must be operated by a public or private nonprofit agency, including faith-based service groups, with which the DOC has contracted for the treatment of such inmate. The provisions of ss. 216.311 and 287.057, F.S., must apply to all contracts considered under this provision. The DOC must ensure each agency provides appropriate supervision of inmates participating in such program.

[10] Section 945.091(1), F.S.

[11] Section 945.091(1)(d), F.S. (1995). This paragraph was repealed in ch. 96-312, L.O.F.

[12] *Id*.

[13] Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

[14] Section 944.275(4)(f), F.S.

Basic gain-time, which automatically reduced an inmate's sentence by a designated amount each month, was eliminated for offenses committed on or after January 1, 1994.[15] The only forms of gain-time that can currently be earned are:

- Incentive gain-time;[16]
- Meritorious gain-time;[17] and
- Educational achievement gain-time.[18]

The procedure for applying gain-time awards to an inmate's sentence is dependent upon the calculation of a "maximum sentence expiration date" and a "tentative release date." The tentative release date may not be later than the maximum sentence expiration date.[19] The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire. To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.[20]

The tentative release is the date projected for the prisoner's release from custody after gain-time is granted or forfeited in accordance with s. 944.275, F.S.[21] Gain-time is applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, are applied to make the tentative release date proportionately later.[22]

Community Control

Section 948.001(3), F.S., defines "community control" to mean a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.[23] The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.[24]

A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school,

[15] Chapter 93-406, L.O.F.
[16] Section 944.275(4)(b), F.S, provides incentive gain-time is a total of up to ten days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.
[17] Section 944.275(4)(c), F.S., provides that meritorious gain-time is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate. The award may range from one day to 60 days and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.
[18] Section 944.275(4)(d), F.S., provides that educational gain-time is a one-time award of 60 days that is granted to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program.
[19] Section 944.275(3)(c), F.S.
[20] Section 944.275(2)(a), F.S.
[21] Section 944.275(3)(a), F.S.
[22] *Id*. *See also* s. 944.275(4)(b), F.S.
[23] Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.
[24] Section 948.10(1), F.S.

performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.[25]

Conditions of community control are determined by the court when the offender is placed on such supervision. However, there are standard conditions of community control that all controlees must comply with, including, but not limited to:

- Specified contact with the parole and probation officer;
- Confinement to an agreed-upon residence during hours away from employment and public service activities;
- Mandatory public service;
- Supervision by the DOC through an electronic monitoring device or system; and
- The standard conditions of probation[26] set forth in s. 948.03, F.S.[27]

A person may be placed on additional terms of supervision as part of his or her community control sentence.[28]

Violations of Probation or Community Control

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.[29] A violation of probation (VOP) or violation of community control (VOCC) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender on probation or community control has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.[30]

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[25] *Id*. *See also* Florida Department of Corrections, *Succeeding on Community Control*, available at http://www.dc.state.fl.us/cc/ccforms/Succeeding-on-Community-Control.pdf (last visited on January 30, 2019). A Community Control Offender Schedule and Daily Activity Log must be submitted weekly with a proposed schedule for the week and the parolee's officer reviews such schedule and either approves or denies the schedule. Additionally, a person is required to provide an hourly accounting of his or her whereabouts for the previous week to verify any deviations from the pre-approved schedule.

[26] Section 948.001(9), F.S., defines "probation" to mean a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S. Some of the standard conditions of probation provided for in s. 948.03, F.S., include, but are not limited to, for the offender to report to the probation officer as directed, permit the probation officer to visit him or her at his or her home or elsewhere, work at suitable employment, live without violating any law, and make restitution to the aggrieved party for the damage or loss caused by his or her offense as determined by the court.

[27] Section 948.101(1), F.S.

[28] Section 948.101(2), F.S.

[29] Section 948.10(3), F.S.

[30] Section 948.06(1)(a), F.S.

The offender must be returned to the court granting such probation or community control.[31] Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.[32]

Arrest Authority

Section 901.15, F.S., provides that a law enforcement officer may arrest a person without a warrant under specified circumstances, including, but not limited to, when:

- The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer.
- A felony has been committed and the officer reasonably believes that the person committed it.
- The officer reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- A warrant for the arrest has been issued and is held by another peace officer for execution.
- A violation of ch. 316, F.S. (state uniform traffic control), has been committed in the presence of the officer.
- There is probable cause to believe that the person has violated s. 790.233, F.S. (possession of firearms by a convicted felon), s. 741.31, F.S. (possession of prohibited ammunition), a protective injunction order, or a specified foreign protection order.
- There is probable cause to believe that the person has committed an act of domestic violence or dating violence.

Additionally, a probation officer is authorized to issue an arrest warrant or arrest an offender in limited circumstances. Section 944.405(1), F.S., authorizes the DOC to issue an arrest warrant for a person who has "absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences."

Section 948.06(1), F.S., also authorizes probation officers or law enforcement officers to arrest probationers and community controlees without a written warrant based on a reasonable belief the offender has violated terms of supervision in a material respect.

Evidence-Based Risk Assessment Tools

Risk and needs assessment instruments (RAIs) measure a defendant's criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.[33] RAIs consist of a set of questions that guide interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminal reoffending. The questioner typically supplements the interview with an official records check, including prior arrests and incarcerations. Responses are statistically weighted, based on research that shows how strongly

[31] *Id*.
[32] Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the offender has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.
[33] Congressional Research Service, *Risk and Needs Assessment in the Federal Prison System*, Nathan James, p. 3 (July 10, 2018), available at https://fas.org/sgp/crs/misc/R44087.pdf (last visited January 28, 2019) (hereinafter cited at CRS Report).

each item correlates with recidivism. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.[34]

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors do not change, while dynamic risk factors can either change on their own or be changed through an intervention. Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a past history of violating terms of supervision.[35] Dynamic risk factors, also called "criminogenic[36] needs," can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence.[37]

The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment. The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender.[38]

In general, research suggests that the most commonly used assessment instruments can, with a moderate level of accuracy, predict who is at risk for violent recidivism. It also suggests that no single instrument is superior to any other when it comes to predictive validity.[39]

Use of Risk Assessment Instruments by the Department of Corrections

The DOC has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.[40] Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.[41] Spectrum has been independently verified through the School of Criminology at the Florida State University.[42]

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[34] *Id*.
[35] *Id*.
[36] "Criminogenic" is commonly understood to mean factors that can contribute to criminal behavior. CRS Report, p. 3, n. 16.
[37] CRS Report, p. 3.
[38] CRS Report, Summary Page.
[39] CRS Report, p. 4.
[40] DOC, Spectrum Video, available at https://www.youtube.com/watch?v=F1sQsOE6BgM (last visited January 28, 2019) (hereinafter cited as "Spectrum Video"); DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee) (hereinafter cited as "DOC Program Information").
[41] Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with Senate Criminal Justice Committee).
[42] Letter from Dr. William D. Bales and Jennifer M. Brown, ABD to DOC Secretary, Julie Jones, (January 19, 2018) (on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.[43] Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains[44] and three core program areas.[45]

The DOC utilizes the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during the administration of Spectrum is also used to assist with transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.[46] Spectrum was completed in September, 2016, and subsequently deployed throughout the state.[47]

III. Effect of Proposed Changes:

The bill amends s. 945.091, F.S., to allow an inmate to participate in a supervised community release program (Program) as an extension of the inmate's confinement, similar to the former Supervised Community Release Program discussed above. The Program release term may begin 180 days before the inmate's provisional or tentative release date and must include active electronic monitoring and community control as defined in s. 948.001, F.S. The bill requires the DOC to administer a RAI to determine an inmate's eligibility for this program. The bill provides that participation in and conditions of the Program will be as proscribed in department rule.

The DOC is authorized to terminate the inmate's participation in the program if he or she fails to comply with any of the terms of the Program as proscribed by rule. If an inmate is terminated from the supervision, he or she must be recommitted to the same institution or another institution designated by the DOC.

The bill allows a law enforcement officer or probation officer to arrest an inmate without a warrant in accordance with s. 948.06(1), F.S., if there are reasonable grounds to believe the inmate violated the terms of the Program. A law enforcement officer that arrests an inmate for a violation of the conditions of the Program is required to report the inmate's alleged violations to the supervising probation office or the DOC's emergency action center for disposition of disciplinary charges as proscribed in the DOC rules.

The bill provides that an inmate released on the Program in accordance with this provision is eligible to earn and lose gain-time as proscribed in law and rule, which includes the prohibition on an inmate earning or receiving gain-time in an amount that results in his or her release prior to

[43] DOC Program Information.
[44] The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video.
[45] The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with the Senate Criminal Justice Committee).
[46] *Id*.
[47] *See* WFSU, *Florida Prison Officials Go Statewide With New Program To Better Help Rehabilitate Inmates*, Sarah Cordner, September 23, 2016, available at http://news.wfsu.org/post/florida-prison-officials-go-statewide-new-program-better-help-rehabilitate-inmates (last visited January 30, 2019).

serving a minimum of 85 percent of the sentence imposed.[48] However, the bill provides the inmate is not counted as part of the inmate population and the approved community-based housing in which the inmate lives is not counted in capacity figures for the prison system.

The bill reenacts ss. 944.516, 945.092, and 946.503, F.S., incorporating the changes made by the act.

The DOC reports that as of December 31, 2018, there were approximately 479 inmates that were 180 days out from their release date that had served at least 85 percent of their sentence. Additionally, the DOC reports that there will be about 2,508 additional inmates meeting this criterion within the next 6 months.[49]

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[48] *See* s. 944.275(4)(f), F.S.
[49] The DOC, SB 338 Agency Analysis, p. 4, January 31, 2019 (hereinafter cited as "The DOC SB 338 Analysis")(on file with the Senate Criminal Justice Committee).

B. Private Sector Impact:

The bill authorizes the DOC to release a specified inmate into the community on supervised release up to 180 days before the end of his or her sentence. This will provide private companies the opportunity to hire an inmate earlier than without the act.

C. Government Sector Impact:

The Criminal Justice Estimating Conference has not heard the bill at this time.

The DOC reports that the bill will likely result in a negative indeterminate prison bed impact (i.e., an indeterminate decrease in prison beds). The DOC stated that the number is indeterminate for several reasons, including not being able to quantify how many inmates would be interested in the program and, of those inmates, how many could obtain proper housing placements to warrant release.[50]

The DOC further reports that the fiscal impact of the bill will vary based on the number of released inmates placed on active electronic monitoring, the rate at which such inmates pay the electronic monitoring costs, and the type of facility[51] from which Program participants are released. The current per diem rate for inmates placed on electronic monitoring who are assigned to community release centers is $3.90 per day for contracted facilities and $5.29 for facilities operated by the DOC. The variable per diem rate is $20.04, which is associated with the individual inmate care costs such as medical, food, inmate clothing, and personal care items. The DOC reports that the average per diem for community supervision in FY 2017-18 was $5.47. Therefore, the DOC will likely pay the electronic monitoring per diem rate, rather than the variable per diem rate, for the inmates released to this Program on electronic monitoring.[52] The electronic monitoring per diem rate would be paid for the designated number of days with which the inmate was out in the community instead of housed in an institution, which could result in a cost savings to the DOC.[53]

The DOC requests the creation of one full-time equivalent position, entitled "Correctional Programs Consultant," to oversee, provide guidance, and coordinate the statewide implementation and administration of the Program.[54] The DOC projects the funding for the position to be $69,949 recurring General Revenue funds and $4,429 nonrecurring General Revenue funds.[55] Finally, the DOC states that there could be a need for additional correctional probation officer positions depending upon the number of participants in the program.[56]

[50] The DOC SB 338 Analysis, p. 4.
[51] There are different per diems for each type of facility, including community release facilities, major institutions, and work camps, based upon the level of security and services provided at the facility. *Id.*
[52] *Id*.
[53] *Id*.
[54] The DOC SB 338 Analysis, p. 4.
[55] *Id*., p. 6.
[56] *Id*., p. 4.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.091 of the Florida Statutes.

This bill reenacts sections 944.516, 945.092, and 946.503 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The Committee Substitute provides that any violation of a participant's conditions of the supervised community release program must be reported to the supervising probation office or the DOC emergency action center, ensuring better oversight of any inmates released to the community on the program.

B. Amendments:

None.

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

240586

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 69 - 70
and insert:
enforcement officer must report the inmate’s alleged violations to the supervising probation office or the department's emergency action center for

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

240586

Delete lines 16 - 17

and insert:

enforcement officer to report alleged violations to a supervising probation office or the department's emergency action center for disposition

By Senator Brandes

24-00740A-19 2019338__

A bill to be entitled

An act relating to extension of confinement; amending s. 945.091, F.S.; authorizing the Department of Corrections to extend the limits of confinement to allow an inmate to participate in supervised community release, subject to certain requirements, as prescribed by the department by rule; requiring the department to administer a risk assessment instrument to appropriately determine an inmate's ability to be released; authorizing the department to terminate the inmate's supervised community release and return him or her to the same or another institution under certain circumstances; authorizing a law enforcement or probation officer to arrest an inmate without a warrant under certain circumstances; requiring the law enforcement or probation officer to report alleged violations to a correctional officer for disposition of disciplinary charges as prescribed by the department by rule; requiring an inmate participating in supervised community release to remain eligible to earn or lose gain-time, subject to certain restrictions; prohibiting the inmate from being counted in the population of the prison system; prohibiting the inmate's approved community-based housing location from being counted in the capacity figures for the prison system; reenacting ss. 944.516(2), 945.092, and 946.503(2), F.S., relating to money or other property received for personal use or benefit of an inmate, limits on work-release and

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

24-00740A-19 2019338__

minimum security custody for persons who have committed the crime of escape, and definitions to be used with respect to correctional work programs, respectively, to incorporate the amendment made to s. 945.091, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (1) of section 945.091, Florida Statutes, to read:

945.091 Extension of the limits of confinement; restitution by employed inmates.—

(1) The department may adopt rules permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe that the inmate will honor his or her trust by authorizing the inmate, under prescribed conditions and following investigation and approval by the secretary, or the secretary's designee, who shall maintain a written record of such action, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to:

(d) Participate in supervised community release as prescribed by the department by rule. The inmate's participation may begin 180 days before his or her provisional or tentative release date. Such supervised community release must include active electronic monitoring and community control as defined in s. 948.001. The department must administer a risk assessment instrument to appropriately determine an inmate's ability to be

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

released pursuant to this paragraph.

1. If a participating inmate fails to comply with the conditions prescribed by the department by rule for supervised community release, the department may terminate the inmate's supervised community release and return him or her to the same or another institution designated by the department. A law enforcement officer or a probation officer may arrest the inmate without a warrant in accordance with s. 948.06, if there are reasonable grounds to believe he or she has violated the terms and conditions of supervised community release. The law enforcement officer or probation officer must report the inmate's alleged violations to a correctional officer for disposition of disciplinary charges as prescribed by the department by rule.

2. An inmate participating in supervised community release under this paragraph remains eligible to earn or lose gain-time in accordance with s. 944.275 and department rule, but may not receive gain-time or other sentence credit in an amount that would cause his or her sentence to expire, end, or terminate, or that would result in his or her release before serving a minimum of 85 percent of the sentence imposed. The inmate may not be counted in the population of the prison system, and the inmate's approved community-based housing location may not be counted in the capacity figures for the prison system.

Section 2. For the purpose of incorporating the amendment made by this act to section 945.091, Florida Statutes, in a reference thereto, subsection (2) of section 944.516, Florida Statutes, is reenacted to read:

944.516 Money or other property received for personal use

or benefit of inmate; deposit; disposition of unclaimed trust funds.—The Department of Corrections shall protect the financial interest of the state with respect to claims which the state may have against inmates in state institutions under its supervision and control and shall administer money and other property received for the personal benefit of such inmates. In carrying out the provisions of this section, the department may delegate any of its enumerated powers and duties affecting inmates of an institution to the warden or regional director who shall personally, or through designated employees of his or her personal staff under his or her direct supervision, exercise such powers or perform such duties.

(2) The department shall require documentation through an accounting of receipts for expenditures by inmates placed on extended limits of confinement pursuant to s. 945.091. However, the department may allow such inmates an amount up to $25 per week which may not require documentation and which may be used for discretionary needs. The $25 per week may be increased by $5 biennially, beginning in fiscal year 1985-1986, up to a total of $50.

Section 3. For the purpose of incorporating the amendment made by this act to section 945.091, Florida Statutes, in a reference thereto, section 945.092, Florida Statutes, is reenacted to read:

945.092 Limits on work-release and minimum security custody for persons who have committed the crime of escape.—A person who has ever been convicted, regardless of adjudication, of the offense of escape, as prohibited by s. 944.40 or its successor, or as prohibited by a similar law of another state, is not

eligible for any work-release program under s. 945.091 or for confinement in minimum security conditions.

Section 4. For the purpose of incorporating the amendment made by this act to section 945.091, Florida Statutes, in a reference thereto, subsection (2) of section 946.503, Florida Statutes, is reenacted to read:

946.503 Definitions to be used with respect to correctional work programs.—As used in this part, the term:

(2) "Correctional work program" means any program presently a part of the prison industries program operated by the department or any other correctional work program carried on at any state correctional facility presently or in the future, but the term does not include any program authorized by s. 945.091 or s. 946.40.

Section 5. This act shall take effect October 1, 2019.

SB 338

2018 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

BILL INFORMATION	
BILL NUMBER:	SB 1206
BILL TITLE:	Supervised Community Release
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	October 1, 2018

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

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

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 8, 2018
LEAD AGENCY ANALYST:	Lee Adams
ADDITIONAL ANALYST(S):	Sibyle Walker, John Becker, Rusty McLaughlin, Greg Roberts, Jami Dunsford
LEGAL ANALYST:	Ryan Padgett
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill authorizes the Department of Corrections (FDC or Department) to extend the limits of confinement of a trustworthy inmate in the last 90 days of a sentence to include housing in an approved private residence in the community, and provides authority for warrantless arrest by law enforcement or a probation officer who has reason to believe the inmate has violated terms under which the limits of confinement have been extended.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Extended Limits of Confinement

Subsection 945.091(1)(a), F.S., allows for the extension of the limits of confinement by allowing trusted inmates under prescribed conditions to leave direct Department supervision. With Department approval, inmates may visit a dying relative, attend a funeral of a relative, or arrange for employment or residence for use when released. Inmates may also be released for specified periods to designated places if it will otherwise aid in their rehabilitation or successful transition back into the community.

Subsection 945.091(1)(b), F.S., provides that an inmate may participate in paid employment, an education or training program, or voluntarily serve a public or nonprofit agency or faith-based service group in the community, while still being confined by the Department, with exception of the hours served in any of the above activities. Section 945.091(c), F.S., states that an inmate may participate in a residential or nonresidential rehabilitative program operated by a public or private nonprofit agency, including faith-based groups. The Department may contract with agencies to provide treatment to the inmate.

Community Work Release

Currently under s. 945.091 F.S., inmates are allowed to work at paid employment in the community through the community work release program. Community Work Release (CWR) is a portion of the Community Release Program that allows selected inmates to work at paid employment in the community during the last months of their confinement. Work Release provides an inmate with a gradual reintegration back into the community, gainful employment, accumulation of savings from paid employment, and preservation of family and community ties. Within two weeks of admission to the community work release program, a written Personalized Program Plan is developed for each inmate. This plan incorporates the inmate's individual needs and provides a positive framework for program participation (i.e., orientation and intake, employment, furloughs, personal budget, substance abuse counseling, academic and vocational education, mental health, and medical rehabilitative programs). The plan includes program objectives to be accomplished while an inmate is assigned to the community work release program. Measurable criteria are established in determining completion of the objectives, along with a reasonable time schedule to achieve each goal and a progress review for evaluating progress toward objectives. Inmates are allowed to work in the community without Department supervision, but must reside in a Community Release Center during the period they are not at work. As of September 30, 2017, there are 3,251 inmates in Community Work Release Centers.

Community Release Centers

Community Release Centers (CRC): No sex offenders may be assigned to community release centers. Facilities that house four categories of community custody inmates, those who are participating in community work release and work at paid employment in the community, those who work in a support capacity for the center (CWA), those receiving transitional services which include substance abuse treatment/programming, educational/vocational services, self-betterment programs, and skills necessary for employment and re-entry into society prior to CWR or CWA placement, and the Community-based Therapeutic inmates (CTP) who receive transitional services, in lieu of placement into paid employment (CWR) or center work assignment (CWA). Inmates must be within 6 to 36 months of their release date, depending on their assignment.

Those assigned to CWA perform such tasks as: food service, maintenance of the center, or assignment to work squads. There are no perimeter fences and inmates must remain at the CRC when they are not working or attending programs outside the CRC.

Custody Level

The Department uses custody level as the fundamental determinant of an inmate's trustworthiness as required by statute. To be assigned to a community work release center an inmate must be classified as "community" custody. The following will prevent an inmate from being classified as community custody:

1. Current or prior sex offense convictions;
2. Current or prior conviction for murder or attempted murder under s. 782.04, F.S.;
3. Current or prior conviction for aggravated manslaughter of an elderly person or disabled adult or attempted manslaughter of an elderly person or disabled adult under ss. 782.07(2), F.S.;
4. Current or prior conviction for aggravated manslaughter of a child or attempted aggravated manslaughter of a child under ss. 782.07(3), F.S.;
5. Current or prior conviction for aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic or attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic under ss. 782.07(4), F.S.;
6. Current or prior conviction for murder of an unborn child or attempted murder of an unborn child under ss. 782.09(1), F.S.;
7. Current or prior conviction for attempted murder of a law enforcement officer under ss. 784.07(3), F.S.;
8. Current or prior conviction for making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person or for attempted making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person under ss. 790.161(4), F.S.;
9. Current or prior conviction for assisting self-murder or for attempted assisting self-murder under Section 782.08, F.S.
10. A guilty finding on any disciplinary report for escape or attempted escape within the last five years;
11. A current or prior conviction for escape covered by ss. 945.092, F.S.;
12. A felony, Immigration and Customs Enforcement, or misdemeanor (for other than child support) warrant or detainer;
13. A misdemeanor detainer for child support, unless it can be established by the inmate's classification officer that the detainer would be withdrawn upon payment of restitution, fines, or court ordered obligations and it appears that the inmate will earn sufficient funds to pay the obligation that has caused the detainer.

Community Control

In ss. 948.001(3), F.S., it defines community control as "a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced."
Section 948.10, F.S., provides that "community control" programs are to "focus on the provision of home confinement subject to an authorized level of limited freedom and special conditions that are commensurate with the seriousness of the crime. The program shall offer the courts and the Florida Commission on Offender Review an alternative, community-based method to punish an offender in lieu of incarceration and shall provide intensive supervision to closely monitor compliance with restrictions and special conditions, including, but not limited to, treatment or rehabilitative programs."

Arrest/Warrant Authority

In ss. 944.405, F.S., it authorizes the Department to issue an arrest warrant for a person who has "absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences." Section 948.06(1), F.S. authorizes probation officers or law enforcement officers to arrest probationers and community controlees without written warrant based on a belief the offender has violated terms of supervision.

Escape

In ss. 945.091(4), F.S., it provides that the willful failure of an inmate to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the Department shall be deemed as an escape from the custody of the Department and shall be punishable as prescribed by law.

2. EFFECT OF THE BILL:

The bill is similar to a program in effect under s. 945.091, F.S., from 1986 to 1996 called Supervised Community Release Program (SCRP). This program was limited to inmates within the last 90 days of sentence who were assigned to a community release center, or who were medically unable to participate in work release. SCRP

participants were not considered to be inmates but were able to earn gain time and were under the disciplinary rules of the Department.

The bill expands on the current concept of the "extension of the limits of confinement" under s. 945.091, F.S., to create another step in the transition process by allowing an inmate, regardless of where he/she is assigned, to continue serving his/her state prison sentence while under custodial supervision in the community during the last 90 days of the sentence. Since the inmate remains in service of the court-imposed sentence while participating in the program, and the Department maintains the calculation of the release date in accordance with s. 944.275, F.S., program participation remains consistent with the requirement that inmates serve 85% of the sentence.

To allow an inmate to participate there must be "reasonable cause to believe that the inmate will honor his or her trust". The bill authorizes the Department to impose community control standards of supervision as well as electronic monitoring tracking technology, and provides the Department authority to establish standards for assessing progress in the program and for termination for failure to meet those standards. Program participants remain eligible to earn and forfeit gain time under Department rules.

There are about 770 inmates assigned to a community facility who have between 10-90 days left to serve (less than 10 days is not enough to justify the work of transitioning the inmate to the program). There are about another 580 community custody inmates who have not been to work release who are within this time frame to release. The primary offenses in these groups are as follows:

MANSLAUGHTER 22
VIOLENT, OTHER 127
ROBBERY 70
BURGLARY 223
PROPERTY
THEFT/FRAUD/DAMAGE 276
DRUGS 461
OTHER 84
WEAPONS 91
TOTAL 1354

Since the program would expose participating inmates to disciplinary penalties including loss of gain time, to avoid ex post facto violations participation would have to be voluntary as to crimes committed before the statutory change. Inmates sentenced for crimes committed after the statute changed could be required to participate; however, that may not be prudent considering the level of trust needed for inmates assigned in a community setting. If the inmate does not want to be in the program it may be best to allow for recusal. Also, a number of inmates would likely rather serve slightly more time in prison than be under community supervision, especially if that includes electronic monitoring (EM), risking return to prison for additional time if they violate. Finally, it is unknown as whether how many inmates in the pool have a suitable employment or residence to release to. Thus, the bed impact of the bill is indeterminate. Further, the fiscal impact of the bill will also vary based on the number of releasees placed on electronic monitoring, and the rate at which they pay the EM costs, as well as the type of facility from which program participants were released (based on the different per diems between community release facilities, major institutions, and work camps). Finally, depending on the number of participants in the program, there could be a need for additional correctional probation officer positions.

In addition to the 770 inmates in community release beds that are eligible for the program, another 324 are assigned outside the secure perimeter at a major facility. If enacted, inmates will be identified by FDC to take the place of the inmates from these groups that opt to participate in supervised release. It is anticipated that ongoing modifications of the Department's custody system that give more weight to completion of rehabilitative programs will provide an adequate pool of minimum and community custody inmates to meet the increased needs resulting from the bill.

Based on the possible 90 day advancement of time frames, the bill would facilitate modification of Rule 33-601.602(2)(d)4, F.A.C., governing time frames for community assignment, to allow for participation in center work assignment at 22 months to release (currently 19), and participation in work release at 18 months to release (currently 14).

The bill also provides authority for warrantless arrest by probation officers and law enforcement officers, similar to the authority currently under ss. 948.06(1), F.S.

Additionally, please note to implement the provisions of the bill, the Department will likely have to promulgate rules and/or amend existing rules and procedures.

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

If yes, explain:	
Is the change consistent with the agency's core mission?	Y☒ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	33-601.602, F.A.C. Community Release Programs.

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

Proponents and summary of position:	
Opponents and summary of position:	

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

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

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

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

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

Revenues:	Indeterminate.
Expenditures:	Indeterminate.

Does the legislation increase local taxes or fees? If yes, explain.	
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:	Indeterminate.
Expenditures:	Overall inmate population fiscal impact is indeterminate. When inmate population is impacted in small increments statewide, the inmate variable per diem of $15.81 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. It is anticipated that there will be an impact to the number of inmates placed on electronic monitoring as a form of supervision. The current per diem rate is $4.90 for inmates placed on electronic monitoring who are assigned to community release centers. The Office of Information Technology also projects there will likely be technology costs of $17,000 due to the need for updating and additional programming on both the Institutions and Community Corrections sentence structure screens. It is anticipated that these costs may be absorbed within current operations of the Department
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:	Indeterminate.
Expenditures:	Indeterminate.
Other:	

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

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. **DOES THE BILL 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.	There will likely be technology impact due to the need for updating and additional programming on both the Institutions and Community Corrections sentence structure screens. **Cost Estimate:** Estimate Hours: 200 Estimated Cost Per Hour: $85.00 Estimated Total Cost: $17,000.00 Estimated technology cost is listed above; however, the costs may be absorbed within current operations of the Department.

FEDERAL IMPACT

1. **DOES THE BILL 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.	

ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	N/A

Florida Department of Corrections
Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED

Compass 100

Compass 100 meets the statutory requirement that, "each inmate released from incarceration by the department must complete a 100-hour comprehensive transition course that covers job readiness and life management skills." Compass 100 integrates a comprehensive, standardized program of career, life and community readiness skills into the existing academic and vocational programs already offered by the Florida Department of Corrections (FDC). Individuals who do not have an academic or vocational need will be enrolled in a hybrid section that contains a combination of self-directed instruction and weekly meetings with the Bureau of Programs' staff to track progress and offer assistance.

To effectively deliver career and community readiness skills, the Compass 100 curriculum contains a modular system of lessons and supporting materials. In addition to the modules, participants will engage in lessons, assignments and discussions on a variety of life and career readiness skills. They include topics such as punctuality, workplace etiquette, interpersonal communication and problem solving, to name a few.

Compass 100 participants will be required to complete the *Thinking for a Change* (T4C) program. T4C is a nationally recognized cognitive-behavioral intervention course specifically designed to assist incarcerated individuals, by changing their thinking and providing skills to effectively communicate and solve problems. For those who cannot complete T4C, there will be an alternate module of lessons to satisfy in order to receive the 24 points/hours. Throughout the program participants will build a *Readiness Portfolio* which will contain items such as well-developed plans/goals, resume, current community resources, scheduled community appointments, program completion certificates and other pertinent documents that will assist in transition back into the community.

Spectrum

Spectrum is an advanced evidence-driven assessment and screening system designed to follow an inmate from community supervision, through institutions and back to the community. This enables FDC to provide data-driven, informed decisions regarding the continuum of care for an individual within our custody. Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education. Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains and 3 core program areas. Through motivational interviewing and individualized case planning, FDC maps resources to identified needs to reduce an individual's risk of recidivism.

Academic and Workforce education/GED

Programs encompasses 3 areas:

1. Core Programs

   a. Literacy
   b. Academic/workforce education
   c. Substance abuse treatment
2. Domain Programs
   a. Cognitive Behavioral Treatment, i.e. Thinking for a Change
3. Elective Programs
   a. A wide array of evidence driven, promising programs that influence pro-social behavior and support FDC curriculum
      i. Labs that support Cognitive Behavioral Treatment coursework, i.e. Babies to Brains for Parenting module of Thinking for a Change
      ii. Dog training
      iii. Volunteer support programs, i.e. Toast Masters

SB 338

Cox, Ryan

From: Torres, Jared <Jared.Torres@fdc.myflorida.com>
Sent: Thursday, January 25, 2018 4:58 PM
To: Cox, Ryan
Cc: Vaughan, Scotti
Subject: Re: Spectrum

Ryan,

Please find below Department staff:

Spectrum, as well as its predecessor CINAS, is based on the Risk – Needs – Responsivity (RNR) model and they both contain responsivity elements.

Core programming refers to GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors.

On Jan 25, 2018, at 3:27 PM, Cox, Ryan <Cox.Ryan@flsenate.gov> wrote:

Hey guys – one more thing from Abe...

I saw this sentence on your Program information background document – "Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains and 3 core program areas"

What are the three core program areas? Is this the Risk-Needs-Responsivity Model I was asking about earlier?

Sincerely,

Ryan C. Cox
Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

From: Cox, Ryan
Sent: Thursday, January 25, 2018 2:50 PM
To: 'Torres, Jared' <Jared.Torres@fdc.myflorida.com>; 'Vaughan, Scotti' <Scotti.Vaughan@fdc.myflorida.com>
Subject: Spectrum

Can you also send me an email about who independently verified Spectrum risk assessment tool? Thanks!

Sincerely,

Ryan C. Cox
Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

SB 338

FLORIDA STATE UNIVERSITY
COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE

January 19, 2018

Secretary Julie L. Jones
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500

Dear Secretary Jones,

The purpose of this letter is to communicate the findings from our independent assessment of the Department's Corrections Integrated Needs Assessment System (CINAS). The primary function of CINAS is to empirically determine an inmate's post-release risk of recidivism so the Department can prioritize high-risk inmates for programming.

Our validation report finds that the components of CINAS are performing as intended. Specifically, CINAS produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States. We hope the findings and recommendations provided in the attached report will be helpful in the transition to the Department's revised risk assessment system—Spectrum.

We wish to express our gratitude to the following individuals for sharing their tremendous knowledge of the development and implementation of CINAS: Abe Uccello, Patrick Mahoney, Brad Locke, Kerensa Lockwood, and others in the Division of Development as well as Rusty McLaughlin in the Bureau of Classification Management. We also wish to extend our gratitude to David Ensley, Dena French, Lori Nolting, and Jami Dunsford in the Bureau of Research and Data Analysis for providing us with the requisite data and valuable insights regarding the construction of the system data and algorithm. By our estimates, these individuals and others have contributed significant time and effort to the internal design, development, and implementation of CINAS. Our report concludes that their efforts have produced commendable results.

If you or your team has questions or needs clarification on the information provided in the attached report, please do not hesitate to contact us.

Sincerely,

William D. Bales, Ph.D.

Jennifer M. Brown, ABD

Eppes Hall, 112 South Copeland Street, Tallahassee, FL 32306-1273
850.644.4050 • Fax 850.644.9614 • www.criminology.fsu.edu

Cox, Ryan

From: Torres, Jared <Jared.Torres@fdc.myflorida.com>
Sent: Thursday, January 25, 2018 4:52 PM
To: Cox, Ryan
Cc: Vaughan, Scotti
Subject: Per request - Spectrum Verification of Risk Assessment Tool
Attachments: Letter to FDC Secretary Julie Jones.pdf; ATT00001.txt

Per request. Regarding: Independent verification of risk assessment tool. Thanks!

Our Vision: "Inspiring success by transforming one life at a time."

SB 338

2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

BILL INFORMATION	
BILL NUMBER:	SB 338
BILL TITLE:	Extension of Confinement
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	October 1, 2019

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

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

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 31, 2019
LEAD AGENCY ANALYST:	Joe Winkler
ADDITIONAL ANALYST(S):	Gregory Roberts, Sibyle Walker, Lee Adams
LEGAL ANALYST:	Philip Fowler
FISCAL ANALYST:	Suzanne Hamilton

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill amends s. 945.091 F.S., authorizes the Florida Department of Corrections (FDC or Department) to extend the limits of confinement of an inmate in the last 180 days of a sentence to participate in supervised community supervision.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Extended Limits of Confinement

Subsection 945.091(1)(a), F.S., allows for the extension of the limits of confinement by allowing trusted inmates under prescribed conditions to leave direct Department supervision. With Department approval, inmates may visit a dying relative, attend a funeral of a relative, or arrange for employment or residence for use when released. Inmates may also be released for specified periods to designated places if it will otherwise aid in their rehabilitation or successful transition back into the community.

Subsection 945.091(1)(b), F.S., provides that an inmate may participate in paid employment, an education or training program, or voluntarily serve a public or nonprofit agency or faith-based service group in the community, while still being confined by the Department, with exception of the hours served in any of the above activities. Section 945.091(c), F.S., states that an inmate may participate in a residential or nonresidential rehabilitative program operated by a public or private nonprofit agency, including faith-based groups. The Department may contract with agencies to provide treatment to the inmate.

Community Work Release

Currently under s. 945.091 F.S., inmates are allowed to work at paid employment in the community through the community work release program. Community Work Release (CWR) is a portion of the Community Release Program that allows selected inmates to work at paid employment in the community during the last months of their confinement. Work Release provides an inmate with a gradual reintegration back into the community, gainful employment, accumulation of savings from paid employment, and preservation of family and community ties. Within two weeks of admission to the community work release program, a written Personalized Program Plan is developed for each inmate. This plan incorporates the inmate's individual needs and provides a positive framework for program participation (i.e., orientation and intake, employment, furloughs, personal budget, substance abuse counseling, academic and vocational education, mental health, and medical rehabilitative programs). The plan includes program objectives to be accomplished while an inmate is assigned to the community work release program. Measurable criteria are established in determining completion of the objectives, along with a reasonable time schedule to achieve each goal and a progress review for evaluating progress toward objectives. Inmates are allowed to work in the community without Department supervision but must reside in a Community Release Center during the period they are not at work. As of January 25, 2019, there are 3,247 inmates in Community Work Release Centers.

Community Release Centers

Community Release Centers (CRC): No sex offenders may be assigned to community release centers. Facilities that house two categories of community custody inmates, those who are participating in community work release and work at paid employment in the community, those who work in a support capacity for the center (CWA). Inmates must be within 6 to 36 months of their release date, depending on their assignment.

Those assigned to CWA perform such tasks as: food service, maintenance of the center, or assignment to work squads. There are no perimeter fences and inmates must remain at the CRC when they are not working or attending programs outside the CRC.

Custody Level

The Department uses custody level as the fundamental determinant of an inmate's trustworthiness as required by statute. To be assigned to a community work release center an inmate must be classified as "community" custody. The following will prevent an inmate from being classified as community custody:

1. Current or prior sex offense convictions;
2. Current or prior conviction for murder or attempted murder under s. 782.04, F.S.;
3. Current or prior conviction for aggravated manslaughter of an elderly person or disabled adult or attempted manslaughter of an elderly person or disabled adult under ss. 782.07(2), F.S.;
4. Current or prior conviction for aggravated manslaughter of a child or attempted aggravated manslaughter of a child under ss. 782.07(3), F.S.;
5. Current or prior conviction for aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic or attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic under ss. 782.07(4), F.S.;
6. Current or prior conviction for murder of an unborn child or attempted murder of an unborn child under ss. 782.09(1), F.S.;
7. Current or prior conviction for attempted murder of a law enforcement officer under ss. 784.07(3), F.S.;
8. Current or prior conviction for making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person or for attempted making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person under ss. 790.161(4), F.S.;
9. Current or prior conviction for assisting self-murder or for attempted assisting self-murder under s. 782.08, F.S.
10. A guilty finding on any disciplinary report for escape or attempted escape within the last five years;
11. A current or prior conviction for escape covered by ss. 945.092, F.S.;
12. A felony, Immigration and Customs Enforcement, or misdemeanor (for other than child support) warrant or detainer;
13. A misdemeanor detainer for child support, unless it can be established by the inmate's classification officer that the detainer would be withdrawn upon payment of restitution, fines, or court ordered obligations and it appears that the inmate will earn sufficient funds to pay the obligation that has caused the detainer.

Community Control

In ss. 948.001(3), F.S., it defines community control as "a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced."
s. 948.10, F.S., provides that "community control" programs are to "focus on the provision of home confinement subject to an authorized level of limited freedom and special conditions that are commensurate with the seriousness of the crime. The program shall offer the courts and the Florida Commission on Offender Review an alternative, community-based method to punish an offender in lieu of incarceration and shall provide intensive supervision to closely monitor compliance with restrictions and special conditions, including, but not limited to, treatment or rehabilitative programs."

Arrest/Warrant Authority

In ss. 944.405, F.S., it authorizes the Department to issue an arrest warrant for a person who has "absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences." S. 948.06(1), F.S., authorizes probation officers or law enforcement officers to arrest probationers and community controlees without written warrant based on a belief the offender has violated terms of supervision.

Escape

In ss. 945.091(4), F.S., it provides that the willful failure of an inmate to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the Department shall be deemed as an escape from the custody of the Department and shall be punishable as prescribed by law.

2. EFFECT OF THE BILL:

The bill requires the Department to administer a risk assessment instrument to appropriately determine an inmate's ability to be released. The department currently uses custody level when determining eligibility for inmate placed on community work release.

S. 945.091(1)(b) authorizes participation in paid employment in the community to inmates "as to whom there is reasonable cause to believe that the inmate will honor his or her trust". It requires the Department to administer a

risk assessment instrument to appropriately determine an inmate's ability to be released. The custody classification system is the instrument by which the department determines if an inmate meets this standard.

The bill is similar to a program in effect under s.945.091, F.S. from 1986 to 1996 called Supervised Community Release Program (SCRP). This program was limited to inmates within the last 90 days of sentence who were assigned to a community release center, or who were medically unable to participate in work release. SCRP participants were not considered to be inmates but were able to earn gain time and were under the disciplinary rules of the Department.

The bill expands on the current concept of the "extension of the limits of confinement" under s.945.091, F.S. to create another step in the transition process by allowing an inmate, regardless of where he/she is assigned, to continue serving his/her state prison sentence while under custodial supervision in the community during the last 180 days of the sentence. Since the inmate remains in service of the court-imposed sentence while participating in the program, and the Department maintains the calculation of the release date in accordance with s.944.275, F.S. program participation remains consistent with the requirement that inmate serve 85% of the sentence. To allow an inmate to participate there must be "reasonable cause to believe that the inmate will honor his or her trust". The bill authorizes the Department to impose community control standards of supervision as well as electronic monitoring tracking technology, and provides the Department authority to establish standards for assessing progress in the program and for termination for failure to meet those standards. Program participants remain eligible to earn and forfeit gain time under Department rules.

As of December 31, 2018, there were about 479 inmates that were 180 days out from their release date that had served at least 85% of their sentence. Within the next 6 months there will be about 2508 additional inmates falling within this criterion.

Since the program would expose participating inmates to disciplinary penalties including loss of gain time, to avoid ex post facto violations participation would have to be voluntary as to crimes committed before the statutory change. Inmates sentenced for crimes committed after the statute changed could be required to participate; however, that may not be prudent considering the level of trust needed for inmates assigned in a community setting. If the inmate does not want to be in the program it may be best to allow for recusal. Also, a number of inmates would likely rather serve slightly more time in prison than be under community supervision, especially if that includes electronic monitoring (EM), risking return to prison for additional time if they violate. Finally, it is unknown as whether how many inmates in the pool have a suitable employment or residence to release to. Thus, the bed impact of the bill is indeterminate. Further, the fiscal impact of the bill will also vary based on the number of released inmates placed on electronic monitoring, and the rate at which they pay the EM costs, as well as the type of facility from which program participants were released (based on the different per diems between community release facilities, major institutions, and work camps). Finally, depending on the number of participants in the program, there could be a need for additional correctional probation officer positions.

The bill also provides authority for warrantless arrest by probation officers and law enforcement officers, similar to the authority currently under ss. 948.06(1), F.S.

Additionally, please note to implement the provisions of the bill, the Department will likely have to promulgate rules and/or amend existing rules and procedures.

Furthermore, when the inmate population is impacted in small increments statewide, the inmate variable per diem of $20.04 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The Department's FY 17-18 average per diem for community supervision was $5.47.

In addition, the current cost of supervision via electronic monitoring device is $3.90 per day for contracted facilities and $5.29 for department operated facilities.

The Department is requesting 1 (Correctional Programs Consultant) position to be located in the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the SCR program statewide. Duties would include, but not be limited to: Rule, policy, and procedure creation/promulgation and interpretation. On-going management of eligible inmates by providing guidance, oversight, database creation/updating as it relates to the placement, removal, and reinstatement of inmates into and out of the SCR program. Provide statewide training, coordination, and implementation of the operation of the SCR program.

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

If yes, explain:	Rulemaking will be necessary to effectuate the implementation of the bill.
Is the change consistent with the agency's core mission?	Y☒ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	Addition of a rule for Supervised Community Release. Rule adjustments (additions and deletions for gain time application, disciplinary procedures, escape policies for absconders, conditions of supervision with DC form for instructions and signature by the inmate, specification as to who shall be responsible for carrying out the provisions of this bill (warden, probation officer, central office staff, etc.), specifications of the amount of the handling of inmate trust fund accounts, release gratuity, etc.

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

Proponents and summary of position:	
Opponents and summary of position:	

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

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

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

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

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

Revenues:	Unknown
Expenditures:	Unknown

Does the legislation increase local taxes or fees? If yes, explain.	
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:	The overall inmate and community supervision population fiscal impact is indeterminate
Expenditures:	The overall inmate and community supervision population fiscal impact is indeterminate. The cost associated with 1 Correctional Program Consultant is as follows:
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

Class Title	Class Code	Salary & Benefits	FTE	FY 19-20 Annual Costs
Correctional Program Consultant	8094	$ 66,242	1	$ 66,242
Total salaries & benefits			1	$ 66,242
Recurring expense - Professional		$ 3,378		3,378
Non-recurring expense - Professional		$ 4,429		4,429
Total expenses				$ 7,807
Human Resource Services		$ 329		$ 329
Total Operating			**1**	**$ 74,378**

Summary of Costs

Recurring	$ 69,949
Non-recurring	4,429
Total	$ 74,378

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

Revenues:	Unknown
Expenditures:	Unknown

Other:	

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

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL 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.	The technology systems impact is significant, but indeterminate. There would likely be a significant technology impact due to the need for updating and additional programming on both the Institutions and Community Corrections sentence structure screens.

FEDERAL IMPACT

1. DOES THE BILL 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.	

ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	As referenced in the Policy analysis above, rulemaking by FDC will be necessary to effectuate the intent of the bill.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.4.19
Meeting Date

338
Bill Number (if applicable)

Topic Extension of Confinement

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road
Street

Phone 850.510.9922

Tallahassee — *City* | FL — *State* | 32308 — *Zip*

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.11.19
Meeting Date

338
Bill Number (if applicable)

Topic CJ

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 605 Middlebrooks Cir
Street

Phone

TLH FL 32312
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-11-19
Meeting Date

SB 338
Bill Number (if applicable)

Topic Extension of Confinement

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933 Phone
Street

Gainesville FL 32614 Email
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FAMM

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

SB 338
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Extension of Confinement

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 850-521-3042

Email scott.mccoy@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 338
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Extension of Confinement

Name Demetrius Minor

Job Title Dir of Coalitions

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

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)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 28, 2019

I respectfully request that **Senate Bill #338**, relating to **Extension of Confinement**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

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 346
INTRODUCER:	Criminal Justice Committee and Senator Brandes
SUBJECT:	Conditional Medical Release
DATE:	February 12, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	**Fav/CS**
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 346 amends the eligibility criteria of conditional medical release (CMR). The bill creates a new CMR designation entitled "inmate with a debilitating illness," which means an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.

The bill also modifies the current designation of "terminally ill inmate" to apply to inmates whose death is expected within 12 months, rather than imminent.

The bill also amends s. 947.005, F.S., adding a new definition for the term "conditional medical release."

The bill reenacts a number of sections of law to incorporate changes made by the act.

The bill expands CMR by creating a new CMR designation and modifying a current designation, which will likely cause an increased number of inmates to be referred to the Florida Commission on Offender Review (FCOR) for CMR. This will likely result in a negative indeterminate fiscal impact (i.e., a decrease in prison beds) on the Department of Corrections (DOC). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

The Criminal Punishment Code[1] (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.[2] The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.[3]

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time, and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.[4]

However, there are several exceptions provided in law that allow an inmate to be released from imprisonment prior to the service of 85 percent of his or her sentence, including, but not limited to, control release[5] and conditional medical release.[6]

Conditional Medical Release

Conditional Medical Release (CMR), which was created by the Florida Legislature in 1992,[7] is a discretionary release of inmates who are "terminally ill" or "permanently incapacitated" and who are not a danger to themselves or others.[8] The Florida Commission on Offender Review (FCOR) reviews eligible inmates for release under the CMR program.[9]

Eligible inmates include inmates designated by the Department of Corrections (DOC) as a:

- "Permanently incapacitated inmate," which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or
- "Terminally ill inmate," which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to

[1] Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.
[2] Section 921.0022, F.S.
[3] Section 775.082, F.S.
[4] Section 944.275, F.S., provides for various types of incentive and meritorious gain-time and establishes the prohibition of serving less than 85 percent of one's sentence.
[5] Section 947.146, F.S., provides for the limited authority to release inmates to ensure that the prison bed capacity maintains between 99 and 100 percent of total capacity.
[6] Section 947.149, F.S.
[7] Chapter 92-310, L.O.F.
[8] Florida Commission on Offender Review, *Release Types, Post Release*, https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease (last visited January 28, 2019).
[9] Section 947.149(3), F.S.

the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.[10]

However, inmates sentenced to death are ineligible for CMR.[11]

The release of an inmate on CMR is for the remainder of the inmate's sentence and requires periodic medical evaluations at intervals determined by the FCOR at the time of release.[12] Supervision can be revoked and the offender returned to prison if the FCOR determines:

- That a violation of any condition of the release has occurred; or
- Her or his medical or physical condition improves to the point that the offender no longer meets the CMR criteria.[13]

Section 947.141, F.S., provides a hearing process for determining whether a CMR releasee must be recommitted to the DOC for a violation of release conditions or a change in medical status.

The FCOR has approved and released 62 inmates for CMR in the last three fiscal years, including:

- 21 in FY 2017-18;
- 14 in FY 2016-17; and
- 27 in FY 2015-16.[14]

The DOC has recommended 124 inmates for release in the past three fiscal years, including:

- 39 in FY 2017-18;
- 34 in FY 2016-17; and
- 51 in FY 2015-16.[15]

III. Effect of Proposed Changes:

The bill amends s. 947.149, F.S., creating a new CMR designation entitled "inmate with a debilitating illness." The designation "inmate with a debilitating illness" applies to an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.

Additionally, the current designation of "terminally ill inmate" is amended to apply to inmates whose death is expected within 12 months, rather than imminent. The current designation of permanently incapacitated inmate is not altered.

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[10] Section 947.149(1), F.S.
[11] Section 947.149(2), F.S.
[12] Section 947.149(4), F.S.
[13] Section 947.149(5), F.S.
[14] Email from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data (attachment on file with the Senate Committee on Criminal Justice) (December 15, 2017). *See also* FCOR Annual Report FY 2017-18, p. 8, https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf (last visited January 28, 2019).
[15] *Id*.

The bill also amends s. 947.005, F.S., defining a new term, "conditional medical release," to mean the release from a state correctional institution or facility as provided in this chapter for a medical or physical condition pursuant to s. 947.149, F.S.

The bill reenacts ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., incorporating changes made by the act.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill expands CMR by creating a new CMR designation and modifying a current designation, which will likely cause an increased number of inmates to be referred to the FCOR for CMR. However, it is unknown how many additional inmates will be eligible for release under the new provisions of the bill. To the extent that the bill increases the

number of inmates released on CMR, the bill will likely result in a negative indeterminate prison bed impact (i.e., an unquantifiable decrease in prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 947.005 and 947.149 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The Committee Substitute:

- Deletes an unnecessary definition of "electronic monitoring" from s. 947.005, F.S.;
- Changes the newly created designation of "inmate with a debilitating disease" in s. 947.149, F.S., to:
  - Remove the requirement that the inmate be suffering from a permanent condition, disease, or syndrome; and
  - Permit the condition to be causing impairment, debilitation, or incapacitation of the inmate, rather than just debilitation or incapacitation.

B. Amendments:

None.

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

283408

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
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	.	
	.	

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

Senate Amendment (with directory and title amendments)

Delete lines 32 - 51
and insert:
Section 2. Subsection (1) of section 947.149, Florida Statutes, is amended to read:
947.149 Conditional medical release.—
(1) The commission shall, in conjunction with the department, establish the conditional medical release program. An inmate is eligible for consideration for release under the

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conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be within one of the following designations:

(a) "Inmate with a debilitating illness," which means an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======

And the directory clause is amended as follows:

Delete lines 22 - 25

and insert:

Section 1. Present subsections (4) through (15) of section 947.005, Florida Statutes, are redesignated as subsections (5) through (16), respectively, and a new subsection (4) is added to that section, to read:

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

And the title is amended as follows:

Delete lines 4 - 5

and insert:

"conditional medical release"; amending s. 947.149, F.S.;

By Senator Brandes

24-00738B-19 2019346__

A bill to be entitled

An act relating to conditional medical release; amending s. 947.005, F.S.; defining the terms "conditional medical release" and "electronic monitoring device"; amending s. 947.149, F.S.; expanding eligibility for conditional medical release to include inmates with debilitating illnesses; defining the term "inmate with a debilitating illness"; redefining the term "terminally ill inmate"; reenacting ss. 316.1935(6), 775.084(4)(k), 775.087(2)(b) and (3)(b), 784.07(3), 790.235(1), 794.0115(7), 893.135(1)(b), (c), and (g), and (3), 921.0024(2), 944.605(7)(b), 944.70(1)(b), 947.13(1)(h), and 947.141(1), (2), and (7), F.S., all relating to authorized conditional medical release granted under s. 947.149, F.S., to incorporate the amendment made to s. 947.149, F.S., in references thereto; providing an effective date.

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

Section 1. Present subsections (4), (5), and (6) through (15) of section 947.005, Florida Statutes, are redesignated as subsections (5), (6), and (8) through (17), respectively, and new subsections (4) and (7) are added to that section, to read:

947.005 Definitions.—As used in this chapter, unless the context clearly indicates otherwise:

(4) "Conditional medical release" means the release from a state correctional institution or facility as provided in this

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

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chapter for a medical or physical condition pursuant to s. 947.149.

(7) "Electronic monitoring device" means an active electronic or telecommunications device that is used to track and monitor the location of a person. Such devices include, but are not limited to, voice tracking systems, position tracking systems, position location systems, and biometric tracking systems.

Section 2. Subsection (1) of section 947.149, Florida Statutes, is amended to read:

947.149 Conditional medical release.—

(1) The commission shall, in conjunction with the department, establish the conditional medical release program. An inmate is eligible for consideration for release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be within one of the following designations:

(a) "Inmate with a debilitating illness," which means an inmate who is determined to be suffering from a significant and permanent terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.

(b) ~~(a)~~ "Permanently incapacitated inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to

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

herself or himself or to others.

(c) ~~(b)~~ "Terminally ill inmate," which means an inmate who has a condition caused by injury, disease, or illness that ~~which~~, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery, ~~and~~ death is expected within 12 months ~~is imminent~~, and ~~so that~~ the inmate does not constitute a danger to herself or himself or to others.

Section 3. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (6) of section 316.1935, Florida Statutes, is reenacted to read:

316.1935 Fleeing or attempting to elude a law enforcement officer; aggravated fleeing or eluding.—

(6) Notwithstanding s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section. A person convicted and sentenced to a mandatory minimum term of incarceration under paragraph (3)(b) or paragraph (4)(b) is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency or conditional medical release under s. 947.149, prior to serving the mandatory minimum sentence.

Section 4. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (k) of subsection (4) of section 775.084, Florida Statutes, is reenacted to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony

offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(4)

(k)1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 947.149.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

Section 5. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) and paragraph (b) of subsection (3) of section 775.087, Florida Statutes, are reenacted to read:

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

(2)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death

pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

(3)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

Section 6. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a

reference thereto, subsection (3) of section 784.07, Florida Statutes, is reenacted to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(3) Any person who is convicted of a battery under paragraph (2)(b) and, during the commission of the offense, such person possessed:

(a) A "firearm" or "destructive device" as those terms are defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 3 years.

(b) A semiautomatic firearm and its high-capacity detachable box magazine, as defined in s. 775.087(3), or a machine gun as defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 8 years.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

Section 7. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (1) of section 790.235, Florida Statutes, is reenacted to read:

790.235 Possession of firearm or ammunition by violent career criminal unlawful; penalty.—

(1) Any person who meets the violent career criminal criteria under s. 775.084(1)(d), regardless of whether such person is or has previously been sentenced as a violent career criminal, who owns or has in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or carries a concealed weapon, including a tear gas gun or chemical weapon or device, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person convicted of a violation of this section shall be sentenced to a mandatory minimum of 15 years' imprisonment; however, if the person would be sentenced to a longer term of imprisonment under s. 775.084(4)(d), the person must be sentenced under that provision. A person convicted of a violation of this section is not eligible for any form of discretionary early release, other than pardon, executive clemency, or conditional medical release under s. 947.149.

Section 8. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (7) of section 794.0115, Florida Statutes, is reenacted to read:

794.0115 Dangerous sexual felony offender; mandatory sentencing.—

(7) A defendant sentenced to a mandatory minimum term of imprisonment under this section is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, before serving the minimum sentence.

Section 9. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraphs (b), (c), and (g) of subsection (1) and subsection (3) of section 893.135, Florida Statutes, are reenacted to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

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

c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., commits the first degree felony of trafficking in cocaine. A person who has been convicted of the first degree felony of trafficking in cocaine under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

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

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

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

3. Any person who knowingly brings into this state 300 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., and who knows that the probable result of such importation would be the death of any person, commits capital importation of cocaine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under

this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

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

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

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

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

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g., or any salt thereof, or 14

grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 200 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.q., or any salt thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment

of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

(I) Alfentanil, as described in s. 893.03(2)(b)1.;

(II) Carfentanil, as described in s. 893.03(2)(b)6.;

(III) Fentanyl, as described in s. 893.03(2)(b)9.;

(IV) Sufentanil, as described in s. 893.03(2)(b)30.;

(V) A fentanyl derivative, as described in s. 893.03(1)(a)62.;

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or

(VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as "trafficking in fentanyl," punishable as provided in s.

775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and shall be ordered to pay a fine of $50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and shall be ordered to pay a fine of $100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of $500,000.

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

a. The person intentionally killed an individual or

counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

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

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

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

(g)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first degree, which felony shall be known as "trafficking in

flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

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

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

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

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. A person sentenced to a mandatory minimum term of imprisonment under this section is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, prior to serving the mandatory minimum term of imprisonment.

Section 10. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (2) of section 921.0024, Florida Statutes, is reenacted to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is

less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. An offender sentenced to life imprisonment under this section is not eligible for any form of discretionary early release, except executive clemency or conditional medical release under s. 947.149.

Section 11. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (b) of subsection (7) of section 944.605, Florida Statutes, is reenacted to read:

944.605 Inmate release; notification; identification card.—

(7)

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

(b) Paragraph (a) does not apply to inmates who:

1. The department determines have a valid driver license or state identification card, except that the department shall provide these inmates with a replacement state identification card or replacement driver license, if necessary.

2. Have an active detainer, unless the department determines that cancellation of the detainer is likely or that the incarceration for which the detainer was issued will be less than 12 months in duration.

3. Are released due to an emergency release or a conditional medical release under s. 947.149.

4. Are not in the physical custody of the department at or within 180 days before release.

5. Are subject to sex offender residency restrictions, and who, upon release under such restrictions, do not have a qualifying address.

Section 12. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 944.70, Florida Statutes, is reenacted to read:

944.70 Conditions for release from incarceration.—

(1)

(b) A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only:

1. Upon expiration of the person’s sentence;

2. Upon expiration of the person’s sentence as reduced by accumulated meritorious or incentive gain-time;

3. As directed by an executive order granting clemency;

4. Upon placement in a conditional release program pursuant

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

to s. 947.1405 or a conditional medical release program pursuant to s. 947.149; or

5. Upon the granting of control release, including emergency control release, pursuant to s. 947.146.

Section 13. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (h) of subsection (1) of section 947.13, Florida Statutes, is reenacted to read:

947.13 Powers and duties of commission.—

(1) The commission shall have the powers and perform the duties of:

(h) Determining what persons will be released on conditional medical release under s. 947.149, establishing the conditions of conditional medical release, and determining whether a person has violated the conditions of conditional medical release and taking action with respect to such a violation.

Section 14. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsections (1), (2), and (7) of section 947.141, Florida Statutes, are reenacted to read:

947.141 Violations of conditional release, control release, or conditional medical release or addiction-recovery supervision.—

(1) If a member of the commission or a duly authorized representative of the commission has reasonable grounds to believe that an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated the terms and conditions of the release in a material respect,

such member or representative may cause a warrant to be issued for the arrest of the releasee; if the offender was found to be a sexual predator, the warrant must be issued.

(2) Upon the arrest on a felony charge of an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731, the offender must be detained without bond until the initial appearance of the offender at which a judicial determination of probable cause is made. If the trial court judge determines that there was no probable cause for the arrest, the offender may be released. If the trial court judge determines that there was probable cause for the arrest, such determination also constitutes reasonable grounds to believe that the offender violated the conditions of the release. Within 24 hours after the trial court judge's finding of probable cause, the detention facility administrator or designee shall notify the commission and the department of the finding and transmit to each a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based. The offender must continue to be detained without bond for a period not exceeding 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the commission whether to issue a warrant charging the offender with violation of the conditions of release. Upon the issuance of the commission's warrant, the offender must continue to be held in custody pending a revocation hearing held in accordance with this section.

(7) If a law enforcement officer has probable cause to believe that an offender who is on release supervision under s.

947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated the terms and conditions of his or her release by committing a felony offense, the officer shall arrest the offender without a warrant, and a warrant need not be issued in the case.

Section 15. This act shall take effect October 1, 2019.

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

SB 346

Cox, Ryan

From: Yarger, Alexander <alecyarger@fcor.state.fl.us>
Sent: Friday, December 15, 2017 10:25 AM
To: Cox, Ryan
Subject: RE: Conditional Medical Release
Attachments: CMR info.pdf; Analysis-of-US-Compassionate-and-Geriatric-Release-Laws.pdf

Good morning,

Here is the information you requested. I have also attached a packet with some data on CMR.

FY14/15: 14 inmates released
FY15/16: 27 inmates released
FY16/17: 14 inmates released

Thanks,

Alec Yarger
Director of Legislative Affairs
Florida Commission on Offender Review
Office: (850) 921-2804
Cell: (850) 728-3548

From: Cox, Ryan [mailto:Cox.Ryan@flsenate.gov]
Sent: Friday, December 15, 2017 9:37 AM
To: Yarger, Alexander <alecyarger@fcor.state.fl.us>
Subject: Conditional Medical Release

Good morning, Alex:

Can you send me data for the last three fiscal years on the number of inmates that have been released on CMR and the number of inmates, if any, that were recommitted to the department due to a change in medical status? Thank you.

Sincerely,
Ryan C. Cox
Senior Attorney
Committee on Criminal Justice
(850) 487-5192

FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

CONDITIONAL MEDICAL RELEASE: EXECUTIVE SUMMARY

What is CMR? Conditional Medical Release is a form of release granted to inmates who are recommended to the Florida Commission on Offender Review (FCOR) for release by the Florida Department of Corrections (FDC) due to the inmate being permanently incapacitated or terminally ill. (Florida Statute 947.149 and Administrative Rule 23-24.040)

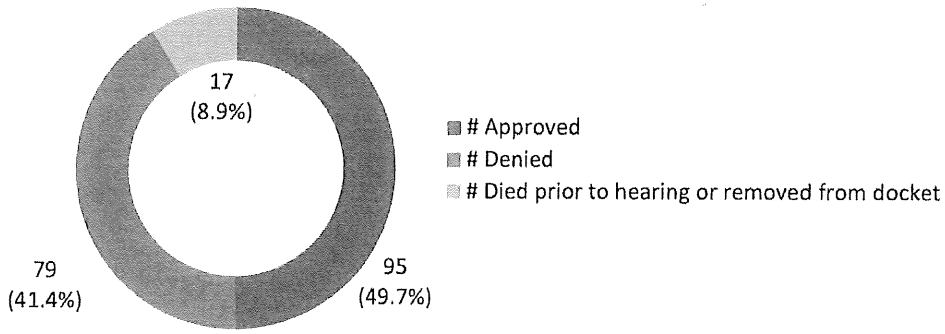
Characteristics of those granted CMR over the last seven years: Over a seven-year period (FY0708-FY1314), a total of 191 inmates were considered for conditional medical release (CMR), some more than once. Almost half (95 or 49.7%) were granted CMR, 79 or 41.4% were denied, and 17 or 8.9% died or were removed from consideration prior to the docket date. Of the inmates who were granted CMR, most are male (80.0%) and white (65.3%), which is somewhat reflective of the entire prison population, which was 92.9% male and 47.8% white as of June 30, 2014. The largest age range of offenders granted CMR status is from ages 45-54 (37.9%). More than a third (34 or 35.8%) of all the granted cases came from Broward, Hillsborough, Miami-Dade and Pinellas counties, which is again reflective of the prison population in general. Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender was granted CMR in the seven years studied. Four of the 95 cases were serving life sentences; the remaining 91 cases had an average of slightly more than five years left on their sentences to serve upon release. Most of the inmates recommended for CMR were diagnosed with some form of cancer.

Average number of approved and denied cases: During the seven-year period, an average of 13.6 of the 95 CMR cases were approved each year, an average of 11.3 of 79 cases were denied each year and an average of 2.4 of 17 cases involved inmates who died prior to docket each year. An average of 27.3 CMR cases were considered each year by the Commission during this period. The highest percentage of cases approved occurred in FY1011 (56.7%) while the lowest percentage of cases approved was in FY1314 (40.0%); the highest percentage of cases denied was also in FY1314 (50.0%), while the lowest percentage of cases denied was in FY0708 (34.6%)

Average timeframes over the seven-year period from docket to death: Using the averages from the seven-year period, the Department would submit a request for CMR consideration for an inmate and it would be placed on the docket within 14 days. He would be released from prison within five days and would be deceased within five or six months (154 days). The average number of days from when FCOR receives the initial request for CMR to getting it put on the docket is 14, or two weeks. The average number of days from request received to death is 154 or slightly more than five months during the seven-year period. The average number of days from CMR request granted to the inmate being released to home or a facility is five; and the average number of days from release to home (or facility) to death is 133 or slightly more than four months. This number continues to decline, to the point that in FY1314, the average number of days from release from prison to death is 30.8 days.

Outcomes of those released to CMR: Most of those approved for CMR were released and subsequently died (68.4%) at home or at a facility within four or five months of release. Almost ten percent completed their sentences after they were released, but may have subsequently died. Five died in the short span of time between being approved for release and being released, and three others EOS'd (expired their sentences) before release to CMR. Eight violated the conditions of their CMR, and either were revoked and returned to prison, were reinstated to CMR or completed their sentences (EOS'd) before the revocation process was complete. Two had their health improve and were returned to prison. One who EOS'd after release reoffended and is back in prison.

Total CMR Cases FY 07/08-13/14



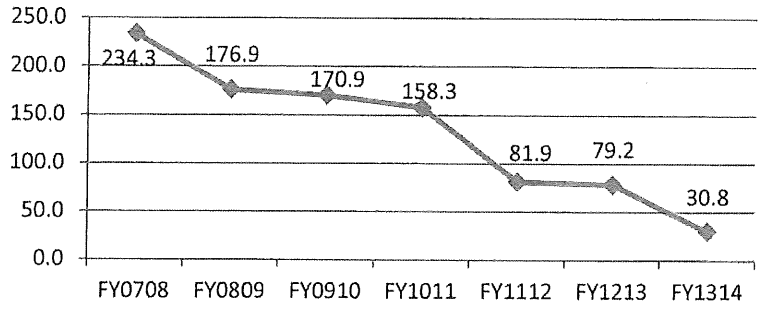
Over a seven-year period (FY0708-FY1314), a total of 191 inmates were considered for conditional medical release (CMR), some more than once. Almost half (95 or 49.7%) were granted CMR, 79 or 41.4% were denied, and 17 or 8.9% died or were removed from consideration prior to the docket date.

CMR Case Outcomes FY 07/08-13/14

FY	# Approved	Percent of FY Total Approved	# Denied	Percent of FY Total Denied	# Died prior to hearing or removed from docket	Percent of FY Total Removed from Docket	FY cases	Total Percent for FY
FY0708	13	50.0%	9	34.6%	4	15.4%	26	100.0%
FY0809	20	55.6%	14	38.9%	2	5.6%	36	100.0%
FY0910	9	42.9%	9	42.9%	3	14.3%	21	100.0%
FY1011	17	56.7%	12	40.0%	1	3.3%	30	100.0%
FY1112	16	45.7%	17	48.6%	2	5.7%	35	100.0%
FY1213	12	52.2%	8	34.8%	3	13.0%	23	100.0%
FY1314	8	40.0%	10	50.0%	2	10.0%	20	100.0%
Total over 7 years	**95**	**49.7%**	**79**	**41.4%**	**17**	**8.9%**	**191**	**100.0%**
Averages	13.6		11.3		2.4		27.3	

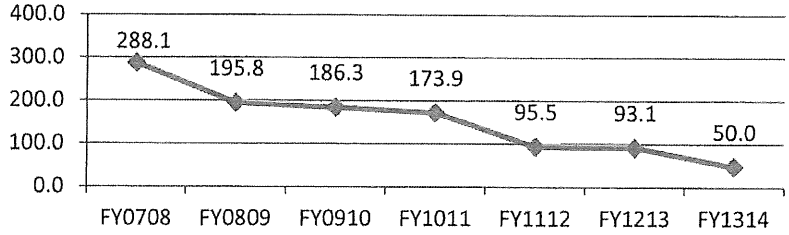
During the seven years covered, the "average" conditional medical release (CMR) gets put on the docket within two weeks (14.1 days) of requesting CMR, and is approved (49.7%). After approval, they wait an average of 5.1 days before they are released. After release, they live an average of 133.2 days, though during the last three years that average has dropped to 64 days. Only one of the 95 approved was serving time for a sex offense. The majority of diagnoses were for some form of terminal cancer, and the life expectancy was generally estimated at six months or fewer. During the seven-year period, the average number of CMR cases approved each year was 13.6, the average number denied was 11.3 and the average number who died prior to docket was 2.4. An average of 27.3 CMR cases were considered each year by the Commission during this period. The highest percentage of cases approved occurred in FY1011 (56.7%) while the lowest percentage of cases approved was in FY1314 (40.0%); the highest percentage of cases denied was also in FY1314 (50.0%), while the lowest percentage of cases denied was in FY0708 (34.6%)

Average # of Days from Release Date to Death



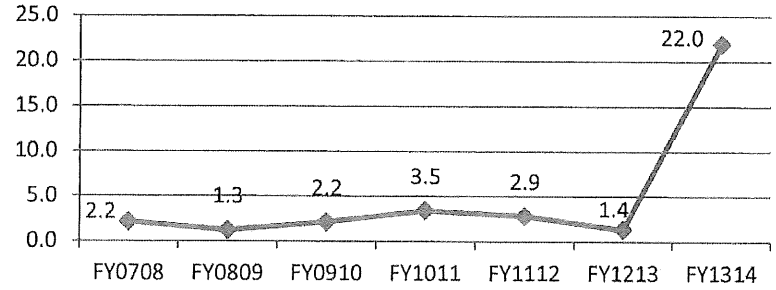
There has been a steady decline in the number of days inmates are living after release from prison on CMR, from a high of 234.3 days in FY0708, to a low of 30.8 days in FY1314. The overall average during the seven year period is 133.2 days from release from prison to death. With the change in eligibility standards from within six months of death to within 12 months, the number of days from release to death is expected to increase.

Average # of Days from Release Request to Death



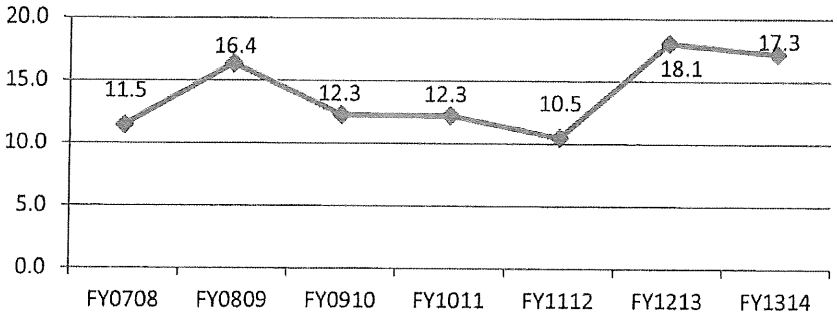
As would be expected based on the previous chart, the average number of days from when the request for CMR is received to when the inmate dies also continues to decline, from a high of 288.1 in FY0708 to a low of 50 days in FY1314. The overall average number of days from CMR request received to death is 154.6.

Average # of Days from Granted Date to Release Date



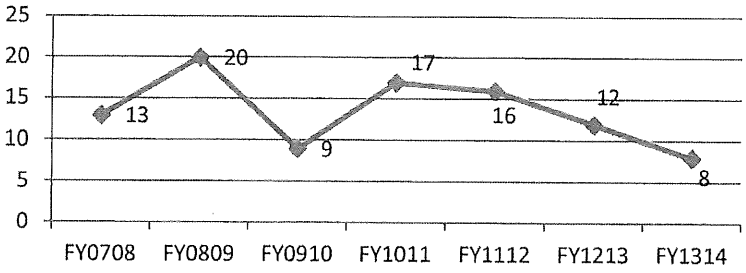
While the average is five days from grant to release, that number is skewed due to one unusual case in FY1314 that took 132 days. This case required that the inmate be accepted into a secure nursing home before release, delaying his release until a bed was available. Excluding that case, the average number of days from granted to release over the other six years is 2.3.

Average # of Days from Request Recieved to Docket



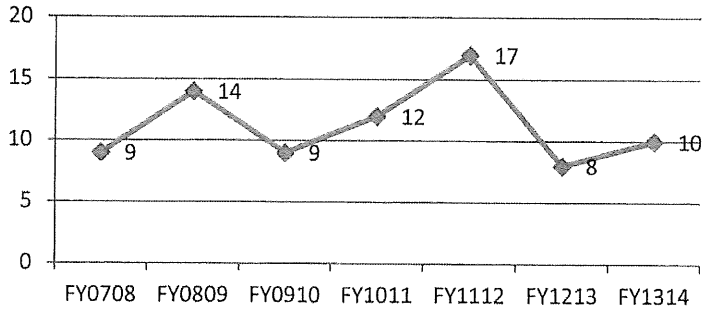
By the same token, FCOR does an excellent job of moving the request along once it's received to get it on the docket quickly, particularly considering there might not be a docket every week. The average has risen slightly over the past seven years, from 11 days to 17, with an average for the seven years of 14.1 days, or two weeks. While it is FCOR's practice to put these cases on the docket immediately, if the Commission is not voting that week it results in a delay to the following week's docket.

Total CMR Cases Approved



The number of FCOR CMR cases that have been approved over the last seven years has dropped, along with the number submitted. About half (49.7%) of all submitted cases are approved, on average.

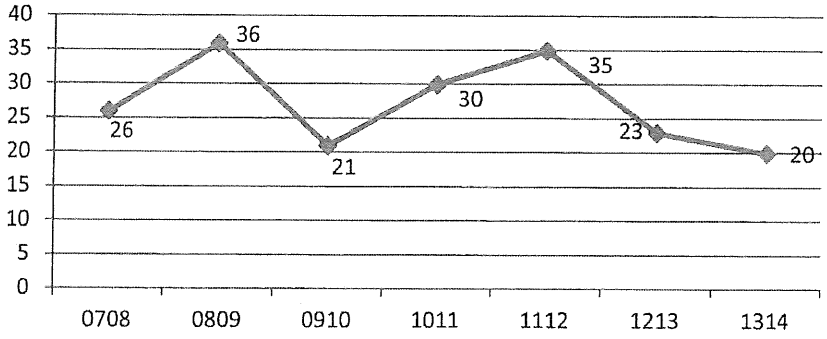
CMR Cases Denied



**Note these include both docketed and non-docketed cases.*

An average of 41.4% of CMR cases are denied each year, and another 8.9% expire prior to their case being heard and are removed from the docket.

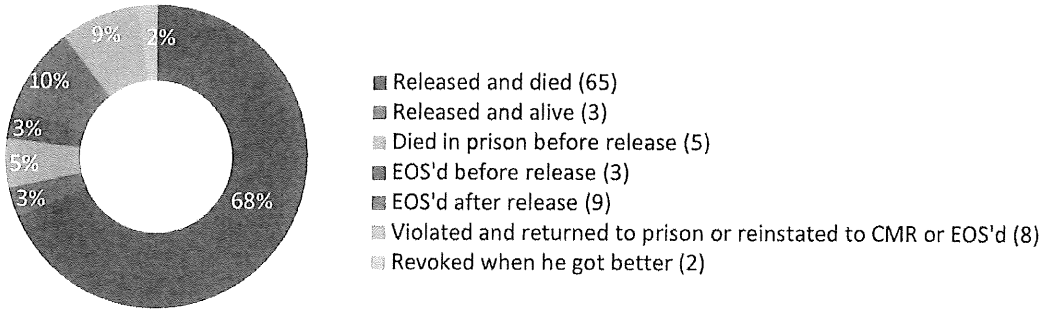
CMR Cases Referred to FCOR by FDC



The number of CMR requests submitted to FCOR from FDC each year has declined over the seven-year period, from 26 in FY0708 to 20 in FY1314 (including cases removed from docket during each of those years), even as the prison population has increased from 98,192 on June 30, 2008 to 100,942 on June 30, 2014*.

**FDC attributes the drop off to the transition of FDC's health services from a public to private enterprise.*

Outcomes for Approved CMR Cases FY 07/08-13/14 (as of April 2015)



Approval Outcomes	FY1314	FY1213	FY1112	FY1011	FY0910	FY0809	FY0708	Total	Percent
Released and died	4	6	13	14	5	15	8	**65**	68.4%
Released and alive	2	1	0	0	0	0	0	**3**	3.2%
Died in prison before release	0	2	0	0	1	0	2	**5**	5.3%
EOS'd before release	0	1	0	0	0	1	1	**3**	3.2%
EOS'd after release*	1	1	2	2	1	1	1	**9**	9.5%
Violated and returned to prison or reinstated to CMR or EOS'd	0	1	1	1	2	2	1	**8**	8.4%
Revoked when he got better	1	0	0	0	0	1	0	**2**	2.1%
Total	**8**	**12**	**16**	**17**	**9**	**20**	**13**	**95**	100.0%

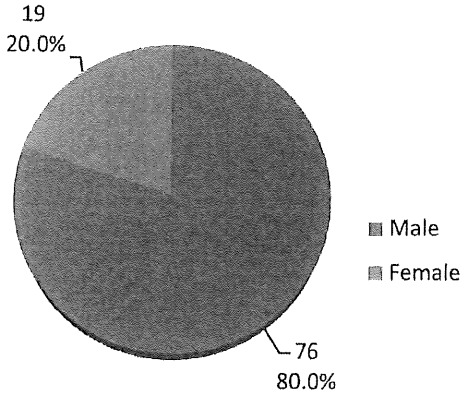
*FY1112 recidivated

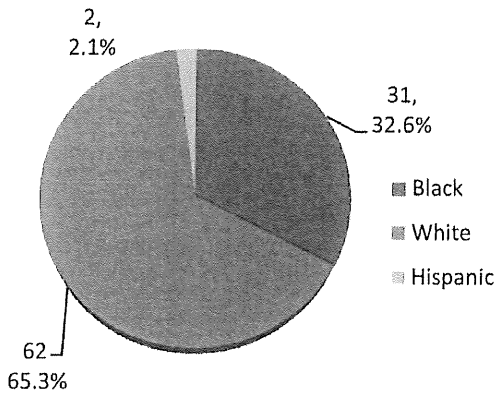
Most of those approved for CMR were released and subsequently died (68.4%) at home or at a facility within four or five months of release. Almost ten percent completed their sentences after they were released, but may have subsequently died. Five died in the short span of time between being approved for release and being released, and three others EOS'd (expired their sentences) before release to CMR. Eight violated, and either were revoked and returned to prison, were reinstated to CMR or completed their sentences (EOS'd) before the revocation process was complete. Two had their health improve and were returned to prison. One who EOS'd after release reoffended and is back in prison.

CONDITIONAL MEDICAL RELEASE: DEMOGRAPHICS

Who are the offenders being released to CMR? They are male (80.0%) and white (65.3%), which is somewhat reflective of the entire prison population, which was 92.9% male and 47.8% white as of June 30, 2014. Some of the black and white offenders may also be Hispanic, but did not identify themselves as such when asked their race. The largest age range of offenders granted CMR status is from ages 45-54 (37.9%). More than a third (34 or 35.8%) of all the granted cases came from Broward, Hillsborough, Miami-Dade and Pinellas (the most with 11 offenders or 11.6%) counties. The most common offense committed by those who were granted CMR was drug-related. Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender was granted CMR in the seven years studied. Four of the 95 cases were serving life sentences; the remaining 91 cases were serving an average of slightly more than five years.

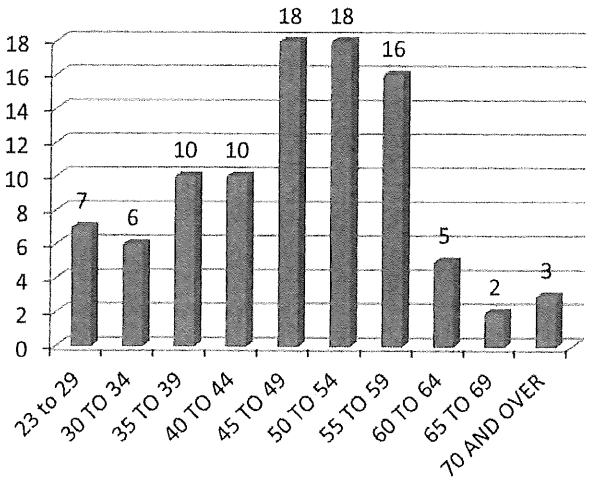
Gender, Race and Age of Inmates Granted CMR





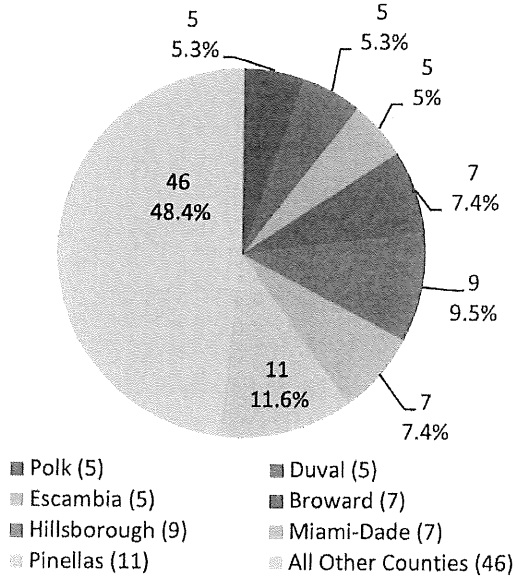
CMR inmates are consistently older than the general population. More than half (54.7%) of all CMR cases granted over the last seven years were ages 45-59, while only a quarter (25.4%) of the inmate population on June 30, 2014 fell into that category. More than a third (35.7%) of the CMR granted cases were age 50-59, compared to the general population on June 30, 2014 at 14.9%.

Age Ranges of Granted Cases	Number	Percent
23 to 29	7	7.4%
30 TO 34	6	6.3%
35 TO 39	10	10.5%
40 TO 44	10	10.5%
45 TO 49	18	18.9%
50 TO 54	18	18.9%
55 TO 59	16	16.8%
60 TO 64	5	5.3%
65 TO 69	2	2.1%
70 AND OVER	3	3.2%
TOTAL	**95**	**100.0%**



County of Offense of Inmates Granted CMR

The four counties with the highest number of CMR cases (Pinellas, Hillsborough, Miami-Dade and Broward) are also in the top five counties for the number of inmates sentenced from those counties as of June 30, 2014. The number of CMR cases from these top four counties comprise more than a third of all the cases over seven years (35.8%). Adding the next three highest counties with approved CMR cases, Polk, Duval and Escambia, brings the total in just those seven counties to 51.6% of all the cases approved over seven years.



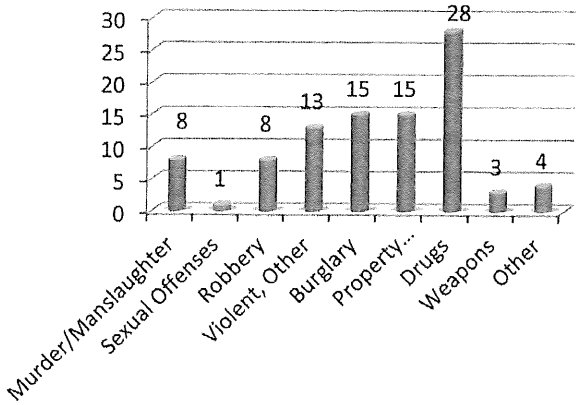
County of Offense	Number	Percen
ALACHUA	1	1.:
BAKER	1	1.:
BAY	1	1.:
BREVARD	4	4.:
BROWARD	7	7.4
CALHOUN	1	1.:
CHARLOTTE	1	1.:
CITRUS	2	2.:
CLAY	1	1.:
COLLIER	2	2.:
COLUMBIA	2	2.:
DIXIE	1	1.:
DUVAL	5	5.3
ESCAMBIA	5	5.3
GADSDEN	1	1.:
HERNANDO	1	1.:
HILLSBOROUGH	9	9.5
INDIAN RIVER	1	1.:
LEE	4	4.:

LEON	1	1.1%
MADISON	1	1.1%
MANATEE	1	1.1%
MARION	1	1.1%
MIAMI-DADE	7	7.4%
NASSAU	1	1.1%
OKALOOSA	1	1.1%
ORANGE	3	3.2%
PALM BEACH	2	2.1%
PASCO	1	1.1%
PINELLAS	11	11.6%
POLK	5	5.3%
PUTNAM	1	1.1%
SARASOTA	1	1.1%
SEMINOLE	2	2.1%
SUWANNEE	2	2.1%
UNION	1	1.1%
VOLUSIA	1	1.1%
WALTON	2	2.1%
Total	95	100.0%

Type of Offense by Inmates Granted CMR

Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender has been granted CMR in the last seven years.

Granted CMR Cases by Type of Offense	Number	Percent
Murder/Manslaughter	8	8.4%
Sexual Offenses	1	1.1%
Robbery	8	8.4%
Violent, Other	13	13.7%
Burglary	15	15.8%
Property theft/damage/fraud	15	15.8%
Drugs	28	29.5%
Weapons	3	3.2%
Other	4	4.2%
TOTAL	95	100.0%



CONDITIONAL MEDICAL RELEASE: STATUTES AND RULES

Florida Statute 947.149 Conditional medical release.—

(1) The commission shall, in conjunction with the department, establish the conditional medical release program. An inmate is eligible for consideration for release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be within one of the following designations:

(a) "Permanently incapacitated inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

(b) "Terminally ill inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.

(2) Notwithstanding any provision to the contrary, any person determined eligible under this section and sentenced to the custody of the department may, upon referral by the department, be considered for conditional medical release by the commission, in addition to any parole consideration for which the inmate may be considered, except that conditional medical release is not authorized for an inmate who is under sentence of death. No inmate has a right to conditional medical release or to a medical evaluation to determine eligibility for such release.

(3) The authority and whether or not to grant conditional medical release and establish additional conditions of conditional medical release rests solely within the discretion of the commission, in accordance with the provisions of this section, together with the authority to approve the release plan to include necessary medical care and attention. The department shall identify inmates who may be eligible for conditional medical release based upon available medical information and shall refer them to the commission for consideration. In considering an inmate for conditional medical release, the commission may require that additional medical evidence be produced or that additional medical examinations be conducted, and may require such other investigations to be made as may be warranted.

(4) The conditional medical release term of an inmate released on conditional medical release is for the remainder of the inmate's sentence, without diminution of sentence for good behavior. Supervision of the medical releasee must include periodic medical evaluations at intervals determined by the commission at the time of release.

(5)(a) If it is discovered during the conditional medical release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for conditional medical release under this section, the commission may order that the releasee be returned to the custody of the department for a conditional medical release revocation hearing, in accordance with s. 947.141. If conditional medical release is revoked due to improvement in the medical or physical condition of the releasee, she or he shall serve the balance of her or his sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued prior to conditional medical release. If the person whose conditional medical release is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.

(b) In addition to revocation of conditional medical release pursuant to paragraph (a), conditional medical release may also be revoked for violation of any condition of the release established by the commission, in accordance with s. 947.141, and the releasee's gain-time may be forfeited pursuant to s. 944.28(1).

Administrative Rule: 23-24.040 Conditional Medical Release Postponement and Rescission

(1) Should any person who has been voted a conditional medical release become the subject of inmate disciplinary or classification proceedings, or become the subject of criminal arrest, information or indictment, or should the release plan prove unsatisfactory prior to actual physical release from the institution of confinement then, any Commissioner can postpone the release date.

(2) The inmate's release date can be postponed for sixty (60) days. On or before the sixty-first (61) day, the Commission shall either release the inmate on conditional medical release or order a Commission investigator to conduct a rescission hearing on the matter of the infraction(s), new information, acts or unsatisfactory release plan as charged.

(3) At a rescission hearing, the inmate shall be afforded all due process safeguards required by law and shall be properly notified not less than seven (7) days prior to the hearing.

(4) The rescission hearing shall be scheduled within fourteen (14) days of the date the Order for a Rescission Hearing is signed by the Commission.

(5) The hearing may be continued or postponed due to the inability of any party or witness to attend or for other good cause (for example, new disciplinary reports, state of emergency, prison lock-down, etc.).

(6) New disciplinary reports received after the Order of Postponement, but prior to the date of the hearing shall be considered at the recission hearing, after re-noticing the inmate. (7) The investigator is not required to find the inmate guilty or not guilty at the rescission hearing, but to determine if any circumstances exist beyond the documentation which provided the basis of the Commission's decision to postpone the release. (8) If the release has been postponed due to an unsatisfactory release plan, the investigator should receive testimony from the inmate and any witnesses as to if an alternate plan exists which may be presented to the Commission for consideration. (9) Following the rescission hearing, the Commission shall determine whether good cause has been established to rescind conditional medical release. The Commission shall then either order the release of the inmate on the same conditions or rescind the release. (10) If the Commission receives information from the Department of Corrections that the inmate no longer qualifies for conditional medical release based on an improvement in the medical condition, a rescission hearing is not required. However, the Commission shall provide written notice to the inmate that release has been rescinded due to a failure to qualify pursuant to Florida Statute, Section 947.149.

Rulemaking Authority 947.07, 947.149 FS. Law Implemented 947.149 FS. History–New 1-5-94, Amended 2-12-13, 7-30-14.

Conditional Medical Releases

CONDITIONAL MEDICAL RELEASE FOR THE LAST 10 FISCAL YEARS					
Fiscal Year	CMR Docket Cases (Code 48)*	Individuals Referred by FDC (docket dupes removed)	Commission Action Granted (Code 49)	Total Released	Release Comments
FY0708	28	24	14	10	Total 14, two died before release, one EOS, 1TBD
FY0809	42	36	20	19	Total 20, one EOS
FY0910	20	19	9	8	Total 9, one died before
FY1011	38	30	16	16	Total 16
FY1112	39	34	16	16	Total 16
FY1213	28	21	12	7	Total 12, two died before release, two EOS, one TBD
FY1314	22	21	8	6	Total 8, two still in prison as of end of FY1314
FY1415	38	35	15	14	Total 14 released during FY; one died before
FY1516	55	51	29	27	Total 27 released - One to EOS; two others not
FY1617	37	34	16**	14	Total 14 released - one died before release; one

*Every docketed case (code 48) is counted, even if it's the same inmate more than once.

** One inmate was granted CMR twice.

16 Conditional Medical Releases Granted in FY1617

A total of 37 inmates were docketed for CMR this FY (three were docketed twice), and 16 or about 43% were granted conditional release. Of those 16, 14 were released during FY1617, and one died before

J. Hum. Rights Soc. Work (2016) 1:165–174
DOI 10.1007/s41134-016-0021-0

Analysis of US Compassionate and Geriatric Release Laws: Applying a Human Rights Framework to Global Prison Health

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Published online: 4 November 2016
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Abstract The purpose of this paper was to analyze the compassionate and geriatric release laws in the USA and the role of advanced age and/or illness. In order to identify existing state and federal laws, a search of the LexisNexis legal database was conducted. Keyword search terms were used: compassionate release, medical parole, geriatric prison release, elderly (or seriously ill), and prison. A content analysis of 47 identified federal and state laws was conducted using inductive and deductive analysis strategies. Of the possible 52 federal and state corrections systems (50 states, Washington D.C, and Federal Corrections), 47 laws for incarcerated people, or their families, to petition for early release based on advanced age or health were found. Six major categories of these laws were identified: (1) physical/mental health, (2) age, (3) pathway to release decision, (4) post-release support, (5) nature of the crime (personal and criminal justice history), and (6) stage of review. Recommendations are offered, for increasing social work policy and practice expertise, and advancing the rights and needs of this population in the context of promoting human rights, aging, health, and criminal justice reform.

Keywords Older adults · Criminal justice · Compassionate and geriatric release laws · Content analysis · Human rights · Social work · Forensic social work

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Introduction

Correctional systems across the globe are struggling with managing the rapidly growing aging and seriously ill population. In the USA, approximately 200,000 adults aged 55 and above are behind bars, many of which have a complex array of health, social service, and legal needs that all too often go unaddressed prior to and after their release from prison (Human Rights Watch [HRW] 2012). The large number of older people in prison is partially attributed to the passage of stricter sentencing laws, such as "Three Strikes You're Out" and the subsequent mandatory longer prison terms (American Civil Liberties Union [ACLU] 2012). These restrictive policies have created a human-made disaster in which many sentenced to long-term prison sentences will reach old age while in prison or shortly after their release. Social work, interdisciplinary scholars, and human rights advocates view the current crisis as a human rights issue that impact the rights and needs of the aging and seriously ill population (Byock 2002; HRW 2012).

Compassionate and Geriatric Release Laws

Beginning in the 1970s, there has been a growing awareness among lawmakers and other professionals, especially in the USA, of the need for compassionate and geriatric policies to address the growing aging and health crisis in prisons. Currently, medical parole and compassionate release laws, and programs for mostly nonviolent, terminally ill incarcerated people have been implemented in an effort to transition aging and/or serious or terminally ill incarcerated people to community-based care (Chiu 2010; Williams et al. 2011). Most of the social work and interdisciplinary scholarly literature in law and medicine in the USA has focused on compassionate release laws (Ferri 2013; Jefferson-Bullock 2015; Green 2014; Williams et al. 2011). The authors of these

journal articles describe the legal/ethical practice and financial dilemmas posed when incarcerating older and seriously ill people. These authors acknowledge that, in theory, the release of persons with serious and/or terminal illness from prison to the community is cost-effective. However, there are difficulties noted in their implementation including bureaucratic red tape and negative public attitudes toward more compassionate approaches to criminal justice (Coleman 2003; Ferri 2013; Jefferson-Bullock 2015; Kinsella 2004; Green 2014; Williams et al. 2011).

To date, there has not been comprehensive human rights-based analysis of both the compassionate and geriatric release laws in the USA. The USA is a compelling case study because it has the largest population of adults aged 50 and older (N = 200,000; ACLU 2012) behind bars. Additionally, the USA has 50 states in which laws vary by provisions based on a variety of eligibility factors including age, physical and mental health, and legal status. Therefore, the purpose of this content analysis of the US compassionate and geriatric release laws was to compare the provisions of current laws and to evaluate the extent to which these were consistent with human rights guidelines. This review was guided by the following research questions: (1) What are the characteristics of compassionate and geriatric release laws in the USA? And (2) to what extent are existing compassionate and geriatric release laws consistent with core principles of a human rights framework? As detailed in the discussion section, the results of this review have implications for social work and human rights for improving social work and interdisciplinary and intersectoral responses to the treatment of criminal justice involved aging and serious and terminally ill people (Anno et al. 2004).

Applying a Human Rights Framework

Applying a human rights framework to the laws, policies, and practices with aging and seriously ill people in prison can be used to assess the extent to which these laws meet basic human rights principles. In particular, the principles of a human rights framework can provide assessment guidelines for developing or evaluating existing public health and criminal justice laws or policies, such as USA compassionate and geriatric release laws. The underlying values/principles of a human rights framework include dignity and respect for all persons, and the indivisible and interlocking holistic relationship of all human rights in civil, political, economic, social, and cultural domains (UN 1948). Additional principles include participation (especially with key stakeholder input on legal decision-making), nondiscrimination (i.e., laws and practices in which individuals are not discriminated against based on differences, such as age, race, gender, and legal history), transparency, and accountability (especially for government transparency and accountability with their citizens; Maschi 2016).

The Universal Declaration of Human Rights (UDHR) also is an instrument that provides assistance with determining the most salient human rights issues affected. Ratified in 1948 as a response to the atrocities of World War II, the UDHR was voted in favor of by 48 countries, including the USA (UN 1948). It provides the philosophical underpinnings and relevant articles to guide policy and practice responses to the aging and serious and terminally ill in prison. The UDHR preamble underscores the norm of "respect for the inherent dignity and equal and inalienable rights" of all human beings. This is of fundamental importance to crafting the treatment and release of aging and seriously ill persons in prison.

There are several UDHR articles that are important to consider when providing a rationale and response to the aging and seriously ill population in prison. For example, Article 3 states, "Everyone has the right to life, liberty, and the security of person." Article 5 states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 states, "Everyone has the right to recognition everywhere as a person before the law." Article 8 states "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law," and Article 25 states, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food and clothing" (UN 1948, p. 3–7).

The United Nations Office on Drugs and Crime (UNDOC 2009) Special Needs Handbook also offers additional guidelines to assess policy and practice responses to the aging and/or seriously and terminally ill in prison. According to the UNODC (2009), older prisoners, including those with mental and physical disabilities, and terminal illnesses are a special needs population and as such are to be given special health, social, and economic practice and policy considerations (UNODC 2009). The handbook also addresses the issue of age in corrections. It is of note that the age at which individuals are defined as "older" or "elderly" in the community often differs from the definition of elderly applied in corrections. Globally, many social welfare systems, including the USA's, commonly view adults as older when they reach the age of 65 because that is when most individuals are eligible to receive full pension or social security benefits. However, although it varies among states, incarcerated persons in the USA may be classified as "older adult" or "elderly" as young as age 50 (HRW 2012; UNODC 2009).

Study Significance

The results of this review also have important implications for global social service, health and correctional systems, and policymaking bodies. While these findings may not generalize globally, conducting a comparative analysis of the regional laws of one country, such as the USA, may be useful for

developing or refining existing laws internationally. This information also can be used by social workers to collaborate with correctional and community service providers. In particular, forensic social workers, especially those who are trained in case management, can play an important role in facilitating the release process and smooth care transitions of aging and seriously ill people released from prison (Office of the Inspector General, 2016). Local and global policy makers, including social workers, also can use these findings to craft more human rights responsive laws and policies that affect this vulnerable population.

Methods

In order to identify all of the compassionate and geriatric release laws in the USA, the research team conducted a comprehensive search of the LexisNexis legal database. The following key word search terms were used: compassionate release, medical parole, geriatric prison release, elderly (or seriously ill), and prison. Identified laws were included in the sample if they met the following criteria: (1) identified aging or seriously ill people in prison and (2) were a law or policy regarding early release from prison based on age or health status. Two trained research assistants reviewed the laws and coded the data. The team met weekly for a 6-month period with the lead researcher until 100 % consensus was reached for all categories of data extracted. The search located 52 federal and state corrections systems (50 states, Washington DC, and Federal Corrections). Of the 52, 47 were found to have a law for incarcerated people or a family member (or surrogate) to petition for early release based on advanced age or health. There was no evidence of any applicable law or provision found in five states (i.e., Illinois, Massachusetts, South Carolina, South Dakota, and Utah).

Data Analysis Methods

Interpretive content analysis strategies as outlined by Drisko and Maschi (2016) were used to analyze the compassionate and geriatric release laws from the USA. Interpretive content analysis is a systematic procedure that codes and analyzes qualitative data, such as the content of published articles or legal laws. A combination of deductive and inductive approaches can be used, and this strategy was used in the current review. Deductive analysis strategies were used to extract the data by constructing preexisting categories for the criteria commonly found in compassionate and geriatric release laws (e.g., age, physical and mental health status, nature of crime). For each category, counts of state and federal laws were then calculated for frequencies and percentages of each category (e.g., 13 states had laws with age provisions).

Inductive analysis strategies were used to analyze any emerging or new categories that could not be classified in existing categories. Tutty and colleagues' (1996) four-step qualitative data analysis strategies were utilized to analyze this data. Step 1 involved identifying "meaning units" (or in-vivo codes) from the data. For example, the assignment of meaning units included the assigning codes. In step 2, second-level coding and first-level meaning units were sorted and placed in their emergent categories. Meaning unit codes were arranged by clustering similar codes into a category and separating dissimilar codes into separate categories. The data were then analyzed for relationships, themes, and patterns. In step 3, the categories were examined for meaning and interpretation. In step 4, conceptually clustered matrices, or tables, were constructed to illustrate the patterns and themes found in the data, including characteristics of the principles of a human rights framework (Miles and Huberman 1994).

Summary of Findings

Out of 50 states plus Washington, DC, and a Federal Law (totaling 52 jurisdictions), 47 jurisdictions including Washington, DC, and the Federal Government were found to have compassionate or geriatric release laws. Five states did not have any publicly available records of compassionate or geriatric release laws (i.e., IL, MA, SC, SD, and UT). After review of the laws from these 47 legal systems in the USA (45 separate US States and D.C., as well as one federal law), basic structural consistencies were found that impacted the determination for early release or furlough from prisons based on physical or mental incapacity or advanced age. Six categories of compassionate and geriatric release laws identified were (1) physical/mental health status, (2) age, (3) nature of crime (i.e., personal and criminal justice history or risk level), (4) pathway to release decision, (5) post-release support, and (6) stage of review (i.e., initial ground-level investigation for a release petition).

Physical and Mental Health Status and Life Limits

Conditions for release in some US laws were based on physical and mental health status, including life limits. These early release or parole and furlough laws have some definition or measurement in which they can determine if an incarcerated person may be eligible for release. This included level of medical infirmity, age, and/or psychological or mental facility (see Tables 1 and 2). Some US states or federal laws used vague language about what conditions were viable for parole or furlough. In comparison, other laws were very specific about conditions for release. For example, some laws considered the potential threat to society or level of public safety risk of

Table 1 Characteristics of laws that specify the conditions that warrant release

	Illness is terminal or incapacitating		Mental health consideration	Age±disability
	With a lifespan time limit	Without a lifespan time limit		
Number of states	17	19	17	14
Abbreviations	AK, AR, DC, HI, KS, KY, MO, MT, NC, NJ, NM, NV, PA, RI, TN, US FED, WY	AL, CT, FL, GA, ID, IN, KS, LA, MD, MN, NE, NH, NY, OH, OK, OR, TX, VT, WI	AK, AL, AR, DE, KS, MD, MI, MS, NH, NJ, RI, TN, TX, US FED, WI, WV, WY	AL, CT, DC, LA, MO, NC, NM, OR, TX, US FED, VA, WA, WI, WY

the incarcerated person. Other laws focused on the high cost of treatment or considered a combination of age, health, and risk factors that influenced release. There was little consistency, or even clarity, among these 47 laws about the well-being of the incarcerated people and their families, and/or victims and their families included across these US laws.

When determining if the incarcerated person's medical health warrants potential early parole or furlough, 36 laws used terminal illness as the consideration. Of those, 17 included a maximum anticipated survival period or time limit for life expectancy. For example, the US federal law includes a time limit of 18 months for the patient to survive in order to be considered for parole. In contrast, the state laws most often included a limit for life expectancy of 6 or 12 months to live. However, in one state, Kansas, the period is only 30-day life expectancy. In the 19 cases where states do not specify the time period for life expectancy, terminal illness is included as a potential factor for early release, as are terms such as "imminent peril of death" or "illness from which the inmate will not recover," or simply, "terminal illness."

The US laws also had provisions for mental or psychological health as a consideration for early release. Seventeen states included mental health capacity as a factor to consider for early parole or furlough. These 17 laws refer to any mental or psychological infirmity that results in incapacity to care for oneself or renders the person bedridden and/or incapable of caring for his or her activities of daily living (ADL). All of these laws required evaluation by both medical and mental health care professionals to make the determination of functional capacity. Only one state, Texas, mentioned "mental retardation" as a potential consideration for parole. Only the US federal prison system is quite specific in defining cognitive impairment associated with either brain injury or disease, such as Alzheimer's.

When reviewing general health conditions that may be factors for early release or furlough, many laws (27) used language that indicated that the incarcerated person was incapacitated in such a way that he/she was incapable of performing activities of daily living, or was incapacitated in general. Fifteen of the laws stated that precondition for early release was that the incarcerated person must be incapacitated either due to age, mental health, or illness, and be a low level risk to society. In some laws, assessing level of public safety risk was the only factor that the medical staff must evaluate before making an application to the parole board or judiciary. In some state laws, the healthcare costs to the prison system are a consideration for early release of an individual.

Several laws that identified criteria for early release simply used terms such as "serious medical syndrome" or "needing medical attention." Many of the states that included vague language around what constellation of factors amount to the likelihood of early release seemed to have fewer transparent processes, leaving the decision to the parole board's discretion on a case-by-case basis.

Table 2 Legal considerations for release

	Considerations for early release for incapacitated or terminally ill patients included in legal language			
	No threat to society	Incapacitated so cannot care for self	Cost to treat is too high	General healthcare to be qualitatively assessed
Number of States	15	27	4	16
Abbreviations	CT, DC, LA, MD, MN, MT, NM, NC, NV, OK, TN, TX, US FED, VT, WY	AK, AL, AR, CA, CT, DC, GA, ID, KS, KY, MI, MN, MO, NC, NE, NJ, NM, NV, NY, OR, TN, TX, US FED, VT, WA, WI, WY	AK, GA, RI, WA	AL, AR, CO, DE, FL, HI, IN, MI, MN, MS, ND, NH, NJ, OH, PA, WV

Age as a Consideration

Some states used age as a factor for considering early release. As illustrated in Table 3, of the 47 laws, only 13 had laws with provisions that considered age (ranging from 45 to 65 or older) as a determining factor for potential early parole (12) or furlough (1). In each law, age itself was not the sole determinant for release, but age in association with some degree of being unable to care for oneself, or an indication of some lack of capability in terms of performing activities of daily living. Most states did not define elderly. If age was defined, it mostly was delineated as 65 and older. Three states and the Federal Government limited how long an incarcerated elder must have served prior to considering advanced age as a factor for early release.

Interestingly, Oregon was the only state whose law recited language on the humane treatment of the aging population and stated that without the release of the prisoner at the advanced age/infirmity, their incarceration may be considered cruel or inhumane. All other states required that an incarcerated person of advanced age, as defined by each, had some incapacity that either was permanent and costly or rendered the incarcerated person unable to physically harm society in any way.

In several US laws, the age of the applicant was almost always considered a determining factor only in conjunction with a medical or cognitive condition. That is, age as a sole factor did not only justify release but also included the presence of a chronic and/or serious health issue. The few exceptions in state laws included Alabama and Louisiana, which considered age only as a reason to release an incarcerated person without incapacity. However, the incarcerated person's level of risk based on offense history and crimes was weighted heavily when determining release based on age without the presence of a notable serious or chronic health condition.

Table 3 States including language around age as a factor for early release

States including language around age as a factor for early release	
State:	Age specification:
Alabama	55+
Connecticut	65 or "advanced"
Louisiana	45+ and serving at least 20 years of a 30+ sentence
Missouri	"Advanced"
North Carolina	65+
New Mexico	65+
Oregon	No specification
Texas	No Specification
Virginia	60+
Washington	No specification
Wisconsin	No specification
Wyoming	65+
US Federal Law	65+ and dependent on % of time served

Pathway to Release Decision

As shown in Table 4, similar to mental and physical health considerations, the pathways to release decisions varied from state to state. Only 18 of the states had very specific and strictly defined pathways to follow for compassionate release and early parole eligibility. The more specific rules included the mechanism, such as the individual or committee that made the final determination for release or furlough. Eleven states had very clearly written rules governing physician documentation, how many or which physicians would be considered for review, and what factors must be included in their medical letter.

In these US laws, early release applications were subject to official parole board review. The series of steps in order to reach the parole board and the supporting documentation varied across laws. Of the 17 states noted above that had clearly written review procedures, most required the deputy warden, in conjunction with the prison medical director, review all documentation prior to making a submission to the parole board. Often, the laws specified that the incarcerated person or his/her family or legal advocate petitions the parole board directly. The medical director could also petition for early release if the incarcerated person could not do so themselves. The 29 states that had less clearly defined provisions often specified that parole review boards consider all information prior to rendering a final decision. At least three states had requirements that the parole board must review the request for early parole within a certain number of days (e.g., 30 days). Other laws seemed to assume that the case would be heard in a

Table 4 The pathway and process for determination of release

	Process for determination of release		
	More malleable decision-process for release	Clearly defined process and rules for release	Clearly written rules around physician documentation
Number of States	28*	17	11
Abbreviations	AK, AZ, CO, CT, DE, FL, GA, HI, IN, KY, LA, MD, MI, MN, ND, NE, NH, NM, OH, OK, OR, PA, US FED, VA, VT, WA, WV, WY	AL, AR, CA, DC, ID, KS, MO, MS, MT, NC, NJ, NV, NY, RI, TN, TX, WI	AK, AL, AZ, CA, MO, NC, NJ, NY, TX, WI, WY
	*IA and ME have precedent for early parole but no law in place		

timely manner or be reviewed by the next meeting of the parole board.

Some laws specified that a request for early release would be in the form of an application or petition to the parole board. Additionally, a submission of a post-release plan was also customary. Some laws addressed where the incarcerated person would receive post-release medical care or hospice services (Table 5). In some laws, these placements were to be vetted by the medical staff of the prison. Social workers or case managers were designated to provide other services, such as family supports, discharge planning, and care coordination.

Eighteen of the laws noted that the medical hospital or hospice, or family home with healthcare professionals, must be vetted prior to release to ensure both safety and proper healthcare. In addition, 11 of the laws mentioned that the incarcerated person must have financial resources to cover healthcare, such as Medicaid, in place prior to early release. Five of the laws mentioned a holistic style of care, including emotional support for the incarcerated person and family, as well as reintegration support. Of the states that allowed for the patient to live in the home with medical care, nine states cited "family conditions" or "support for the family as caregivers" as factors. Some laws mentioned that victim notification and participation as a condition must be met as part of the release petition.

Interestingly, many states, including the federal system, also required that the released person be closely monitored by a parole or medical officer to ensure that the released person's physical health did not improve. If the incarcerated person's condition should improve to the point they could function to perform activities of daily living or are no longer terminally ill, the incarcerated person must be returned to prison to complete their full sentence.

Table 5 Post-release support in place for release

	Post-release support in place			
	Medical facilities vetted	Financial coverage	Holistic support system	Family or support conditions
Number of States	18	11	5	9
Abbreviations	AK, DC, ID, IN, KS, MD, MN, MO, NC, NE, NJ, NM, NY, TN, TX, US FED, VT, WY	AK, AL, CO, ID, KS, MO, MT, NY, TN, US FED, WY	ID, MN, NC, NJ, NY	ID, LA, MD, MN, MT, NC, NJ, NY, US FED

Assessing Level of Risk: Nature of Crime (Criminal Offense History)

As shown in Table 6, most US states/Federal prisons excluded some incarcerated people—regardless of their overall health—from potential early release. Most laws stipulated that eligibility for early parole or furlough, the incarcerated person must be convicted of an offense with potential for parole ($n = 25$). Some jurisdictions also specified that the incarcerated person may not have been convicted of murder, either first or second degree ($n = 7$). However, most exclusions were focused upon the incarcerated person who has committed a Class A (e.g., murder or treason), B (e.g., homicide, drug trafficking, or violent assault), or C felony (e.g., some types of assault, fraud, theft, robbery, larceny, drug distribution).

In addition, 11 of the states/Federal laws and regulations excluded incarcerated persons convicted of offenses of a sexual nature. For those incarcerated persons with serious offense histories, a psychologist or psychiatrist must also investigate and determine their level of risk for potential harm to society and recidivism. Nine state laws (KS, KY, MD, MT, NC, NV, NY, TN, and WI) included provisions that victims or their families must be notified of an upcoming case for parole or furlough, and may participate in the hearing (if there is one) or submit a letter or an opinion concerning the potential release of the prisoner.

Style of Review

Forty-seven US laws differed in their style of review which ranged from strictly regulated to very discretionary release determinants. In addition to factors, such as age, physical and mental health status, and level of risk, other determinants included a state's ability to grant medical release. For example, if the governor or Deputy Warden "deemed it beneficial," either for reasons of cost or overcrowding, early release could be granted.

Table 6 Type of crime considered for early release

	Type of crime considered for early release			
	Ability for parole and/or without sentence of death	Excluding murder	Consider % of time served	Excluding sexually oriented crimes
Number of States	25	7	8	11
Abbreviations	AK, CA, CT, DC, FL, ID, KY, LA, MD, MO, MS, MT, NC, NE, NH, NJ, OR, RI, TN, TX, US FED, VA, WA, WI, WY	AL, DC, LA, NJ, NM, NY, OR	CT, DE, IN, MO, MS, NC, NY, OH	AK, AL, AR, CO, ID, KY, MS, NC, NJ, TX, WI

Discussion

Implications for a Human Rights Approach to Social Work

The purpose of this content analysis was to describe and analyze the compassionate and geriatric release laws in the USA. As noted in the findings section, we found that these laws had one or more provisions that fell within one of these six major categories. These categories were (1) physical/mental health status, (2) age, (3) nature of the crime (e.g., offense history), (4) pathway to release decision, (5) post-release support, and (6) stage of review. These finding have important implications for social workers and other key stakeholders who want to advance the human rights of justice involved vulnerable populations of older persons and persons with physical or mental disabilities or terminal illnesses, especially those in prison. The 2015 release of the Council on Social Work Education's Educational Policy (CSWE 2015) states the "purpose of the social work profession is to promote human and community well-being" (CSWE 2015, p. 1). This purpose is inclusive of all individuals regardless of their backgrounds, including criminal justice histories. Two particularly relevant skills for social workers, who want to respond to the crisis of the aging and dying in prison, are to engage in human rights and social and economic justice and to understand laws and regulations that may impact practice at the micro, mezzo, and macro levels (CSWE 2015).

The US laws governing compassionate and geriatric release are an example of an intersectional human rights issue that bridges aging, health, and criminal justice practice and policy arenas. An often unrecognized human rights area of the social work profession is the specialization of forensic social work ((Maschi and Leibowitz 2017)). Forensic social workers, who are often referred to as practicing at intersection of social work and the law, are trained in micro (e.g., clinical) and/or macro (e.g., intersectoral collaboration and policy level) interventions. In particular, geriatric forensic social workers are well positioned to prevent or intervene with the aging and dying in prison issue because of combined generalist and specialized practice knowledge and skills. Given this current crisis, a two-pronged approach to clinical and policy practice in diverse settings, such as prisons, and with diverse populations, such as incarcerated older people is necessary (Maschi et al. 2013). For example, in many of the research, practice, and policy recommendations noted in the Office of the Inspector General's report (2015), social workers can play a role in addressing all of them. These recommendations are:

1. Consider the feasibility of placing additional social workers in more institutions, particularly those with larger populations of aging inmates.
2. Provide all staff training to identify signs of aging and assist in communicating with aging inmates.
3. Reexamine the accessibility and the physical infrastructure of all of its institutions to accommodate the large number of aging inmates with mobility needs.
4. Study the feasibility of creating units, institutions, or other structures specifically for aging inmates in those institutions with high concentrations of aging inmates.
5. Systematically identify programming needs of aging inmates and develop programs and activities to meet those needs.
6. Develop sections in release preparation courses that address the post-incarceration medical care and retirement needs of aging inmates.
7. Consider revising its compassionate release policy to facilitate the release of appropriate aging inmates, including by lowering the age requirement and eliminating the minimum 10 years served requirement (Office of Inspector General, United States Department of Justice. 2015, p. 3–4).

Applying a Human Rights Approach to Justice Policy Reform

Most relevant to this paper, a human rights approach can be applied to assess the laws, policies, and practices to the extent to provisions of existing compassionate and geriatric release laws meet basic human rights principles. As described in the introduction, the principles of the human rights framework are dignity and worth of the person, the five domains of human rights (i.e., political, civil, social, economic, and cultural), participation, nondiscrimination, and transparency and accountability (UN 1948). Developed by the first author, the Compassionate and Geriatric Release Checklist (CGR-C, Maschi 2016) was created for social workers, policymakers, advocates, and other key stakeholders to use as an assessment tool to develop or amend existing compassionate or geriatric release laws (please contact the authors for a copy of the checklist). This tool also can be used by social workers to prepare expert testimony for local, state, or federal hearings or as an educational or professional training exercise. Applying a human rights framework, the checklist consists of six assessment categories for compassionate and geriatric release laws: dignity and respect of the person, promotes political, civil, economic, social, and cultural rights, nondiscrimination, participation, transparency, accountability, and special populations served.

A human rights-based analysis using the framework as highlighted in the checklist suggests that most of the provisions of each US compassionate and geriatric release often fall short of meeting the basic human rights principles that speak

to the dignity and worth of the incarcerated person, family and victim rights and supports, and accountability and transparency on the part of the judicial and correctional systems to grant release. Additionally, the majority of the US compassionate and geriatric release laws fell short of inconclusive nondiscrimination provisions. This is especially true when assessing level of risk of incarcerated people with histories of sex or violent offenses. Based on available research, this type of provision is overly restrictive. For example, research shows that older adults with diverse offense histories have low recidivism rates (1–5 %) compared to their younger counterparts and person (ACLU 2012; Jhi and Joo 2009). For example, in a study investigating whether risk factors for recidivism remained stable across age groups (N=1303), the findings showed that rates decreased in older age groups (ages 55 and older (Fazel et al. 2006). These findings are consistent with recidivism rates in studies with international samples of older sexual offenders, including research conducted in the UK, the USA, and Canada. Given these findings about older age and the reduced risk for recidivism, it is important to underscore that incarcerated individuals with violent offense histories (despite their failing health status) or elderly in US federal and state prisons are often nevertheless excluded from compassionate or geriatric release provisions (HRW 2012).

Applying a Multitiered Practice Model for All Levels of Prevention and Intervention

The 2012 Report of the United Nations High Commissioner for Human Rights (UN 2012) urges that specialized treatment be given to older adults and seriously ill people in prison and post-release. The need for specialized treatment is because many incarcerated elders experienced histories of accumulated disadvantages and currently are experiencing grave human rights conditions in prison. Therefore, when crafting a human rights-based social work, a multitiered prevention and intervention response to the current crisis and the process that led to it is needed. One helpful human rights-based practice model is Wronka's (2007) Advanced Generalist/Public Health (AGPH) Model. The AGPH model conceptualizes four interventions levels designed to prevent or alleviate social problems, such as the crisis and the process leading to the aging and seriously ill people in prison. These coincide with macro, mezzo, micro, meta-micro, and meta-macro, and research levels of intervention. Although research has its own level, it also informs all intervention levels (Wronka 2007). These levels of intervention are described and then applied to how social workers can address the aging and dying crisis below.

Macro and meta-macro levels In the AGPH model, the macro level is a target of primary intervention strategies. The macro level targets a whole national population, such as the USA, to prevent a problem, such as the crisis of aging and dying people in prison. The purpose of primary intervention strategies is to prevent individuals, families, and community from experiencing health and justice disparities (Maschi and Youdin 2012; Wronka 2007). An example of a primary intervention strategy is the development and implementation of a national campaign for criminal justice reform, especially with regard to peeling back the punitive and strict long-term sentencing policies that emerged in the 1980s. These policy advocacy strategies are an area where social worker are involved and/or could be more actively involved in crafting a more compassionate response to the aging and seriously ill in prison.

In an even larger meta-macro level, the focus is international. An example of a global prevention initiative is a social media campaign that promotes the importance of universal health and justice and fairness for all persons. Given that the criminal justice system disproportionately consists of historically underrepresented and underserved groups, such as older people, racial/ethnic minorities, and persons with physical or mental disabilities, a campaign that would promote prevention would reduce the societal oppression to prison pipeline, such as ending mass incarceration, is a potential strategy. Social workers, especially forensic social workers, can and do assume a pivotal role in these prevention efforts that advance human rights that reduce health and justice disparities for individuals of all ages and families and communities most affected by the USA's current state of hyper-incarceration (Wronka 2007).

Mezzo levels The mezzo level targets secondary intervention strategies among groups at risk, such as individuals that come to the attention of the law (Wronka 2007). These strategies may be interventions in high-risk environments, such as police stations and/or the courts. For example, a social worker can develop an alternative to incarceration/diversion program and monitor effectiveness on outcomes, such as reduced rates of imprisonment. Another example for an at-risk group is in prison settings. A social worker can develop or administer and evidence-based practice on health literacy or the management of chronic health problems that reduces the risk of rapid health decline while residing in the often unhealthy conditions of prison.

Micro and meta-micro levels The micro level is the target of tertiary intervention strategies and symptomatic populations, such as the older or serious or terminally ill population in prison. Tertiary level interventions commonly entail clinical intervention on an individual or family level, such as medical or palliative care social work interventions. For example, a social worker employed at a prison hospice may design and implement a grief therapy group for inmate peer supports or family members and monitor its effectiveness on the coping and well-being of the participants (Wronka 2007).

The meta-micro level consisting of informal supports also is the target of tertiary intervention strategies. Although clinical interventions help with problems, everyday life social connections, such as family, friends, and others, can have therapeutic benefits. For example, a social worker in a prison can be instrumental in arranging family, volunteers, or community service provider visits to a prison or connect with families, peers, or professionals to prepare them for the release of an ill person in prison (Wronka 2007).

Research and evaluation level In the AGPH model, research and evaluation are the method of quaternary (fourth level) intervention strategies. Findings from research and evaluation studies provide informed knowledge for prevention and intervention strategies across the other intervention levels. In turn, the primary, secondary, and tertiary levels influence the research questions to be asked and the types of research methods used (Wronka 2007). For example, research is needed to provide data-driven development of policies impacting this aging and dying in population or to monitor the implementation of existing compassionate and geriatric release laws. Quantitative and qualitative methods can be used to gather data from key stakeholders.

An example of an important area of research is the reliability and validity of risk assessment (Andrews et al. 2006; Lansing 2012), especially for those with violent sex offense histories. Based on age factors, risk assessment should be attentive to the level of risk based on age (younger versus older offenders). As indicated above, recidivism rates are lower in older age groups. In a study of older sex offenders, they were found to score lower on the Static-99, a widely used actuarial measure (Hansen, 2006), and research on repeat offending (sexual and violent offenses) among an older prison population showed that recidivism decreased in the older age group (55+ years; Fazel et al. 2006). Therefore, more research is needed to accurately assess risk that accounts for age (Andrews and Dowden 2012).

Limitations of the Current Review

These findings have methodological limitations that warrant discussion. First, although a comprehensive search of the Lexis Nexus database was conducted, the extent to which all of the subject laws and possible amendments were available is unknown. Second, although multiple coders were used to select a sample of laws, classify them, and analyze their findings, it is entirely possible that other research teams may obtain different results. Third, the content analyses of categories and themes were developed deductively and inductively by the research team, and it goes without saying that a content analysis with a different set of categories and frequency counts would yield a different outcome. Yet, despite these limitations, this comprehensive analysis of the compassionate and geriatric release laws in the USA offers insight into the next steps for research and evaluation to improve conditions for the elderly and seriously and terminally ill persons in prison and for their families and communities.

Conclusion

From a human rights perspective, human beings—even individuals who have committed crimes—should receive adequate physical and psychological care in the prison system and have access to supports post-release. If incarcerated individuals are unable to receive adequate care inside prisons, it is incumbent upon social workers, advocates, and researchers to compel further investigation into the barriers to care. Potential barriers may include the potential cost of care for aging and terminally ill patients, public perception of release, expediency of the process of consideration, and level of access of timely evidence-based treatment. Supports for family members, surrogates and/or guardians, and survivors of crimes should be part of compassionate or geriatric release legislation. Social workers also should promote a compassionate care as opposed to the use of tactics that are punitive and forms of cruel and unusual punishment within the prison system and community post-release. If the standard of care available in-prison remains suboptimal to a basic standard of community care, it is social work's role to advocate for more humane prison conditions or prison release policies that result in improved care quality. It is our view that social workers grounded in human rights are the missing piece of compassion and care in our current punitive criminal justice system. Perhaps it is time to embrace our criminal justice roots for the "just" cause of promoting human rights for the aging and dying in prison.

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/19
Meeting Date

346
Bill Number (if applicable)

Topic CJ

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Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/19
Meeting Date

SB 346
Bill Number (if applicable)

Topic Conditional Medical Release

Amendment Barcode (if applicable)

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Lobbyist registered with Legislature: ☑ Yes ☐ No

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2/11/2019
Meeting Date

SB 346
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Conditional Medical Release

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Lobbyist registered with Legislature: ☑ Yes ☐ No

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2/11/19
Meeting Date

SB 346
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Conditional Medical Release

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Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

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2.4.19
Meeting Date

346
Bill Number (if applicable)

Topic Conditional Medical Release

Amendment Barcode (if applicable)

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Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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2/11/19
Meeting Date

346
Bill Number (if applicable)

Topic Conditional Medical Release

Amendment Barcode (if applicable)

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Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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2/11/19
Meeting Date

SB 346
Bill Number (if applicable)

Amendment Barcode (if applicable)

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Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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2-11-19
Meeting Date

SB 346
Bill Number (if applicable)

Topic Conditional Medical Release

Amendment Barcode (if applicable)

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Representing FAMM

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/12/15
Meeting Date

SB 346
Bill Number (if applicable)

Topic Medical Release

Amendment Barcode (if applicable)

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Representing FL Association Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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APPEARANCE RECORD

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2/11/2019
Meeting Date

Topic _____ Bill Number 346 *(if applicable)*

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Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 28, 2019

I respectfully request that **Senate Bill #346**, relating to **Conditional Medical Release**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

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 370
INTRODUCER:	Criminal Justice Committee and Senator Harrell
SUBJECT:	Victims of Human Trafficking
DATE:	February 12, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	**Fav/CS**
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 370 provides that a person who solicits, induces, entices, or procures a victim of human trafficking to commit prostitution, lewdness, or assignation must be sentenced by the court to a period of incarceration of 30 days, in addition to any other penalty imposed.

The bill requires the current 10-day minimum mandatory sentence for a second or subsequent violation of s. 796.07(2)(f), F.S., to be served consecutively to the 30-day sentence established by the bill, if applicable.

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. The bill creates a new 30-day sentence and requires the current 10-day minimum mandatory period to be served consecutively to that sentence, if applicable. This will likely result in a positive indeterminate fiscal impact to county jails (i.e. an increase in jail beds).

The bill is effective October 1, 2019.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Young children, teenagers, and adults are all victims of human trafficking, who are subjected to force, fraud, or coercion for the purpose of

sexual exploitation or forced labor.[1] Human trafficking is the third-largest international crime industry, generating a profit of an estimated $32 billion every year.[2] In 2016, there were an estimated 40.3 million victims of human trafficking.[3]

From 2007-2017, there were 40,987 human trafficking cases reported to the National Human Trafficking Hotline (Hotline). In 2017, the Hotline and BeFree Textline recorded a total of 8,759 human trafficking cases in the U.S. alone, which represented a 13 percent jump in the number of identified human trafficking cases from the year prior.[4] The Hotline receives an average of 150 calls per day.[5]

Forced labor and sex trafficking are the most common types of human trafficking. Labor trafficking is "all work or service which is extracted from any person under the threat of penalty and for which the person has not offered himself or herself voluntarily."[6] Sex trafficking "occurs when someone uses force, fraud or coercion to cause a commercial sex act with an adult or causes a minor to commit a commercial sex act."[7] Sex trafficking accounted for 6,244 of the reported cases of human trafficking in 2017.[8]

Traffickers coerce victims into sex trafficking in numerous ways. Some victims may be forced into prostitution by an intimate partner while others may be recruited with a false job offer. Fake massage businesses, truck stops, and hotels and motels are all venues used in sex trafficking operations.[9]

In an effort to combat human trafficking in the U.S., the Trafficking Victims Protection Act (Act) was passed in 2000 and established several methods of prosecuting traffickers, preventing human trafficking, and protecting victims and survivors of trafficking. The Act contained severe penalties and mandated restitution for victims of human trafficking.[10]

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[1] Section 787.06(1)(a), F.S.
[2] DoSomething.org, *11 Facts About Human Trafficking*, available at https://www.dosomething.org/us/facts/11-facts-about-human-trafficking (last visited January 28, 2019).
[3] International Labour Organization, *Forced labour, modern slavery and human trafficking*, available at http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm (last visited January 28, 2019).
[4] Polaris, *Growing Awareness. Growing Impact. 2017 Statistics from the National Human Trafficking Hotline and BeFree Textline*, available at http://polarisproject.org/sites/default/files/2017NHTHStats%20%281%29.pdf (last visited January 28, 2019).
[5] Polaris, *The Facts*, available at https://polarisproject.org/human-trafficking/facts (last visited January 28, 2019).
[6] Polaris, *What is forced labour, modern slavery and human trafficking*, available at http://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm (last visited January 31, 2019).
[7] Sharedhope International, *What is Sex Trafficking*, available at https://sharedhope.org/the-problem/what-is-sex-trafficking/ (last visited January 31, 2019).
[8] *See generally* n. 4.
[9] Polaris, *Sex Trafficking*, available at https://polarisproject.org/human-trafficking/sex-trafficking (last visited January 29, 2019).
[10] Pub. L. No. 106-386 (2000).

Human Trafficking in Florida

Florida ranks third in the nation for reported cases of human trafficking.[11] From January through June of 2018, the Hotline had 367 human trafficking cases reported in Florida.[12] Children are often those targeted in trafficking operations, with 12-14 being the average age that a trafficked victim is first used for commercial sex.[13]

Florida law defines "human trafficking" to mean the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.[14] In Florida, 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 commits the crime of human trafficking.[15] Such an offense is punishable as a first degree felony,[16] unless the person being sex trafficked is a child under the age of 18, mentally defective, or mentally incapacitated, then such an offense is punishable as a life felony.[17]

The number of human trafficking cases listed in reports may not accurately reflect the number of actual cases of human trafficking due to the fact that many traffickers are prosecuted for other crimes.[18] Additionally, prosecutors often have difficulty proving the relationship at issue is that of human trafficking or when dealing with a victim who might be unwilling to testify against his or her trafficker in court.[19]

Human trafficking cases are often hidden operations that require law enforcement agencies engage in intricate investigations. In November 2018, an investigation in Polk County lead to the arrest of 103 people for charges including prostitution and human trafficking.[20] Similarly, in January 2019, a two month-long investigation lead to the arrest of a 36-year-old male in

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[11] National Human Trafficking Hotline, *Hotline Statistics*, available at https://humantraffickinghotline.org/states (last visited January 28, 2019).
[12] National Human Trafficking Hotline, *Florida: Statistics*, available at https://humantraffickinghotline.org/state/florida (last visited January 28, 2019).
[13] Statewide Council on Human Trafficking, *Statewide Council on Human Trafficking Annual Reports*, available at http://myfloridalegal.com/pages.nsf/Main/8AEA5858B1253D0D85257D34005AFA72 (last visited January 28, 2019).
[14] Section 787.06(2)(d), F.S.
[15] Section 787.06(3), F.S.
[16] A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding $10,000, or both. Sections 775.082 and 775.083, F.S.
[17] Section 787.06(3)(a)-(g), F.S. A life felony is punishable by a state prison term for life, by a term of imprisonment not exceeding 40 years, a fine not exceeding $15,000, or both. Sections 775.082 and 775.083, F.S.
[18] Nada Hassanein, *Preying on the vulnerable: Human trafficking prevalent yet elusive in the Big Bend*, Tallahassee Democrat, (June 27, 2018) available at https://www.tallahassee.com/story/news/2019/01/27/preying-vulnerable-human-trafficking-alive-and-well-big-bend/2648630002/ (last visited January 28, 2019).
[19] *Id.*
[20] Daniel Dahm and Brianna Volz, *Orlando-area doctor among 103 arrested in Polk County sex sting, sheriff says*, ClickOrlando.com, (December 3, 2018) available at https://www.clickorlando.com/news/103-arrested-in-polk-county-sex-sting (last visited January 28, 2019).

Tallahassee on prostitution and sex trafficking charges involving a 14-year old girl. At the time of his arrest, the male was already facing charges for sex trafficking a child in 2014.[21]

Prostitution and Other Prohibited Acts

Prostitution is prohibited in Florida and is defined as the giving or receiving of the body for sexual activity for hire.[22] Prostitution rings are often covert operations. As a result, police officers go undercover in an effort to conduct prostitution stings. In Cocoa, six suspects were arrested in January 2019 after an undercover police officer who was posing as a prostitute was approached by the individuals who subsequently agreed to pay the officer for the services of a prostitute.[23]

Another tool commonly used by law enforcement agencies to crack down on prostitution activity is the Internet. In January 2019, four people were arrested in Tallahassee in conjunction with an undercover prostitution operation that was aimed at reducing street level prostitution in the capital city. After an undercover police officer contacted the suspects through an online advertisement that had indicators of being associated with prostitution activity and met with each suspect individually at an undisclosed hotel, the officer placed each of them under arrest.[24]

Section 796.07(2)(f), F.S., prohibits the solicitation, inducement, enticement, or procurement of another to commit prostitution, lewdness, or assignation.[25] Those terms are defined in the following ways:

- "Lewdness" means any indecent or obscene act; and
- "Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.[26]

A person who violates s. 796.07(2)(f), F.S., commits:

- A misdemeanor of the first degree[27] for a first violation;
- A felony of the third degree[28] for a second violation; and
- A felony of the second degree[29] for a third or subsequent violation.[30]

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[21] WTXL, *Human trafficking suspect accused of sex-trafficking child in Tallahassee*, (January 26, 2019) available at http://www.wtxl.com/news/human-trafficking-suspect-accused-of-sex-trafficking-child-in-tallahassee/article_9748879c-21a4-11e9-b768-5bb68f906ecc.html (last visited January 28, 2019).

[22] This definition excludes sexual activity between spouses. Section 796.07(1)(a), F.S.

[23] Caryn Shaffer, *Six arrested in Cocoa police operation targeting prostitution*, Florida Today, (January 28, 2019) available at https://www.floridatoday.com/story/news/crime/2019/01/28/six-arrested-cocoa-after-soliciting-undercover-cop-disguised-prostitute/2706115002/ (last visited January 29, 2019).

[24] WTXL, *Four arrested in undercover prostitution sting in Tallahassee*, (January 14, 2019) available at http://www.wtxl.com/news/four-arrested-in-undercover-prostitution-sting-in-tallahassee/article_47c5602a-182e-11e9-aa98-0bf1f95703cb.html (last visited January 29, 2019).

[25] Section 796.07(2)(f), F.S.

[26] Section 796.07(1)(b) and (c), F.S.

[27] A first degree misdemeanor is punishable by a state prison term not exceeding 1 year, a fine not exceeding $1,000, or both. Sections 775.082 and 775.083, F.S.

[28] A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding $5,000, or both. Sections 775.082 and 775.083, F.S.

[29] A second degree felony is punishable by a state prison term not exceeding 15 years, a fine not exceeding $10,000, or both. Sections 775.082 and 775.083, F.S.

[30] Section 796.07(5)(a)1.-3., F.S.

A person who commits a second or subsequent violation of s. 796.07(2)(f), F.S., must be sentenced to a minimum mandatory period of 10 days incarceration.[31]

III. Effect of Proposed Changes:

The bill provides that a person who solicits, induces, entices, or procures a *victim of human trafficking* to commit prostitution, lewdness, or assignation must be sentenced by the court to a period of incarceration of 30 days, in addition to any other penalty imposed.

The bill requires the 10-day minimum mandatory sentence for a second or subsequent violation of s. 796.07(2)(f), F.S., to be served consecutively to the 30-day sentence established by the bill, if applicable.

The bill also provides that "human trafficking" has the same meaning as defined in s. 787.06(2)(d), F.S.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[31] Section 796.07(5)(c), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. The bill creates a new 30-day sentence and requires the current 10-day minimum mandatory period to be served consecutively to that sentence, if applicable. This will likely result in a positive indeterminate fiscal impact to county jails (i.e. an increase in jail beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 796.07 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The Committee Substitute removes the *minimum mandatory period of incarceration* for a person who solicits, induces, entices, or procures a victim of human trafficking to commit prostitution, lewdness, or assignation, and provides that a person who commits such a crime must be sentenced by the court to a period of incarceration of 30 days.

B. Amendments:

None.

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

672736

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 40
and insert:
person shall be sentenced by the court to a period of

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 4
and insert:

672736

providing construction; requiring a minimum

363744

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2019	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (672736) (with title amendment)

Delete line 40
and insert:
person shall be sentenced by the court to a period of

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete lines 4 - 5

363744

and insert:

providing construction; requiring a period of incarceration for solicitation of prostitution

By Senator Harrell

25-00839-19 2019370__

A bill to be entitled

An act relating to victims of human trafficking; amending s. 796.07, F.S.; providing a definition; providing construction; requiring a mandatory minimum term of incarceration for solicitation of prostitution offenses involving victims of human trafficking; providing an effective date.

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

Section 1. Paragraph (c) of subsection (5) of section 796.07, Florida Statutes, is amended, paragraph (e) is added to subsection (1) and paragraph (e) is added to subsection (5) of that section, and paragraph (f) of subsection (2) and paragraph (a) of subsection (5) of that section are republished, to read:

796.07 Prohibiting prostitution and related acts.—

(1) As used in this section:

(e) "Human trafficking" has the same meaning as provided in s. 787.06.

(2) It is unlawful:

(f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

(5)(a) A person who violates paragraph (2)(f) commits:

1. A misdemeanor of the first degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

2. A felony of the third degree for a second violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A felony of the second degree for a third or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) In addition to any other penalty imposed, the court shall sentence a person convicted of a second or subsequent violation of paragraph (2)(f) to a minimum mandatory period of incarceration of 10 days. This sentence shall be served consecutively to any period of incarceration imposed under paragraph (e).

(e) If a person violates paragraph (2)(f) and the person solicited, induced, enticed, or procured is a victim of human trafficking, in addition to any other penalty imposed, the person shall be sentenced to a mandatory minimum period of incarceration of 30 days.

Section 2. This act shall take effect October 1, 2019.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-11-19
Meeting Date

370
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Victims of Human Trafficking

Name Barbara Delane

Job Title MS

Address 625 E Brevard St
Street

City *State* 32308 *Zip*

Phone 850-251-4280

Email barbmackenzie1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2 / 11 /2019
Meeting Date

Topic _____ Bill Number 370 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.4.19
Meeting Date

370
Bill Number (if applicable)

Topic Victims of Human Trafficking

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road
Street

Phone 850.510.9922

Tallahassee FL 32308
City *State* *Zip*

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations Subcommittee on Health and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Children, Families, and Elder Affairs
Military and Veterans Affairs and Space

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GAYLE HARRELL
25th District

January 25, 2019

Senator Keith Perry
316 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Perry,

I respectfully request that **SB 370 – Victims of Human Trafficking** be placed on the next available agenda for the Committee Meeting on Criminal Justice.

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

Thank you,

Gayle

Senator Gayle Harrell
Senate District 25

Cc: Lauren Jones, Staff Director
Sue Arnold, Committee Administrative Assistant

REPLY TO:
❒ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
❒ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
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:	SB 406
INTRODUCER:	Senators Brandes and Pizzo
SUBJECT:	Theft
DATE:	February 8, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	**Favorable**
2.			ACJ	
3.			AP	

I. Summary:

SB 406 amends various provisions related to criminal theft offenses. First, the bill amends ss. 812.014 and 812.015, F.S., increasing the threshold amount for third degree felony theft offenses from $300 to $1,500. This provision applies to grand theft and retail theft. The bill also removes a fire extinguisher from the list of property that automatically constitute a third degree grand theft regardless of the value of the property taken.

The bill modifies when specified theft offenses will be reclassified to the next degree higher based on the presence of prior theft convictions in the offender's criminal history. The bill provides that for an offense to be reclassified from:

- First degree misdemeanor petit theft to a third degree felony, the offender must have previously been convicted two or more times as an *adult* for any theft.
- Third degree felony retail theft to a second degree felony, the offender must have previously been convicted of a violation of s. 812.015(8), F.S. (retail theft), as an *adult*.

Additionally, for an offense to qualify for reclassification, the most recent theft offense must have occurred within three years from the expiration of the adult offender's sentence for the most recent theft conviction.

The bill also amends ss. 812.014 and 812.015, F.S., providing that the determination of the value of property taken in violation of these sections must be based on the fair market value of the property at the time the taking occurred.

Lastly, the bill amends ss. 812.014 and 812.015, F.S., requiring that the threshold amounts for theft offenses must be adjusted every five years.

The bill amends s. 921.0022, F.S., making conforming changes to the Criminal Punishment Code severity ranking chart to changes made by the bill. A number of sections of law are reenacted by the bill to incorporate the changes made by the bill.

The bill is effective October 1, 2019.

II. Present Situation:

There are approximately 3,000 people currently incarcerated in the Department of Corrections (DOC) for felony theft convictions and just over 24,000 people on state community supervision for a felony theft crime in Florida.[1] Since 2000, 37 states have increased the threshold dollar amounts for felony theft crimes.[2] Such increases ensure that associated "criminal sentences don't become more severe over time simply because of natural increases in the prices of consumer goods."[3]

The majority of states (30 states) and the District of Columbia set a $1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between $500 and $950, and five states, including Florida, have thresholds below $500. Between 2003 and 2015, nine states, including Alabama, Mississippi, and Louisiana, raised their felony thresholds twice.[4]

Property Theft

Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or 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
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[5]

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than $100.[6] First degree petit theft, a first degree misdemeanor, is theft of property valued at $100 or more but less than $300.[7] Second degree petit theft incurs greater penalties if there is a prior theft

[1] Email from Scotti Vaughan, Department of Corrections, Deputy Legislative Affairs Director, February 6, 2019 (on file with Senate Criminal Justice Committee).
[2] Pew Charitable Trusts, *The Effects of Changing State Theft Penalties*, (February 2016), available at http://www.pewtrusts.org/~/media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en (last visited February 4, 2019); *See also* Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies*, National Conference of State Legislatures, (June 2015), available at http://www.ncsl.org/documents/cj/sentencing.pdf (last visited February 4, 2019).
[3] John Gramlich and Katie Zafft, *Updating State Theft Laws Can Bring Less Incarceration – and Less*, Stateline, Pew Charitable Trusts, (March 1, 2016), available at http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/31/updating-state-theft-laws-can-bring-less-incarceration-and-less-crime (last visited February 4, 2019).
[4] *Id.*
[5] Section 812.014(1), F.S.
[6] Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to $500. Sections 775.082 and 775.083, F.S.
[7] Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to $1,000. Sections 775.082 and 775.083, F.S.

conviction: it is a first degree misdemeanor if there is one prior conviction,[8] and a third degree felony if there are two or more prior convictions.[9]

Third degree grand theft, a third degree felony,[10] is theft of:
- Property valued at $300 or more, but less than $20,000.
- Specified property including, but not limited to:
  - A will, codicil, or testamentary instrument;
  - A firearm;
  - Any commercially farmed animal,[11] a bee colony of a registered beekeeper, or aquaculture species raised at a certified aquaculture facility;
  - Any fire extinguisher;
  - Citrus fruit of 2,000 or more individual pieces;
  - Any stop sign;
  - Property taken from a designated, posted construction site;[12] and
- Property from a dwelling or its unenclosed curtilage if the property is valued at $100 or more, but less than $300.[13]

The last time the Legislature increased the minimum threshold property value for third degree grand theft was in 1986.[14] The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996. The petit theft provisions were also amended, including the thresholds, in 1996.[15]

Retail Theft

Section 812.015(1)(d), F.S., defines retail theft as:
- The taking possession of or carrying away of merchandise, property, money, or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

Retail theft is a third degree felony if the theft involves property valued at $300 or more and the person:
- Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense;

[8] Section 812.014(3)(b), F.S.
[9] Section 812.014(3)(c), F.S.
[10] A third degree felony is punishable by up to 5 years' incarceration and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.
[11] This includes any animal of the equine, avian, bovine, or swine class or other grazing animal.
[12] Section 812.014(2)(c), F.S.
[13] Section 812.014(2)(d), F.S.
[14] Chapter 86-161, s. 1, L.O.F.
[15] Chapter 96-388, s. 49, L.O.F.

- Commits theft from more than one location within a 48-hour period;[16]
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.[17]

Retail theft is a second degree felony if the person has previously been convicted of third degree felony retail theft or individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of $3,000.[18] The statute also requires a fine of not less than $50 and no more than $1,000 for a second or subsequent conviction for petit theft from a merchant, farmer, or transit agency.[19]

The threshold for a third degree felony retail theft was created and set by the Legislature in 2001.[20]

Reclassification of Theft Offenses

Certain theft offenses are reclassified to the next higher degree offense if the person committing the offense has previous theft convictions. A petit theft offense is reclassified to a third degree felony, if the person has two previous convictions of any theft.[21] A third degree felony retail theft offense is reclassified to a second degree felony if the person has a previous retail theft in violation of s. 812.015(8), F.S.[22]

There are no time limits between theft convictions related to theft crime level and penalty enhancements.

Juvenile offenders who are adjudicated delinquent for theft offenses are considered to have been "convicted" of theft and are treated the same as adult offenders for purposes of these penalty enhancements.[23]

III. Effect of Proposed Changes:

Property Theft

The bill amends s. 812.014(2)(c), F.S., increasing the minimum threshold amounts for a third degree felony grand theft from $300 to $1,500. For property taken from a dwelling or enclosed

[16] In the first two instances, the amount of each individual theft is aggregated to determine the value of the property stolen. Section 812.015(8)(a) and (b), F.S.
[17] Section 812.015(8), F.S.
[18] Section 812.015(9), F.S.
[19] Section 812.015(2), F.S.
[20] Chapter 01-115, s. 3, L.O.F.
[21] Section 812.014(3)(c), F.S.
[22] Section 812.015(9)(a), F.S.
[23] *T.S.W. v. State*, 489 So. 2d 1146 (Fla. 2d DCA 1986); *R.D.D. v. State*, 493 So. 2d 534 (Fla. 5th DCA 1986).

curtilage, the theft threshold amounts are modified from $100 or more, but less than $300, to $1,500 or more, but less than $5,000. The first degree misdemeanor petit theft threshold amount is modified from $100 or more, but less than $300, to $500 or more, but less than $1,500.

The bill also deletes a fire extinguisher from the list of property that constitute a third degree grand theft regardless of the value of the property taken.[24]

Lastly, the bill modifies the enhancement statute providing that a first degree petit theft becomes a third degree felony only if:

- The offender has previously been convicted two or more times *as an adult* for any theft; and
- The most recent subsequent petit theft offense occurred within three years of the expiration of the offender's sentence for the most recent theft conviction.

Retail Theft

The bill amends s. 812.015, F.S., to increase the property value of third degree felony retail theft from $300 or more, to $1,500 or more. The bill enhances retail theft to a second degree felony only if:

- The offender has previously been convicted of retail theft *as an adult*; and
- The subsequent retail theft offense occurred within three years of the expiration of the offender's sentence for the most recent retail theft conviction.

Value and Periodic Threshold Adjustment

The bill amends ss. 812.014 and 812.015, F.S., providing that the determination of the value of property taken in violation of these sections must be based on the fair market value of the property at the time the taking occurred.

The bill also amends ss. 812.014 and 812.015, F.S., requiring that the threshold amounts for these theft offenses must be adjusted every five years in an amount equal to the total of the annual increases for that five-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Office of Economic and Demographic Research (EDR) is required to calculate the thresholds, rounded to the nearest $50, and publish the amounts, as adjusted, on its website by July 1 of every fifth year. These new threshold amounts will take effect on October 1 of that year. The bill also requires EDR to certify the revised amounts to the Division of Law Revision (Division). The bill requires the Division to conform ss. 812.014 and 812.015, F.S., to the revised amounts.

The bill amends s. 921.0022, F.S., to conform the Criminal Punishment Code offense severity ranking chart to changes made by the bill. The bill reenacts ss. 95.18, 373.6055, 400.9935, 409.910, 489.126, 538.09, 538.23, 550.6305, 627.743, 634.319, 634.421, 636.238, 642.038, 705.102, 718.111, 812.015, 812.0155, 812.14, 893.138, 932.701, 943.051, 985.11, and 985.557, F.S., incorporating changes made by the act.

[24] These offenses will now be classified by the property value rather than automatically qualifying as a third degree grand theft.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not heard the bill at this time. However, on January 8, 2018, the CJIC heard SB 928/HB 713 (2018), which were similar to the current bill, and estimated that the bill would have a "negative significant" prison bed impact (i.e., a decrease of more than 25 prison beds).[25]

VI. Technical Deficiencies:

None.

[25] 2018 Conference Results (through February 12, 2018), CJIC, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls (last visited on February 4, 2019).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of Florida Statutes: 812.014, 812.015, and 921.0022.

This bill reenacts the following sections of the Florida Statutes: 95.18, 373.6055, 400.9935, 409.910, 489.126, 538.09, 538.23, 550.6305, 627.743, 634.319, 634.421, 636.238, 642.038, 705.102, 718.111, 812.015, 812.0155, 812.14, 893.138, 932.701, 943.051, 985.11, and 985.557.

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.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/11/2019	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 79 - 219

and insert:

~~4. A will, codicil, or other testamentary instrument.~~

4.~~5.~~ A firearm.

5.~~6.~~ A motor vehicle, except as provided in paragraph (a).

6.~~7.~~ Any commercially farmed animal, including any animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture

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species raised at a certified aquaculture facility. If the property stolen is a commercially farmed animal, including an animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; or an aquaculture species raised at a certified aquaculture facility, a $10,000 fine shall be imposed.

~~8. Any fire extinguisher.~~

7.~~9.~~ Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

~~10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).~~

~~11. Any stop sign.~~

8.~~12.~~ Anhydrous ammonia.

9.~~13.~~ Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the

property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(d) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at $1,500 ~~$100~~ or more, but less than $5,000 ~~$300~~, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

(e) Except as provided in paragraph (d), if the property stolen is valued at $500 ~~$100~~ or more, but less than $1,500 ~~$300~~, the offender commits petit theft of the first degree, punishable as a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(3)(a) Theft of any property not specified in subsection (2) is petit theft of the second degree and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and as provided in subsection (5), as applicable.

(b) A person who commits petit theft and who has previously been convicted of any theft commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person who commits petit theft in the first degree and who has previously been convicted two or more times as an adult of any theft commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083 if the third or subsequent petit theft offense occurred within 3 years after the expiration of his or her sentence for the most recent theft conviction.

(d)1. Every judgment of guilty or not guilty of a petit theft shall be in writing, signed by the judge, and recorded by the clerk of the circuit court. The judge shall cause to be affixed to every such written judgment of guilty of petit theft, in open court and in the presence of such judge, the fingerprints of the defendant against whom such judgment is rendered. Such fingerprints shall be affixed beneath the judge's signature to such judgment. Beneath such fingerprints shall be appended a certificate to the following effect:

"I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, ..., and that they were placed thereon by said defendant in my presence, in open court, this the .... day of ....,
...(year)...."

Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."

2. Any such written judgment of guilty of a petit theft, or a certified copy thereof, is admissible in evidence in the courts of this state as prima facie evidence that the fingerprints appearing thereon and certified by the judge are

the fingerprints of the defendant against whom such judgment of guilty of a petit theft was rendered.

(7) For purposes of determining the value of property taken in violation of this section, the value must be based on the fair market value of the property at the time the taking occurred.

(8) The Office of Program Policy Analysis and Government Accountability shall, every 5 years, perform a study of the appropriateness of the threshold amounts included in this section. The study's scope shall include, but need not be limited to, the crime trends related to theft offenses, the theft threshold amounts of other states in effect at the time of the study, fiscal impact of any modifications to Florida's threshold amounts, and economic factors, such as inflation. The report shall include options for amending the threshold amounts if the study finds that such amounts are inconsistent with current trends. In conducting the study, OPPAGA shall consult with the Office of Economic and Demographic Research in addition to other interested entities. OPPAGA shall submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by September 1 of each fifth year.

Section 2. Paragraph (n) of subsection (1) and subsection (10) are added to section 812.015, Florida Statutes, and subsections (8) and (9) of that section are amended, to read:

812.015 Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(1) As used in this section:

(n) "Value" means the fair market value of the property taken in violation of this section at the time the taking occurred.

(8) Except as provided in subsection (9), a person who commits retail theft commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at $1,500 ~~$300~~ or more, and the person:

(a) Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(b) Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(c) Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or

(d) Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

(9) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person:

(a) Violates subsection (8) as an adult and has previously

been convicted of a violation of subsection (8) within 3 years after the expiration of his or her sentence for the conviction; or

(b) Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of $3,000.

(10) The Office of Program Policy Analysis and Government Accountability shall, every 5 years, perform a study of the appropriateness of the threshold amounts included in this section. The study's scope shall include, but need not be limited to, the crime trends related to theft offenses, the theft threshold amounts of other states in effect at the time of the study, fiscal impact of any modifications to Florida's threshold amounts, and economic factors, such as inflation. The report shall include options for amending the threshold amounts if the study finds that such amounts are inconsistent with current trends. In conducting the study, OPPAGA shall consult with the Office of Economic and Demographic Research in addition to other interested entities. OPPAGA shall submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by September 1 of each fifth year.

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

And the title is amended as follows:

Delete lines 7 - 19

and insert:

market value at the time of the taking; requiring the Office of Program Policy Analysis and Government

Accountability to conduct a study of the threshold amounts every five years; providing the scope of the study; requiring the OPPAGA to make recommendations, if appropriate; requiring the OPPAGA to consult with the Office of Economic and Demographic Research and other interested entities; requiring the OPPAGA to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by September 1 of every fifth year; amending s. 812.015, F.S.; defining the term "value"; increasing threshold amounts for a certain theft offense; revising the circumstances under which an offense of retail theft constitutes a felony of the second degree; requiring the OPPAGA to conduct a study of the threshold amounts every five years; providing the scope of the study; requiring the OPPAGA to make recommendations, if appropriate; requiring the OPPAGA to consult with the EDR and other interested entities; requiring the OPPAGA to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by September 1 of every fifth year; amending s. 921.0022, F.S.;

By Senator Brandes

24-00750-19 2019406__

A bill to be entitled

An act relating to theft; amending s. 812.014, F.S.; increasing threshold amounts for certain theft offenses; revising the list of items the theft of which constitutes theft of the third degree; providing that the value of taken property is based on fair market value at the time of the taking; requiring the adjustment of certain monetary amounts by the Division of Law Revision based on certain required periodic calculations done by the Office of Economic and Demographic Research; amending s. 812.015, F.S.; defining the term "value"; increasing threshold amounts for a certain theft offense; revising the circumstances under which an offense of retail theft constitutes a felony of the second degree; requiring the adjustment of certain monetary amounts by the Division of Law Revision based on certain required periodic calculations done by the Office of Economic and Demographic Research; amending s. 921.0022, F.S.; conforming provisions to changes made by the act; conforming a cross-reference; reenacting ss. 95.18(10), 373.6055(3)(c), 400.9935(3), 409.910(17)(g), 489.126(4), 550.6305(10), 627.743(2), 634.319(2), 634.421(2), 636.238(3), 642.038(2), 705.102(4), 718.111(1)(d), 812.015(2), 812.0155(1) and (2), 812.14(4), (7), and (8), 893.138(3), 932.701(2)(a), 943.051(3)(b), 985.11(1)(b), and 985.557(1)(a) and (2)(c), F.S., relating to adverse possession without color of title; criminal history

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24-00750-19 2019406__

checks for certain water management district employees and others; clinic responsibilities; responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable; moneys received by contractors; intertrack wagering; payment of third-party claims; diversion or appropriation of certain funds received by sales representatives; diversion or appropriation of certain funds received by sales representatives; penalties for certain violations; diversion or appropriation of certain funds received by sales representatives; reporting lost or abandoned property; condominium associations; retail and farm theft; suspension of driver license following an adjudication of guilt for theft; trespass and larceny with relation to utility fixtures and theft of utility services; local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity; the definition of the term "contraband article"; fingerprinting of certain minors; fingerprinting and photographing of certain children; and discretionary and mandatory criteria for the direct filing of an information, respectively, to incorporate the amendment made to s. 812.014, F.S., in references thereto; reenacting s. 538.09(5), F.S., relating to the registration of a secondhand dealer, to incorporate the amendment made to s. 812.015, F.S., in a reference thereto; reenacting ss. 538.23(2) and 812.0155(2), F.S., relating to secondary metals

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recycler violations and penalties and suspension of driver license following an adjudication of guilt for theft, respectively, to incorporate the amendments made to ss. 812.014 and 812.015, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraphs (c), (d), and (e) of subsection (2) and subsection (3) of section 812.014, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $1,500 ~~$300~~ or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is a commercially farmed animal, including an animal of the equine, avian, bovine, or swine class or other

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grazing animal; a bee colony of a registered beekeeper; or an aquaculture species raised at a certified aquaculture facility, a $10,000 fine shall be imposed.

~~8. Any fire extinguisher.~~

8.~~9.~~ Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

9.~~10.~~ Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

10.~~11.~~ Any stop sign.

11.~~12.~~ Anhydrous ammonia.

12.~~13.~~ Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under

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subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(d) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at $1,500 ~~$100~~ or more, but less than $5,000 ~~$300~~, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

(e) Except as provided in paragraph (d), if the property stolen is valued at $500 ~~$100~~ or more, but less than $1,500 ~~$300~~, the offender commits petit theft of the first degree, punishable as a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(3)(a) Theft of any property not specified in subsection (2) is petit theft of the second degree and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and as provided in subsection (5), as applicable.

(b) A person who commits petit theft and who has previously been convicted of any theft commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person who commits petit theft in the first degree and who has previously been convicted two or more times as an adult of any theft commits a felony of the third degree,

punishable as provided in s. 775.082 or s. 775.083 if the third or subsequent petit theft offense occurred within 3 years after the expiration of his or her sentence for the most recent theft conviction.

(7) For purposes of determining the value of property taken in violation of this section, the value must be based on the fair market value of the property at the time the taking occurred.

(8) The threshold amounts for offenses specified in this section must be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Office of Economic and Demographic Research shall calculate the thresholds, rounded to the nearest $50, and publish the amounts, as adjusted, on its website by July 1 of every fifth year, with the amounts to take effect on October 1 of that year. The office shall certify the revised amounts to the Division of Law Revision, which is directed to conform the statutes to the revised amounts.

Section 2. Paragraph (n) of subsection (1) and subsection (10) are added to section 812.015, Florida Statutes, and subsections (8) and (9) of that section are amended, to read:

812.015 Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(1) As used in this section:

(n) "Value" means the fair market value of the property taken in violation of this section at the time the taking

occurred.

(8) Except as provided in subsection (9), a person who commits retail theft commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at $1,500 ~~$300~~ or more, and the person:

(a) Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(b) Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(c) Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or

(d) Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

(9) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person:

(a) Violates subsection (8) as an adult and has previously been convicted of a violation of subsection (8) within 3 years after the expiration of his or her sentence for the conviction;

or

(b) Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of $3,000.

(10) The threshold amounts for offenses specified in this section must be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Office of Economic and Demographic Research shall calculate the thresholds, rounded to the nearest $50, and publish the amounts, as adjusted, on its website by July 1 of every fifth year, with the amounts to take effect on October 1 of that year. The office shall certify the revised amounts to the Division of Law Revision, which is directed to conform the statutes to the revised amounts.

Section 3. Paragraphs (a), (b), (d), (e), and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.

212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than $300 but less than $20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of

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		simulated identification.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
322.212(5)(a)	3rd	False application for driver license or identification card.
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than $200.
443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than $300.
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still

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		apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than $50.
812.014(3)(c)	3rd	Petit theft (3rd or subsequent adult conviction within specified period); theft of any property not specified in subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.

826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud $150 or more.
832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks $150 or more or obtaining property in return for worthless check $150 or more.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a

		law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
849.23	3rd	Gambling-related machines; "common offender" as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.

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893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial

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		purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a

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		dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $1,500 ~~$300~~ or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $1,500 ~~$100~~ or more but less than $5,000 ~~$300~~, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false,

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		expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01	3rd	Forgery.

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831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation.
893.13(2)(a)2.	3rd	Purchase of any s.

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		893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility

		employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.

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787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.

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800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-9.	3rd	Grand theft, 3rd degree, a will, firearm, motor

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~~812.014 (2)(c)4.-10.~~		vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause

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		great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement,

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		correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
914.14(2)	3rd	Witnesses accepting bribes.

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914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap

		tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation

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		coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.

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790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.

806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $1,500 ~~$300~~ or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.

817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.

828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a

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		minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs)

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		within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or

		subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.

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784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.

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784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.

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790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.

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810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $1,500 ~~$300~~ or more; second or subsequent adult conviction within specified period.
812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.

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812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.

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827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of

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		materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.

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944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

Section 4. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (10) of section 95.18, Florida Statutes, is reenacted to read:

95.18 Real property actions; adverse possession without color of title.—

(10) A person who occupies or attempts to occupy a residential structure solely by claim of adverse possession under this section and offers the property for lease to another commits theft under s. 812.014.

Section 5. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (c) of subsection (3) of section 373.6055, Florida Statutes, is reenacted to read:

373.6055 Criminal history checks for certain water management district employees and others.—

(3)

(c) In addition to other requirements for employment or

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access established by any water management district pursuant to its water management district's security plan for buildings, facilities, and structures, each water management district's security plan shall provide that:

1. Any person who has within the past 7 years been convicted, regardless of whether adjudication was withheld, for a forcible felony as defined in s. 776.08; an act of terrorism as defined in s. 775.30; planting of a hoax bomb as provided in s. 790.165; any violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as provided in s. 790.166; dealing in stolen property; any violation of s. 893.135; any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance; burglary; robbery; any felony violation of s. 812.014; any violation of s. 790.07; any crime an element of which includes use or possession of a firearm; any conviction for any similar offenses under the laws of another jurisdiction; or conviction for conspiracy to commit any of the listed offenses may not be qualified for initial employment within or authorized regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas.

2. Any person who has at any time been convicted of any of the offenses listed in subparagraph 1. may not be qualified for initial employment within or authorized regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas unless, after release from incarceration and any supervision

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imposed as a sentence, the person remained free from a subsequent conviction, regardless of whether adjudication was withheld, for any of the listed offenses for a period of at least 7 years prior to the employment or access date under consideration.

Section 6. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (3) of section 400.9935, Florida Statutes, is reenacted to read:

400.9935 Clinic responsibilities.—

(3) A charge or reimbursement claim made by or on behalf of a clinic that is required to be licensed under this part but that is not so licensed, or that is otherwise operating in violation of this part, regardless of whether a service is rendered or whether the charge or reimbursement claim is paid, is an unlawful charge and is noncompensable and unenforceable. A person who knowingly makes or causes to be made an unlawful charge commits theft within the meaning of and punishable as provided in s. 812.014.

Section 7. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (g) of subsection (17) of section 409.910, Florida Statutes, is reenacted to read:

409.910 Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—

(17)

(g) The agency may investigate and request appropriate officers or agencies of the state to investigate suspected criminal violations or fraudulent activity related to third-

party benefits, including, without limitation, ss. 414.39 and 812.014. Such requests may be directed, without limitation, to the Medicaid Fraud Control Unit of the Office of the Attorney General or to any state attorney. Pursuant to s. 409.913, the Attorney General has primary responsibility to investigate and control Medicaid fraud.

Section 8. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (4) of section 489.126, Florida Statutes, is reenacted to read:

489.126 Moneys received by contractors.—

(4) Any person who violates any provision of this section is guilty of theft and shall be prosecuted and punished under s. 812.014.

Section 9. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (10) of section 550.6305, Florida Statutes, is reenacted to read:

550.6305 Intertrack wagering; guest track payments; accounting rules.—

(10) All races or games conducted at a permitholder's facility, all broadcasts of such races or games, and all broadcast rights relating thereto are owned by the permitholder at whose facility such races or games are conducted and constitute the permitholder's property as defined in s. 812.012(4). Transmission, reception of a transmission, exhibition, use, or other appropriation of such races or games, broadcasts of such races or games, or broadcast rights relating thereto without the written consent of the permitholder

constitutes a theft of such property under s. 812.014; and in addition to the penal sanctions contained in s. 812.014, the permitholder has the right to avail itself of the civil remedies specified in ss. 772.104, 772.11, and 812.035 in addition to any other remedies available under applicable state or federal law.

Section 10. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 627.743, Florida Statutes, is reenacted to read:

627.743 Payment of third-party claims.—

(2) When making any payment on a third party claim for damage to an automobile for a partial loss, the insurer shall have printed on the loss estimate, if prepared by the insurer, the following: "Failure to use the insurance proceeds in accordance with the security agreement, if any, could be a violation of s. 812.014, Florida Statutes. If you have any questions, contact your lending institution." However, this subsection does not apply if the insurer does not prepare the loss estimate.

Section 11. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 634.319, Florida Statutes, is reenacted to read:

634.319 Reporting and accounting for funds.—

(2) Any sales representative who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to her or his own use is, upon conviction, guilty of theft, punishable as provided in s. 812.014.

Section 12. For the purpose of incorporating the amendment

made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 634.421, Florida Statutes, is reenacted to read:

634.421 Reporting and accounting for funds.—

(2) Any sales representative who, not being entitled thereto, diverts or appropriates funds or any portion thereof to her or his own use commits theft as provided in s. 812.014.

Section 13. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (3) of section 636.238, Florida Statutes, is reenacted to read:

636.238 Penalties for violation of this part.—

(3) A person who collects fees for purported membership in a discount plan but purposefully fails to provide the promised benefits commits a theft, punishable as provided in s. 812.014.

Section 14. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 642.038, Florida Statutes, is reenacted to read:

642.038 Reporting and accounting for funds.—

(2) Any sales representative who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to his or her own use commits theft as provided in s. 812.014.

Section 15. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (4) of section 705.102, Florida Statutes, is reenacted to read:

705.102 Reporting lost or abandoned property.—

(4) Any person who unlawfully appropriates such lost or abandoned property to his or her own use or refuses to deliver such property when required commits theft as defined in s. 812.014, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 16. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 718.111, Florida Statutes, is reenacted to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(d) As required by s. 617.0830, an officer, director, or agent shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. An officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834 if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834; constitutes a transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. 831.01, the theft or embezzlement of funds of a

condominium association is punishable as provided in s. 812.014, and the destruction of or the refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13 or as obstruction of justice as provided in chapter 843. An officer or director charged by information or indictment with a crime referenced in this paragraph must be removed from office, and the vacancy shall be filled as provided in s. 718.112(2)(d)2. until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

Section 17. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 812.015, Florida Statutes, is reenacted to read:

812.015 Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(2) Upon a second or subsequent conviction for petit theft

from a merchant, farmer, or transit agency, the offender shall be punished as provided in s. 812.014(3), except that the court shall impose a fine of not less than $50 or more than $1,000. However, in lieu of such fine, the court may require the offender to perform public services designated by the court. In no event shall any such offender be required to perform fewer than the number of hours of public service necessary to satisfy the fine assessed by the court, as provided by this subsection, at the minimum wage prevailing in the state at the time of sentencing.

Section 18. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in references thereto, subsections (1) and (2) of section 812.0155, Florida Statutes, are reenacted to read:

812.0155 Suspension of driver license following an adjudication of guilt for theft.—

(1) Except as provided in subsections (2) and (3), the court may order the suspension of the driver license of each person adjudicated guilty of any misdemeanor violation of s. 812.014 or s. 812.015, regardless of the value of the property stolen. Upon ordering the suspension of the driver license of the person adjudicated guilty, the court shall forward the driver license of the person adjudicated guilty to the Department of Highway Safety and Motor Vehicles in accordance with s. 322.25.

(a) The first suspension of a driver license under this subsection shall be for a period of up to 6 months.

(b) A second or subsequent suspension of a driver license under this subsection shall be for 1 year.

(2) The court may revoke, suspend, or withhold issuance of a driver license of a person less than 18 years of age who violates s. 812.014 or s. 812.015 as an alternative to sentencing the person to:

(a) Probation as defined in s. 985.03 or commitment to the Department of Juvenile Justice, if the person is adjudicated delinquent for such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

(b) Probation as defined in s. 985.03, commitment to the Department of Juvenile Justice, probation as defined in chapter 948, community control, or incarceration, if the person is convicted as an adult of such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

Section 19. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in references thereto, subsections (4), (7), and (8) of section 812.14, Florida Statutes, are reenacted to read:

812.14 Trespass and larceny with relation to utility fixtures; theft of utility services.—

(4) A person who willfully violates subsection (2) commits theft, punishable as provided in s. 812.014.

(7) An owner, lessor, or sublessor who willfully violates subsection (5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Prosecution for a violation of subsection (5) does not preclude prosecution for theft pursuant to subsection (8) or s. 812.014.

(8) Theft of utility services for the purpose of

facilitating the manufacture of a controlled substance is theft, punishable as provided in s. 812.014.

Section 20. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (3) of section 893.138, Florida Statutes, is reenacted to read:

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

(3) Any pain-management clinic, as described in s. 458.3265 or s. 459.0137, which has been used on more than two occasions within a 6-month period as the site of a violation of:

(a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery;

(b) Section 810.02, relating to burglary;

(c) Section 812.014, relating to theft;

(d) Section 812.131, relating to robbery by sudden snatching; or

(e) Section 893.13, relating to the unlawful distribution of controlled substances,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

Section 21. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 932.701, Florida Statutes, is reenacted to read:

932.701 Short title; definitions.—

(2) As used in the Florida Contraband Forfeiture Act:

(a) "Contraband article" means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.

2. Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.

3. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.

4. Any motor fuel upon which the motor fuel tax has not been paid as required by law.

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

7. Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c).

8. Any motor vehicle offered for sale in violation of s. 320.28.

9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a).

10. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145 and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

11. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or

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currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201.

12. Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of s. 509.144, whether or not comprising an element of the offense.

Section 22. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 943.051, Florida Statutes, is reenacted to read:

943.051 Criminal justice information; collection and storage; fingerprinting.—

(3)

(b) A minor who is charged with or found to have committed the following offenses shall be fingerprinted and the fingerprints shall be submitted electronically to the department, unless the minor is issued a civil citation pursuant to s. 985.12:

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

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5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014(3).

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property, as provided in s. 790.115.

Section 23. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 985.11, Florida Statutes, is reenacted to read:

985.11 Fingerprinting and photographing.—

(1)

(b) Unless the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014.

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, resulting in bodily harm to a firefighter, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person

authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

Section 24. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in references thereto, paragraph (a) of subsection (1) and paragraph (c) of subsection (2) of section 985.557, Florida Statutes, are reenacted to read:

985.557 Direct filing of an information; discretionary and mandatory criteria.—

(1) DISCRETIONARY DIRECT FILE.—

(a) With respect to any child who was 14 or 15 years of age at the time the alleged offense was committed, the state attorney may file an information when in the state attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, attempt to commit, or conspiracy to commit:

1. Arson;

2. Sexual battery;

3. Robbery;

4. Kidnapping;

5. Aggravated child abuse;

6. Aggravated assault;

7. Aggravated stalking;

8. Murder;

9. Manslaughter;

10. Unlawful throwing, placing, or discharging of a destructive device or bomb;

11. Armed burglary in violation of s. 810.02(2)(b) or specified burglary of a dwelling or structure in violation of s. 810.02(2)(c), or burglary with an assault or battery in violation of s. 810.02(2)(a);

12. Aggravated battery;

13. Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;

14. Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;

15. Grand theft in violation of s. 812.014(2)(a);

16. Possessing or discharging any weapon or firearm on school property in violation of s. 790.115;

17. Home invasion robbery;

18. Carjacking; or

19. Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or grand theft of a motor vehicle valued at $20,000 or more in violation of s. 812.014(2)(b) if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

(2) MANDATORY DIRECT FILE.—

(c) The state attorney must file an information if a child,

regardless of the child's age at the time the alleged offense was committed, is alleged to have committed an act that would be a violation of law if the child were an adult, that involves stealing a motor vehicle, including, but not limited to, a violation of s. 812.133, relating to carjacking, or s. 812.014(2)(c)6., relating to grand theft of a motor vehicle, and while the child was in possession of the stolen motor vehicle the child caused serious bodily injury to or the death of a person who was not involved in the underlying offense. For purposes of this section, the driver and all willing passengers in the stolen motor vehicle at the time such serious bodily injury or death is inflicted shall also be subject to mandatory transfer to adult court. "Stolen motor vehicle," for the purposes of this section, means a motor vehicle that has been the subject of any criminal wrongful taking. For purposes of this section, "willing passengers" means all willing passengers who have participated in the underlying offense.

Section 25. For the purpose of incorporating the amendment made by this act to section 812.015, Florida Statutes, in a reference thereto, subsection (5) of section 538.09, Florida Statutes, is reenacted to read:

538.09 Registration.—

(5) In addition to the fine provided in subsection (4), registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if the department determines that the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made pursuant to this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with any purchase or sale or has been or is engaged in or is about to engage in any practice, purchase, or sale which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in making any purchase or sale;

(e) Is making purchases or sales through any business associate not registered in compliance with the provisions of this chapter;

(f) Has, within the preceding 10-year period for new registrants who apply for registration on or after October 1, 2006, been convicted of, or has entered a plea of guilty or nolo contendere to, or had adjudication withheld for, a crime against the laws of this state or any other state or of the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of s. 812.015, or any fraudulent dealing;

(g) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit; or

(h) Has failed to pay any sales tax owed to the Department of Revenue.

In the event the department determines to deny an application or revoke a registration, it shall enter a final order with its findings on the register of secondhand dealers and their business associates, if any; and denial, suspension, or revocation of the registration of a secondhand dealer shall also deny, suspend, or revoke the registration of such secondhand dealer's business associates.

Section 26. For the purpose of incorporating the amendments made by this act to sections 812.014 and 812.015, Florida Statutes, in references thereto, subsection (2) of section 538.23, Florida Statutes, is reenacted to read:

538.23 Violations and penalties.—

(2) A secondary metals recycler is presumed to know upon receipt of stolen regulated metals property in a purchase transaction that the regulated metals property has been stolen from another if the secondary metals recycler knowingly and intentionally fails to maintain the information required in s. 538.19 and shall, upon conviction of a violation of s. 812.015, be punished as provided in s. 812.014(2) or (3).

Section 27. For the purpose of incorporating the amendments made by this act to sections 812.014 and 812.015, Florida Statutes, in references thereto, subsection (2) of section 812.0155, Florida Statutes, is reenacted to read:

812.0155 Suspension of driver license following an adjudication of guilt for theft.—

(2) The court may revoke, suspend, or withhold issuance of a driver license of a person less than 18 years of age who violates s. 812.014 or s. 812.015 as an alternative to sentencing the person to:

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(a) Probation as defined in s. 985.03 or commitment to the Department of Juvenile Justice, if the person is adjudicated delinquent for such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

(b) Probation as defined in s. 985.03, commitment to the Department of Juvenile Justice, probation as defined in chapter 948, community control, or incarceration, if the person is convicted as an adult of such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

Section 28. This act shall take effect October 1, 2019.

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SB 406

Cox, Ryan

From: Vaughan, Scotti <Scotti.Vaughan@fdc.myflorida.com>
Sent: Wednesday, February 6, 2019 11:30 AM
To: Cox, Ryan
Cc: Torres, Jared; Taylor, Chris; Mann, Garrett
Subject: FW: Updated numbers for SB 406
Attachments: Theft offenses.xlsx

Ryan,
Please see the attached. Please note that this spreadsheet has the same definition as last year and includes trafficking in stolen property on the probation side. Without that offense, the probation numbers for theft are 24,312.

Thanks,
Scotti

Scotti P. Vaughan
Deputy Legislative Affairs Director
Florida Department of Corrections
Office: 850.717.3041
Cell: 850.688.7432

From: Cox, Ryan [mailto:Cox.Ryan@flsenate.gov]
Sent: Wednesday, February 06, 2019 8:53 AM
To: Torres, Jared <Jared.Torres@fdc.myflorida.com>; Vaughan, Scotti <Scotti.Vaughan@fdc.myflorida.com>
Subject: Updated numbers for SB 406

Hi, guys! Happy Wednesday. Last year the analysis for the theft bill included a statement about the number of people currently incarcerated and on probation for felony theft offenses. The analysis last year cited an email from DOC. I would like to update the numbers for this year's analysis. Can you get me these by COB today? I have included the exact sentence Connie included last year so you have it for reference. Thanks!!

"There are approximately 3,000 people currently incarcerated in the DOC for felony theft convictions and 31,000 on state community supervision for a felony theft crime in Florida."

Sincerely,

Ryan C. Cox
Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

Inmates with Theft Primary Offense as of 2/1/19	
2317-GRAND THEFT O/$100,000 1ST.DEG	25
2318-GRAND THEFT,$300 LESS &20,000	1
2320-GRAND THEFT FIREARM	18
2323-PETIT THEFT/3RD CONVICTION	606
2327-THEFT-STATE FUND $300-20K	1
2328-THEFT STATE FUNDS $20K-100K	1
2329-GRAND THEFT O/20,000 L/$100,00	204
2332-THEFT-STATE FUNDS $100K+	1
2345-GRAND THEFT W/DAMAGE	36
2346-STOLEN CARGO LT $50K	1
2347-GRAND THEFT O/$100K	227
2348-GRAND THEFT CARGO O/$50K	8
2352-USE ANTISHOPLIFTING DEVICE	4
2353-RETAIL THEFT $300+	42
2354-RETAIL THEFT $300+(2ND CONV.)	1
2359-THEFT COPPER/NONFER.METALS	7
2363-ORG RETAIL THEFT > 3K	6
2367-THEFT:CONTROLLED SUBSTANCE	4
2404-GRAND THEFT MOTOR VEHICLE	505
2806-ORGANIZES THEFT PROPERTY ECT.	25
3860-THEFT>65YO>$50K	17
3861-THEFT>65YO>$10K<$50K	15
3862-THEFT>65YO>$300<$10K	10
8530-GRAND THEFT,300 L/5,000	1,048
8531-GRAND THEFT $5KL/$10K	32
8532-GRAND THEFT $10K L/$20K	21
8533-GR. THEFT $100-300 DWELLING	23
Total	**2,889**

Offenders with Theft Primary Offense as of 2/1/19	
2298-THEFT FROM ESTAB.BY EMPLOY	40
2300-LARCENY/GRAND THEFT	63
2303-SHOPLIFTING	5
2304-LARCENY-PARTS FROM VEHICLE	1
2305-LARCENY FROM AUTO	3
2308-LARCENY FROM BUILDING	8
2310-LARCENY FROM MAILS	1
2311-LARCENY FROM BANKING TYPE INST	2
2312-LARCENY FROM INTERSTATE SHIPME	1
2317-GRAND THEFT O/$100,000 1ST.DEG	313
2318-GRAND THEFT,$300 LESS &20,000	1,183
2319-GRAND THEFT OF WILL	9
2320-GRAND THEFT FIREARM	179
2321-GT COMMERCIAL SPECIES/ANIMAL	7
2322-GRAND THEFT FIRE EXTINGUISHER	10
2323-PETIT THEFT/3RD CONVICTION	1,316
2324-GRAND THEFT,CITRUS FRUIT	1
2325-GRAND THEFT FRM CONST.SITE	23
2327-THEFT-STATE FUND $300-20K	115
2328-THEFT STATE FUNDS $20K-100K	179
2329-GRAND THEFT O/20,000 L/$100,00	1,783
2332-THEFT-STATE FUNDS $100K+	39
2334-THEFT - ANHYDROUS AMMONIA	3
2337-THEFT-STATE $$ U$300 3RD+CONV.	4
2340-THEFT/DEST.ARCHEOLOG.SITE	3
2345-GRAND THEFT W/DAMAGE	35
2346-STOLEN CARGO LT $50K	10
2347-GRAND THEFT O/$100K	599
2348-GRAND THEFT CARGO O/$50K	26
2350-THEFT CABLE TV SERVICE	1
2353-RETAIL THEFT $300+	192
2354-RETAIL THEFT $300+(2ND CONV.)	8
2355-CABLE TV THEFT-2ND+	1
2358-GRAND THEFT OF STOP SIGN	2
2359-THEFT COPPER/NONFER.METALS	8
2362-ORG THEFT STOLEN PROP > 3K	15
2363-ORG RETAIL THEFT > 3K	8
2367-THEFT:CONTROLLED SUBSTANCE	84
2399-LARCENY-OTHER	56
2400-VEHICLE THEFT/ILLEGAL USE	1
2402-THEFT AND STRIP VEHICLE	1
2404-GRAND THEFT MOTOR VEHICLE	2,684
2800-STOLEN PROPERTY	2
2802-TRANSP INTERSTATE STOLEN PROP	2

2803-TRAFFIC IN STOLEN PROPERTY	5,025
2804-POSSESS STOLEN PROPERTY	1
2806-ORGANIZES THEFT PROPERTY ECT.	44
3844-OPER.FACILITY W/O LICENSE	4
3860-THEFT>65YO>$50K	36
3861-THEFT>65YO>$10K<$50K	77
3862-THEFT>65YO>$300<$10K	111
8530-GRAND THEFT,300 L/5,000	13,263
8531-GRAND THEFT $5KL/$10K	467
8532-GRAND THEFT $10K L/$20K	494
8533-GR. THEFT $100-300 DWELLING	115
9823-PETIT-THEFT-MISD	674
Total	**29,337**

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

406
Bill Number (if applicable)

477870
Amendment Barcode (if applicable)

Topic Theft

Name Gary Hester, Chief

Job Title Government Affairs

Address 2636 Mitcham Dr
Street

Phone 850-219-3631

Tallahassee FL 32308
City *State* *Zip*

Email ghester@fpca.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 406
Bill Number (if applicable)

Topic Relating to Theft

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Executive Director

Address 2650 Pablo Ave.
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 321-2234232

Email cminor@fjja.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Juvenile Justice Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/2019
Meeting Date

SB 406
Bill Number (if applicable)

Topic Theft

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788
Street

Phone 850-521-3042

Tallahassee FL 32302
City *State* *Zip*

Email scott.mccoy@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2-11-19
Meeting Date

406
Bill Number (if applicable)

Topic C.T.

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 605 Middlebrooks Cir
Street

Phone

TLH FL 32312
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/19
Meeting Date

406
Bill Number (if applicable)

Topic Theft

Amendment Barcode (if applicable)

Name Sally West

Job Title Director of Government Relations

Address 3810 Buck Lake Rd C321
Street

Tall. FL 32317
City *State* *Zip*

Phone 8224-723-2650

Email SallyWest@walgreens.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Walgreens

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/2019
Meeting Date

406
Bill Number (if applicable)

Topic Theft

Amendment Barcode (if applicable)

Name Gary Hester, Chief

Job Title Government Affairs

Address 2636 Mitcham Drive
Street

Phone 850-219-3631

Tallahassee — *City* | FL — *State* | 32308 — *Zip*

Email ghester@fpca.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

Topic _____ Bill Number 406 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/12/18
Meeting Date

SB 406
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Floridian Partners

Address 108 S Monroe
Street

Tallahassee
City *State* *Zip*

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Association Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-11-19
Meeting Date

SB 406
Bill Number (if applicable)

Topic Theft

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933 Phone 352.682.2542
Street

Gainesville FL 32614 Email gnewburn@famm.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FAMM

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 406
Bill Number (if applicable)

Topic Theft

Amendment Barcode (if applicable)

Name ANDY THOMAS

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St. Ste. 401
Street

Phone 850-606-1000

TLH FL 32301
City *State* *Zip*

Email andy.thomas@fpdz.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/19
Meeting Date

SB 406
Bill Number (if applicable)

Topic Updating Felony Theft Threshold

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legal Director & Senior Policy Counsel

Address 4343 West Flagler Road
Street

Phone 786-363-4436

Miami FL 33134
City *State* *Zip*

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Civil Liberties Union of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/19
Meeting Date

SB 406
Bill Number (if applicable)

Topic Theft

Amendment Barcode (if applicable)

Name Demetrius Minor

Job Title Director of Coalitions

Address 200 W College Ave
Street

Phone 727-270-1407

Email dminor@afphq.org

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 11, 2019
Meeting Date

406
Bill Number (if applicable)

Topic Retail Theft

Amendment Barcode (if applicable)

Name Grace Lovett

Job Title VP Government Affairs

Address 227 S. Adams St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-222-4082

Email gracee@frf.org

Speaking: [X] For [ ] Against [ ] Information

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

Representing FL Retail Federation

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-1-19
Meeting Date

406
Bill Number (if applicable)

Topic CRIMINAL JUSTICE

Amendment Barcode (if applicable)

Name SAL NUZZO

Job Title VP POLICY

Address 100 N DUVAL ST.
Street

Phone 850-322-9941

TALL FL 32301
City *State* *Zip*

Email SNUZZO@JAMESMADISON.ORG

Speaking: [X] For [ ] Against [ ] Information

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

Representing THE JAMES MADISON INST.

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.11.19
Meeting Date

406
Bill Number (if applicable)

Topic Theft

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Rd
Street

Tall FL 32308
City *State* *Zip*

Phone 510.9922

Email barney@barneybishop.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/19
Meeting Date

406
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Theft

Name Daphnee Sainvil

Job Title Legislative Policy Advisor

Address 100 S. Andrews Ave., Main Library, 8th Floor
Street

Fort Lauderdale | FL | 33301
City | *State* | *Zip*

Phone 954-253-7320

Email dsainvil@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/2019
Meeting Date

SB 0406
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Theft

Name Khanh-Lien (con lynn) Banko

Job Title Resolutions Chair - Florida PTA

Address 1747 Orlando Central Parkway
Street

Phone (386) 717-4965

Orlando FL 32809
City *State* *Zip*

Email resolutions@floridapta.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 04, 2019

I respectfully request that **Senate Bill #406**, relating to **Theft**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

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 408
INTRODUCER:	Senator Brandes
SUBJECT:	Drug Offenses
DATE:	February 8, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Pre-meeting**
2.			JU	
3.			AP	

I. Summary:

SB 408 provides that it is a third degree felony for a person to use or possess a pill press or similar mechanical device with the intent to unlawfully manufacture a pill, tablet, or capsule containing a controlled substance. However, this act is currently prohibited in s. 893.147(7), F.S.

The bill also creates a new drug trafficking offense called "trafficking in pharmaceuticals," a first degree felony. This offense involves the unlawful possession, sale, etc., of 120 or more dosage units containing a controlled substance described in s. 893.135, F.S.

A "dosage unit" is defined as "an individual tablet, capsule, pill, transdermal patch, unit of sublingual gelatin, or other visually distinctive form, with a clear manufacturer marking on each unit, of a commercial drug product approved by the Food and Drug Administration and manufactured and distributed by a pharmaceutical company lawfully doing business in the United States."

A person who unlawfully possesses, sells, etc., 120 or more dosage units containing a controlled substance described in s. 893.135, F.S., must be prosecuted for the new "trafficking in pharmaceuticals" offense. No other drug trafficking offense can be charged. If there are fewer than 120 dosage units involved, the person may not be charged with drug trafficking.

The bill does not affect prosecution of any current drug trafficking offense, if the controlled substance is not contained in a dosage unit.

The new "trafficking in pharmaceuticals" offense contains 3, 7, 15, and 25-year mandatory minimum terms of imprisonment and mandatory fines. The applicable mandatory minimum term and mandatory fine are determined by the specified dosage unit range relevant to the number of dosage units trafficked.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have a "positive/negative indeterminate" prison bed impact, which means that the impact of the bill could be an unquantifiable increase or decrease in prison beds. See Section V. Fiscal Impact Statement.

The bill is effective on October 1, 2019.

II. Present Situation:

Florida's Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the "potential for abuse"[1] of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

Punishment of Prohibited Drug Acts

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance.[2] The penalty for violating s. 893.13, F.S., can depend on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred. For example, selling a controlled substance listed in s. 893.03(1)(c), F.S.,

[1] Pursuant to s. 893.035(3)(a), F.S., "potential for abuse" means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user's health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user's own initiative rather than on the basis of professional medical advice.
[2] *See e.g.,* s. 893.13(1)(a) and (b), F.S.

which includes many synthetic controlled substances, is a third degree felony.[3] However, if that substance is sold within 1,000 feet of a K-12 school or other designated facility or location, the violation is a second degree felony.[4]

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances, and the controlled substances involved in the trafficking must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies[5] and are subject to a mandatory minimum term of imprisonment and a mandatory fine, which is determined by the weight or quantity of the substance.[6] For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term and a mandatory fine of $50,000.[7] Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 7-year mandatory minimum term and a mandatory fine of $100,000.[8]

Trafficking Exception

Pharmaceutical drugs are approved by the Food and Drug Administration for many medical uses. Some of these drugs may contain a controlled substance described in the s. 893.135, F.S. For example, some of these drugs may contain amphetamine, codeine, morphine, hydromorphone, hydrocodone, oxycodone, or fentanyl. All of these controlled substances are described in s. 893.135, F.S.

Section 893.135, F.S., does not apply to possession, sale, etc., of a pharmaceutical drug when that possession, sale, etc., is authorized by ch. 893, F.S. (Controlled Substance Act) or ch. 499, F.S. (Florida Drug and Cosmetic Act). Section 893.135(1), F.S., which proscribes numerous drug trafficking acts, is "prefaced by the following qualification: 'Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13[.]'"[9]

An example of this exception is possession of a lawfully-prescribed pharmaceutical drug containing hydrocodone, a controlled substance described in s. 893.135(1)(c)2., 5., and 6., F.S. Section 499.03(1), F.S., in part, prohibits a person from possessing or possessing with intent to

[3] Section 893.13(1)(a)2., F.S. A third degree felony is punishable by up to 5 years in state prison and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.
[4] Section 893.13(1)(c)2., F.S. A second-degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S.
[5] A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S. Section 893.135, F.S., prescribes specific mandatory fines which are greater than the $10,000 fine prescribed in s. 775.083, F.S., for a first degree felony. However, s. 772.083, F.S., authorizes any higher amount if specifically authorized by statute.
[6] *See* s. 893.135, F.S.
[7] Section 893.135(1)(b)1.a., F.S.
[8] Section 893.135(1)(b)1.b., F.S.
[9] *O'Hara v. State*, 964 So.2d 839, 841 (Fla. 2d. DCA 2007).

sell, dispense or deliver, "any prescription drug as defined in s. 499.003(40), *unless the possession of the drug has been obtained by a valid prescription by a practitioner licensed by law to prescribe the drug*."[10]

Section 499.003(40), F.S., defines a "prescription drug" as

> a prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active pharmaceutical ingredients subject to, defined by, or described by s. 503(b) of the federal act or s. 465.003(8), s. 499.007(13), subsection (31), or subsection (47), except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.

Section 465.003(8), F.S., defines "medicinal drugs" or "drugs" as "those substances or preparations commonly known as 'prescription' or 'legend' drugs which are required by federal or state law to be dispensed only on a prescription, but shall not include patents or proprietary preparations as hereafter defined." Section 893.04(1), F.S., provides that "[a] pharmacist, in good faith and in the course of professional practice only, may dispense controlled substances upon a written, oral, or electronic prescription of a practitioner" under the conditions prescribed in that subsection.

Section 893.02(4), F.S., defines a "controlled substance" as "any substance named or described in Schedules I-V of s. 893.03." Hydrocodone is a controlled substance, since it is scheduled in s. 893.03, F.S.[11] Therefore, hydrocodone is a "prescription drug" for purposes of s. 499.03(1), F.S., and its possession by lawful prescription is not prohibited by that subsection. Further, its possession by lawful prescription is not prohibited by s. 893.135, F.S., because the possession is authorized by chs. 893 and 499, F.S.

Determining Trafficking Weight of a Controlled Substance Contained in a Pharmaceutical Drug

In order to determine if the unlawfully possessed, sold, etc., dosage units (pills, tablets, etc.) of a pharmaceutical drug containing a controlled substance described in s. 893.135, F.S., meet the threshold gram weight for charging drug trafficking, the gram weight of the dosage units must be weighed. Trafficking offenses include the described controlled substances and "mixtures" containing those controlled substances.[12] If a dosage unit of a pharmaceutical drug contains a controlled substance described in s. 893.135, F.S., and constituents which are not a controlled substance (as is almost invariably the case), the dosage unit is treated as a mixture.[13] For

[10] Emphasis provided by staff.
[11] Section 893.03(2)(a)1.k. and (3)(c)3. and 4., F.S. A similar statutory analysis was conducted using earlier statutory provisions in *O'Hara v. State*, 964 So.2d 839, 841-842 (Fla. 2d. DCA 2007).
[12] *See e.g.*, s. 893.135(1)(f)1., F.S., which punishes trafficking in amphetamines and methamphetamines, and includes "any mixture containing amphetamine or methamphetamine[.]"
[13] Section 893.02(16), F.S., defines a "mixture" as "any physical combination of two or more substances, including, but not limited to, a blend, an aggregation, a suspension, an emulsion, a solution, or a dosage unit, whether or not such combination can be separated into its components by physical means, whether mechanical or thermal." Section 893.135(6), F.S., provides that "[a] mixture, as defined in s. 893.02, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a gelatin capsule, pill, or tablet, containing a controlled

example, in the case of a pharmaceutical drug pill which contains a controlled substance, the weight of the controlled substance is the total weight of the pill. If a person unlawfully possesses, sells, etc., more than one pill containing the same controlled substance, the weight of the controlled substance possessed is calculated by aggregating the total weight of each pill.[14]

Tableting Machines, Encapsulating Machines, and Controlled Substance Counterfeiting Materials

Section 893.147(7)(a), F.S., provides that it is unlawful for any person to possess, purchase, deliver, sell, or possess with intent to sell or deliver a tableting machine,[15] an encapsulating machine,[16] or controlled substance counterfeiting materials[17] knowing, intending, or having reasonable cause to believe that it will be used to manufacture a controlled substance or counterfeit controlled substance.[18]

This offense is generally a third degree felony.[19] However, the offense is a second degree felony if the person commits the offense knowing, intending, or having reasonable cause to believe that such action will result in the unlawful manufacture of a controlled substance or counterfeit controlled substance that contains:

- A Schedule I controlled substance;
- Cocaine, as described in s. 893.03(2)(a)4., F.S;[20]
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;
- Methadone;
- Alfentanil, as described in s. 893.03(2)(b)1., F.S.;[21]

substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture."

[14] *Id*.

[15] "Tableting machine" means manual, semiautomatic, or fully automatic equipment that can be used to compact or mold powdered or granular solids or semisolid material to produce coherent solid tablets. Section 893.147(7)(c)5., F.S.

[16] "Encapsulating machine" means manual, semiautomatic, or fully automatic equipment that can be used to fill shells or capsules with powdered or granular solids or semisolid material to produce coherent solid tablets. Section 893.147(7)(c)4., F.S.

[17] "Controlled substance counterfeiting material" means a punch, die, plate, stone, or other item designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon a drug or container or labeling thereof so as to render such drug a counterfeit controlled substance. Section 893.147(7)(c)2., F.S.

[18] Section 893.147(7)(c)3., F.S., provides that "counterfeit controlled substance" has the same meaning as provided in s. 831.31(2), F.S. Section 831.31(2), F.S., defines "counterfeit controlled substance" as a controlled substance named or described in s. 893.03, F.S., which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or number, or any likeness thereof, of a manufacturer other than the person who in fact manufactured the controlled substance; or any substance which is falsely identified as a controlled substance named or described in s. 893.03, F.S.

[19] Section 893.147(7)(d)1., F.S.

[20] Section 893.03(2)(a)4., F.S., references cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine, except that these substances shall not include ioflupane I 123.

[21] Section 893.03(2)(b)1. F.S., references alfentanil and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

- Carfentanil, as described in s. 893.03(2)(b)6., F.S.;[22]
- Fentanyl, as described in s. 893.03(2)(b)9., F.S.;[23]
- Sufentanil, as described in s. 893.03(2)(b)30., F.S.;[24] or
- A controlled substance analog, as described in s. 893.0356, F.S.,[25] of any of these previously described substances.[26]

The following exceptions apply to this offense:

- A regulated person may possess, purchase, deliver, sell, or possess with intent to deliver or sell a tableting machine or encapsulating machine as part of a regulated transaction with a regular customer or regular importer if he or she is in compliance with 21 U.S.C. s. 830;[27]
- A person registered under 21 U.S.C. s. 822 may possess, purchase, deliver, sell, or possess with intent to deliver or sell a tableting machine or encapsulating machine to manufacture a controlled substance pursuant to such registration;[28] and
- A person who holds an active, unencumbered license or a permit under s. 381.986, F.S., or ch. 465, F.S., may possess, purchase, deliver, sell, or possess with intent to sell or deliver a tableting machine or encapsulating machine to manufacture a controlled substance, if such person is performing functions in compliance with or under the authority of that license or permit.[29]

Criminal Punishment Code

The Criminal Punishment Code[30] (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).[31] Points are assigned and accrue based upon the severity level ranking assigned to the primary

[22] Section 893.03(2)(b)6., F.S., references carfentanil and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
[23] Section 893.03(2)(b)9., F.S., references fentanyl and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
[24] Section 893.03(2)(b)30., F.S., references sufentanil and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
[25] Section 893.0356(2)(a), F.S., defines a "controlled substance analog" as a substance which, due to its chemical structure and potential for abuse, meets the following criteria: is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S. However, this term does not include: a controlled substance; any substance for which there is an approved new drug application; any compound, mixture, or preparation which contains any controlled substance which is not for administration to a human being or animal, and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; or any substance to which an investigational exemption applies under s. 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. s. 355, but only to the extent that conduct with respect to the substance is pursuant to such exemption. Section 893.0356(2)(b), F.S.
[26] Section 893.147(7)(d)2., F.S.
[27] Section 893.147(7)(b)1., F.S. For purposes of this paragraph, the terms "regulated person," "regulated transaction," "regular customer," and "regular importer" have the same meanings as provided in 21 U.S.C. s. 802. *Id.*
[28] Section 893.147(7)(b)2., F.S.
[29] Section 893.147(7)(b)3., F.S.
[30] Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.
[31] Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.[32] Absent mitigation,[33] the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.[34]

Mandatory Minimum Sentences

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the Criminal Punishment Code and any mandatory minimum penalties apply."[35] As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

III. Effect of Proposed Changes:

The bill provides that it is a third degree felony for a person to use or possess a pill press or similar mechanical device with the intent to unlawfully manufacture a pill, tablet, or capsule containing a controlled substance. However, this act is currently prohibited in s. 893.147(7), F.S.[36]

A "dosage unit" is defined as "an individual tablet, capsule, pill, transdermal patch, unit of sublingual gelatin, or other visually distinctive form, with a clear manufacturer marking on each unit, of a commercial drug product approved by the Food and Drug Administration and manufactured and distributed by a pharmaceutical company lawfully doing business in the United States."

The bill also creates a new drug trafficking offense called "trafficking in pharmaceuticals," which is committed if a person knowingly sells, purchases, delivers, or brings into this state, or is knowingly in actual or constructive possession of, 120 or more dosage units containing a controlled substance described in s. 893.135, F.S.

[32] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.
[33] The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.
[34] If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.
[35] Fla. R. Crim. P. 3.704(d)(26).
[36] See discussion of s. 893.147, F.S., in the "Present Situation" section of this analysis.

A person who unlawfully possesses, sells, etc., 120 or more dosage units containing a controlled substance described in s. 893.135, F.S., must be prosecuted for the new "trafficking in pharmaceuticals" offense. No other drug trafficking offense can be charged.

If there are fewer than 120 dosage units involved in the trafficking, the person may not be charged with drug trafficking, though a person could be charged under s. 893.13, F.S., which also punishes controlled substance offenses. However, penalties in s. 893.13, F.S., are generally lower than penalties in s. 893.135, F.S., and most violations of s. 893.13, F.S., do not involve a mandatory minimum term of imprisonment.

The bill does not affect prosecution of any current drug trafficking offense, if the controlled substance is not contained in a dosage unit.

The new "trafficking in pharmaceuticals" offense contains 3, 7, 15, and 25-year mandatory minimum terms of imprisonment and mandatory fines. The mandatory minimum term and mandatory fine are determined by the specified dosage unit range applicable to dosage units trafficked. Specifically, the bill provides for the following penalties:

- If the quantity involved is 120 or more dosage units, but less than 500 dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 3 years and is ordered to pay a fine of up to $25,000;
- If the quantity involved is 500 or more dosage units, but less than 1,000 dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 7 years and is ordered to pay a fine of up to $50,000;
- If the quantity involved is 1,000 or more dosage units, but less than 5,000 dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 15 years and is ordered to pay a fine of up to $100,000; and
- If the quantity involved is 5,000 or more dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 25 years and is ordered to pay a fine of up to $250,000.

It is not possible to make a general comparison of trafficking penalties based upon dosage units (new "trafficking in pharmaceuticals" offense) and trafficking penalties based upon gram weight (current law),[37] but some drug offenders could receive a mandatory minimum term under the bill that is substantially less than the mandatory minimum term they could receive under current law. For example, the Office of Program Policy Analysis and Government Accountability determined that 215 oxycodone pills, each weighing 0.13 grams, equals 28 grams.[38] Under current law, trafficking in 28 grams of these pills would require a 15-year mandatory minimum term;[39] under the bill, 215 dosage units (pills) would require a 3-year mandatory term.

Some drug offenders could also receive a mandatory fine that is less than the mandatory fine under current law. The new trafficking in pharmaceuticals offense requires that a fine be

[37] Gram weight of a dosage unit will vary depending on the pharmaceutical drug and its constituents, and gram weight thresholds for trafficking will vary depending on the controlled substance in the dosage units.
[38] *Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking*, Report No. 12-02 (January 2012), at p. 5 (Exhibit 6), Office of Program Policy Analysis and Government Accountability, available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1202rpt.pdf (last visited on Feb. 4, 2019).
[39] Section 893.135(1)(c)3.c., F.S.

imposed up to a specified cap (e.g., "fine of up to $100,000"). Current trafficking offenses require a specified fine be imposed (e.g., "fine of 100,000"); there is no mandatory fine range.

Another difference between the new trafficking offense and current trafficking offense relates to ranking of offenses in the Code offense severity ranking chart.[40] Current trafficking offenses contain escalating (or tiered) gram weight ranges with escalating penalties and escalating rankings in the offense severity level ranking chart. For example, trafficking in "14 grams or more, but less than 28 grams" of amphetamines requires a 3-year mandatory minimum term,[41] and the offense is ranked in level 7 of the chart.[42] Trafficking in "28 grams or more, but less than 200 grams" of amphetamines requires a 7-year mandatory minimum term,[43] and the offense is ranked in level 8 of the chart.[44] The higher the ranking, the more sentence points. These sentence points are used in the calculation of the lowest permissible sentence (in prison months).[45]

In contrast, the bill also contains escalating ranges (or tiers) with escalating penalties for the new "trafficking in pharmaceuticals" offense, though these are dosage unit ranges rather than weight ranges. However, there is no escalation in the severity level ranking based on the dosage units tiers, and the bill does not rank the new offense. A first degree felony that is not ranked in the chart defaults to a level 7 ranking.[46] Therefore, regardless of the number of dosage units trafficked, the offense remains a level 7 offense. This could impact the scored lowest permissible sentence (in prison months) but would not preclude the court from imposing a sentence up to and including 30 years (the maximum penalty for a first degree felony).[47]

The bill is effective on October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[40] Section 921.0022, F.S.
[41] Section 893.135(1)(f)1.a., F.S.
[42] Section 921.0022(3)(g), F.S.
[43] Section 893.135(1)(f)1.b., F.S
[44] Section 921.0022(3)(h), F.S.
[45] See discussion of the Code in the "Present Situation" section of this analysis.
[46] Section 921.0023(3), F.S.
[47] Section 775.082, F.S.

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 Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive/negative indeterminate " prison bed impact, which means that the effect of the bill could be an unquantifiable increase or decrease in prison beds.

The EDR notes:

> …. [F]or certain drugs, these new thresholds could lower the number of offenders receiving drug trafficking mandatory minimum sentences, as well as the number of mandatory minimum years served, due to the dosage unit number thresholds allowing greater weights for controlled substances before triggering mandatory minimum sentences than existing weight thresholds for the same substances. However, there isn't enough data on dosage units for commercial drug products containing substances listed under s. 893.135, F.S. to determine how prisons might be impacted. Finally, while the addition of an unranked, 3rd degree felony for using or possessing mechanical devices that unlawfully manufacture pills would be expected to increase the number of offenders who might be sentenced to prison, the size of that population is not known and the incarceration rate for that type of felony is low (FY 17-18: 8.7%).[48]

VI. Technical Deficiencies:

Section 1 of the bill provides that it is a third degree felony for a person to use or possess a pill press or similar mechanical device with the intent to unlawfully manufacture a pill, tablet, or capsule containing a controlled substance. However, this act is currently prohibited in s. 893.147(7), F.S. Therefore, staff recommends that section 1 of the bill be removed.

[48] This EDR estimate is on file with the Senate Committee on Criminal Justice.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.135 of the Florida Statutes.

This bill creates section 893.066 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 373.6055, 397.4073, 414.095, 772.12, 775.087, 782.04, 810.02, 812.014, 893.13, 893.1351, 900.05, 903.133, 907.041, and 921.0024.

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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete lines 39 - 49.

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

And the title is amended as follows:

Delete lines 2 - 7

and insert:

An act relating to drug offenses; amending s. 893.135, F.S.; defining the

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11

By Senator Brandes

24-00739-19 2019408__

A bill to be entitled

An act relating to drug offenses; creating s. 893.066, F.S.; prohibiting the use or possession of a pill press or similar device with the intent to unlawfully manufacture a pill, tablet, or capsule containing certain controlled substances; providing criminal penalties; amending s. 893.135, F.S.; defining the term "dosage unit"; providing applicability; prohibiting the sale, purchase, delivery, bringing into this state, or actual or constructive possession of specified amounts of dosage units of certain controlled substances; creating the offense of "trafficking in pharmaceuticals"; providing criminal penalties; reenacting ss. 373.6055(3)(c), 397.4073(6), 414.095(1), 772.12(2), 775.087(2)(a) and (3)(a), 782.04(1)(a), (3)(a), and (4)(a), 810.02(3)(f), 812.014(2)(c), 893.13(8)(d), 893.1351(1) and (2), 900.05(3)(e), 903.133, 907.041(4)(c), and 921.0024(1)(b), F.S., relating to criminal history checks for certain water management district employees and others; background checks of service provider personnel; the determination of eligibility for temporary cash assistance; the Drug Dealer Liability Act; felony reclassification of the possession or use of a weapon in an aggravated battery; murder; burglary; theft; prohibited acts that relate to the prescription of controlled substances; ownership, lease, rental, or possession for trafficking in or manufacturing controlled substances; criminal justice

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data collection; the prohibition of bail on appeal for certain felony convictions; pretrial detention and release; the scoresheet worksheet key for computation in the Criminal Punishment Code; respectively, to incorporate the amendment made to s. 893.135, F.S., in references thereto; providing an effective date.

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

Section 1. Section 893.066, Florida Statutes, is created to read:

893.066 Unlawful possession of pill press; penalty.—Except as authorized in this chapter, a person may not use or possess a pill press or other similar mechanical device capable of compressing powder into pills, tablets, or capsules of uniform size and weight, with the intent to unlawfully manufacture a pill, tablet, or capsule containing a controlled substance as described in s. 893.03. A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraph (o) is added to subsection (1) of section 893.135, Florida Statutes, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(o) 1. As used in this paragraph, the term "dosage unit" means an individual tablet, capsule, pill, transdermal patch, unit of sublingual gelatin, or other visually distinctive form,

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with a clear manufacturer marking on each unit, of a commercial drug product approved by the federal Food and Drug Administration and manufactured and distributed by a pharmaceutical company lawfully doing business in the United States.

2. Notwithstanding any other provision of this section, the sale, purchase, manufacture, delivery, or actual or constructive possession of fewer than 120 dosage units containing any controlled substance described in this section is not a violation of any other provision of this section.

3. A person who knowingly sells, purchases, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 120 or more dosage units containing a controlled substance described in this section commits a felony of the first degree, which felony shall be known as "trafficking in pharmaceuticals," punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and must be prosecuted under this paragraph. If the quantity involved:

a. Is 120 or more dosage units, but less than 500 dosage units, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of up to $25,000.

b. Is 500 or more dosage units, but less than 1,000 dosage units, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of up to $50,000.

c. Is 1,000 or more dosage units, but less than 5,000 dosage units, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to

pay a fine of up to $100,000.

d. Is 5,000 or more dosage units, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of up to $250,000.

Section 3. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in a reference thereto, paragraph (c) of subsection (3) of section 373.6055, Florida Statutes, is reenacted to read:

373.6055 Criminal history checks for certain water management district employees and others.—

(3)

(c) In addition to other requirements for employment or access established by any water management district pursuant to its water management district's security plan for buildings, facilities, and structures, each water management district's security plan shall provide that:

1. Any person who has within the past 7 years been convicted, regardless of whether adjudication was withheld, for a forcible felony as defined in s. 776.08; an act of terrorism as defined in s. 775.30; planting of a hoax bomb as provided in s. 790.165; any violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as provided in s. 790.166; dealing in stolen property; any violation of s. 893.135; any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance; burglary; robbery; any felony violation of s. 812.014; any violation of s. 790.07; any crime an element of which includes use or possession

of a firearm; any conviction for any similar offenses under the laws of another jurisdiction; or conviction for conspiracy to commit any of the listed offenses may not be qualified for initial employment within or authorized regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas.

2. Any person who has at any time been convicted of any of the offenses listed in subparagraph 1. may not be qualified for initial employment within or authorized regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas unless, after release from incarceration and any supervision imposed as a sentence, the person remained free from a subsequent conviction, regardless of whether adjudication was withheld, for any of the listed offenses for a period of at least 7 years prior to the employment or access date under consideration.

Section 4. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in a reference thereto, subsection (6) of section 397.4073, Florida Statutes, is reenacted to read:

397.4073 Background checks of service provider personnel.—

(6) DISQUALIFICATION FROM RECEIVING STATE FUNDS.—State funds may not be disseminated to any service provider owned or operated by an owner, director, or chief financial officer who has been convicted of, has entered a plea of guilty or nolo contendere to, or has had adjudication withheld for, a violation of s. 893.135 pertaining to trafficking in controlled substances, or a violation of the law of another state, the

District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction which is substantially similar in elements and penalties to a trafficking offense in this state, unless the owner's or director's civil rights have been restored.

Section 5. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in a reference thereto, subsection (1) of section 414.095, Florida Statutes, is reenacted to read:

414.095 Determining eligibility for temporary cash assistance.—

(1) ELIGIBILITY.—An applicant must meet eligibility requirements of this section before receiving services or temporary cash assistance under this chapter, except that an applicant shall be required to register for work and engage in work activities in accordance with s. 445.024, as designated by the local workforce development board, and may receive support services or child care assistance in conjunction with such requirement. The department shall make a determination of eligibility based on the criteria listed in this chapter. The department shall monitor continued eligibility for temporary cash assistance through periodic reviews consistent with the food assistance eligibility process. Benefits may not be denied to an individual solely based on a felony drug conviction, unless the conviction is for trafficking pursuant to s. 893.135. To be eligible under this section, an individual convicted of a drug felony must be satisfactorily meeting the requirements of the temporary cash assistance program, including all substance abuse treatment requirements. Within the limits specified in

this chapter, the state opts out of the provision of Pub. L. No. 104-193, s. 115, that eliminates eligibility for temporary cash assistance and food assistance for any individual convicted of a controlled substance felony.

Section 6. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in a reference thereto, subsection (2) of section 772.12, Florida Statutes, is reenacted to read:

772.12 Drug Dealer Liability Act.—

(2) A person, including any governmental entity, has a cause of action for threefold the actual damages sustained and is entitled to minimum damages in the amount of $1,000 and reasonable attorney's fees and court costs in the trial and appellate courts, if the person proves by the greater weight of the evidence that:

(a) The person was injured because of the defendant's actions that resulted in the defendant's conviction for:

1. A violation of s. 893.13, except for a violation of s. 893.13(2)(a) or (b), (3), (5), (6)(a), (b), or (c), (7); or

2. A violation of s. 893.135; and

(b) The person was not injured by reason of his or her participation in the same act or transaction that resulted in the defendant's conviction for any offense described in subparagraph (a)1.

Section 7. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in references thereto, paragraph (a) of subsection (2) and paragraph (a) of subsection (3) of section 775.087, Florida Statutes, are reenacted to read:

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

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

a. Murder;

b. Sexual battery;

c. Robbery;

d. Burglary;

e. Arson;

f. Aggravated battery;

g. Kidnapping;

h. Escape;

i. Aircraft piracy;

j. Aggravated child abuse;

k. Aggravated abuse of an elderly person or disabled adult;

l. Unlawful throwing, placing, or discharging of a destructive device or bomb;

m. Carjacking;

n. Home-invasion robbery;

o. Aggravated stalking;

p. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in

Phenethylamines, or other violation of s. 893.135(1); or

q. Possession of a firearm by a felon

and during the commission of the offense, such person actually possessed a "firearm" or "destructive device" as those terms are defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 10 years, except that a person who is convicted for possession of a firearm by a felon or burglary of a conveyance shall be sentenced to a minimum term of imprisonment of 3 years if such person possessed a "firearm" or "destructive device" during the commission of the offense. However, if an offender who is convicted of the offense of possession of a firearm by a felon has a previous conviction of committing or attempting to commit a felony listed in s. 775.084(1)(b)1. and actually possessed a firearm or destructive device during the commission of the prior felony, the offender shall be sentenced to a minimum term of imprisonment of 10 years.

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

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

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

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

a. Murder;

b. Sexual battery;

c. Robbery;

d. Burglary;

e. Arson;

f. Aggravated battery;

g. Kidnapping;

h. Escape;

i. Sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance;

j. Aircraft piracy;

k. Aggravated child abuse;

l. Aggravated abuse of an elderly person or disabled adult;

m. Unlawful throwing, placing, or discharging of a destructive device or bomb;

n. Carjacking;

o. Home-invasion robbery;

p. Aggravated stalking; or

q. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine,

capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1);

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

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

3. Any person who is convicted of a felony or an attempt to commit a felony listed in subparagraph (a)1., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a semiautomatic firearm and its high-capacity box magazine or a "machine gun" as defined in s. 790.001 and, as the result of the discharge, death or great bodily harm was inflicted upon any person, the convicted person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.

Section 8. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in references thereto, paragraph (a) of subsection (1), paragraph (a) of subsection (3), and paragraph (a) of subsection (4) of section 782.04, Florida Statutes, are reenacted to read:

782.04 Murder.—

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;

2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

a. Trafficking offense prohibited by s. 893.135(1),

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

f. Kidnapping,

g. Escape,

h. Aggravated child abuse,

i. Aggravated abuse of an elderly person or disabled adult,

j. Aircraft piracy,

k. Unlawful throwing, placing, or discharging of a destructive device or bomb,

l. Carjacking,

m. Home-invasion robbery,

n. Aggravated stalking,

o. Murder of another human being,

p. Resisting an officer with violence to his or her person,

q. Aggravated fleeing or eluding with serious bodily injury

or death,

r. Felony that is an act of terrorism or is in furtherance of an act of terrorism, including a felony under s. 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35, or

s. Human trafficking; or

3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to be the proximate cause of the death of the user:

a. A substance controlled under s. 893.03(1);

b. Cocaine, as described in s. 893.03(2)(a)4.;

c. Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;

d. Methadone;

e. Alfentanil, as described in s. 893.03(2)(b)1.;

f. Carfentanil, as described in s. 893.03(2)(b)6.;

g. Fentanyl, as described in s. 893.03(2)(b)9.;

h. Sufentanil, as described in s. 893.03(2)(b)30.; or

i. A controlled substance analog, as described in s. 893.0356, of any substance specified in sub-subparagraphs a.-h.,

is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

(3) When a human being is killed during the perpetration of, or during the attempt to perpetrate, any:

(a) Trafficking offense prohibited by s. 893.135(1),

by a person other than the person engaged in the perpetration of

or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits murder in the second degree, which constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) The unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

(a) Trafficking offense prohibited by s. 893.135(1),

is murder in the third degree and constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 9. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in a reference thereto, paragraph (f) of subsection (3) of section 810.02, Florida Statutes, is reenacted to read:

810.02 Burglary.—

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(f) Structure or conveyance when the offense intended to be committed therein is theft of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments

and sentences for burglary with the intent to commit theft of a controlled substance under this paragraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the burglary is committed within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 10. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 812.014, Florida Statutes, is reenacted to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $300 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is a commercially farmed animal, including an animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; or an aquaculture species raised at a certified aquaculture facility, a $10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and

sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 11. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in a reference thereto, paragraph (d) of subsection (8) of section 893.13, Florida Statutes, is reenacted to read:

893.13 Prohibited acts; penalties.—

(8)

(d) Notwithstanding paragraph (c), if a prescribing practitioner has violated paragraph (a) and received $1,000 or more in payment for writing one or more prescriptions or, in the case of a prescription written for a controlled substance described in s. 893.135, has written one or more prescriptions for a quantity of a controlled substance which, individually or in the aggregate, meets the threshold for the offense of trafficking in a controlled substance under s. 893.135, the violation is reclassified as a felony of the second degree and ranked in level 4 of the Criminal Punishment Code.

Section 12. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in references thereto, subsections (1) and (2) of section 893.1351, Florida Statutes, are reenacted to read:

893.1351 Ownership, lease, rental, or possession for trafficking in or manufacturing a controlled substance.—

(1) A person may not own, lease, or rent any place, structure, or part thereof, trailer, or other conveyance with the knowledge that the place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance, as provided in s. 893.135; for the sale of a controlled substance, as provided in s. 893.13; or for the manufacture of a controlled substance intended for sale or distribution to another. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person may not knowingly be in actual or constructive

possession of any place, structure, or part thereof, trailer, or other conveyance with the knowledge that the place, structure, or part thereof, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance, as provided in s. 893.135; for the sale of a controlled substance, as provided in s. 893.13; or for the manufacture of a controlled substance intended for sale or distribution to another. A person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 13. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in a reference thereto, paragraph (e) of subsection (3) of section 900.05, Florida Statutes, is reenacted to read:

900.05 Criminal justice data collection.—

(3) DATA COLLECTION AND REPORTING.—Beginning January 1, 2019, an entity required to collect data in accordance with this subsection shall collect the specified data required of the entity on a biweekly basis. Each entity shall report the data collected in accordance with this subsection to the Department of Law Enforcement on a monthly basis.

(e) *Department of Corrections*.—The Department of Corrections shall collect the following data:

1. Information related to each inmate, including:

a. Identifying information, including name, date of birth, race or ethnicity, and identification number assigned by the department.

b. Number of children.

c. Education level, including any vocational training.

d. Date the inmate was admitted to the custody of the

department.

e. Current institution placement and the security level assigned to the institution.

f. Custody level assignment.

g. Qualification for a flag designation as defined in this section, including sexual offender flag, habitual offender flag, gang affiliation flag, or concurrent or consecutive sentence flag.

h. County that committed the prisoner to the custody of the department.

i. Whether the reason for admission to the department is for a new conviction or a violation of probation, community control, or parole. For an admission for a probation, community control, or parole violation, the department shall report whether the violation was technical or based on a new violation of law.

j. Specific statutory citation for which the inmate was committed to the department, including, for an inmate convicted of drug trafficking under s. 893.135, the statutory citation for each specific drug trafficked.

k. Length of sentence or concurrent or consecutive sentences served.

l. Tentative release date.

m. Gain time earned in accordance with s. 944.275.

n. Prior incarceration within the state.

o. Disciplinary violation and action.

p. Participation in rehabilitative or educational programs while in the custody of the department.

2. Information about each state correctional institution or

facility, including:

a. Budget for each state correctional institution or facility.

b. Daily prison population of all inmates incarcerated in a state correctional institution or facility.

c. Daily number of correctional officers for each state correctional institution or facility.

3. Information related to persons supervised by the department on probation or community control, including:

a. Identifying information for each person supervised by the department on probation or community control, including his or her name, date of birth, race or ethnicity, sex, and department-assigned case number.

b. Length of probation or community control sentence imposed and amount of time that has been served on such sentence.

c. Projected termination date for probation or community control.

d. Revocation of probation or community control due to a violation, including whether the revocation is due to a technical violation of the conditions of supervision or from the commission of a new law violation.

4. Per diem rates for:

a. Prison bed.

b. Probation.

c. Community control.

This information only needs to be reported once annually at the time the most recent per diem rate is published.

Section 14. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in a reference thereto, section 903.133, Florida Statutes, is reenacted to read:

903.133 Bail on appeal; prohibited for certain felony convictions.—Notwithstanding the provisions of s. 903.132, no person adjudged guilty of a felony of the first degree for a violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s. 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a violation of s. 794.011(2) or (3), shall be admitted to bail pending review either by posttrial motion or appeal.

Section 15. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in a reference thereto, paragraph (c) of subsection (4) of section 907.041, Florida Statutes, is reenacted to read:

907.041 Pretrial detention and release.—

(4) PRETRIAL DETENTION.—

(c) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevant facts, that any of the following circumstances exist:

1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;

2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will

reasonably prevent the obstruction of the judicial process;

3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings;

4. The defendant is charged with DUI manslaughter, as defined by s. 316.193, and that there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community; conditions that would support a finding by the court pursuant to this subparagraph that the defendant poses a threat of harm to the community include, but are not limited to, any of the following:

a. The defendant has previously been convicted of any crime under s. 316.193, or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193;

b. The defendant was driving with a suspended driver license when the charged crime was committed; or

c. The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver license was suspended or revoked in violation of s. 322.34;

5. The defendant poses the threat of harm to the community. The court may so conclude, if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no

conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons;

6. The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed;

7. The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial; or

8.a. The defendant has ever been sentenced pursuant to s. 775.082(9) or s. 775.084 as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal, or the state attorney files a notice seeking that the defendant be sentenced pursuant to s. 775.082(9) or s. 775.084, as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal;

b. There is a substantial probability that the defendant committed the offense; and

c. There are no conditions of release that can reasonably protect the community from risk of physical harm or ensure the presence of the accused at trial.

Section 16. For the purpose of incorporating the amendment made by this act to section 893.135, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 921.0024, Florida Statutes, is reenacted to read:

921.0024 Criminal Punishment Code; worksheet computations;

scoresheets.—

(1)

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

1. If the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a violent felony offender of special concern as defined in s. 948.06:

a. Twelve (12) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where:

I. The violation does not include a new felony conviction; and

II. The community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines or

make restitution payments.

b. Twenty-four (24) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where the violation includes a new felony conviction.

Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of thirty (30) points shall be added. For purposes of this section, a prior serious felony is an offense in the offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital

felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional eighteen (18) sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional twenty-five (25) sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a

violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), or (4), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(10) or (11), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Offense related to a criminal gang: If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03, the subtotal sentence points are multiplied by 1.5. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who

is a family or household member as defined in s. 741.28(3) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Adult-on-minor sex offense: If the offender was 18 years of age or older and the victim was younger than 18 years of age at the time the offender committed the primary offense, and if the primary offense was an offense committed on or after October 1, 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed a sexual battery under chapter 794 or a lewd act under s. 800.04 or s. 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s. 800.04; or s. 847.0135(5), the subtotal sentence points are multiplied by 2.0. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

Section 17. This act shall take effect October 1, 2019.

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

SB 408 – Drug Offenses

This bill creates s. 893.066, F.S., creating an **unranked, 3rd degree felony** for using or possessing "a pill press or other similar mechanical device capable of compressing powder into pills, tablets, or capsules of uniform size and weight, with the intent to unlawfully manufacture a pill, tablet, or capsule containing a controlled substance as described in s. 893.03."

This bill also amends s. 893.135, F.S., adding "trafficking in pharmaceuticals" to the list of trafficking offenses under this statute, defined as "a person who knowingly sells, purchases, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 120 or more dosage units containing a controlled substance described in this section." Additionally, "the term 'dosage unit' means an individual tablet, capsule, pill, transdermal patch, unit of sublingual gelatin, or other visually distinctive form, with a clear manufacturer marking on each unit, of a commercial drug product approved by the federal Food and Drug Administration and manufactured and distributed by a pharmaceutical company lawfully doing business in the United States." Therefore, penalties will only apply to trafficking of commercial drug products that.

The bill notes that "the sale, purchase, manufacture, delivery, or actual or constructive possession of fewer than 120 dosage units containing any controlled substance described in this section" would not be a violation under s. 893.135, F.S. Therefore, any penalties applied would be under s. 893.13, F.S. Otherwise, anything above that threshold for dosage units that is already included under the drug trafficking statute will also be included under the following thresholds (unranked, 1st degree felonies, Level 7 by default):

- between 120-499 dosage units – 3 year mandatory minimum
- between 500-999 dosage units – 7 year mandatory minimum
- between 1,000-4,999 dosage units – 15 year mandatory minimum
- 5,000 or more dosage units – 25 year mandatory minimum

Per DOC, in FY 17-18, there were 32,369 (adj.) offenders sentenced for drug possession offenses under s. 893.13, F.S., and 2,831 (adj.) were sentenced to prison (mean sentence length=23.0 m, incarceration rate: 8.8% adj.-8.8% unadj.). There were 9,424 (adj.) offenders sentenced for sale, manufacture, and delivery penalties under s. 893.13, F.S., with 3,299 (adj.) sentenced to prison (mean sentence length=37.1 m, incarceration rate: 35.0% adj.-35.0% unadj.). Finally, there were 2,005 (adj.) offenders sentenced for drug trafficking offenses, and 1,502 (adj.) were sentenced to prison (mean sentence length=75.7 m, incarceration rate: 74.9% adj.-74.9% unadj.).

It is not known which of the offenses above involved substances in dosage unit form. Additionally, the current incarceration thresholds cannot be broken down any further to examine how possession, sale/manufacture/delivery, and trafficking offense sentences

might be structured under the new dosage unit thresholds. However, for certain drugs, these new thresholds could lower the number of offenders receiving drug trafficking mandatory minimum sentences, as well as the number of mandatory minimum years served, due to the dosage unit number thresholds allowing greater weights for controlled substances before triggering mandatory minimum sentences than existing weight thresholds for the same substances. However, there isn't enough data on dosage units for commercial drug products containing substances listed under s. 893.135, F.S. to determine how prisons might be impacted. Finally, while the addition of an unranked, 3rd degree felony for using or possessing mechanical devices that unlawfully manufacture pills would be expected to increase the number of offenders who might be sentenced to prison, the size of that population is not known and the incarceration rate for that type of felony is low (FY 17-18: 8.7%).

EDR PROPOSED ESTIMATE: Positive/Negative Indeterminate

Requested by: Senate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019
Meeting Date

SB 408
Bill Number (if applicable)

Topic Drug Offenses

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 850-521-3042

Email scott.mccoy@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2019 2:30PM
Meeting Date

SB 408 ~~SB 338~~
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic EFFECT OF MANDATORY MINIMUMS

Name PAUL HEROUX

Job Title FLORIDA RESIDENT

Address 4765 ARROW ROAD
Street

Phone 407-443-1459

ORANDO FLORIDA 32812
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA RIGHTS AND PRISON REFORM

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-11-19
Meeting Date

SB 408
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Drug Offenses

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933 (*Street*)
Gainesville FL 32614 (*City* / *State* / *Zip*)

Phone 352-682-2542

Email gnewburn@famm.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FAMM

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/12/18
Meeting Date

SB 408
Bill Number (if applicable)

Topic Trafficking

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Floridian Partners

Address _____ Phone _____
Street

Ft. Association Cir
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Assoc Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.11.19
Meeting Date

408
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Drug Offenses

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Rd.
Street

Phone 510.9922

Tall / FL / 32308
City / *State* / *Zip*

Email barney@barneybishop.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 04, 2019

I respectfully request that **Senate Bill #408**, relating to **Drug Offenses**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

CourtSmart Tag Report

Room: LL 37 **Case No.:** **Type:**
Caption: Senate Criminal Justice Committee **Judge:**

Started: 2/11/2019 2:38:06 PM
Ends: 2/11/2019 3:59:48 PM Length: 01:21:43

2:38:10 PM Meeting called to order
2:38:15 PM Roll call
2:38:52 PM Tab 14- SB 370 by Senator Harrell; Victims of Human Trafficking
2:40:48 PM Amendment Barcode 672736
2:41:04 PM Substitute Amendment Barcode 363744
2:41:14 PM Brian Pitts waves in support
2:42:08 PM Questions from the committee on SB 370
2:43:58 PM Waived close
2:44:58 PM Roll call on SB 370
2:45:03 PM Tab 1- SB 96 by Senator Bean; Police Fire and Rescue Dogs
2:47:17 PM Amendment Barcode 364560
2:48:19 PM Amendment adopted
2:49:21 PM Amendment Barcode 666876
2:49:26 PM Amendment adopted
2:49:48 PM Brain Pitts, Speaker
2:51:38 PM Speakers waive in support
2:52:48 PM Close on SB 96
2:53:12 PM Roll call on SB 96
2:53:19 PM Tab 2- SB 130 by Senator Stewart; Sexual Battery Prosecution Time Limitation
2:54:04 PM Brian Pitts, Speaker
2:56:32 PM Speakers waive in support
2:57:34 PM Close on SB 130
2:57:43 PM Roll call on SB 130
2:57:46 PM Tab 6- SB 186 by Senator Lee; Public Records/Victim of Mass Violence
3:01:07 PM Speakers waive in support and opposition
3:02:06 PM Close on SB 186
3:02:14 PM Roll call on SB 186
3:02:38 PM Tab 3- SB 132 by Senator Rouson; Drones
3:04:10 PM Amendment Barcode 688632
3:04:38 PM Amendment Barcode 470666
3:04:41 PM Amendments adopted
3:05:00 PM Speakers waive in support
3:05:24 PM Roll call on SB 132
3:05:36 PM Tab 4- SB 136 by Senator Rouson; False Personation
3:06:02 PM Brian Pitts, Speaker
3:07:05 PM Speaker waives in support
3:08:10 PM Close on SB 136
3:08:15 PM Roll call on SB 136
3:08:19 PM Tab 5- SB 160 by Senator Book; Prohibited Acts in Connection with Obscene or Lewd Materials
3:09:04 PM Amendment Barcode 891082
3:09:20 PM Amendment adopted
3:10:25 PM Brian Pitts, Speaker
3:13:23 PM Speaker waives in support
3:13:26 PM Close on SB 160
3:13:31 PM Roll call on SB 160
3:13:45 PM Tab 9- SB 236 by Senator Book; Public Records and Public Meetings
3:15:26 PM Amendment Barcode 585814
3:16:25 PM Amendment adopted
3:17:26 PM Roll call on SB 236
3:17:38 PM Tab 10- SB 248 by Senator Hooper
3:18:18 PM Public Records/Civilian Personnel Employed by a Law Enforcement Agency
3:18:42 PM Amendment Barcode 417100

3:18:53 PM Amendement adopted
3:19:23 PM Amendment Barcode 730452
3:19:25 PM Amendment adopted
3:20:20 PM Speaker David Daniel from Florida Land Title Association
3:21:08 PM Senator Pizzo with a question in regards to the current law for the speaker
3:22:40 PM Speaker Douglas Mang from First American Title Insurance Company
3:24:15 PM Speaker Brian Pitts
3:25:53 PM Close on SB 248
3:27:04 PM Roll call on SB 248
3:28:04 PM Tab 11- SB 332 by Senator Pizzo; Incarcerated Women
3:29:09 PM Amendment Barcode 404354
3:29:26 PM Amendment adopted
3:30:40 PM Speakers waive in support of SB 332
3:31:58 PM Close on SB 332
3:32:59 PM Roll call on SB 332
3:33:08 PM Tab 7- SB 204 by Senator Brandes; Detention Facilities
3:33:53 PM Amendment Barcode 487700
3:34:22 PM Amendment adopted
3:34:25 PM Speaker Brian Pitts
3:37:07 PM Speakers waive in suppport
3:37:17 PM Speaker Andy Thomas from Florida Public Defender Association
3:37:49 PM Close on SB 204
3:39:06 PM Roll call on SB 204
3:39:16 PM Tab 15- SB 406 by Senator Brandes; Theft
3:40:26 PM Amendment Barcode 477870
3:40:31 PM Speaker Gary Hester from Florida Police Chiefs Association
3:41:48 PM Amendment withdrawn
3:42:48 PM Speaker Grace Lovett from FL Retail Federation
3:44:07 PM Speaker Demetrius Minor from Americans For Prosperity
3:46:00 PM Speaker Brian Pitts
3:47:57 PM Speaker Sally West from Walgreens
3:49:51 PM Roll call on SB 406
3:50:50 PM Tab 8- SB 210 by Senator Brandes; Searches of Cellular Phones and Other Electronic Devices
3:51:18 PM Amendment Barcode 531094
3:51:52 PM Substitute Amendment Barcode 651826
3:52:04 PM Amendment adopted
3:53:17 PM Roll call on SB 210
3:53:22 PM Tab 12- SB 338 by Senator Brandes; Extension of Confinement
3:55:03 PM Amendment Barcode 240586
3:56:03 PM Amendment adopted
3:57:09 PM Speakers waive in support
3:57:22 PM Roll call on SB 338
3:57:45 PM Tab 13- SB 346 by Senator Brandes; Conditional Medical Release
3:58:06 PM Amendment Barcode 283408
3:58:19 PM Amendment adopted
3:58:48 PM Roll call on SB 346
3:59:31 PM Meeting adjourned