

Tab 1 SB 652 by Pizzo; (Similar to H 00201) Urban Core Gun Violence Task Force							
268592	D	S	RCS	CJ, Pizzo	Delete everything after	01/28	04:07 PM
Tab 2 CS/SB 728 by IS, Stargel (CO-INTRODUCERS) Hutson; (Compare to H 00311) Threats							
493844	A	S	RS	CJ, Stargel	Delete L.35 - 105:	01/28	04:07 PM
430974	SA	S	FAV	CJ, Stargel	Delete L.35 - 105:	01/28	04:07 PM
Tab 3 SB 1018 by Stewart; (Identical to H 00675) Exposure of Sexual Organs							
Tab 4 SB 1024 by Bean; (Identical to H 00931) Public Records/Criminal Intelligence and Criminal Investigative Information							
765140	D	S	RCS	CJ, Bean	Delete everything after	01/28	04:07 PM
Tab 5 SB 1286 by Simmons; (Similar to CS/H 00745) Contraband in Specified Facilities							
609888	A	S	RCS	CJ, Simmons	Delete L.34 - 225:	01/28	04:07 PM
Tab 6 SB 1416 by Perry; (Identical to H 00951) Assaults on Specified Persons							
684444	A	S		CJ, Perry	Delete L.21 - 51:	01/27	01:13 PM
Tab 7 SB 1718 by Brandes; Public Meetings and Records/Conditional Aging Inmate Release Program							
707688	A	S	RCS	CJ, Brandes	Delete L.51 - 79:	01/28	04:07 PM
Tab 8 SB 1728 by Brandes; (Compare to H 00837) Public Meetings and Records/Conditional Medical Release Program							
149084	A	S	RCS	CJ, Brandes	Delete L.51 - 79:	01/28	04:07 PM
Tab 9 SB 1802 by Pizzo; (Compare to H 00201) Public Meetings/Urban Core Gun Violence Task Force							
554590	A	S	RCS	CJ, Pizzo	Delete L.13 - 18:	01/28	04:07 PM
Tab 10 SB 1880 by Perry; (Identical to H 01225) Restitution for Juvenile Offenses							
156254	A	S		CJ, Perry	Delete L.95 - 122:	01/27	01:14 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Perry, Chair
Senator Brandes, Vice Chair

MEETING DATE: Tuesday, January 28, 2020
TIME: 1:30—3:30 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 652 Pizzo (Similar H 201, Linked S 1802)	Urban Core Gun Violence Task Force; Creating the Urban Core Gun Violence Task Force; specifying duties and powers of the task force; authorizing the task force to seek assistance from state agencies; providing for access to certain information, etc. CJ 01/28/2020 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 0
2	CS/SB 728 Infrastructure and Security / Stargel (Compare H 311)	Threats; Prohibiting threats to use, including future threats to use, a firearm or weapon with specified intent; prohibiting a person from threatening the future throwing, projecting, placing, or discharging of any destructive device with specified intent; prohibiting a person from making a false report with specified intent concerning the current or future placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction or concerning the current or future use of a firearm in a violent manner against a person or persons, etc. IS 01/13/2020 Fav/CS CJ 01/28/2020 Amendment Adopted - Temporarily Postponed AP	Amendment Adopted - Temporarily Postponed
3	SB 1018 Stewart (Identical H 675)	Exposure of Sexual Organs; Increasing criminal penalties for exposure of sexual organs under certain circumstances, etc. CJ 01/28/2020 Temporarily Postponed JU RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, January 28, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1024 Bean (Identical H 931)	Public Records/Criminal Intelligence and Criminal Investigative Information; Expanding an existing public records exemption by redefining the term "active" to include an ongoing, good faith investigation of a case that previously resulted in the conviction of the accused person; providing for future review and repeal of the expanded exemption; providing for reversion of specified language if the exemption is not saved from repeal; providing a statement of public necessity, etc. CJ 01/28/2020 Fav/CS GO RC	Fav/CS Yeas 3 Nays 0
5	SB 1286 Simmons (Similar CS/H 745)	Contraband in Specified Facilities; Prohibiting the introduction of cannabis and certain related substances into specified facilities of the Department of Children and Families or of the Agency for Persons with Disabilities; prohibiting the introduction of Cannabis sativa and certain related substances and vapor-generating electronic devices into specified detention facilities; prohibiting the introduction of Cannabis sativa and certain related substances, cellular telephones and other portable communication devices, and vapor-generating electronic devices into specified juvenile detention facilities or commitment programs, etc. CJ 01/28/2020 Fav/CS JU RC	Fav/CS Yeas 4 Nays 0
6	SB 1416 Perry (Identical H 951)	Assaults on Specified Persons; Requiring public transit providers to post a specified sign concerning assaulting a transit operator; requiring public transit providers to create and implement a risk reduction program; revising the reclassification of the offense of assault on specified persons, etc. CJ 01/28/2020 Temporarily Postponed JU RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, January 28, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1718 Brandes (Linked CS/S 574)	Public Meetings and Records/Conditional Aging Inmate Release Program; Exempting from public meetings requirements the protected health information of specified inmates being considered for the conditional aging inmate release program; exempting from public records requirements certain records used by the reviewing panel to make a determination of the appropriateness of conditional aging inmate release and the recordings of closed panel review hearings; providing for legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 01/28/2020 Fav/CS GO RC	Fav/CS Yeas 4 Nays 0
8	SB 1728 Brandes (Compare H 837, Linked CS/S 556)	Public Meetings and Records/Conditional Medical Release Program; Exempting from public meetings requirements the protected health information of specified inmates being considered for the conditional medical release program; exempting from public records requirements certain records used by the reviewing panel to make a determination of the appropriateness of conditional medical release and the recordings of closed panel review hearings; providing for legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CJ 01/28/2020 Fav/CS GO RC	Fav/CS Yeas 4 Nays 0
9	SB 1802 Pizzo (Compare H 201, Linked S 652)	Public Meetings/Urban Core Gun Violence Task Force; Providing an exemption from public meetings requirements for portions of the Urban Core Gun Violence Task Force meetings at which exempt or confidential and exempt information is discussed; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 01/28/2020 Fav/CS GO RC	Fav/CS Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, January 28, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SB 1880 Perry (Identical H 1225)	Restitution for Juvenile Offenses; Requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; authorizing the child's parent or guardian to be absolved of liability for restitution in certain circumstances; authorizing the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility, etc.	Temporarily Postponed
		CJ 01/28/2020 Temporarily Postponed JU AP	

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 652

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: Urban Core Gun Violence Task Force

DATE: January 29, 2020 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 652 creates a 10-member task force within the Florida Department of Law Enforcement (FDLE). The Urban Core Gun Violence Task Force (Task Force) is tasked with investigating system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities.

Also, the bill requires the Task Force to develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities.

The FDLE reports that, based on the number of hours committed by the FDLE to the Marjory Stoneman Douglas Commission for similar support efforts, it expects a total expenditure of \$363,143 to support the Task Force. This does not include per diem. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

In American urban centers with significant minority populations, like New Orleans, Detroit, and Baltimore, the homicide rate is up to 10 times higher than the national average—between 30 and

40 murders per 100,000 people.¹ One study calculated that young black men living in a high-crime area of Rochester, NY, had a murder rate of 520 per 100,000, over 100 times higher than the national average.² Firearm homicide is the leading cause of death for black males ages 15–34.³

Urban cores can be defined as areas that have high population densities (7,500 or more per square mile or 2,900 per square kilometer or more) and high transit, walking and cycling work trip market shares (20 percent or more). Urban cores also include non-exurban sectors with median house construction dates of 1945 or before.⁴

A study of adolescents participating in an urban violence intervention program showed that 26 percent of participants had witnessed a person being shot and killed, while half had lost a loved one to gun violence. The impact of this is compounded because exposure to firearm violence—being shot, being shot at, or witnessing a shooting—doubles the probability that a young person will commit a violent act within two years.⁵

Crime statistics collected from law enforcement agencies and compiled by the FDLE isolate for “gun violence” but not specifically for “urban core.” However, because the data is submitted by individual agencies, one can look at data from larger cities’ police or sheriff departments and assume that at least a part of those statistics come from an “urban core.” Having this limitation in mind, the following 2018 data may be of some value in determining how much “gun violence” occurs in the “urban core” of these locations.

Agency	Population in Agency Jurisdiction	2018 Total Firearm Involved Violent Crimes and Manslaughter
Miami – Dade Police	1,203,732	2,068
Jacksonville Sheriff’s Office	908,512	2,695
Tampa Police Department	378,531	585
Orlando Police Department	285,099	611
From FDLE Florida Index Crime by Jurisdiction, Total Reported Firearm-Involved Violent Crimes and Manslaughter in Florida, by Offense and Jurisdiction, 2018. ⁶		

¹ Giffords Law Center to Prevent Gun Violence, *Healing Communities in Crisis, Lifesaving Solutions to the Urban Gun Violence Epidemic*, p. 11, available at <https://lawcenter.giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf> (last visited January 23, 2020).

² *Id.* at 12.

³ *Id.*

⁴ Wendell Cox, *Urban Cores, Core Cities and Principal Cities*, *Newgeography*, August 1, 2014, available at <http://www.newgeography.com/content/004453-urban-cores-core-cities-and-principal-cities> (last visited January 23, 2020).

⁵ *Id.*

⁶ FDLE Florida Index Crime by Jurisdiction, Total Reported Firearm-Involved Violent Crimes and Manslaughter in Florida, by Offense and Jurisdiction, 2018, available at <https://www.fdle.state.fl.us/FSAC/Data-Statistics/UCR-Offense-Data.aspx> (last viewed January 23, 2020).

III. Effect of Proposed Changes:

The bill creates a task force within the FDLE at s. 943.6872, F.S. The Urban Core Gun Violence Task Force is created pursuant to s. 20.03, F.S., and will comply with the requirements of s. 20.052, F.S. The Task Force is created for the purposes of:

- Investigating system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities;⁷ and
- Developing recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities.

The Task Force will convene no later than September 1, 2020, and will be comprised of 10 members who will serve at the pleasure of the officer who appointed him or her. At least five of the members shall be women and at least six of the members shall be members of racial minority groups. The appointments will be made as follows:

- Two members will be appointed by the President of the Senate;
- Two members will be appointed by the Minority Leader of the Senate;
- Two members will be appointed by the Speaker of the House of Representatives;
- Two members will be appointed by the Minority Leader of the House of Representatives; and
- Two members will be appointed by the Governor.

The Governor will appoint the Chair from among the 10 members.

The General Counsel of the FDLE will serve as the general counsel for the task force. Additionally, the chair of the Task Force will assign staff from the FDLE and the Department of Juvenile Justice (DJJ) to assist the Task Force in performing its duties.

The Task Force will meet on a quarterly basis or as necessary to conduct its work at the call of the chair and at a time designated by him or her at a location in the state. It will submit an initial report on its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2021, and may issue reports annually thereafter.

The Task Force may not conduct its meetings through teleconferences or other similar means. Members of the task force are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 20.052, F.S.

The Task Force is given the authority to request professional assistance from appropriate state agencies in the discharge of its duties. The bill requires those state agencies to provide any requested assistance in a timely manner.

The bill specifies that, notwithstanding any other law to the contrary, the Task Force may request and shall be provided with access to *any information or records* that pertain to crime and gun violence incidents in this state's urban core neighborhoods and communities. The bill recognizes

⁷ The term "urban core neighborhoods and communities" is not defined in the bill.

that some amount of the information or records requested by the Task Force may be otherwise exempt or confidential and exempt. The bill states that the information or records shall retain such exempt or confidential and exempt status, and that the Task Force may not disclose any such information or records.⁸

Section 943.6872, F.S., the section of law created by the bill, is repealed on December 31, 2025.⁹

The bill is effective July 1, 2020.

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.

⁸ Note that any discussion at an open meeting of the Task Force related to the protected information or records would likely violate the exempt or confidential or exempt status of the information or reports. However, SB 1802, the public meetings exemption bill linked to this bill would preserve the exempt or confidential and exempt status of the information or reports.

⁹ According to s. 20.03(8), F.S., under which the Task Force is created, the lifespan of the Task Force is 3 years. This date would be June 30, 2023. Because s. 20.03(8), F.S., also states that a task force's existence terminates upon the completion of its assignment, if it has not completed any final report by June 30, 2023, presumably the Members of the Task Force could continue to work on the report until it is complete, but certainly no later than December 31, 2025, when the section of law creating the Task Force is repealed.

C. Government Sector Impact:

The FDLE reports that, based on the number of hours committed by the FDLE to the Marjory Stoneman Douglas Commission for similar support efforts, it expects a total expenditure of \$363,143 to support the Task Force.¹⁰

Under the provisions in the bill, members of the Task Force are entitled to per diem and travel expenses pursuant to s. 112.061, F.S. This amount cannot be quantified since the amount of travel and per diem is indeterminate until the expenses are incurred by the Task Force members and staff. (The FDLE has estimated the annual travel and per diem cost for 10 Task Force members and 10 staff members to be \$51,040.)¹¹

The bill allows the chair of the Task Force to assign staff from the DJJ to assist the Task Force in performing its duties. DJJ states that any research or consultation DJJ is required to provide would increase the workload on DJJ staff. There is no specific expected fiscal impact from the bill attached to the potential increased workload.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.6872 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on January 28, 2020

The committee substitute:

- Creates s. 943.6872, F.S., a new section of law.
- Clarifies that the Urban Core Gun Violence Task Force, an advisory body, will comply with the requirements of s. 20.052, F.S.
- Removes reference in the bill to members' per diem, because s. 20.052(4)(d), F.S., specifies that members of the advisory body are authorized to receive per diem.
- Removes the Task Force's authorization to investigate and delegate authority to its investigators to administer oaths and affirmations.

¹⁰ 2020 FDLE Legislative Bill Analysis, October 2019. (On file with the Senate Criminal Justice Committee).

¹¹ *Id.*

¹² 2020 Agency Legislative Bill Analysis, Department of Juvenile Justice, December 30, 2019. (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.



268592

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/28/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 943.6872, Florida Statutes, is created
to read:

943.6872 Urban Core Gun Violence Task Force.-

(1) The Urban Core Gun Violence Task Force, a task force as
defined in s. 20.03, is created within the Department of Law
Enforcement. Except as otherwise provided in this section, the



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11 task force shall comply with the requirements of s. 20.052.

12 (2) (a) The 10-member task force shall convene no later than
13 September 1, 2020, and must be composed of 2 members appointed
14 by each of the following: the President of the Senate, the
15 Minority Leader of the Senate, the Speaker of the House of
16 Representatives, the Minority Leader of the House of
17 Representatives, and the Governor. Appointments must be made by
18 August 1, 2020. The Governor shall appoint a chair from among
19 the members. Members serve at the pleasure of the officer who
20 appointed them. A vacancy on the task force must be filled in
21 the same manner as the original appointment. At least five of
22 the task force members must be women and at least six must be
23 members of racial minority groups.

24 (b) The General Counsel of the Department of Law
25 Enforcement shall serve as the general counsel for the task
26 force.

27 (c) The chair shall assign staff from the Department of Law
28 Enforcement and the Department of Juvenile Justice to assist the
29 task force in performing its duties.

30 (d) The task force shall meet on a quarterly basis or at
31 the call of the chair, as necessary to conduct its work, at a
32 time and location in this state designated by the chair. The
33 task force may not conduct its meetings through teleconferences
34 or other similar means.

35 (3) The task force shall investigate system failures and
36 the causes of high crime rates and gun violence incidents in
37 urban core neighborhoods and communities. In addition, the task
38 force shall develop recommendations for solutions, programs,
39 services, and strategies for improved interagency communications



268592

40 between local and state government agencies which will help
41 facilitate the reduction of crime and gun violence in urban core
42 neighborhoods and communities.

43 (4) The task force may call upon appropriate state
44 government agencies for such professional assistance as may be
45 needed in the discharge of its duties, and such agencies shall
46 provide such assistance in a timely manner.

47 (5) Notwithstanding any other law to the contrary, the task
48 force may request and shall be provided with access to any
49 information or records that pertain to crime and gun violence
50 incidents in this state's urban core neighborhoods and
51 communities. Information or records obtained by the task force
52 which are otherwise exempt or confidential and exempt shall
53 retain such exempt or confidential and exempt status, and the
54 task force may not disclose any such information or records.

55 (6) The task force shall submit an initial report on its
56 findings and recommendations to the Governor, the President of
57 the Senate, and the Speaker of the House of Representatives by
58 January 1, 2021, and may issue reports annually thereafter.

59 (7) This section is repealed on December 31, 2025.

60 Section 2. This act shall take effect July 1, 2020.

61
62 ===== T I T L E A M E N D M E N T =====

63 And the title is amended as follows:

64 Delete everything before the enacting clause
65 and insert:

66 A bill to be entitled
67 An act relating to the Urban Core Gun Violence Task
68 Force; creating s. 943.6872, F.S.; creating the Urban



268592

69 Core Gun Violence Task Force; requiring the task force
70 to comply with specified requirements; providing for
71 membership; providing for staff support; providing
72 requirements for meetings; specifying duties and
73 powers of the task force; authorizing the task force
74 to seek assistance from state agencies; providing for
75 access to certain information; requiring an initial
76 report; authorizing annual reports; providing for
77 repeal of the task force; providing an effective date.

By Senator Pizzo

38-00980-20

2020652__

A bill to be entitled

An act relating to the Urban Core Gun Violence Task Force; creating the Urban Core Gun Violence Task Force; providing for membership; providing for staff support; providing requirements for meetings; providing for reimbursement of certain expenses; specifying duties and powers of the task force; authorizing the task force to seek assistance from state agencies; providing for access to certain information; requiring an initial report; authorizing annual reports; providing for repeal of the task force; providing an effective date.

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

Section 1. Urban Core Gun Violence Task Force.—

(1) There is created within the Department of Law Enforcement the Urban Core Gun Violence Task Force, a task force as defined in s. 20.03, Florida Statutes.

(2) (a) The task force shall convene no later than September 1, 2020, and shall be composed of 10 members. Two members shall be appointed by the President of the Senate, two members shall be appointed by the Minority Leader of the Senate, two members shall be appointed by the Speaker of the House of Representatives, two members shall be appointed by the Minority Leader of the House of Representatives, and two members shall be appointed by the Governor. From the members of the task force, the Governor shall appoint the chair. Appointments must be made by August 1, 2020. Members shall serve at the pleasure of the

Page 1 of 3

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

38-00980-20

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officer who appointed the member. A vacancy on the task force shall be filled in the same manner as the original appointment. At least five of the task force members shall be women and at least six of the task force members shall be members of racial minority groups.

(b) The General Counsel of the Department of Law Enforcement shall serve as the general counsel for the task force.

(c) The chair shall assign staff from the Department of Law Enforcement and the Department of Juvenile Justice to assist the task force in performing its duties.

(d) The task force shall meet on a quarterly basis or as necessary to conduct its work at the call of the chair and at a time designated by him or her at a location in this state. The task force may not conduct its meetings through teleconferences or other similar means.

(e) Members of the task force are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes.

(3) The task force shall investigate system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities. In addition, the task force shall develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities.

(4) The task force has the power to investigate. The task force may delegate to its investigators the authority to

Page 2 of 3

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

38-00980-20

2020652__

59 administer oaths and affirmations.

60 (5) The task force may call upon appropriate state
61 government agencies for such professional assistance as may be
62 needed in the discharge of its duties, and such agencies shall
63 provide such assistance in a timely manner.

64 (6) Notwithstanding any other law to the contrary, the task
65 force may request and shall be provided with access to any
66 information or records that pertain to crime and gun violence
67 incidents in this state's urban core neighborhoods and
68 communities. Information or records obtained by the task force
69 which are otherwise exempt or confidential and exempt shall
70 retain such exempt or confidential and exempt status, and the
71 task force may not disclose any such information or records.

72 (7) The task force shall submit an initial report on its
73 findings and recommendations to the Governor, the President of
74 the Senate, and the Speaker of the House of Representatives by
75 January 1, 2021, and may issue reports annually thereafter.

76 (8) This section is repealed on December 31, 2025.

77 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/28/2020
Meeting Date

SB 652
Bill Number (if applicable)

Topic Urban Core Gun Violence Task Force

Amendment Barcode (if applicable)

Name Khanh-hien Bando

Job Title Resolutions Chair

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Jan 28 2020
Meeting Date

SB 652
Bill Number (if applicable)

Topic Peace Plan for A Safer Florida

Amendment Barcode (if applicable)

Name Alycia Merritt

Job Title Communications Director

Address 715 W GAINES ST
Street

Phone (954) 295-7694

Tallahassee FL 32304
City State Zip

Email amm19bh@my.fsu.edu

Speaking: For Against Information

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

Representing March For Our Lives

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-28-20
Meeting Date

652
Bill Number (if applicable)

Topic Urban Core Violence Task Force

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms

Address 1025 E. Breward St

Phone 251-4280

Tallahassee FL 32308
City State Zip

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.



The Florida Senate

Committee Agenda Request

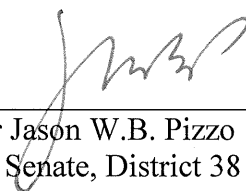
To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: November 6, 2019

I respectfully request that **652**, relating to Urban Core Gun Violence Task Force, be placed on the:

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



Senator Jason W.B. Pizzo
Florida Senate, District 38



2020 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION

BILL NUMBER:	SB 652
BILL TITLE:	Urban Core Gun Violence Task Force
BILL SPONSOR:	Senator Pizzo
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE

1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

PREVIOUS LEGISLATION

BILL NUMBER:	SB1384
SPONSOR:	Gibson
YEAR:	2019
LAST ACTION:	Died in committee

CURRENT COMMITTEE

Criminal Justice

SIMILAR BILLS

BILL NUMBER:	
SPONSOR:	

IDENTICAL BILLS

BILL NUMBER:	HB201
SPONSOR:	Jones

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	October 2019
LEAD AGENCY ANALYST:	Lori Mizell
ADDITIONAL ANALYST(S):	Chelsea Perez, Becky Bezemek
LEGAL ANALYST:	Jeff Dambly
FISCAL ANALYST:	Cynthia Barr, Deshawn Byrd

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Urban Core Gun Violence Task Force: Creates the Urban Core Gun Violence Task Force; provides for membership, staff support, requirements for meetings and reimbursement of certain expenses; specifies duties and powers of the task force; authorizes task force to seek assistance from state agencies; provides for access to certain information; requires an initial report and authorizes annual reports; provides for repeal of the task force.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** FDLE has been involved with other Commissions, including the Marjory Stoneman Douglas High School Public Safety (MSD) Commission, which addressed the issues presented by the tragic school shooting at Marjory Stoneman Douglas High School in Parkland, Florida. FDLE staff provided the commission analytical support to complete the initial report of investigative findings and recommendations. FDLE's staff continues to support the MSD Commission as additional topics are researched.
2. **EFFECT OF THE BILL:** The task force shall investigate system failures and the causes for high crime and gun violence incidents in urban and inner-city communities and neighborhoods and develop recommendations for solutions, programs, services and strategies. FDLE's General Counsel shall serve as the general counsel for the task force. FDLE staff shall assist the task force in performing its duties.
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 <input type="checkbox"/> N <input type="checkbox"/>
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:	Report of findings and recommendations pertaining to system failures and causes of high crime and gun violence in urban core communities to the Governor, the President of the Senate and the Speaker of the House of Representatives.
Date Due:	January 1, 2021 and annual thereafter
Bill Section Number:	Section 1 Subsection (7) Lines 72-75

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

Board:	
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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:	<ul style="list-style-type: none"> • Expenditures include per diem and travel expenses pursuant to s. 112.061 F.S and total approximately \$51,040. If the task force meets quarterly, average expenses for meeting travel would be \$638 per person (\$150 (lodging) + \$36 (meals) x 3 days = \$558 + \$80 per diem = \$638). Annual travel costs for four meetings for 10 task force members and 10 staff members = \$51,040 (\$638 x 20 = \$12,760 x 4 meetings/year = \$51,040). • Based on hours committed by FDLE members to the MSD Commission this calendar year for similar support efforts, FDLE requires five FTE positions including three Government Analyst II and two Government Analyst I totaling \$363,143 (\$343,668 recurring). • Total Fiscal: \$414,183 (\$394,708 recurring)
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:	
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4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

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

TECHNOLOGY IMPACT

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

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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FEDERAL IMPACT

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

If yes, describe the anticipated impact including any fiscal impact.	
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LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

<p>Issues/concerns/comments and recommended action:</p>	<ul style="list-style-type: none"> • Lines 35-37 require FDLE General Counsel to serve as the general counsel for the task force. As the general counsel is already limited in time, and has statutory obligations to serve on other bodies such as the MSD Commission, the department respectfully requests expansion of language to include "or their designee" to allow more flexibility to provide legal counsel to the task force. • Lines 57-59 specify the task force has "the power to investigate," yet only specifies the authority to administer oaths and affirmations or obtain otherwise confidential or exempt information. FDLE respectfully requests additional language to provide the task force with independent subpoena authority, as the department does not have independent authority to issue subpoenas. • Lines 68-71 provide that records obtained by the task force maintain any confidentiality or exemptions such records would otherwise hold. However, as a task force pursuant to s. 20.03, F.S., this body would be required to meet sunshine meeting requirements. As no exception for closed sessions is provided in this bill, task force members would be without an effective means to openly discuss confidential and/or exempt records without waiving such rights. The department respectfully requests additional language to allow for closed sessions to discuss confidential and/or exempt materials that the task force may regularly need, such as active criminal intelligence information or active criminal investigative information, or personal identifiable information of individuals such as victims who may have constitutional rights under Marsy's Law.
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ADDITIONAL COMMENTS

- Line 50 provides vague language. Recommend defining “high crime” and “gun violence incidents” to better narrow the scope and understand the focus of the bill. Each region and county may be experiencing high crime and/or gun violence issues for different reasons. It is important to narrow the focus by addressing specific urban and inner-city communities (e.g. Opa-Locka, Liberty City, etc.) that are facing the worst crime and gun violence rates and then move onto other communities.
- Lines 72-75: Recommend extending the due date of the initial report from January 1, 2021 to January 1, 2022 given the broad nature of the bill. The MSD Commission, for example, had eight months to prepare for their initial report (March-December 2018). The time constraint was extremely challenging to complete a thorough investigation with the amount of information available. Additionally, many members of the commission did not have a law enforcement background and were not familiar with the processes which added to the time constraint. The focus of the MSD Commission was on one specific school – Marjory Stoneman Douglas High School. Whereas, SB 652 proposes a much more broad topic by researching high crime and gun violence in urban / inner-city communities. Additional time to research and conduct analysis would improve the overall results and report of the task force.



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Juvenile Justice

BILL INFORMATION

BILL NUMBER:	<u>SB 652</u>
BILL TITLE:	<u>Urban Core Gun Violence Task Force</u>
BILL SPONSOR:	<u>Senator Pizzo</u>
EFFECTIVE DATE:	<u>7/1/2020</u>

COMMITTEES OF REFERENCE

1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4) Click or tap here to enter text.

CURRENT COMMITTEE

Criminal Justice

SIMILAR BILLS

BILL NUMBER:	HB 201
SPONSOR:	Representative Jones

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?

No.

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	12/30/19 – For more information please contact Legislative Affairs Director Rachel Moscoso at (850) 717-2716
LEAD AGENCY ANALYST:	Ben Hudson, Legislative Specialist
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

The bill creates the Urban Core Gun Violence Task Force within the Department of Law Enforcement to investigate and provide recommendations relating to system failures and the causes of high crime and gun violence in urban core communities and neighborhoods.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

S. 20.03 (8) F.S., defines a “task force” as an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by a specific statutory enactment for a time not to exceed 3 years, appointed to study a specific problem and recommend a solution or policy alternative. Its existence terminates upon the completion of its assignment.

There is currently no task force responsible for investigating urban core gun violence in Florida statute.

2. EFFECT OF THE BILL:

Section 1

The bill creates the Urban Core Gun Violence Task Force within the Department of Law Enforcement.

The bill directs the President of the Senate, Minority Leader of the Senate, Speaker of the House of Representatives, Minority Leader of the House of Representatives, and the Governor to each appoint two members to the task force by August 1, 2020.

The Governor shall appoint a chair from the members of the task force. The chair shall assign staff from the Department Juvenile Justice, as well as the Department of Law Enforcement, to assist the task force in performing its duties. Any research or consultation DJJ is required to provide would increase the workload on DJJ staff.

The task force is charged with investigating system failures and the causes of high crime and gun violence in urban communities and neighborhoods, and developing recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies that will help facilitate the reduction of crime and gun violence in urban communities.

Additionally, the task force may call upon appropriate state agencies for professional assistance, and such agencies shall provide assistance in a timely manner. The task force may request access to any information or records that pertain to crime and gun violence incidents in the state’s urban core neighborhoods and communities. Records that are otherwise exempt or confidential shall retain exempt status.

The task force shall submit a report on its findings and recommendations to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2021, and may issue reports annually thereafter.

This section will be repealed December 31, 2025.

Section 2

Provides an effective date, July 1, 2020.

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 <input type="checkbox"/> N <input type="checkbox"/>
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:	A report on the findings and recommendations by the task force concerning their investigation of urban gun violence
Date Due:	January 1, 2021
Bill Section Number(s):	Section 1

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

Board:	Urban Core Gun Violence Task Force
Board Purpose:	Investigate system failures and the causes of high crime and gun violence in urban core communities and neighborhoods and provide recommendations.
Who Appoints:	The Governor is required to appoint 2 out of the 10 members of the task force, as well as appoint the chair from the members of the task force.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Section 1

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:	Members of the task force are entitled to receive reimbursement for per diem and travel expenses.
Does the legislation contain a State Government appropriation?	No
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 agency including any fiscal impact.	Click or tap here to enter text.
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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.
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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.
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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 728

INTRODUCER: Infrastructure and Security Committee and Senator Stargel

SUBJECT: Threats

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	Fav/CS
2.	Cellon	Jones	CJ	Pre-meeting
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Threats

CS/SB 728 amends s. 790.162, F.S., to prohibit a person from making a threat to use a firearm or weapon, including the future use of a firearm or any weapon, with intent to do bodily harm to any person or to do damage to any property of any person if the threat is sufficient to cause alarm in a reasonable person. The bill also amends s. 790.162, F.S., to prohibit a threat of future throwing, projecting, placing, or discharging of any destructive device.

The bill provides that a person is not in violation of s. 790.162, F.S., if he or she uses or threatens to use a firearm or any other weapon in lawful self-defense, lawful defense of others, or lawful defense of property.

False Reports

The bill amends s. 790.163, F.S., to prohibit a person from making a false report, with intent to deceive, mislead, or misinform any person, concerning the current or future placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction. The bill also amends s. 790.163, F.S., to prohibit a person from making a false report concerning the current or future use of firearms in a violent manner against a person or persons.

Likewise, the bill amends s. 790.164, F.S., which specifically addresses the same conduct as in s. 790.163, F.S., but where the false report “targets” property owned by the state or any political subdivision. The bill prohibits a person from making a false report with intent to deceive, mislead, or misinform any person, concerning the current or future placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction, and the current or future use of firearms in a violent manner against a person or persons.

The Criminal Punishment Code offense severity ranking chart is amended in s. 921.0022(3)(e), F.S., to incorporate changes made by the bill. These changes do not include any adjustments to the current rankings of the offenses amended by the bill.

The Criminal Justice Impact Conference has not published its final estimate for this bill which was considered on January 27, 2020. However, the preliminary estimate for the bill is that it will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Definitions

Chapter 790, F.S., relating to weapons and firearms defines the following terms for purposes of that chapter:

- “Destructive device” means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms;¹ any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but

¹ For the purposes of the National Firearms Act, the term “destructive device” means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 7684(2), 7685, or 7686 of title 10, United States Code; or any other device which the Secretary finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes. 26 U.S.C. 5845(f).

not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device.²

- “Firearm” means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun.³
- “Weapon” means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.⁴

Threat to Throw, Project, Place, or Discharge Any Destructive Device

Section 790.162, F.S., currently makes it unlawful for any person to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person. A violation is a second degree felony, punishable by an imprisonment term not exceeding 15 years and up to a \$10,000 fine.⁵

The courts have construed s. 790.162, F.S., determining that whether an offender intended to carry out a threat is irrelevant,⁶ and there need not be proof that an actual destructive device existed.⁷

False Reports –Planting a Bomb, Explosive, or Weapon of Mass Destruction; Arson; Use of Firearms in a Violent Manner

Section 790.163, F.S., currently makes it unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction,⁸ or concerning

² Section 790.001(4), F.S. The term under Florida law does not include a device which is not designed, redesigned, used, or intended for use as a weapon; any destructive device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; any shotgun other than a short-barreled shotgun; or any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

³ Section 790.001(6), F.S. The term does not include an antique firearm unless the antique firearm is used in the commission of a crime.

⁴ Section 790.001(13), F.S.

⁵ Sections 775.082, and 775.083, F.S.

⁶ “[T]he threat must convey an intent to do bodily harm or damage to property. Here, appellant’s threat obviously conveyed this intent. Therefore, under our construction of the statute, whether appellant intended to follow through with his threat was irrelevant.” *Reid v. State*, 405 So.2d 500, 501 (Fla. 2d DCA 1981).

⁷ “[T]he State need not prove the existence of an actual destructive device. It is sufficient that the State prove that the defendant threatened to throw, place, or discharge a destructive device with the stated intent to do bodily harm to any person or with the stated intent to do damage to any property of any person, regardless of whether the defendant had the actual ability to carry out that threat.” *Valdes v. State*, 443 So.2d 221, 222 (Fla. 1st DCA 1983).

⁸ Defined in s. 790.166, F.S., to mean “any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; any device or object involving a biological agent; any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or any biological agent, toxin, vector, or delivery system.” The terms “bomb,” “dynamite,” or “deadly explosive” are not currently defined in the statutes or case law. The term “explosive” is defined in s. 790.001(5), F.S., with certain listed exceptions, as “any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon application of

the use of firearms in a violent manner against a person. Section 790.164, F.S., prohibits the same false reports where the “target” of the report is property owned by the state or any political subdivision. Section 790.164, F.S., also encompasses false reports concerning any act of arson or other violence to the property as well as the use of firearms in a violent manner against a person or persons.

Under both sections of law, a violation is a second degree felony, punishable by a term of imprisonment not exceeding 15 years and up to a \$10,000 fine.⁹

Case Law Applying Section 790.162, F.S., (Threats), Contrasting Section 790.163, F.S., (False Reports)

Since 2002, Florida courts have found that a threat to do a future action such as “blowing up” a school, does not equate to a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the planting of a bomb, dynamite, other deadly explosive, or weapon of mass destruction.

False reports of the nature found in ss. 790.163 and 790.164, F.S., read in conjunction with ss. 790.161 and 790.162, F.S., make it clear that the first two statutes punish the *acts* of committing the crimes of actually throwing, placing, or discharging bombs or other deadly explosives, attempts to do so, and *threats* to do so.¹⁰ It is equally clear that the false report statutes, ss. 790.163 and 790.164, F.S., were created to punish the classic “bomb scare” false report scenario.¹¹

Relying heavily on a Maryland court’s analysis of a similar question, the court in *D.B. v. State* determined that the defendant’s statements to school officials that he would “blow up” or “burn down” his school *at some time in the future* was *not* a violation of s. 790.163, F.S., the *false reports statute* under which D.B. was charged. “An individual may truthfully threaten to explode a bomb in a building without making a false statement. Similarly, one may transmit a false statement or rumor that there is a bomb in a building without ever threatening, or communicating an intent, to explode a bomb.”¹²

A recent case almost identical to *D.B. v. State*, involved a 12 year-old student who stated, “I’m going to shoot up the classroom, April Fools,” while in the classroom “swapping April Fools’ jokes,” with his classmates. As in *D.B. v. State*, the charge against the boy was brought under the *false reports* statute.¹³ It is entirely possible in this case that the prosecuting attorney considered charging J.A.W. under the threats statute, s. 790.162, F.S., having read the 2002 *D.B.* case and therefore knowing that the false reports statute was not the statute that fit the crime. But it would have been equally obvious to the prosecutor that there was no crime in the threats statute related

heat, flame, or shock, including but not limited to dynamite, nitroglycerin, trinitrotoluene, or ammonium nitrate when combined with other ingredients to form an explosive mixture, blasting caps, and detonators.”

⁹ Sections 775.082 and 775.083, F.S.

¹⁰ Section 790.161, F.S., prohibits the *act* of willfully and unlawfully making, possessing, throwing, projecting, placing, or discharging a destructive device, or attempting to do those acts. Section 790.162, F.S., punishes the *threat to do the acts* prohibited in s. 790.161, F.S.

¹¹ *Grizzard v. State*, 139 So.2d 161, 162 (Fla. 2d DCA 161, 1962).

¹² *D.B. v. State*, 825 So.2d 1042 (Fla. 1st DCA, 2002) *quoting* *Moosavi v. State*, 355 Md. 651, 736 A.2d 285 (1999).

¹³ *J.A.W., A Child v. State*, 283 So.3d 896 (Fla. 1st DCA, 2019); s. 790.163, F.S.

to the use of firearms or other weapons, and the “threat” uttered by J.A.W. involved the use of a firearm to “shoot up the school.” It is, perhaps, for these reasons that J.A.W. was charged under the false reports statute which does contain a provision related to the use of firearms against another, rather than not charging him at all.¹⁴

The *J.A.W.* court’s ruling, based on its reasoning in *D.B.*, plainly stated:

As a matter of plain English, there is a distinction between a statement that “there is a bomb in the building” and a statement, such as [the defendant’s], that ‘I’m going to blow up the building.’ [Citations omitted.]...

Applying *D.B.* here, the firearms-related prohibition in s. 790.163(1) plainly prohibits knowingly false and misleading reports about active shooting-type situations. [Citations omitted.] But the statute does not reach future-oriented threats like the one uttered by *J.A.W.* because [the] April Fools’ Day joke threatened future shooting, it was not a “false report” made with intent to deceive, mislead, or otherwise misinform for purposes of s. 790.163(1).¹⁵

III. Effect of Proposed Changes:

The bill amends s. 790.162, F.S., to expand that section’s applicability to also include threats involving the use of a firearm or any weapon, as defined under current law. The bill makes it a second degree felony for any person to threaten the use of a firearm or any weapon, including the *future* use of a firearm or any weapon if the threat is sufficient to cause alarm in a reasonable person.

The bill also adds a provision to s. 790.162, F.S., prohibiting the threat of the *future* throwing, projecting, placing, or discharging of any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person, of any destructive device.

Additionally, the bill provides a person does not violate the prohibition against threats if the person uses or threatens to use a “firearm or any other weapon” in lawful self-defense, lawful defense of others, or lawful defense of property.

The bill also amends ss. 790.163 and 790.164, F.S., respectively, to make it unlawful for any person to make a false report, with intent to deceive, mislead, or misinform any person,

¹⁴ *Id.*; See s. 790.163(1), F.S.; Note that the bill adds a threat to use a firearm or other weapon to the threats statute, s. 790.162, F.S., thereby solving what may have been the prosecutor’s dilemma under the facts of *J.A.W.*

¹⁵ *Id.*; See also *L.C. v. State*, 283 So.3d 442, 443-444 (Fla. 2nd DCA, 2019), in which the court observed: Courts must afford statutory language “its plain and ordinary meaning, giving due regard to the context within which it is used.” *Hampton v. State*, 103 So. 3d 98, 110 (Fla. 2012). A reasonable reader would understand making a report to mean providing information about something that is occurring or has already occurred, not expressing a desire or an intention to do something in the future.

concerning the *current or future* placing or planting of a bomb, an explosive, or a weapon of mass destruction, or the *current or future* use of firearms in a violent manner.¹⁶

The bill amends s. 921.0222, F.S., the offense severity ranking chart of the Criminal Punishment Code to revise the description of the existing second degree felony for a violation of s. 790.162, F.S., from “Threat to throw or discharge destructive device,” to “Threat involving firearm, weapon, or destructive device.”

The bill takes effect October 1, 2020.

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 estimate of the prison bed impact, if any, has not published its final estimate for this bill which was considered on January 27, 2020. However, the preliminary estimate for the bill is that it

¹⁶ The bill does *not* specifically amend s. 790.164, F.S., to insert *current or future* false reports with respect to reports concerning any act of arson or other violence to property owned by the state or any political subdivision.

will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds).

In its analysis of the bill, the Public Defender Association, Inc. indicates that the bill would have an indeterminate effect on public defender caseloads. The Association also notes that it is difficult to project how many cases would be filed under the new felony created in s. 790.162, F.S.¹⁷

VI. Technical Deficiencies:

Threats

Future threats to throw, project, place, or discharge any destructive device appears to already be prohibited by current s. 790.162, F.S. This is because a threat, by its definition, can only *be* a *threat of a future action*. “I am going to blow up the school” is a threat to carry out an action *in the future*.

“I am blowing up the school right now (spoken as the person throws the destructive device at the school)” indicates an action in progress at the moment and is punishable, not as a threat, but as an unlawful act in and of itself. “I blew up the school” is not a threat at all, but rather it is a statement of an unlawful act that has occurred in the past.

Therefore, because a threat can only *be* a threat of a future action, consideration should be given to removing the references to future threats in the bill language amending s. 790.162, F.S.

False Reports

Similarly, the language prohibiting a *false* report, with intent to deceive, mislead, or otherwise misinform any person, concerning the *current or future* crimes of planting a bomb, an explosive, or a weapon of mass destruction, and the use of firearms in a violent manner as set forth in ss. 790.163 and 790.165, F.S., is nonsensical.

A report about the future commission of the crimes listed in those sections can only *be false* if there is evidence that what the person reported *was* false. For example, if a person reports that a bomb has been planted at the school, law enforcement can establish if that has happened or not. If there’s no bomb found, the report was false. However, if the person reports that someone is *going to* plant a bomb at the school, or *will* plant a bomb (future action), it cannot be shown that the report is *false* because what has been reported has not *yet* occurred or may never occur.

Because a report of a *current* criminal activity of this nature can be proven to be true or false and because a report of a *future* crime of this nature cannot be shown to be false, it is suggested that the “current or future” language be removed from the bill.

¹⁷ Florida Public Defender Association, Inc., Fiscal Analysis of SB 728 (on file with the Senate Criminal Justice Committee).

VII. Related Issues:

Aggravated Assault

Section 784.021, F.S., prohibits aggravated assault with a deadly weapon. The elements of the offense are:

- The defendant intentionally and unlawfully threatened, either by word or act, to do violence to the victim;
- At the time, the defendant appeared to have the ability to carry out the threat;
- The act of the defendant created in the mind of the victim a well-founded fear that the violence was about to take place; and
- The assault was made with a deadly weapon.¹⁸

Aggravated assault with a deadly weapon is punishable as a third degree felony which could result in up to 5 years' imprisonment and a \$5,000 fine.

Aggravated assault is somewhat similar to the new crime created by the bill in s. 790.162, F.S., which prohibits a person from threatening the use of a firearm or any weapon if the threat is sufficient to cause alarm in a reasonable person.

The main difference between the two crimes is that aggravated assault requires that the defendant appear to have the ability to carry out the threat. One could argue that the act of threatening to shoot someone *and* appearing to be able to carry out the threat (i.e., pointing a firearm at the victim) is a more dangerous crime than the new crime in s. 790.162, F.S., which has no such element. It may be incongruous to punish the less dangerous crime in s. 790.162, F.S., as a second degree felony which could result in 15 years' imprisonment and a \$10,000 fine.

Threats

The First Amendment to the U.S. Constitution does not protect "true threats" as free speech and states are not restricted from banning such threats.¹⁹ The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats "protect[s] individuals from the fear of violence" and "from the disruption that fear engenders," in addition to protecting people "from the possibility that the threatened violence will occur."²⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.162, 790.163, 790.164, and 921.0022.

¹⁸ Aggravated Assault; Florida Standard Criminal Jury Instructions 8.2.

¹⁹ *Virginia v. Black*, 538 U.S. 343, 344 (2003) quoting *Watts v. United States*, 394 U.S. 705, 708 (1969).

²⁰ *Id.*; see also *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388 (1992).

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 Infrastructure and Security on January 13, 2020:

The committee substitute:

- Includes as a violation of law a threat of *future* use of a firearm or any weapon if the threat is sufficient to cause alarm in a reasonable person;
- Includes the *future* throwing, projecting, placing, or discharging of any destructive device in the existing prohibition against such threats;
- Provides a person is not in violation if he or she threatens to use a firearm or any other weapon in lawful self-defense, or in lawful defense of others or of property; and
- Revises existing prohibitions against making a false report, with intent to deceive, mislead, or misinform any person, to apply to those reports concerning the *current or future* placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction, or concerning the *current or future* use of firearms in a violent manner against a person.

- B. **Amendments:**

None.



493844

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/28/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 35 - 105
and insert:

(1) It is unlawful for any person to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person. ~~and any person convicted thereof~~ A person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083,



493844

11 or s. 775.084.

12 (2) It is unlawful for any person to threaten the use of a
13 firearm or any weapon with intent to do bodily harm to any
14 person or with intent to do damage to any property of any
15 person, if the threat is sufficient to cause alarm in a
16 reasonable person. A person who violates this subsection commits
17 a felony of the third degree, punishable as provided in s.
18 775.082, s. 775.083, or s. 775.084.

19 (3) A person does not violate subsection (2) if he or she
20 uses or threatens to use a firearm or any other weapon in lawful
21 self-defense, lawful defense of others, or lawful defense of
22 property.

23 Section 2. Paragraph (e) of subsection (3) of section
24 921.0022, Florida Statutes, is amended to read:

25 921.0022 Criminal Punishment Code; offense severity ranking
26 chart.—

27 (3) OFFENSE SEVERITY RANKING CHART

28 (e) LEVEL 5

29

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.

31

32



493844

36	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
37	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
38	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
39	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
40	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
41	440.381(2)	3rd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
42	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
43			



430974

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/28/2020	.	
	.	
	.	
	.	

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

1 **Senate Substitute for Amendment (493844) (with title**
2 **amendment)**

3
4 Delete lines 35 - 105
5 and insert:

6 (1) It is unlawful for any person to threaten to throw,
7 project, place, or discharge any destructive device with intent
8 to do bodily harm to any person or with intent to do damage to
9 any property of any person.,~~and any person convicted thereof~~ A
10 person who violates this subsection commits a felony of the



430974

11 third ~~second~~ degree, punishable as provided in s. 775.082, s.
12 775.083, or s. 775.084.

13 (2) It is unlawful for any person to threaten the use of a
14 firearm or any weapon with intent to do bodily harm to any
15 person or with intent to do damage to any property of any
16 person, if the threat is sufficient to cause alarm in a
17 reasonable person. A person who violates this subsection commits
18 a felony of the third degree, punishable as provided in s.
19 775.082, s. 775.083, or s. 775.084.

20 (3) A person does not violate subsection (2) if he or she
21 uses or threatens to use a firearm or any other weapon in lawful
22 self-defense, lawful defense of others, or lawful defense of
23 property.

24 Section 2. Paragraph (e) of subsection (3) of section
25 921.0022, Florida Statutes, is amended to read:

26 921.0022 Criminal Punishment Code; offense severity ranking
27 chart.-

28 (3) OFFENSE SEVERITY RANKING CHART

29 (e) LEVEL 5

30

Florida Statute	Felony Degree	Description
31 316.027(2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
32 316.1935(4) (a)	2nd	Aggravated fleeing or eluding.



430974

37

suspended or revoked.

379.367(4)

3rd

Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

38

379.407(5)(b)3.

3rd

Possession of 100 or more undersized spiny lobsters.

39

381.0041(11)(b)

3rd

Donate blood, plasma, or organs knowing HIV positive.

40

440.10(1)(g)

2nd

Failure to obtain workers' compensation coverage.

41

440.105(5)

2nd

Unlawful solicitation for the purpose of making workers' compensation claims.

42

440.381(2)

3rd

Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

43

624.401(4)(b)2.

2nd

Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.

By the Committee on Infrastructure and Security; and Senator Stargel

596-02228-20

2020728c1

1 A bill to be entitled
 2 An act relating to threats; amending s. 790.162, F.S.;
 3 prohibiting threats to use, including future threats
 4 to use, a firearm or weapon with specified intent;
 5 prohibiting a person from threatening the future
 6 throwing, projecting, placing, or discharging of any
 7 destructive device with specified intent; providing
 8 applicability; providing criminal penalties; amending
 9 s. 790.163, F.S.; prohibiting a person from making a
 10 false report with specified intent concerning the
 11 current or future placing or planting of any bomb,
 12 dynamite, other deadly explosive, or weapon of mass
 13 destruction or concerning the current or future use of
 14 a firearm in a violent manner against a person or
 15 persons; providing criminal penalties; amending s.
 16 790.164, F.S.; prohibiting a person from making a
 17 false report with specified intent concerning the
 18 current or future placing or planting of any bomb,
 19 dynamite, other deadly explosive, or weapon of mass
 20 destruction concerning any act of arson or other
 21 violence to property owned by the state or a political
 22 subdivision, or concerning the current or future use
 23 of firearms in a violent manner against a person or
 24 persons; providing criminal penalties; amending s.
 25 921.0022, F.S.; conforming a provision to changes made
 26 by the act; providing an effective date.

28 Be It Enacted by the Legislature of the State of Florida:
 29

Page 1 of 12

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596-02228-20

2020728c1

30 Section 1. Section 790.162, Florida Statutes, is amended to
 31 read:
 32 790.162 Threats involving a firearm, weapon, or threat to
 33 throw, project, place, or discharge any destructive device,
 34 felony, penalty.-
 35 (1) It is unlawful for any person to threaten:
 36 (a) The use of a firearm or any weapon, including the
 37 future use of a firearm or any weapon if the threat is
 38 sufficient to cause alarm in a reasonable person; or
 39 (b) To threaten to throw, project, place, or discharge any
 40 destructive device, including the future throwing, projecting,
 41 placing, or discharging of any destructive device,
 42
 43 with intent to do bodily harm to any person or with intent to do
 44 damage to any property of any person.
 45 (2) A person does not violate subsection (1) if he or she
 46 uses or threatens to use a firearm or any other weapon in lawful
 47 self-defense, lawful defense of others, or lawful defense of
 48 property.
 49 (3) A, and any person who violates subsection (1) convicted
 50 thereof commits a felony of the second degree, punishable as
 51 provided in s. 775.082, s. 775.083, or s. 775.084.
 52 Section 2. Subsection (1) of section 790.163, Florida
 53 Statutes, is amended to read:
 54 790.163 False report concerning planting a bomb, an
 55 explosive, or a weapon of mass destruction, or concerning the
 56 use of firearms in a violent manner; penalty.-
 57 (1) It is unlawful for any person to make a false report,
 58 with intent to deceive, mislead, or otherwise misinform any

Page 2 of 12

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596-02228-20 2020728c1

59 person, concerning the current or future placing or planting of
 60 any bomb, dynamite, other deadly explosive, or weapon of mass
 61 destruction as defined in s. 790.166, or concerning the current
 62 or future use of firearms in a violent manner against a person
 63 or persons. A person who violates this subsection commits a
 64 felony of the second degree, punishable as provided in s.
 65 775.082, s. 775.083, or s. 775.084.

66 Section 3. Subsection (1) of section 790.164, Florida
 67 Statutes, is amended to read:

68 790.164 False reports concerning planting a bomb,
 69 explosive, or weapon of mass destruction in, or committing arson
 70 against, state-owned property, or concerning the use of firearms
 71 in a violent manner; penalty; reward.-

72 (1) It is unlawful for any person to make a false report,
 73 with intent to deceive, mislead, or otherwise misinform any
 74 person, concerning the current or future placing or planting of
 75 any bomb, dynamite, other deadly explosive, or weapon of mass
 76 destruction as defined in s. 790.166, concerning any act of
 77 arson or other violence to property owned by the state or any
 78 political subdivision, or concerning the current or future use
 79 of firearms in a violent manner against a person or persons. A
 80 person who violates this subsection commits a felony of the
 81 second degree, punishable as provided in s. 775.082, s. 775.083,
 82 or s. 775.084.

83 Section 4. Paragraph (e) of subsection (3) of section
 84 921.0022, Florida Statutes, is amended to read:

85 921.0022 Criminal Punishment Code; offense severity ranking
 86 chart.-

87 (3) OFFENSE SEVERITY RANKING CHART

596-02228-20 2020728c1

88 (e) LEVEL 5

89	Florida Statute	Felony Degree	Description
90	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
91	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
92	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
93	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
94	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
95	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

596-02228-20

2020728c1

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.

96

379.367(4) 3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

97

379.407(5)(b)3. 3rd Possession of 100 or more undersized spiny lobsters.

98

381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing HIV positive.

99

440.10(1)(g) 2nd Failure to obtain workers' compensation coverage.

100

440.105(5) 2nd Unlawful solicitation for the purpose of making workers' compensation claims.

Page 5 of 12

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596-02228-20

2020728c1

101 440.381(2) 3rd Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

102

624.401(4)(b)2. 2nd Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.

103

626.902(1)(c) 2nd Representing an unauthorized insurer; repeat offender.

104

790.01(2) 3rd Carrying a concealed firearm.

105

790.162 2nd Threat involving firearm, weapon, or to throw or discharge destructive device.

106

790.163(1) 2nd False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.

107

790.221(1) 2nd Possession of short-barreled shotgun or machine gun.

108

Page 6 of 12

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	596-02228-20		2020728c1
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
109			
	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
110			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
111			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
112			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
113			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
114			
	812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
115			
	812.019(1)	2nd	Stolen property; dealing in or

	596-02228-20		2020728c1
			trafficking in.
116			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
117			
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
118			
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
119			
	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
120			
	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.
121			
	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

596-02228-20

2020728c1

persons.

122

817.611(2)(a) 2nd Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

123

817.625(2)(b) 2nd Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

124

825.1025(4) 3rd Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

125

827.071(4) 2nd Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

126

827.071(5) 3rd Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.

127

828.12(2) 3rd Tortures any animal with intent to inflict intense pain, serious physical injury, or

Page 9 of 12

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596-02228-20

2020728c1

death.

128

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.

129

843.01 3rd Resist officer with violence to person; resist arrest with violence.

130

847.0135(5)(b) 2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

131

847.0137
(2) & (3) 3rd Transmission of pornography by electronic device or equipment.

132

847.0138
(2) & (3) 3rd Transmission of material harmful to minors to a minor by electronic device or equipment.

133

874.05(1)(b) 2nd Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

134

874.05(2)(a) 2nd Encouraging or recruiting

Page 10 of 12

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596-02228-20

2020728c1

person under 13 years of age to
join a criminal gang.

135

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).

136

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)
within 1,000 feet of a child
care facility, school, or
state, county, or municipal
park or publicly owned
recreational facility or
community center.

137

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.

138

Page 11 of 12

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596-02228-20

2020728c1

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.

139

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.

140

893.13(4)(b) 2nd Use or hire of minor; deliver
to minor other controlled
substance.

141

893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

142

143

Section 5. This act shall take effect October 1, 2020.

Page 12 of 12

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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)

1-28-20

Meeting Date

728

Bill Number (if applicable)

Topic Threats

Amendment Barcode (if applicable)

Name Sheriff Mike Prenergast

Job Title Sheriff of Citrus County

Address 1 Dr. Martin Luther King Jr. Ave.

Phone 352-726-4488

Street

Inverness

Email

City

State

Zip

Speaking: [X] 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 [X] No

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/28/2020

Meeting Date

SB 728

Bill Number (if applicable)

Topic Threats

Amendment Barcode (if applicable)

Name Gary W. Hester

Job Title Government Affairs - Chief

Address P.O Box 14038

Phone 863-287-8438

Street

Tallahassee

FL

32317

Email garywhester@gmail.com

City

State

Zip

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)

1-28-20

Meeting Date

728

Bill Number (if applicable)

Topic THREATS

Amendment Barcode (if applicable)

Name MICHAEL CRABB

Job Title LIEUTENANT

Address 2500 W. COLONIAL DR

Phone 321-436-4447

Street

ORLANDO

City

FL

State

32804

Zip

Email MICHAEL.CRABB@OCFL.NET

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/28/29

Meeting Date

SB 728

Bill Number (if applicable)

Topic Verbal Threats

Amendment Barcode (if applicable)

Name David Shepp

Job Title Lobbyist

Address P.O. Box 3739

Phone 863 581-4250

Street

Lakeland

City

FL

State

33802

Zip

Email shepp@thesoutherngrp.com

Speaking: For Against Information

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

Representing Polk County Sheriff Judd

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)

1/28/2020
Meeting Date

SB 728
Bill Number (if applicable)

Topic Threats

Amendment Barcode (if applicable)

Name Khanh-Lien Banko

Job Title Resolutions Chair

Address 1747 Orlando Central Parkway

Phone 386-717-4965

Street
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

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)

1/28/20

Meeting Date

728

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo Fl. 33773

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Families.

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:
Appropriations Subcommittee on
Education, *Chair*
Appropriations
Education
Ethics and Elections
Finance and Tax
Judiciary
Rules

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

SENATOR KELLI STARGEL
22nd District

January 17, 2020

The Honorable Keith Perry
Senate Committee on Criminal Justice, Chair
316 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Perry:

I respectfully request that SB 728, related to *Threats*, be placed on Criminal Justice meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 22

Cc: Lauren Jones/Staff Director
Sue Arnold/AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore



Florida Public Defender Association, Inc.

Fiscal Analysis of SB 728

PUBLIC DEFENDERS

*Bruce Miller
First Circuit*

*Andrew Thomas
Second Circuit*

*Blair Payne
Third Circuit*

*Charles Cofer
Fourth Circuit*

*Mike Graves
Fifth Circuit*

*Bob H. Dillinger
Sixth Circuit*

*James S. Purdy
Seventh Circuit*

*Stacy A. Scott
Eighth Circuit
Secretary*

*Rex Dimmig
Tenth Circuit
President-Elect*

*Carlos J. Martinez
Eleventh Circuit*

*Larry L. Eger
Twelfth Circuit*

*Julianne M. Holt
Thirteenth Circuit*

*Mark Sims
Fourteenth Circuit*

*Carey Haughwout
Fifteenth Circuit
President*

*Robert Lockwood
Sixteenth Circuit
Treasurer*

*Howard Finkelstein
Seventeenth Circuit*

*Blaise Trettis
Eighteenth Circuit*

*Diamond R. Litty
Nineteenth Circuit*

*Kathleen A. Smith
Twentieth Circuit*

EXECUTIVE DIRECTOR
Kristina Wiggins, MPA

GENERAL COUNSEL
Robert Trammell

LEGISLATIVE CONSULTANT
Nancy Daniels

Bill Analysis- This bill adds language to section 790.162 to make it a second-degree felony to threaten the use of a firearm or any weapon with intent to harm a person or property. It is already a second-degree felony to threaten to throw, place, project or discharge any destructive device with intent to harm a person or property.

Public Defenders have concerns about bills that make threatening speech into a crime that could send a person to prison for up to 15 years. Youthful offenders particularly are prone to make ill-considered threatening statements without the ability or true criminal intent to carry them out.

Fiscal Analysis- The bill would have an indeterminate effect on public defender caseloads. It is difficult to project how many cases would be filed under the new language in this bill that are not already charged under existing statutes.

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 1018

INTRODUCER: Senator Stewart

SUBJECT: Exposure of Sexual Organs

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1018 amends s. 800.03, F.S., increasing the penalty from a first degree misdemeanor to a third degree felony for exposing or exhibiting one's s sexual organs in a vulgar or indecent manner while in public or private view.

Additionally, this bill makes being naked in public, except in any place provided or set apart for that purpose, a first degree misdemeanor. The language in the bill maintains that a mother who is breastfeeding does not violate this section.

This bill may have a positive indeterminate prison bed and jail bed impact (an unquantifiable increase). See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2020.

II. Present Situation:

Exposure of sexual organs

Section 800.03, F.S., provides that it is unlawful for a person to expose or exhibit his or her sexual organs in a vulgar or indecent manner while in public or private view, or to be naked except in any place provided or set apart for that purpose. A mother who is breastfeeding does not violate this section. A violation of this section is a misdemeanor of the first degree.¹

¹ A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

Courts have consistently held that being naked alone is not sufficient to violate s. 800.03, F.S. To trigger a violation, there must also be a “lascivious” exhibition of the sexual organs.² The terms “lascivious,” “lewd” and “indecent” have been interpreted by the Florida Supreme Court to be synonymous and mean wicked, lustful, unchaste, licentious, or sensual design by the perpetrator.³ Because nudity alone is not a violation of s. 800.03, F.S., some counties have enacted county ordinances which specifically address public nudity.⁴ Similarly, the Department of Environmental Protection has enacted a rule that specifically prohibits nudity in parks.⁵ These local ordinances or rules further restrict nudity in their respective jurisdictions.

Courts have also made a distinction between conduct that occurs in public and conduct that occurs in a private place. If the exposure occurs in a private place, evidence must be provided that someone was offended by the conduct.⁶

Similar conduct, when done in the presence of a person younger than 16, is currently a felony. Section 800.04(7), F.S., provides that a person who intentionally masturbates, intentionally exposes his or her genitals in a lewd or lascivious manner, or intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, and the victim is younger than 16 years old, commits:

- A second degree felony,⁷ if the person is 18 years of age or older.
- A third degree felony,⁸ if the person is younger than 18 years of age.

III. Effect of Proposed Changes:

This bill amends s. 800.03, F.S., increasing the penalty, from a first degree misdemeanor, to a third degree felony for exposing or exhibiting one’s s sexual organs in a vulgar or indecent manner while in public or private view.

Additionally, this bill makes it a first degree misdemeanor to be naked in public, except in any place provided or set apart for that purpose.

The language in the bill maintains that a mother who is breastfeeding does not violate this section.

This bill is effective October 1, 2020.

² See *Hoffman v. Carson*, 250 So. 2d 891 (Fla. 1971); *Goodmakers v. State*, 450 So. 2d 888 (Fla. 2d DCA, 1984); *Duvallon v. State*, 404 So. 2d 196 (Fla. 1st DCA, 1981).

³ *Boles v. State*, 27 So. 2d 293, 294 (Fla. 1946); *Goodmakers v. State*, 450 So. 2d 888 (Fla. 2d DCA 1984).

⁴ Brevard County, Florida, Municipal Code art. II., s. 74-30.

⁵ Rule 62D-2.014(7)(a), F.A.C., states that in every area of a park including bathing areas no individual shall expose the human, male or female genitals, pubic area, the entire buttocks or female breast below the top of the nipple, with less than fully opaque covering.

⁶ *State v. Kees*, 919 So. 2d 504, 506-07 (Fla. 5th DCA 2005).

⁷ A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

⁸ A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, has not reviewed this bill. However, the bill will likely have a positive indeterminate prison bed impact (an unquantifiable increase in prison beds) because the bill increases the penalty from a first degree misdemeanor to a third degree felony for exposing or exhibiting one's sexual organs in a vulgar or indecent manner while in public or private view.

Additionally, the bill may have a positive indeterminate jail bed impact (an unquantifiable increase in jail beds) because the bill makes nudity in public a first degree misdemeanor.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 800.03 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

13-00929-20

20201018__

1 A bill to be entitled

2 An act relating to exposure of sexual organs; amending
3 s. 800.03, F.S.; increasing criminal penalties for
4 exposure of sexual organs under certain circumstances;
5 providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Section 800.03, Florida Statutes, is amended to
10 read:

11 800.03 Exposure of sexual organs.—

12 (1) It is unlawful to expose or exhibit one's sexual organs
13 in public or on the private premises of another, or so near
14 thereto as to be seen from such private premises, in a vulgar or
15 indecent manner, ~~or to be naked in public except in any place~~
16 ~~provided or set apart for that purpose.~~ Violation of this
17 ~~subsection~~ section is a felony misdemeanor of the third first
18 degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or
19 s. 775.084.

20 (2) It is unlawful to be naked in public except in any
21 place provided or set apart for that purpose. Violation of this
22 subsection is a misdemeanor of the first degree, punishable as
23 provided in s. 775.082 or s. 775.083.

24 (3) A mother's breastfeeding of her baby does not under any
25 circumstance violate this section.

26 Section 2. This act shall take effect October 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-28-20

Meeting Date

1018

Bill Number (if applicable)

Topic Exposure of Sexual Organs

Amendment Barcode (if applicable)

Name Barbara Devane

Job Title Ms

Address 625 E. Brand St

Phone 251-4280

Street

Tallahassee FL 32308

Email bardevane1@

City

State

Zip

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.

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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)

1-28-20

Meeting Date

1018

Bill Number (if applicable)

Topic Exposure of Sexual Organs

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Tallahassee FL 32308

Email

Speaking: [] For [] Against [] Information

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

Representing Florida Sheriffs Association

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.

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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)

1/28/20
(Meeting Date)

1018
Bill Number (if applicable)

Topic SB 1018 STEWART

Amendment Barcode (if applicable)

Name RAMON MAURY

Job Title REPRESENTING

Address PO BOX 10245
Street

Phone 222-1568

TALL FL 32302
City State Zip

Email RAMON@RAMONMAURY.COM

Speaking: For Against Information

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

Representing AANR-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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-28-20

Meeting Date

1018

Bill Number (if applicable)

Topic EXPOSURE OF SEX ORGANS

Amendment Barcode (if applicable)

Name MICHAEL CRABB

Job Title LIEUTENANT

Address 2500 W. CROWN DR

Phone 321-436-4447

Street

ORLANDO

City

FL

State

32804

Zip

Email MICHAEL.CRABB@OCFL.NET

Speaking: For Against Information

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

Representing ORANGE COUNTY SHERIFF'S OFFICE / SHERIFF MINA

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)

APPEARANCE RECORD

1018

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

1/28/20

Meeting Date

728

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo FL. 33773

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Families

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 13, 2019

I respectfully request that **Senate Bill #: 1018** relating to Exposure of Sexual Organs be placed on the:

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

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

c.c. Lauren Jones, Staff Director
Sue Arnold, Senior Administrative Assistant

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 1024

INTRODUCER: Criminal Justice Committee and Senator Bean

SUBJECT: Public Records/Postconviction Reinvestigative Information

DATE: January 29, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1024 creates a public records exemption for postconviction reinvestigative information in s. 119.071(2)(q), F.S. Postconviction reinvestigative information is defined in the bill as information compiled by a state attorney or other criminal justice agency at the request of the state attorney for the purpose of making an evidence-based determination as to whether an identifiable person, identifiable persons, or a group of identifiable persons is innocent of the crime or crimes that he, she, or they have been convicted of committing.

The information is confidential and exempt when it is related to an ongoing, good faith investigation of a claim of actual innocence until the claim is no longer capable of further reasonable investigation or the relief sought is granted. This exemption appears to be no more broad than necessary to accomplish the purposes of furthering the pursuit of justice while safeguarding, preserving, and protecting personal information relating to a claim of actual innocence by a convicted person.

The bill provides the public necessity statement for the public records exemption, stating that the exemption is in the public interest to safeguard, preserve, and protect information relating to a claim of actual innocence by a person who may have been convicted of a crime or crimes that he, she, or they did not commit. The bill makes legislative findings in support of the public necessity for the exemption.

The bill requires a two-thirds vote of the members present and voting for final passage. It will stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill's fiscal impact is indeterminate. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy 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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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 the statutory definition of

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

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.”

“public record” to include “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 public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any 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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the

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. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ 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.

fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

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.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Agency Investigations

Section 119.071(2), F.S., contains general exemptions from the public records law for agency investigations. For purposes of ch. 119, F.S., the definition of "agency" is any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See *generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

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.²⁷

Conviction Integrity Review Units

Conviction Integrity Review (CIR) units are divisions of prosecutorial offices that work to prevent, identify, and correct false convictions. There were 44 CIR units in the United States in 2018, almost three times the number of just five years earlier. Fifty-eight CIR exonerations took place in 2018.²⁸

Currently, four state attorney's offices in Florida have established CIR units within their offices. These offices are located in the:

- Fourth Circuit, covering Duval, Clay, and Nassau Counties;
- Ninth Circuit, covering Orange and Osceola Counties;
- Thirteenth Circuit, covering Hillsborough County; and
- Seventeenth Circuit, covering Broward County.²⁹

The first state attorney's office to establish a CIR unit was the Fourth Circuit in early 2018. All four of the CIR units have essentially the same procedures in place which includes criteria a person must meet to warrant more than an initial screening. For example, the CIR units require that a person present a plausible claim of innocence, and some of the units report they rely upon an independent review panel of legal experts to work with the units to review and evaluate the cases under investigation.³⁰ Prior to 2018, Florida had 64 exonerations, including eight defendants who had been sentenced to death.³¹

The work of the Fourth Circuit's CIR unit resulted in the 2019 exoneration of two men, Clifford Williams and Nathan Myers, who were sentenced to life in prison for the 1976 Jacksonville murder of Jeanette Williams.³² The CIR unit's investigation confirmed multiple alibi witnesses for the whereabouts of the two men at the time of the murder, and further confirmed that another man, Nathaniel Lawson, admitted to committing the murder. The CIR unit's investigation was

²⁷ Section 119.011(2), F.S.

²⁸ The National Registry of Exonerations, *Exonerations in 2018*, April 9, 2019, p. 2, available at <https://www.law.umich.edu/special/exoneration/Documents/Exonerations%20in%202018.pdf> (last visited January 24, 2020).

²⁹ Office of the State Attorney for the Fourth Judicial Circuit, *Conviction Integrity Review*, available at <https://www.sao4th.com/about/programs-and-initiatives/conviction-integrity-review/>; Office of the State Attorney for the Ninth Judicial Circuit, *Conviction Integrity Policy*, available at <https://www.sao9.net/conviction-integrity.html>; Section 119.011 Office of the State Attorney for the Thirteenth Circuit, *Conviction Review Unit*, available at <https://www.sao13th.com/conviction-review-unit-cru/>; Office of the State Attorney for the Seventeenth Circuit, *Conviction Review Unit*, available at <http://www.sao17.state.fl.us/conviction-review.html> (all sites last visited January 24, 2020).

³⁰ *Id.*

³¹ The National Registry of Exonerations, *Exonerations in 2018*, April 9, 2019, p. 13, available at <https://www.law.umich.edu/special/exoneration/Documents/Exonerations%20in%202018.pdf> (last visited January 24, 2020).

³² State Attorney's Office of the Fourth Judicial Circuit of Florida, *Conviction Integrity Investigation, State of Florida v. Hubert Nathan Meyers, State of Florida v. Clifford Williams, Jr.*, March 28, 2019, p. 42, available at https://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR_Investigative_Report_FINAL_3.28.19_R.pdf (last visited January 24, 2020).

able to independently confirm Lawson's presence at the scene at the time of the shooting.³³ Prior to Mr. Williams' and Mr. Myers' convictions and sentences being vacated by the 4th Circuit Court on March 28, 2019, they had served 42 years and 11 months in prison.³⁴

The information gathered by CIR units is not currently considered exempt from the public records law.

III. Effect of Proposed Changes:

The bill creates a public records exemption for postconviction reinvestigative information in s. 119.071(2)(q), F.S.

Postconviction reinvestigative information is defined in the bill as information compiled by a state attorney or other criminal justice agency at the request of the state attorney for the purpose of making an evidence-based determination as to whether an identifiable person, identifiable persons, or a group of identifiable persons is innocent of the crime or crimes that he, she, or they have been convicted of committing.

The bill makes postconviction reinvestigative information confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution when it is related to an ongoing, good faith investigation of a claim of actual innocence until the claim is no longer capable of further reasonable investigation or the relief sought is granted. This exemption appears to be no more broad than necessary to accomplish the purposes of furthering the pursuit of justice while safeguarding, preserving, and protecting postconviction reinvestigative information.

The bill provides a public necessity statement for the creation of the public records exemption stating that the exemption is in the public interest of safeguarding, preserving, and protecting information relating to a claim of actual innocence by a person who may have been convicted of a crime or crimes that he, she, or they did not commit.

The bill makes findings in support of the public necessity for the exemption:

- That it is necessary to protect this information in order to encourage witnesses, who might otherwise be reluctant to come forward, to be forthcoming with evidence of a crime or crimes;
- The information compiled during the reinvestigation could reveal the identity of the person or persons who actually committed the crime or crimes which have been identified as the perpetrator or perpetrators; and
- Therefore, it is in the interest of the pursuit of justice that all postconviction reinvestigation information be protected until such investigation is concluded.

The bill requires a two-thirds vote of the members present and voting for final passage. It will stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

³³ *Id.*, at p. 4.

³⁴ The Florida Senate, *Senate Bill 28 Special Master's Final Report*, January 23, 2020, at p. 1-2, available at <http://www.flsenate.gov/Session/Bill/2020/28/Analyses/2020s00028.sm.PDF> (last visited January 25, 2020).

The bill is effective July 1, 2020.

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. This bill creates an exemption for postconviction reinvestigative information, as defined in the bill, in s. 119.071(2)(q), F.S., 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 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 exemption.

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 purpose of the law is to protect postconviction investigative information relating to a claim of actual innocence by a convicted person which may be developed or gathered during the investigation of the claim. This bill exempts the information for only as long as it is related to an ongoing, good faith investigation of a claim of actual innocence until the claim is no longer capable of further reasonable investigation or the relief sought is granted. The exemption does not appear to be broader than necessary to accomplish the purpose of the exemption.

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 Public Defender Association, Inc., suggests that any workload issues associated with public defenders obtaining documents or information in the postconviction innocence claims addressed by the bill are “indeterminate.”³⁵

The Florida Department of Law Enforcement does not mention any fiscal impact to the agency from this bill.³⁶

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 January 28, 2020:

The committee substitute:

- Creates a public records exemption for postconviction reinvestigative information in s. 119.071(2)(q), F.S., making postconviction reinvestigative information confidential and exempt from the public records law.
- Defines postconviction reinvestigative information.
- Provides that the information is only confidential and exempt for as long as it is related to an ongoing, good faith investigation of a claim of actual innocence until the claim is no longer capable of further reasonable investigation or the relief sought is

³⁵ 2020 Bill Analysis, SB 1024, Florida Public Defender Association, Inc. (on file with the Senate Criminal Justice Committee).

³⁶ 2020 Agency Bill Analysis SB 1024, Florida Department of Law Enforcement, December 5, 2019 (on file with the Senate Criminal Justice Committee).

granted, which makes the exemption no more broad than necessary to accomplish its purpose.

- Sets forth a public necessity statement for the exemption, that the exemption is in the public interest of safeguarding, preserving, and protecting information relating to a claim of actual innocence by a person who may have been convicted of a crime or crimes that he, she, or they did not commit.
- Provides Legislative findings supporting the public necessity, including that:
 - It is necessary to protect the information in order to encourage witnesses, who might otherwise be reluctant to come forward, to be forthcoming with evidence of a crime or crimes;
 - The information compiled during the reinvestigation could reveal the identity of the person or persons who actually committed the crime or crimes which have been identified as the perpetrator or perpetrators; and
 - It is in the interest of the pursuit of justice that all postconviction reinvestigation information be protected until such investigation is concluded.
- Requires a two-thirds vote of the members present and voting for final passage.
- Stands repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/28/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (q) is added to subsection (2) of
section 119.071, Florida Statutes, to read:

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

(2) AGENCY INVESTIGATIONS.—

(q)1. As used in this paragraph, the term "postconviction



765140

11 reinvestigative information" means information compiled by a
12 state attorney or other criminal justice agency at the request
13 of the state attorney for the purpose of making an evidence-
14 based determination as to whether an identifiable person,
15 identifiable persons, or a group of identifiable persons is
16 innocent of the crime or crimes that he, she, or they have been
17 convicted of committing.

18 2. Postconviction reinvestigative information is
19 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
20 of the State Constitution when it is related to an ongoing, good
21 faith investigation of a claim of actual innocence until the
22 claim is no longer capable of further reasonable investigation
23 or the relief sought is granted. This paragraph is subject to
24 the Open Government Sunset Review Act in accordance with s.
25 119.15 and shall stand repealed on October 2, 2025, unless
26 reviewed and saved from repeal through reenactment by the
27 Legislature.

28 Section 2. The Legislature finds that it is a public
29 necessity that postconviction reinvestigative information be
30 made confidential and exempt from s. 119.07(1), Florida
31 Statutes, and s. 24(a), Article I of the State Constitution. The
32 Legislature further finds that the information compiled by a
33 state attorney's office, or another criminal justice agency upon
34 the request of a state attorney, for the purpose of making an
35 evidence-based determination as to whether an identifiable
36 person or group of persons is innocent of the crime or crimes
37 that he, she, or they have been convicted of committing be made
38 confidential and exempt from s. 119.07(1), Florida Statutes, and
39 s. 24(a), Article I of the State Constitution. The Legislature



765140

40 recognizes that it is in the public interest to safeguard,
41 preserve, and protect information related to a claim of actual
42 innocence by a person who may have been convicted of a crime or
43 crimes that he, she, or they did not commit. It is necessary to
44 protect this information in order to encourage witnesses, who
45 might otherwise be reluctant to come forward, to be forthcoming
46 with evidence of a crime or crimes. Further, the information
47 compiled during the reinvestigation could reveal the identity of
48 the person or persons who actually committed the crime or crimes
49 which have been identified as the perpetrator or perpetrators.
50 It is in the interest of the pursuit of justice that all
51 postconviction reinvestigation information be protected until
52 such investigation is concluded.

53 Section 3. This act shall take effect July 1, 2020.

54
55 ===== T I T L E A M E N D M E N T =====

56 And the title is amended as follows:

57 Delete everything before the enacting clause
58 and insert:

59 A bill to be entitled
60 An act relating to public records; amending s.
61 119.071, F.S.; defining the term "postconviction
62 reinvestigative information"; providing an exemption
63 from public records requirements for certain
64 postconviction reinvestigative information; providing
65 for future review and repeal of the exemption;
66 providing a statement of public necessity; providing
67 an effective date.

By Senator Bean

4-01123A-20

20201024__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.011, F.S.; expanding an existing public records
 4 exemption by redefining the term "active" to include
 5 an ongoing, good faith investigation of a case that
 6 previously resulted in the conviction of the accused
 7 person; providing for future review and repeal of the
 8 expanded exemption; providing for reversion of
 9 specified language if the exemption is not saved from
 10 repeal; providing a statement of public necessity;
 11 providing an effective date.

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

15 Section 1. Paragraph (d) of subsection (3) of section
 16 119.011, Florida Statutes, is amended to read:

17 119.011 Definitions.—As used in this chapter, the term:

18 (3)

19 (d)1. ~~The word~~ "Active" shall have the following meaning:

20 a.1- Criminal intelligence information shall be considered
 21 "active" as long as it is related to intelligence gathering
 22 conducted with a reasonable, good faith belief that it will lead
 23 to detection of ongoing or reasonably anticipated criminal
 24 activities.

25 b.2- Criminal investigative information shall be considered
 26 "active" as long as it is related to an ongoing investigation
 27 that which is continuing with a reasonable, good faith
 28 anticipation of securing an arrest or prosecution in the
 29 foreseeable future, or as long as it is related to an ongoing,

Page 1 of 3

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

4-01123A-20

20201024__

30 good faith investigation of a claim of actual innocence in a
 31 case that previously resulted in the conviction of the accused
 32 person, and remains "active" until such time as the claim is no
 33 longer capable of further reasonable investigation or the relief
 34 sought is granted.

35

36 In addition, criminal intelligence and criminal investigative
 37 information shall be considered "active" while such information
 38 is directly related to pending prosecutions, ~~or~~ appeals, or
 39 investigations by a criminal justice agency of a criminal matter
 40 that previously resulted in the conviction of the accused
 41 person. The word "active" shall not apply to information in
 42 cases that which are barred from prosecution under ~~the~~
 43 provisions of s. 775.15 or other statute of limitation.

44 2. The expansion of the public records exemption under this
 45 paragraph to include an ongoing, good faith investigation of a
 46 case that previously resulted in the conviction of the accused
 47 person is subject to the Open Government Sunset Review Act in
 48 accordance with s. 119.15 and shall stand repealed on October 2,
 49 2025, unless reviewed and saved from repeal through reenactment
 50 by the Legislature. If the expansion of the exemption is not
 51 saved from repeal, this paragraph shall revert to that in
 52 existence on June 30, 2020, except that any amendments to this
 53 paragraph other than by this act must be preserved and continue
 54 to operate to the extent that such amendments are not dependent
 55 upon the portions of this paragraph which expire pursuant to
 56 this subparagraph.

57 Section 2. The Legislature finds that it is a public
 58 necessity to expand the definition of the term "active" in s.

Page 2 of 3

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

4-01123A-20

20201024__

59 119.011, Florida Statutes, to include criminal intelligence
60 information and criminal investigative information that is
61 related to an ongoing, good faith investigation of a matter that
62 previously resulted in the conviction of an accused person. This
63 change is necessary in the interest of safeguarding, preserving,
64 and protecting personal information relating to a claim of
65 actual innocence by a convicted person. This expansion is
66 critical to furthering criminal justice agency investigations
67 and the pursuit of justice.

68 Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 19, 2019

I respectfully request that **Senate Bill # 1024**, relating to Public Records/Criminal Intelligence & Criminal Investigative Information, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4



Florida Public Defender Association, Inc.

FISCAL ANALYSIS OF SB 1024

PUBLIC DEFENDERS

*Bruce Miller
First Circuit*

*Andrew Thomas
Second Circuit*

*Blair Payne
Third Circuit*

*Charles Cofer
Fourth Circuit*

*Mike Graves
Fifth Circuit*

*Bob H. Dillinger
Sixth Circuit*

*James S. Purdy
Seventh Circuit*

*Stacy A. Scott
Eighth Circuit
Secretary*

*Rex Dimmig
Tenth Circuit
President-Elect*

*Carlos J. Martinez
Eleventh Circuit*

*Larry L. Eger
Twelfth Circuit*

*Julianne M. Holt
Thirteenth Circuit*

*Mark Sims
Fourteenth Circuit*

*Carey Haughwout
Fifteenth Circuit
President*

*Robert Lockwood
Sixteenth Circuit
Treasurer*

*Howard Finkelstein
Seventeenth Circuit*

*Blaise Trettis
Eighteenth Circuit*

*Diamond R. Litty
Nineteenth Circuit*

*Kathleen A. Smith
Twentieth Circuit*

EXECUTIVE DIRECTOR
Kristina Wiggins, MPA

GENERAL COUNSEL
Robert Trammell

LEGISLATIVE CONSULTANT
Nancy Daniels

Bill Analysis- The bill changes the definition of “active” criminal intelligence information in the public records statute to protect information related to an ongoing, good faith investigation of a claim of actual innocence that resulted in a conviction. Such information is protected “until such time as the claim is no longer capable of reasonable investigation or the relief sought is granted.”

Public Defenders have concerns about this bill. Although it states that the intent is to protect personal information related to a claim of innocence by a convicted person, we believe it could complicate access to information needed by a person claiming innocence. We also believe it could undermine confidence in the transparency of the criminal justice system.

Fiscal Analysis- Public Defenders are appointed to handle post-conviction claims by defendants convicted of non-capital felonies, some of which involve claims of actual innocence. To the extent the bill would frustrate the ability to obtain law enforcement information concerning these cases, our investigative staff would have additional workload, and our attorneys would be involved in more litigation. The extent of additional workload is indeterminate.



2020 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
BILL NUMBER:	SB 1024
BILL TITLE:	Public Records Criminal Intelligence and Criminal Investigative Information
BILL SPONSOR:	Senator Bean
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Government Oversight and Accountability
3) Rules
4)
5)

CURRENT COMMITTEE
Criminal Justice

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION	
BILL NUMBER:	SB1130
SPONSOR:	Bean
YEAR:	2019
LAST ACTION:	Died in committee

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	December 5, 2019
LEAD AGENCY ANALYST:	Jason Jones
ADDITIONAL ANALYST(S):	
LEGAL ANALYST:	Kate Holmes, Chris Bufano, Jason Jones
FISCAL ANALYST:	Cynthia Barr, Deshawn Byrd

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Amends current definition of “active criminal investigative information” in s. 119.011, F.S., to expand the language to include records deemed active “as long as it is related to an ongoing, good faith reinvestigation of a claim of actual innocence which previously resulted in the conviction of the accused person.” The bill also asserts the active exemption to records where there is a reinvestigation by a criminal justice agency of a criminal matter that previously resulted in the conviction of the accused person.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Currently, records are only deemed “active” under the definition of “criminal investigative information” 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 and during the pendency of criminal prosecutions or appeals.
2. **EFFECT OF THE BILL:** Expands the “active” exemption to include records pertaining to a reinvestigation of a claim of actual innocence that resulted in the conviction of the accused person. The expanded exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment.
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 <input type="checkbox"/> N <input type="checkbox"/>
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 IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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FEDERAL IMPACT

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

If yes, describe the anticipated impact including any fiscal impact.	
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LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

<p>Issues/concerns/comments and recommended action:</p>	<ul style="list-style-type: none"> • The proposed bill expands the current “active criminal investigative information” exemption to deem records “active” “as long as it is related to an ongoing, good faith reinvestigation of a claim of actual innocence which previously resulted in the conviction of the accused person.” The bill does not define “claim of actual innocence.” Agencies consistently receive communications letters from family members or convicted persons where they claim they were wrongfully convicted or imprisoned. The bill is silent as to what requires or triggers a “reinvestigation” by the agency. It is unknown if this bill would require reopening investigations by a criminal justice agency based upon a “claim of actual innocence.” • The bill also states that records pertaining to this “reinvestigation” remain active “until such time as the claim is no longer capable of further reasonable investigation or the relief sought should be granted.” Who makes the determination that the claim is no longer capable of further reasonable investigation? The “relief sought” would typically revolve around a judicial determination as to whether or not to grant a motion for post-conviction relief. Depending upon the number of agencies involved in a case, some agencies may not know whether or not the relief has been granted by the courts and whether or not the records would fall under the “active” exemption. • Florida has a public policy in favor of openness of government. The Public Records Act is to be liberally construed in favor of open government and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. See <i>National Collegiate Athletic Association v. Associated Press</i>, 18 So. 3d 1201, 1206 (Fla.1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010); <i>Krischer v.D’Amato</i>, 674 So. 2d 909, 911 (Fla. 4th DCA 1996); <i>Seminole County v. Wood</i>, 512 So. 2d 1000, 1002 (Fla. 5th DCA 1987), review denied, 520 So. 2d 586 (Fla. 1988); <i>Tribune Company v. Public Records</i>, 493 So. 2d 480, 483 (Fla. 2d DCA 1986), review denied sub nom., <i>Gillum v. Tribune Company</i>, 503 So. 2d 327 (Fla. 1987). Courts have previously discussed the “active criminal investigative information exemption” and have found that the “limited purpose of the exemption for active criminal investigative information—to protect the apprehension and prosecution of crime—has been fully satisfied in this case.” <i>Tribune Co. v. Pub. Records</i>, P.C.S.O. No. 79-35504 Miller/Jent,
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	<p>493 So. 2d 480, 484 (Fla. 2d DCA 1986) quoting <i>Tribune Co. V. Cannella</i>, 438 So.2d 516, 523 (Fla. 2d DCA 1983). While the statute in current form provides that records retain the “active” status through pending prosecution or appeals, the courts have held that once the records are turned over to defense counsel in discovery the agency cannot claim the “active” exemption in response to a public records request. <i>Satz v. Blankenship</i>, 407 So.2d 396 (4th DCA 1981); <i>Bludworth v. Palm Beach Newspapers, Inc.</i>, 479 So.2d 775 (Fla. 4th DCA 1985); <i>State v. Kokal</i>, 562 So.2d 324, (Fla. 1990). The basis of the court’s holdings was because of Florida’s public policy of open government and the limited purpose of protecting the information until the apprehension and prosecution of the crime.</p> <ul style="list-style-type: none"> • Additionally, based upon a review of the case law surrounding the “active” exemption, it is possible this proposed language would not follow the current posture of the law. In <i>Kokal</i>, the Supreme Court of Florida considered the phrase “pending prosecutions or appeals” (the current phrase in s. 119.011(3)(d), F.S.) and held that the use of that phrase “means ongoing prosecution or appeals from convictions and sentences which have not become final.” <i>Id.</i> at 326. The Court was concerned that considering information “active” after the conviction and sentence have become final “would be to hold such information would never become inactive because there is always some circumstances under which a defendant may file a motion for post-conviction relief.” <i>Id.</i> This concern by the Court is directly related to the proposed bill language. By expanding the exemption for records to retain there “active” status during an “investigation of a claim of actual innocence which previously resulted in the conviction of the accused person” and an “investigation by a criminal justice agency of a criminal matter that previously resulted in the conviction of the accused person” has the potential to be in conflict with the holding in <i>Kokal</i> as well as the holding and discussion in <i>Tribune Co. v. Pub. Records</i>, P.C.S.O. No. 79-35504 <i>Miller/Jent</i>, 493 So. 2d 480 (Fla. 2d DCA 1986). • While the case law is clear that once records have been turned over to the defendant or defendant’s counsel in discovery, the records cannot be redacted under the “active criminal investigation” exemption, any other records that an agency obtains or creates during the “reinvestigation” could plausibly be redacted under the “active” exemption. In order to properly redact and/or release any records, agencies would have to be privy to what records were previously released to the defendant and/or defendant’s attorney in discovery. These additional steps to determine what records would or would not fall under the exemption would require additional time for agencies to accurately respond to the public records request. This increase in time in researching the status of the records could increase the cost of providing the records to the requester. • Finally, the Legislature finds that it is a public necessity to expand the criminal intelligence and criminal investigative information exemption in order to safeguard, preserve and protect personal information relating to claim of actual innocence by a convicted person. However, the proposed bill only amends paragraph “b” (regarding criminal investigative information) to include a “reinvestigation of a claim of actual innocence.” New paragraph “a” (regarding criminal intelligence information) does not include the new proposed phrase “or as long as it is related to an ongoing, good faith reinvestigation of a claim of actual innocence which previously resulted in the conviction of the accused person until such time as the claim is no longer capable of further reasonable investigation or the relief sought should be granted.” The only referenced change to criminal intelligence information is the following: “or reinvestigation by a criminal justice agency of a criminal matter that previously resulted in the conviction of the accused person.” Courts could possibly interpret the proposed language surrounding a “claim of actual innocence” to not apply to criminal intelligence information since that amended language was not included in proposed paragraph “a”.
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ADDITIONAL COMMENTS

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 1286

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Contraband in Specified Facilities

DATE: January 29, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1286 adds medical marijuana, hemp, industrial hemp, and vapor-generating electronic devices to the list of contraband that may not be introduced into the secure perimeter of state correctional institutions, county detention facilities, juvenile detention facilities, juvenile commitment programs, and facilities operated by the Department of Children and Families (DCF), and the Agency for Persons with Disabilities (APD).

This bill provides that it is a third degree felony to introduce medical marijuana, hemp, or industrial hemp into the secure perimeter of any of the above mentioned facilities and a first degree misdemeanor to introduce a vapor-generating electronic device into the secure perimeter of any of the above mentioned facilities.

This bill also amends ss. 916.1085 and 985.711, F.S., to add cellular phones or portable communication devices, to the list of contraband that may not be introduced into or on the grounds of juvenile detention facilities, juvenile commitment programs, and facilities operated by the DCF or the APD. It is a first degree misdemeanor to introduce such contraband into the secure perimeter of any of these facilities.

Additionally this bill makes introducing an intoxicating beverage or any item designated by the DCF or the APD as contraband, into the secure perimeter of a facility operated by the DCF or the APD, a first degree misdemeanor.

Additionally this bill amends s. 921.0022, F.S., ranking the previously unranked offense of introducing a firearm or deadly weapon, or a controlled substance into any of the above listed facilities as a level 4 offense.

The Criminal Justice Impact Conference estimates the House companion to this bill, which is substantively similar, will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds). The Legislature’s Office of Economic and Demographic Research preliminarily estimate of this bill is the same as the House companion bill. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2020.

II. Present Situation:

Introduction of contraband is prohibited from certain government operated facilities. Specifically, Florida law prohibits the introduction of contraband into state correctional institutions, county detention facilities, juvenile detention and commitment programs, and facilities operated by the DCF or the APD.¹

Introduction of Contraband at State Correctional Institutions (State Prisons)

Section 944.47, F.S., provides that it is a third degree felony² to introduce into or on the grounds of a state correctional facility, any of the following items:

- Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any inmate.
- Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate.
- Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution.³

A portable communication device is defined under this section as 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 communication in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA’s, laptop computers, or any components of these devices which are intended to be used to assemble such devices. The term also includes any new technology that is developed for similar purposes. Excluded from this definition is any device having communication capabilities which has been approved or issued by the department for investigative or institutional security purposes or for conducting other state business.⁴

¹ Sections 916.1085, 944.47, 951.22, and 985.711, F.S.

² A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

³ Section 944.47(1)(a)1., 2., and 6., F.S.

⁴ Section 944.47(1)(a)6., F.S.

Additionally, it is a second degree felony⁵ for a person to introduce into or on the grounds of a state correctional facility, any of the following items:

- Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Any controlled substance as defined in s. 893.02(4), F.S., or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive substance.⁶

Introduction of Contraband at County Detention Facilities (County Jails)

Section 951.22, F.S., provides that it is a first degree misdemeanor⁷ to introduce into or on the grounds of a county detention facility, any of the following items:

- Any written or recorded communication.⁸
- Any currency or coin.
- Any article of food or clothing.
- Any tobacco products.
- Any cigarette.
- Any cigar.
- Any intoxicating beverage or beverage that causes or may cause an intoxicating effect.⁹

Additionally, it is a third degree felony to introduce into or on the grounds of a county detention facility, one of the following items:

- 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), F.S.
- Any firearm or any instrumentality commonly used or intended to be a dangerous weapon.
- Any instrumentality of any nature which may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.
- Any cellular telephone or other portable communication device¹⁰ as described in s. 944.47(1)(a)6., F.S.¹¹

⁵ A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

⁶ Section 944.47(1)(a)3.-5., F.S.

⁷ A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

⁸ This does not apply to any document or correspondence exchanged between a lawyer, paralegal, or other legal staff and an inmate at a detention facility if the document or correspondence is otherwise lawfully possessed and disseminated and relates to the legal representation of the inmate. Section 951.22(1)(a), F.S.

⁹ Sections 951.22(1)(a)-(g), F.S.

¹⁰ This does not include any device which has been approved or issued by the sheriff or officer in charge for investigative or institutional security purposes or for conducting official business.

¹¹ Sections 951.22(1)(h)-(k), F.S.

Introduction of Contraband at Juvenile Detention Facilities and Juvenile Commitment Programs

Section 985.711, F.S., provides that it is a third degree felony to introduce into or on the grounds of a juvenile detention facility or a juvenile commitment program, any unauthorized food or clothing.¹²

Additionally, it is a second degree felony to introduce into or on the grounds of a juvenile detention facility or juvenile commitment program, any of the following items:

- Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.
- Any controlled substance as defined in s. 893.02(4), F.S., or any prescription or non-prescription drug that has a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive substance.¹³

Introduction of Contraband at the DCF and the APD Facilities

The DCF and the APD supervise certain criminal defendants who have been found incompetent to proceed or not guilty by reason of insanity.

Section 916.1085, F.S., provides that it is a third degree felony to introduce into or on the grounds of any facility under the supervision or control of the DCF or the APD, any of the following items:

- Any controlled substance as defined in ch. 893, F.S.
- Any firearm or deadly weapon.¹⁴

Additionally, intoxicating beverages or any item determined by the DCF or the APD to be hazardous to the welfare of clients or the operation of the facility are considered contraband.¹⁵ However, a violation of these items is not a criminal offense.

Florida's Controlled Substance Schedules

Section 893.02(4), F.S., defines controlled substance as any substance named or described in Schedules I-V of s. 893.03, F.S. Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the "potential for abuse"¹⁶ of the substance and whether there is a currently accepted medical use for the substance.

¹² Sections 985.711(1)(a)1., F.S.

¹³ Section 985.711(1)(a)2.-4., F.S.

¹⁴ Section 916.1085(1)(a), F.S.

¹⁵ Section 916.1085(1)(a), F.S.

¹⁶ Section 893.035(3)(a), F.S., defines "potential for abuse" as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that create a hazard to the user's health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user's own initiative rather than on the basis of professional medical advice.

Cannabis, Medical Marijuana, and Hemp

State correctional facilities, county detention facilities, juvenile detention and commitment programs, and facilities operated by the DCF and the APD currently prohibit any controlled substance as defined in ch. 893, F.S., including cannabis.

Section 893.02(3), F.S., defines cannabis as all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

Cannabis is prohibited contraband. However, recent changes made by the Legislature make prosecution of cannabis contraband offenses difficult. In 2014, the Legislature amended s. 893.02(3), F.S., to exclude medical marijuana as defined under s. 381.986, F.S.¹⁷ Similarly, in 2019, the Legislature exempted hemp as defined in s. 581.217, F.S., and industrial hemp as defined in s. 1004.4473, F.S., from the definition of cannabis under s. 893.02(3), F.S.¹⁸

Section 381.986(1)(f), F.S., defines marijuana as all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

Section 581.217(3)(d), F.S., defines hemp as the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Section 1004.4473(1)(c), F.S., defines industrial hemp as all parts and varieties of the *Cannabis sativa* plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Vaping

During the 2019 Legislative Session, CS/SB 7012¹⁹ was adopted, to implement Amendment 9 to the State Constitution, which was approved by the voters of Florida on November 6, 2018, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces, as part of the Florida Clean Indoor Air Act. The use of e-cigarettes is commonly referred to as vaping.

“Vape” or “vaping” means to inhale or exhale vapor²⁰ produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing

¹⁷ Chapter 2014-157, L.O.F.

¹⁸ Chapter 2019-132, L.O.F.

¹⁹ See ch. 2019-14, L.O.F. This legislation was approved by the Governor and took effect July 1, 2019.

²⁰ “Vapor” means aerosolized or vaporized nicotine or other aerosolized or vaporized substance produced by a vapor-generating electronic device or exhaled by the person using such a device. Section 386.202(14), F.S.

an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.²¹

A “vapor-generating electronic device” is any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.²²

Criminal Punishment Code

The Criminal Punishment Code²³ (Code) is Florida’s primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10). Points are assigned and accrue based upon the severity level ranking assigned to the primary 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.²⁴ Absent mitigation,²⁵ 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.²⁶

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. Currently a felony of the third degree is ranked as a level 1 offense.²⁷

²¹ Section 386.203(13), F.S.

²² Section 386.203(15), F.S. Electronic nicotine delivery systems (ENDS) are “noncombustible tobacco products.” “These products use an ‘e-liquid’ that may contain nicotine, as well as varying compositions of flavorings, propylene glycol, vegetable glycerin, and other ingredients. The liquid is heated to create an aerosol that the user inhales.” “ENDS may be manufactured to look like conventional cigarettes, cigars, or pipes. Some resemble pens or USB flash drives. Larger devices, such as tank systems or mods, bear little or no resemblance to cigarettes.” *Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS)*, U.S. Food and Drug Administration, available at <https://www.fda.gov/tobacco-products/products-ingredients-components/vaporizers-e-cigarettes-and-other-electronic-nicotine-delivery-systems-ends> (last visited January 15, 2020).

²³ 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.

²⁴ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

²⁵ 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.

²⁶ 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.

²⁷ Section 921.0023(1), F.S.

III. Effect of Proposed Changes:

Introduction of Contraband at State Correctional Institutions (State Prisons)

This bill amends s. 944.47, F.S., to add medical marijuana, hemp, industrial hemp, and vapor-generating electronic devices to the list of contraband that is prohibited from being introduced into the secure perimeter of any state correctional institution.

This bill provides that a person who introduces contraband including medical marijuana, hemp, or industrial hemp commits a second degree felony.

This bill provides that a person who introduces contraband including a vapor-generating electronic device commits a first degree misdemeanor.

Introduction of Contraband at County Detention Facilities (County Jails)

This bill amends s. 951.22, F.S., to add medical marijuana, hemp, industrial hemp, and vapor-generating electronic devices to the list of contraband that is prohibited from being introduced into the secure perimeter of any county detention facility.

This bill provides that a person who introduces contraband including medical marijuana, hemp, or industrial hemp commits a third degree felony.

This bill provides that a person who introduces contraband including a vapor-generating electronic device commits a first degree misdemeanor.

Introduction of Contraband at Juvenile Detention Facilities and Juvenile Commitment Programs

This bill amends s. 985.711, F.S., to add medical marijuana, hemp, industrial hemp, cellular phones or portable communication devices, and vapor-generating electronic devices to the list of contraband that is prohibited from being introduced into the secure perimeter of a juvenile detention facility or commitment program.

This bill provides that a person who introduces contraband including medical marijuana, hemp, or industrial hemp commits a third degree felony.

This bill provides that a person who introduces contraband including cellular phones or portable communication devices, or vapor-generating electronic devices commits a first degree misdemeanor.

Introduction of Contraband at the DCF and the APD Facilities

This bill amends s. 916.1085, F.S., to add medical marijuana, hemp, industrial hemp, cellular phones or portable communication devices, and vapor-generating electronic devices, to the list of contraband that is prohibited from being introduced into the secure perimeter of a facility under the supervision or control of the DCF or the APD.

This bill provides that a person who introduces contraband including medical marijuana, hemp, or industrial hemp commits a third degree felony.

This bill provides that a person who introduces contraband including cellular phones or portable communication devices, or vapor-generating electronic devices, intoxicating beverages, or any other item designated as contraband by the DCF or the APD, commits a first degree misdemeanor.

Criminal Punishment Code

Additionally, this bill amends s. 921.0022, F.S., ranking the previously unranked offense of introducing a firearm or deadly weapon, or a controlled substance into a facility operated or controlled by the DCF or the APD, as a level 4 offense. Currently this offense is an unranked third degree felony which means it has a level 1 offense ranking.

This bill is effective October 1, 2020.

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), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates the House companion (HB 745) to this bill, which is substantively similar, will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).²⁸

Similarly, the Legislature’s Office of Economic and Demographic Research (EDR) preliminarily estimate for this bill is the same as the House companion bill.²⁹

The EDR provides the following information relevant to its preliminary estimate:

Per [Department of Corrections], in FY 18-19, there were 11 new commitments for introducing a controlled substance into a state prison and 132 new commitments for introducing contraband into a county detention facility (type of contraband not defined). There were no commitments for introduction of controlled substances into a DCF or DJJ facility. It is not known how the recent changes to marijuana law impacted contraband offenses prior to this amended language.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 916.1085, 944.47, 951.22, 985.711, 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 January 28, 2020:

The committee substitute changes the language of the statutes so that items are only considered contraband if they are brought into the “secure perimeter” of any facility.

Intoxicating beverages and other items deemed contraband by the DCF and the APD are prohibited in facilities controlled or supervised by those agencies. The committee

²⁸ The CJIC meeting at which the House companion bill estimate was made occurred during a meeting of the Criminal Justice Estimating Conference on January 27, 2020. The meeting is available on video on the Florida Channel at <https://thefloridachannel.org/videos/1-27-20-criminal-justice-estimating-conference/> (last visited January 29, 2020).

²⁹ The EDR’s preliminary estimate is on file with the Senate Committee on Criminal Justice.

³⁰ *Id.*

substitute provides a person who introduces an intoxicating beverage or another item deemed contraband by the DCF or the APD into a facility controlled or supervised by the DCF or the APD commits a first degree misdemeanor.

Additionally, this committee substitute removes the full definition of cannabis and provides the appropriate cross reference to the term. Similarly, the full definition of vapor-generating electronic device is removed, and provides the appropriate cross reference to that term.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/28/2020	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 34 - 225

and insert:

to introduce inside the secure perimeter of ~~into or upon the grounds of~~ any facility under the supervision or control of the department or agency, or to take or attempt to take or send therefrom, any of the following articles, which are declared to be contraband for the purposes of this section:

1. Any intoxicating beverage or beverage which causes or



609888

11 may cause an intoxicating effect;

12 2. Any controlled substance as defined in chapter 893,
13 marijuana as defined in s. 381.986, hemp as defined in s.
14 581.217, and industrial hemp as defined in s. 1004.4473;

15 3. Any firearm or deadly weapon; ~~or~~

16 4. Any cellular telephone or other portable communication
17 device as described in s. 944.47(1)(a)6. As used in this
18 subparagraph, the term "portable communication device" does not
19 include any device that has communication capabilities which has
20 been approved or issued by the person in charge of the facility;

21 5. Any vapor-generating electronic device as defined in s.
22 386.203; or

23 ~~6.4.~~ Any other item as determined by the department or the
24 agency, and as designated by rule or by written institutional
25 policies, to be hazardous to the welfare of clients or the
26 operation of the facility.

27 (2)

28 (c)1. A person who violates any provision of subparagraph
29 (1)(a)2. or subparagraph (1)(a)3. commits a felony of the third
30 degree, punishable as provided in s. 775.082, s. 775.083, or s.
31 775.084.

32 2. A person who violates any provision of subparagraph
33 (1)(a)1., subparagraph (1)(a)4., subparagraph (1)(a)5., or
34 subparagraph (1)(a)6. commits a misdemeanor of the first degree,
35 punishable as provided in s. 775.082 or s. 775.083.

36 Section 2. Paragraph (a) of subsection (1) and paragraph
37 (a) of subsection (2) of section 944.47, Florida Statutes, are
38 amended to read:

39 944.47 Introduction, removal, or possession of contraband;



609888

40 penalty.-

41 (1) (a) Except through regular channels as authorized by the
42 officer in charge of the correctional institution, it is
43 unlawful to introduce inside the secure perimeter of ~~into or~~
44 ~~upon the grounds of~~ any state correctional institution, or to
45 take or attempt to take or send or attempt to send therefrom,
46 any of the following articles which are hereby declared to be
47 contraband for the purposes of this section, to wit:

48 1. Any written or recorded communication or any currency or
49 coin given or transmitted, or intended to be given or
50 transmitted, to any inmate of any state correctional
51 institution.

52 2. Any article of food or clothing given or transmitted, or
53 intended to be given or transmitted, to any inmate of any state
54 correctional institution.

55 3. Any intoxicating beverage or beverage which causes or
56 may cause an intoxicating effect.

57 4. Any controlled substance as defined in s. 893.02(4),
58 marijuana as defined in s. 381.986, hemp as defined in s.
59 581.217, industrial hemp as defined in s. 1004.4473, or any
60 prescription or nonprescription drug having a hypnotic,
61 stimulating, or depressing effect.

62 5. Any firearm or weapon of any kind or any explosive
63 substance.

64 6. Any cellular telephone or other portable communication
65 device intentionally and unlawfully introduced inside the secure
66 perimeter of any state correctional institution without prior
67 authorization or consent from the officer in charge of such
68 correctional institution. As used in this subparagraph, the term



609888

69 "portable communication device" means any device carried, worn,
70 or stored which is designed or intended to receive or transmit
71 verbal or written messages, access or store data, or connect
72 electronically to the Internet or any other electronic device
73 and which allows communications in any form. Such devices
74 include, but are not limited to, portable two-way pagers, hand-
75 held radios, cellular telephones, Blackberry-type devices,
76 personal digital assistants or PDA's, laptop computers, or any
77 components of these devices which are intended to be used to
78 assemble such devices. The term also includes any new technology
79 that is developed for similar purposes. Excluded from this
80 definition is any device having communication capabilities which
81 has been approved or issued by the department for investigative
82 or institutional security purposes or for conducting other state
83 business.

84 7. Any vapor-generating electronic device as defined in s.
85 386.203.

86 (2) (a) A person who violates this section as it pertains to
87 an article of contraband described in subparagraph (1) (a)1.,
88 subparagraph (1) (a)2., or subparagraph (1) (a)6. commits a felony
89 of the third degree, punishable as provided in s. 775.082, s.
90 775.083, or s. 775.084. A person who violates this section as it
91 pertains to an article of contraband described in subparagraph
92 (1) (a)7. commits a misdemeanor of the first degree, punishable
93 as provided in s. 775.082 or s. 775.083. Otherwise, a violation
94 of this section is a felony of the second degree, punishable as
95 provided in s. 775.082, s. 775.083, or s. 775.084.

96 Section 3. Subsection (1) and (2) of section 951.22,
97 Florida Statutes, are amended to read:



609888

98 951.22 County detention facilities; contraband articles.-

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

107 (a) Any written or recorded communication. This paragraph
108 does not apply to any document or correspondence exchanged
109 between a lawyer, paralegal, or other legal staff and an inmate
110 at a detention facility if the document or correspondence is
111 otherwise lawfully possessed and disseminated and relates to the
112 legal representation of the inmate.

113 (b) Any currency or coin.

114 (c) Any article of food or clothing.

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

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

117 (f) Any cigar.

118 (g) Any intoxicating beverage or beverage that causes or
119 may cause an intoxicating effect.

120 (h) Any narcotic, hypnotic, or excitative drug or drug of
121 any kind or nature, including nasal inhalators, sleeping pills,
122 barbiturates, marijuana as defined in s. 381.986, hemp as
123 defined in s. 581.217, industrial hemp as defined in s.
124 1004.4473, and controlled substances as defined in s. 893.02(4).

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



609888

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

130 (k) Any cellular telephone or other portable communication
131 device as described in s. 944.47(1)(a)6. The term does not
132 include any device that has communication capabilities which has
133 been approved or issued by the sheriff or officer in charge for
134 investigative or institutional security purposes or for
135 conducting other official business.

136 (l) Any vapor-generating electronic device as defined in s.
137 386.203.

138 (2) A person who violates paragraph (1)(a), paragraph
139 (1)(b), paragraph (1)(c), paragraph (1)(d), paragraph (1)(e),
140 paragraph (1)(f), ~~or~~ paragraph (1)(g), or paragraph (1)(l)
141 commits a misdemeanor of the first degree, punishable as
142 provided in s. 775.082 or s. 775.083. A person who violates
143 paragraph (1)(h), paragraph (1)(i), paragraph (1)(j), or
144 paragraph (1)(k) commits a felony of the third degree,
145 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

146 Section 4. Paragraph (a) of subsection (1) and subsection
147 (2) of section 985.711, Florida Statutes, are amended to read:
148 985.711 Introduction, removal, or possession of certain
149 articles unlawful; penalty.-

150 (1)(a) Except as authorized through program policy or
151 operating procedure or as authorized by the facility
152 superintendent, program director, or manager, a person may not
153 introduce inside the secure perimeter of ~~into or upon the~~
154 ~~grounds of~~ a juvenile detention facility or commitment program,
155 or take or send, or attempt to take or send, from a juvenile



609888

156 detention facility or commitment program, any of the following
157 articles, which are declared to be contraband under this
158 section:

159 1. Any unauthorized article of food or clothing.

160 2. Any intoxicating beverage or any beverage that causes or
161 may cause an intoxicating effect.

162 3. Any controlled substance, as defined in s. 893.02(4),
163 marijuana as defined in s. 381.986, hemp as defined in s.
164 581.217, and industrial hemp as defined in s. 1004.4473; ~~or~~ any
165 prescription or nonprescription drug that has a hypnotic,
166 stimulating, or depressing effect.

167 4. Any firearm or weapon of any kind or any explosive
168 substance.

169 5. Any cellular telephone or other portable communication
170 device as described in s. 944.47(1)(a)6. As used in this
171 subparagraph, the term "portable communication device" does not
172 include any device that has communication capabilities which has
173 been approved or issued by the facility superintendent, program
174 director, or manager.

175 6. Any vapor-generating electronic device as defined in s.
176 386.203.

177 (2) (a) Any person who violates this section as it pertains
178 to an article of contraband described in subparagraph (1)(a)1.
179 commits a felony of the third degree, punishable as provided in
180 s. 775.082, s. 775.083, or s. 775.084.

181 (b) Any person who violates this section as it pertains to
182 an article of contraband described in subparagraph (1)(a)5. or
183 subparagraph (1)(a)6. commits a misdemeanor of the first degree,
184 punishable as provided in s. 775.082 or s. 775.083.



609888

185 (c) In all other cases, a person who violates this section
186 commits a felony of the second degree, punishable as provided in
187 s. 775.082, s. 775.083, or s. 775.084.

188

189

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

191 And the title is amended as follows:

192 Delete lines 4 - 18

193 and insert:

194 introduction of certain cannabis related substances,
195 cellular telephones and other portable communication
196 devices, and vapor-generating electronic devices into
197 specified facilities of the Department of Children and
198 Families or of the Agency for Persons with
199 Disabilities; providing criminal penalties; amending
200 s. 944.47; prohibiting the introduction of certain
201 cannabis related substances and vapor-generating
202 electronic devices into a correctional institution;
203 providing criminal penalties; amending s. 951.22,
204 F.S.; prohibiting the introduction of certain cannabis
205 related substances and vapor-generating electronic
206 devices into a county detention facility; providing
207 criminal penalties; amending s. 985.711, F.S.;

208 prohibiting the introduction of certain cannabis
209 related substances, cellular telephones and other
210 portable communication devices, and vapor-generating
211 electronic devices into specified juvenile detention
212 facilities or commitment programs;

By Senator Simmons

9-01409-20

20201286__

1 A bill to be entitled
 2 An act relating to contraband in specified facilities;
 3 amending s. 916.1085, F.S.; prohibiting the
 4 introduction of cannabis and certain related
 5 substances into specified facilities of the Department
 6 of Children and Families or of the Agency for Persons
 7 with Disabilities; providing a definition; providing
 8 criminal penalties; amending ss. 944.47 and 951.22,
 9 F.S.; prohibiting the introduction of *Cannabis sativa*
 10 and certain related substances and vapor-generating
 11 electronic devices into specified detention
 12 facilities; providing a definition; providing criminal
 13 penalties; amending s. 985.711, F.S.; prohibiting the
 14 introduction of *Cannabis sativa* and certain related
 15 substances, cellular telephones and other portable
 16 communication devices, and vapor-generating electronic
 17 devices into specified juvenile detention facilities
 18 or commitment programs; providing a definition;
 19 providing criminal penalties; amending s. 921.0022,
 20 F.S.; ranking the offense of introducing certain
 21 contraband into specified facilities of the Department
 22 of Children and Families on level 4 of the offense
 23 severity ranking chart; providing an effective date.

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

26
 27 Section 1. Paragraph (a) of subsection (1) and paragraph
 28 (c) of subsection (2) of section 916.1085, Florida Statutes, are
 29 amended to read:

Page 1 of 16

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9-01409-20

20201286__

30 916.1085 Introduction or removal of certain articles
 31 unlawful; penalty.—
 32 (1) (a) Except as authorized by law or as specifically
 33 authorized by the person in charge of a facility, it is unlawful
 34 to introduce into or upon the grounds of any facility under the
 35 supervision or control of the department or agency, or to take
 36 or attempt to take or send therefrom, any of the following
 37 articles, which are declared to be contraband for the purposes
 38 of this section:
 39 1. Any intoxicating beverage or beverage which causes or
 40 may cause an intoxicating effect;
 41 2. Any controlled substance as defined in chapter 893 or
 42 any part of any plant of the genus *Cannabis sativa*, whether
 43 growing or not; any seeds of the plant; any resin extracted from
 44 any part of the plant; and any compound, manufacture, salt,
 45 derivative, mixture, or preparation containing such substances,
 46 including marijuana as defined in s. 381.986, hemp as defined in
 47 s. 581.217, and industrial hemp as defined in s. 1004.4473;
 48 3. Any firearm or deadly weapon; ~~or~~
 49 4. Any cellular telephone or other portable communication
 50 device as described in s. 944.47(1)(a)6. As used in this
 51 subparagraph, the term "portable communication device" does not
 52 include any device that has communication capabilities which has
 53 been approved or issued by the sheriff or officer in charge for
 54 investigative or institutional security purposes or for
 55 conducting other official business;
 56 5. Any vapor-generating electronic device as defined in s.
 57 944.47(1)(a)7.; or
 58 6.4- Any other item as determined by the department or the

Page 2 of 16

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9-01409-20 20201286__

59 agency, and as designated by rule or by written institutional
60 policies, to be hazardous to the welfare of clients or the
61 operation of the facility.

62 (2)

63 (c) 1. A person who violates ~~any provision of~~ subparagraph
64 (1)(a)2. or subparagraph (1)(a)3. commits a felony of the third
65 degree, punishable as provided in s. 775.082, s. 775.083, or s.
66 775.084.

67 2. A person who violates subparagraph (1)(a)4. or
68 subparagraph (1)(a)5. commits a misdemeanor of the first degree,
69 punishable as provided in s. 775.082 or s. 775.083.

70 Section 2. Paragraph (a) of subsection (1) and subsection
71 (2) of section 944.47, Florida Statutes, are amended to read:
72 944.47 Introduction, removal, or possession of contraband;
73 penalty.—

74 (1)(a) Except through regular channels as authorized by the
75 officer in charge of the correctional institution, it is
76 unlawful to introduce into or upon the grounds of any state
77 correctional institution, or to take or attempt to take or send
78 or attempt to send therefrom, any of the following articles
79 which are hereby declared to be contraband for the purposes of
80 this section, to wit:

81 1. Any written or recorded communication or any currency or
82 coin given or transmitted, or intended to be given or
83 transmitted, to any inmate of any state correctional
84 institution.

85 2. Any article of food or clothing given or transmitted, or
86 intended to be given or transmitted, to any inmate of any state
87 correctional institution.

9-01409-20 20201286__

88 3. Any intoxicating beverage or beverage which causes or
89 may cause an intoxicating effect.

90 4. Any controlled substance as defined in s. 893.02(4); ~~or~~
91 any prescription or nonprescription drug having a hypnotic,
92 stimulating, or depressing effect; or any part of any plant of
93 the genus *Cannabis sativa*, whether growing or not; any seeds of
94 the plant; any resin extracted from any part of the plant; and
95 any compound, manufacture, salt, derivative, mixture, or
96 preparation containing such substances, including marijuana as
97 defined in s. 381.986, hemp as defined in s. 581.217, and
98 industrial hemp as defined in s. 1004.4473.

99 5. Any firearm or weapon of any kind or any explosive
100 substance.

101 6. Any cellular telephone or other portable communication
102 device intentionally and unlawfully introduced inside the secure
103 perimeter of any state correctional institution without prior
104 authorization or consent from the officer in charge of such
105 correctional institution. As used in this subparagraph, the term
106 "portable communication device" means any device carried, worn,
107 or stored which is designed or intended to receive or transmit
108 verbal or written messages, access or store data, or connect
109 electronically to the Internet or any other electronic device
110 and which allows communications in any form. Such devices
111 include, but are not limited to, portable two-way pagers, hand-
112 held radios, cellular telephones, Blackberry-type devices,
113 personal digital assistants or PDA's, laptop computers, or any
114 components of these devices which are intended to be used to
115 assemble such devices. The term also includes any new technology
116 that is developed for similar purposes. Excluded from this

9-01409-20 20201286__

117 definition is any device having communication capabilities which
118 has been approved or issued by the department for investigative
119 or institutional security purposes or for conducting other state
120 business.

121 7. Any vapor-generating electronic device. As used in this
122 subparagraph, the term "vapor-generating electronic device"
123 means any product that employs an electronic, a chemical, or a
124 mechanical means capable of producing vapor or aerosol from a
125 nicotine product or any other substance, including, but not
126 limited to, an electronic cigarette, electronic cigar,
127 electronic cigarillo, electronic pipe, or other similar device
128 or product; any replacement cartridge for such device; and any
129 other container of a solution or other substance intended to be
130 used with or within such device.

131 (2) (a) A person who violates this section as it pertains to
132 an article of contraband described in subparagraph (1) (a)1.,
133 subparagraph (1) (a)2., or subparagraph (1) (a)6. commits a felony
134 of the third degree, punishable as provided in s. 775.082, s.
135 775.083, or s. 775.084. A person who violates this section as it
136 pertains to an article of contraband described in subparagraph
137 (1) (a)7. commits a misdemeanor of the first degree, punishable
138 as provided in s. 775.082 or s. 775.083. Otherwise, a violation
139 of this section is a felony of the second degree, punishable as
140 provided in s. 775.082, s. 775.083, or s. 775.084.

141 (b) A violation of this section by an employee, as defined
142 in s. 944.115(2) (b), who uses or attempts to use the powers,
143 rights, privileges, duties, or position of his or her employment
144 in the commission of the violation is ranked one level above the
145 ranking specified in s. 921.0022 or s. 921.0023 for the offense

Page 5 of 16

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9-01409-20 20201286__

146 committed.

147 Section 3. Paragraph (1) is added to subsection (1) of
148 section 951.22, Florida Statutes, and paragraph (h) of
149 subsection (1) and subsection (2) of that section are amended,
150 to read:

151 951.22 County detention facilities; contraband articles.—

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

159 (h) Any narcotic, hypnotic, or excitative drug or drug of
160 any kind or nature, including nasal inhalators, sleeping pills,
161 barbiturates, and controlled substances as defined in s.
162 893.02(4), or any part of any plant of the genus *Cannabis*
163 *sativa*, whether growing or not; any seeds of the plant; any
164 resin extracted from any part of the plant; and any compound,
165 manufacture, salt, derivative, mixture, or preparation
166 containing such substances, including marijuana as defined in s.
167 381.986, hemp as defined in s. 581.217, and industrial hemp as
168 defined in s. 1004.4473.

169 (1) Any vapor-generating electronic device as defined in s.
170 944.47(1) (a)7.

171 (2) A person who violates paragraph (1) (a), paragraph
172 (1) (b), paragraph (1) (c), paragraph (1) (d), paragraph (1) (e),
173 paragraph (1) (f), ~~or~~ paragraph (1) (g), or paragraph (1) (1)
174 commits a misdemeanor of the first degree, punishable as

Page 6 of 16

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9-01409-20 20201286__
 175 provided in s. 775.082 or s. 775.083. A person who violates
 176 paragraph (1)(h), paragraph (1)(i), paragraph (1)(j), or
 177 paragraph (1)(k) commits a felony of the third degree,
 178 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Paragraph (a) of subsection (1) and subsection
 180 (2) of section 985.711, Florida Statutes, are amended to read:

181 985.711 Introduction, removal, or possession of certain
 182 articles unlawful; penalty.—

183 (1)(a) Except as authorized through program policy or
 184 operating procedure or as authorized by the facility
 185 superintendent, program director, or manager, a person may not
 186 introduce into or upon the grounds of a juvenile detention
 187 facility or commitment program, or take or send, or attempt to
 188 take or send, from a juvenile detention facility or commitment
 189 program, any of the following articles, which are declared to be
 190 contraband under this section:

191 1. Any unauthorized article of food or clothing.

192 2. Any intoxicating beverage or any beverage that causes or
 193 may cause an intoxicating effect.

194 3. Any controlled substance, ~~as defined in s. 893.02(4);~~
 195 ~~or~~ any prescription or nonprescription drug that has a hypnotic,
 196 stimulating, or depressing effect; or any part of any plant of
 197 the genus *Cannabis sativa*, whether growing or not; any seeds of
 198 the plant; any resin extracted from any part of the plant; and
 199 any compound, manufacture, salt, derivative, mixture, or
 200 preparation containing such substances, including marijuana as
 201 defined in s. 381.986, hemp as defined in s. 581.217, and
 202 industrial hemp as defined in s. 1004.4473.

203 4. Any firearm or weapon of any kind or any explosive

9-01409-20 20201286__
 204 substance.

205 5. Any cellular telephone or other portable communication
 206 device as described in s. 944.47(1)(a)6. As used in this
 207 subparagraph, the term "portable communication device" does not
 208 include any device that has communication capabilities which has
 209 been approved or issued by the sheriff or officer in charge for
 210 investigative or institutional security purposes or for
 211 conducting other official business.

212 6. Any vapor-generating electronic device as defined in s.
 213 944.47(1)(a)7.

214 (2)(a) Any person who violates this section as it pertains
 215 to an article of contraband described in subparagraph (1)(a)1.
 216 commits a felony of the third degree, punishable as provided in
 217 s. 775.082, s. 775.083, or s. 775.084.

218 (b) Any person who violates this section as it pertains to
 219 an article of contraband described in subparagraph (1)(a)5. or
 220 subparagraph (1)(a)6. commits a misdemeanor of the first degree,
 221 punishable as provided in s. 775.082 or s. 775.083.

222
 223 In all other cases, a person who violates this section commits a
 224 felony of the second degree, punishable as provided in s.
 225 775.082, s. 775.083, or s. 775.084.

226 Section 5. Paragraph (d) of subsection (3) of section
 227 921.0022, Florida Statutes, is amended to read:

228 921.0022 Criminal Punishment Code; offense severity ranking
 229 chart.—

230 (3) OFFENSE SEVERITY RANKING CHART

231 (d) LEVEL 4

	9-01409-20		20201286__
	Florida Statute	Felony Degree	Description
233	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.
234	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
235	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
236	517.07(1)	3rd	Failure to register securities.
237	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
238	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
239	784.074(1)(c)	3rd	Battery of sexually violent

	9-01409-20		20201286__
			predators facility staff.
240	784.075	3rd	Battery on detention or commitment facility staff.
241	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
242	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
243	784.081(3)	3rd	Battery on specified official or employee.
244	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
245	784.083(3)	3rd	Battery on code inspector.
246	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
247	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
248			

	9-01409-20		20201286__
	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
249			
	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
250			
	787.07	3rd	Human smuggling.
251			
	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
252			
	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
253			
	790.115(2)(c)	3rd	Possessing firearm on school property.
254			
	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
255			
	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied

	9-01409-20		20201286__
			structure; unarmed; no assault or battery.
256			
	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
257			
	810.06	3rd	Burglary; possession of tools.
258			
	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
259			
	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
260			
	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
261			
	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
262			
	817.505(4)(a)	3rd	Patient brokering.
263			
	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s.

	9-01409-20		20201286__	
				893.03(5) drugs.
264	817.568(2)(a)	3rd		Fraudulent use of personal identification information.
265	817.625(2)(a)	3rd		Fraudulent use of scanning device, skimming device, or reencoder.
266	817.625(2)(c)	3rd		Possess, sell, or deliver skimming device.
267	828.125(1)	2nd		Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
268	837.02(1)	3rd		Perjury in official proceedings.
269	837.021(1)	3rd		Make contradictory statements in official proceedings.
270	838.022	3rd		Official misconduct.
271	839.13(2)(a)	3rd		Falsifying records of an individual in the care and custody of a state agency.
272				

Page 13 of 16

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	9-01409-20		20201286__	
	839.13(2)(c)	3rd		Falsifying records of the Department of Children and Families.
273	843.021	3rd		Possession of a concealed handcuff key by a person in custody.
274	843.025	3rd		Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
275	843.15(1)(a)	3rd		Failure to appear while on bail for felony (bond estreature or bond jumping).
276	847.0135(5)(c)	3rd		Lewd or lascivious exhibition using computer; offender less than 18 years.
277	874.05(1)(a)	3rd		Encouraging or recruiting another to join a criminal gang.
278	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).

Page 14 of 16

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279 9-01409-20 20201286__
 914.14(2) 3rd Witnesses accepting bribes.
 280 914.22(1) 3rd Force, threaten, etc., witness,
 victim, or informant.
 281 914.23(2) 3rd Retaliation against a witness,
 victim, or informant, no bodily
 injury.
 282 916.1085(2)(c)1. 3rd Introduction of specified
contraband into certain DCF
facilities.
 283 918.12 3rd Tampering with jurors.
 284 934.215 3rd Use of two-way communications
 device to facilitate commission
 of a crime.
 285 944.47(1)(a)6. 3rd Introduction of contraband
 (cellular telephone or other
 portable communication device)
 into correctional institution.
 286 951.22(1)(h), 3rd Intoxicating drug,
 (j) & (k) instrumentality or other device
 to aid escape, or cellular
 telephone or other portable

9-01409-20 20201286__
 communication device introduced
 into county detention facility.
 287
 288 Section 6. This act shall take effect October 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-28-20

Meeting Date

1286

Bill Number (if applicable)

Topic Contraband in Specified Facilities

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

City

FL

State

32308

Zip

Email _____

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)

1/28/20

Meeting Date

1286

Bill Number (if applicable)

Topic Contraband

Amendment Barcode (if applicable)

Name Tabitha Burress

Job Title Communications Chair

Address 4320 Randall Blvd

Phone 239-272-2257

Street

Naples

City

FL

State

34120

Zip

Email tabitha.burress@gmail.com

Speaking: For Against Information

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

Representing Florida Cannabis Action Network

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)

1/28/20

Meeting Date

1286

Bill Number (if applicable)

Topic Contraband

Amendment Barcode (if applicable)

Name Greg Dound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo

City

FL.

State

33773

Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

1/28/2020

SB 1286

Meeting Date

Bill Number (if applicable)

Topic Contraband in Spiritual Facilities

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address Po Box 11254

Phone (956) 354-8424

Street

City

TLH

FL State

32302 Zip

Email NORMTallahassee@gmail.com

Speaking: For Against Information

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

Representing The Holistic Cannabis Community / NORM Tallahassee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

01/28/2019

Meeting Date

1286

Bill Number (if applicable)

Topic Contraband

Amendment Barcode (if applicable)

Name Lauren Jackson

Job Title Lobbyist

Address 205 S. Adams St.

Phone 931-265-8999

Street

Tallahassee

City

FL

State

32301

Zip

Email lauren@erichsconsultants.com

Speaking: For Against Information

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

Representing Seminole County Sheriff's Office

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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: January 10, 2020

I respectfully request that **Senate Bill 1286**, relating to Contraband in Specified Facilities, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

SB 1286 wpa – Contraband in Specified Facilities with Proposed Amendment

Amends s. 916.1085, F.S., adding to the list of contraband items that it is unlawful to introduce inside the secure perimeter of (deleting “into or upon the grounds of”) “facilities which house defendants who have been adjudicated incompetent to proceed or found not guilty by reason of insanity” the following: “marijuana as defined in s. 381.986, F.S., hemp as defined in s. 581.217, F.S., and industrial hemp as defined in s. 1004.4473, F.S.,” as well as “any cellular telephone or other portable communication device as described in s. 944.47(1)(a)6, F.S.,” and “any vapor-generating electronic device as defined in s. 386.203, F.S.” While most of these are 1st degree misdemeanors, the previous Level 1, 3rd degree felony for introducing a controlled substance is now elevated to a **Level 4, 3rd degree felony** along with “any firearm or deadly weapon.”

This bill also amends s. 944.47, F.S., including that “it is unlawful to introduce inside the secure perimeter of” (deleting “into or upon the grounds of”) and adding “marijuana as defined in s. 381.986, F.S., hemp as defined in s. 581.217, F.S., and industrial hemp as defined in s. 1004.4473, F.S.” to the current Level 4, 2nd degree felony for introducing a controlled substance into a Florida Department of Corrections facility. Furthermore, “any vapor-generating electronic device as defined in s. 386.203, F.S.” is also added as a 1st degree misdemeanor.

This bill also amends s. 951.22, F.S., including that “it is unlawful...to introduce inside the secure perimeter of” (deleting “into or possess upon the grounds of”) and adding “marijuana as defined in s. 381.986, F.S., hemp as defined in s. 581.217, F.S., and industrial hemp as defined in s. 1004.4473, F.S.” to the current Level 4, 3rd degree felony for introducing a controlled substance into county detention facilities. Furthermore, “any vapor-generating electronic device as defined in s. 386.203, F.S.” is also added as a 1st degree misdemeanor.

Finally, this bill amends s. 985.711, F.S., including that “a person may not introduce inside the secure perimeter of” (deleting “into or upon the grounds of”) and adding “marijuana as defined in s. 381.986, F.S., hemp as defined in s. 581.217, F.S., and industrial hemp as defined in s. 1004.4473, F.S.” to the current Level 4, 2nd degree felony for introducing a controlled substance into juvenile detention facilities. Furthermore, “any cellular telephone or other portable communication device as described in s. 944.47(1)(a)6, F.S.” and “any vapor-generating electronic device as defined in s. 386.203, F.S.” are also added as 1st degree misdemeanors.

Per DOC, in FY 18-19, there were 11 new commitments for introducing a controlled substance into a state prison and 132 new commitments for introducing contraband into a county detention facility (type of contraband not defined). There were no commitments

for introduction of controlled substances into a DCF or DJJ facility. It is not known how the recent changes to marijuana law impacted contraband offenses prior to this amended language.

EDR PROPOSED ESTIMATE: Positive Insignificant

Requested by: Senate

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 1416

INTRODUCER: Senator Perry

SUBJECT: Assaults on Specified Persons

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1416 creates s. 341.0611, F.S., which provides that:

- By January 1, 2021, every public transit provider operating regularly scheduled transit service for the general public must post in at least one conspicuous place at the entrance of each public transit vehicle a sign in accordance with specifications in the bill containing the following statement: “ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON.”
- By July 1, 2021, such public transit provider must create and implement a risk reduction program. At a minimum, each risk reduction program must include the deployment of assault mitigation infrastructure and technology on public transit (including barriers to restrict the unwanted entry of individuals and objects into transit operator’s workstations) and conflict de-escalation training for transit operators.

The bill also amends s. 784.07, F.S., which reclassifies the felony or misdemeanor degree of assaults and batteries on certain officers or employees to provide that an assault against any of these officers or employees is reclassified from a second degree misdemeanor to a third degree felony. Currently, an assault is reclassified from a second degree misdemeanor to a first degree misdemeanor. The effect of this change is that an assault reclassified under this statute as amended by the bill has a maximum penalty of five years in state prison; in contrast, the maximum penalty for an assault reclassified under the current statute is a year in county jail.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive significant” prison bed impact (an increase of more than 25 prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Section 784.07(2), F.S., reclassifies the misdemeanor or felony degree of assault,¹ aggravated assault,² battery,³ and aggravated battery⁴ when a person is charged with knowingly committing any of these offenses upon an officer or employee described as follows while that officer or employee is engaged in the lawful performance of his or her duties:

- A law enforcement officer;
- A firefighter;
- An emergency medical care provider;
- A railroad special officer;
- A traffic accident investigation officer;
- A nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI;
- A law enforcement explorer;
- A traffic infraction enforcement officer;
- A parking enforcement specialist;
- A person licensed as a security officer and wearing a uniform bearing at least one patch or emblem that is visible at all times and clearly identifies the person's employing agency and that the person is a licensed security officer;
- A security officer employed by the board of trustees of a community college; or
- A public transit employee or agent.⁵

¹ Assault, which is a second degree misdemeanor, is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Section 784.011(1) and (2), F.S.

² Aggravated assault, which is a third degree felony, is the commission of an assault using a deadly weapon without intent to kill or the commission of an assault with the intent to commit a felony. Section 784.021(1) and (2), F.S.

³ Simple battery, which is a first degree misdemeanor, is actually and intentionally touching or striking another person against the will of that person or intentionally causing bodily harm to another person. Section 784.03(1)(a), F.S.

⁴ A person commits aggravated battery, a second degree felony, if the person, in committing a battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; uses a deadly weapon; or the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. Section 784.045(1) and (2), F.S.

⁵ "Public transit employees or agents" is defined in s. 784.07(1)(e), F.S., as bus operators, train operators, revenue collectors, security personnel, equipment maintenance personnel, or field supervisors, who are employees or agents of a transit agency as described in s. 812.015(1)(l), F.S. There is no specific reference in the statute to a public transit employee or agent in the list of officers and employees referenced as being subject to an assault or battery, which triggers the reclassification if the assault or battery occurs while the officer or employee is engaged in his or her lawful duties. A public transit employee or agent is only referenced in regard to a listed officer or employee engaged in performance of his or her lawful duties. Further, the Florida jury instruction for s. 784.07(2)(a), F.S. (relating to reclassification of the degree of assault) does not specifically reference a public transit employee or agent. Fla. Std. Jury Instr. (Crim.) 8.10. (See "Technical Deficiencies" section of this analysis.) However, notwithstanding the specific reference omission, it appears that the statute has been applied when the victim is a public transit employee. *See, e.g., Walker v. State*, 193 So.3d 946, 948-949 (Fla. 4th DCA 2016), rehearing denied, 193 So.3d 990 (Fla. 4th DCA 2016) (appellate court stating that the charges against the appellant included a count relating to battery on a public transit employee in violation of ss. 784.03(1), 784.07(1)(e), and 784.07(2)(b), F.S., and the appellant was found guilty as charged on this count).

The reclassification of the degree of the offense is as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor;
- In the case of battery, from a first degree misdemeanor to a third degree felony;
- In the case of aggravated assault, from a third degree felony to a second degree felony, and any person convicted of aggravated assault upon a law enforcement officer is subject to a mandatory three-year minimum term of imprisonment; and
- In the case of aggravated battery, from a second degree felony to a first degree felony, and any person convicted of aggravated battery of a law enforcement officer is subject to a mandatory five-year minimum term of imprisonment.

Further, if the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

- A firearm or destructive device, the person is subject to a mandatory minimum term of imprisonment of three years; or
- A semiautomatic firearm and its high-capacity detachable box magazine or a machine gun, the person is subject to a mandatory minimum term of imprisonment of eight years.⁶

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.⁷

III. Effect of Proposed Changes:

New Requirements Relating to Certain Public Transit Providers

The bill creates s. 341.0611, F.S., which provides that:

- By January 1, 2021, every public transit provider operating regularly scheduled transit service for the general public must post in at least one conspicuous place at the entrance of each public transit vehicle a sign in accordance with specifications in the bill containing the following statement: “ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON.”
- By July 1, 2021, such public transit provider must create and implement a risk reduction program. At a minimum, each risk reduction program must include the deployment of assault mitigation infrastructure and technology on public transit (including barriers to restrict the

⁶ Section 784.07(3)(a) and (b), F.S. Additionally, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release, prior to serving the minimum sentence. Section 784.07(3), F.S.

⁷ Section 775.082, F.S. (maximum penalties). Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.082, F.S., provides the following maximum fines: \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

unwanted entry of individuals and objects into transit operator's workstations) and conflict de-escalation training for transit operators.

Revision of the Offense Degree Designation for an Assault Reclassified under s. 784.07, F.S.

The bill amends s. 784.07, F.S., which reclassifies the felony or misdemeanor degree of assaults and batteries on certain officers or employees to provide that an assault against any of these officers or employees is reclassified from a second degree misdemeanor to a third degree felony. Currently, an assault is reclassified from a second degree misdemeanor to a first degree misdemeanor. The effect of this change is that an assault reclassified under this statute as amended by the bill has a maximum penalty of five years in state prison; in contrast, the maximum penalty for an assault reclassified under the current statute is a year in county jail.

Effective Date

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

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 estimate of the 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 significant" prison bed impact (an increase of more than 25 prison beds).⁸

The EDR provides the following information relevant to its preliminary estimate:

Per [Department of Corrections], in FY 18-19, there were 400 new commitments to prison for these offenses, though it is not known how many transit workers were victims. In FY 17-18, simple battery had an incarceration rate of 16.3% (adj.).⁹ Per [Florida Department of Law Enforcement], in FY 18-19, there were 259 guilty/convicted and 77 adjudication withheld where a 2nd degree misdemeanor was increased to a 1st degree felony under s. 784.07, F.S. While it is expected that 2nd degree assault would have a lower incarceration rate as a 3rd degree felony, the large number of those impacted would be expected to be enough to reach significance.¹⁰

VI. Technical Deficiencies:

As previously noted, though s. 784.07, F.S., appears to apply when the victim is a public transit employee or agent, there is no specific reference in the statute to a public transit employee or agent in the list of officers and employees referenced as being subject to an assault or battery, which triggers the reclassification if the assault or battery occurs while the officer or employee is engaged in his or her lawful duties.¹¹ To provide greater clarity that s. 784.07, F.S., applies to an assault or battery on a public transit employee or agent, staff recommends including specific reference to a public transit employee or agent in the list of officers or employees who have been assaulted or battered (as charged).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 784.07 of the Florida Statutes.

⁸ The EDR's preliminary estimate is on file with the Senate Committee on Criminal Justice.

⁹ The abbreviation "adj." means "adjusted." Sentencing data from the Department of Corrections is incomplete, which means that the number the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

¹⁰ *Id.*

¹¹ *See* footnote 5.

This bill creates section 341.0611 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.



684444

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

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

Senate Amendment (with title amendment)

Delete lines 21 - 51

and insert:

black, bold type font no smaller than 48 point containing the following statement:

"ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON."

(2) By July 1, 2021, every public transit provider operating regularly scheduled transit service for the general



684444

11 public shall create and implement a risk reduction program. Each
12 risk reduction program shall include conflict de-escalation
13 training for transit operators. The risk reduction program may
14 include the deployment of assault mitigation infrastructure and
15 technology on public transit, including barriers to restrict the
16 unwanted entry of individuals and objects into transit
17 operator's workstations.

18 Section 2. Paragraph (a) of subsection (2) of section
19 784.07, Florida Statutes, is amended to read:

20 784.07 Assault or battery of law enforcement officers,
21 firefighters, emergency medical care providers, public transit
22 employees or agents, or other specified officers;
23 reclassification of offenses; minimum sentences.-

24 (2) Whenever any person is charged with knowingly
25 committing an assault or battery upon a law enforcement officer,
26 a firefighter, an emergency medical care provider, a railroad
27 special officer, a traffic accident investigation officer as
28 described in s. 316.640, a nonsworn law enforcement agency
29 employee who is certified as an agency inspector, a blood
30 alcohol analyst, or a breath test operator while such employee
31 is in uniform and engaged in processing, testing, evaluating,
32 analyzing, or transporting a person who is detained or under
33 arrest for DUI, a law enforcement explorer, a traffic infraction
34 enforcement officer as described in s. 316.640, a parking
35 enforcement specialist as defined in s. 316.640, a public
36 transit employee or agent, a person

37
38
39 ===== T I T L E A M E N D M E N T =====



684444

40 And the title is amended as follows:

41 Delete line 8

42 and insert:

43 such a program; authorizing public transit providers
44 to deploy assault mitigation infrastructure; amending
45 s. 784.07, F.S.; providing a specific reference to
46 assault or battery on a public transit employee or
47 agent; revising the

By Senator Perry

8-01289A-20

20201416__

A bill to be entitled

An act relating to assaults on specified persons; creating s. 341.0611, F.S.; requiring public transit providers to post a specified sign concerning assaulting a transit operator; requiring public transit providers to create and implement a risk reduction program; specifying minimum requirements for such a program; amending s. 784.07, F.S.; revising the reclassification of the offense of assault on specified persons; providing an effective date.

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

Section 1. Section 341.0611, Florida Statutes, is created to read:

341.0611 Transit worker safety.-

(1) By January 1, 2021, every public transit provider operating regularly scheduled transit service for the general public shall post in at least one conspicuous place at the entrance of each public transit vehicle a yellow sign with black, bold type no smaller than 48 point containing the following statement:

"ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON."

(2) By July 1, 2021, every public transit provider operating regularly scheduled transit service for the general public shall create and implement a risk reduction program. At a minimum, each risk reduction program shall include:

(a) The deployment of assault mitigation infrastructure and

Page 1 of 3

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

8-01289A-20

20201416__

technology on public transit, including barriers to restrict the unwanted entry of individuals and objects into transit operator's workstations.

(b) Conflict de-escalation training for transit operators.

Section 2. Paragraph (a) of subsection (2) of section 784.07, Florida Statutes, is amended 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.-

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, railroad special officer,

Page 2 of 3

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

8-01289A-20

20201416__

59 traffic accident investigation officer, traffic infraction
60 enforcement officer, inspector, analyst, operator, law
61 enforcement explorer, parking enforcement specialist, public
62 transit employee or agent, or security officer is engaged in the
63 lawful performance of his or her duties, the offense for which
64 the person is charged shall be reclassified as follows:

65 (a) In the case of assault, from a misdemeanor of the
66 second degree to a felony ~~misdemeanor~~ of the third ~~first~~ degree.

67 Section 3. This act shall take effect October 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

2-28-2025 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

1416
Bill Number (if applicable)

Topic ASSAULTS ON SPECIFIED PERSONS

Amendment Barcode (if applicable)

Name DARWIN MADRID

Job Title HCO 4

Address 9772 SE 155ST

Phone 352 572 6642

Street Summerfield

Email _____

City _____ State _____ Zip _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/28/2020

Meeting Date

1416

Bill Number (if applicable)

Topic ASSAULT ON SPECIFIED PERSONS

Amendment Barcode (if applicable)

Name DANIEL KURCZI

Job Title _____

Address SOS FOREST CREEK RUN

Phone (937) 219-7230

Street

DELEON SPRINGS FL 32130

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

01/28/2020

Meeting Date

1416

Bill Number (if applicable)

Topic ASSAULTS ON SPECIFIED PERSON

Amendment Barcode (if applicable)

Name JASON L. STOUGH

Job Title ORANGE COUNTY EMPLOYEE

Address 1985 ROBI CIR,

Phone 407-760-3376

Street

TITUSVILLE

FLA,

32794

Email HUSBANDOFFLYNNJSBABY@

City

State

Zip

YAHOO.COM

Speaking: [] For [] Against [] Information

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

Representing SELF

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/2020

Meeting Date

SB 1416

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Silvia T. Gonzalez

Job Title Driver

Address _____

Phone (407) 793-1424

Street

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

1-28-20

Meeting Date

1416

Bill Number (if applicable)

Topic Assault on Specified person

Amendment Barcode (if applicable)

Name Jacqueline Stevens

Job Title Bills Driver

Address _____
Street

Phone 321-223-6048

City

State

Zip

Email Stevens Jacki 2 (@) 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.

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)

1/28/2020

Meeting Date

HB 1416

Bill Number (if applicable)

Topic Assault on specified persons

Amendment Barcode (if applicable)

Name Kyle Milwee

Job Title Construction Craft Laborer

Address 950 W. Tropicana Ct.

Phone 727-270-5801

Street

Missimmee

FL

34761

City

State

Zip

Email Kyle.Milwee@gmail.com

Speaking: [] For [] Against [] Information

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

Representing Kyle Milwee

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)

1/28/2020

Meeting Date

1411

Bill Number (if applicable)

Topic Assaults on specified persons

Amendment Barcode (if applicable)

Name Jeff Congemi

Job Title Mx Control

Address 5006 Pretty Way

Phone 850-276-3814

Street

Parana City FL 32404

City

State

Zip

Email jeffrey.congemi@yahoo.com

Speaking: [] For [] Against [] Information

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

Representing Self

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)

1/28/2020
Meeting Date

1416
Bill Number (if applicable)

Topic Assaults on Specified Persons.

Amendment Barcode (if applicable)

Name Sabrina Sandifer-White

Job Title IT Specialist

Address 54226 UKKI Rd

Phone 904 879 7461

Street Callehan

City State Zip

Email Hiyanama20@aol.com

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/28/2020

Meeting Date

1416

Bill Number (if applicable)

Topic Assault on Specified Persons

Amendment Barcode (if applicable)

Name John Newgardow

Job Title Elec Tech

Address 784 Bryants Landing Rd
Street

Phone 850 628 0997

Newarrtchen
City

FL
State

32465
Zip

Email _____

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

APPEARANCE RECORD

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

1/29/2020

SB 1416

Meeting Date

Bill Number (if applicable)

Topic Assaults on Specified Persons

Amendment Barcode (if applicable)

Name Michael Weichert

Job Title Aircraft Mech

Address 3167 O'HARA DR

Phone 727 9928119

Street

New Port Richey FL 34655

City

State

Zip

Email mike w jett@yahoo.com

Speaking: For Against Information

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

Representing My Family

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/28/20

Meeting Date

SB 1416

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name MURRAY CALDWELL

Job Title I AM & AW RETIRED

Address 146 E PARK LN

Street

Phone (321) 292-4258

Cocoa Bch FL 32931

City

State

Zip

Email MURRAYN@AOL.COM

Speaking: For Against Information

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

Representing I AM & AW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1-28-20

Meeting Date

SB 1416

Bill Number (if applicable)

Topic SB-1416

Amendment Barcode (if applicable)

Name Jess Estes

Job Title Rocket techn.

Address 3747 Canberra Ct.

Phone 321-360-2531

Street

Htusville

Florida

32780

City

State

Zip

Email jrestes12@yahoo.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/28/2020
Meeting Date

SB 1416
Bill Number (if applicable)

Topic Assaults on Specified Persons

Amendment Barcode (if applicable)

Name Richard Gilland

Job Title _____

Address 7140 Milton Ave
Street

Phone 32927

Port St John FL 32927
City State Zip

Email gillandc1@hotmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/2020

Meeting Date

SB 1416

Bill Number (if applicable)

Topic ASSAULT ON SPECIFIED PERSONS

Amendment Barcode (if applicable)

Name EDWARD GRABOWSKI

Job Title LOGISTICS ANALYST

Address 559 CARO CT.

Phone 386-846-8671

Street

NEW SMYRNA BEACH FL 32168

Email edwardgrabowski@bellsouth.net

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing MYSELF

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1-28-2020

Meeting Date

SB 1416

Bill Number (if applicable)

Topic ASSULTS ON SPECIFIED PERSONS

Amendment Barcode (if applicable)

Name STEVEN N MOSLEY

Job Title RETIRED

Address 890 CLEVELAND ST
Street

Phone 321-917-4765

TITUSVILLE FL 32780
City State Zip

Email SNMOSLEY@GMAIL.COM

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/2020

Meeting Date

SB 1416

Bill Number (if applicable)

Topic Assault on Specified Persons

Amendment Barcode (if applicable)

Name Mike Phillips

Job Title

Address 6084 Kocol Lane

Phone 321-652-2089

Street

Cocoa FL 32927

City

State

Zip

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1-28-20

Meeting Date

SB 1416

Bill Number (if applicable)

Topic ASSAULTS ON SPECIFIED PERSONS

Amendment Barcode (if applicable)

Name THOMAS A. NEWTON

Job Title

Address 6113 WATERLOO AV

Street

Phone

COCOA

FL

32927

Email

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1-28-20

Meeting Date

SB 1416

Bill Number (if applicable)

Topic Assault on Public Transit Operators

Amendment Barcode (if applicable)

Name J. Keith Arnold

Job Title GR

Address 14101 River Rd.

Phone 939 550-681-0411

Street

Jct. Myers, Fla. 33905

Email Keith.Arnold@bipa.com

City

State

Zip

Speaking: For Against Information

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

Representing Fla. Public Transportation Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

11/28/20

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

1416

Meeting Date

Bill Number (if applicable)

Topic ASSAULT ON TRANSIT OPERATORS

Amendment Barcode (if applicable)

Name ANDRES TRUJILLO

Job Title STATE DIRECTOR

Address 11774 SW 137th PATH

Phone 786-348-5771

Miami FL 33186

Email FTRUJILLO@VTV@aol.com

Speaking: [X] For [] Against [] Information

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

Representing SMART-TRANSPORTATION DIVISION

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.

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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)

1/28/20 Meeting Date

SB 1416 Bill Number (if applicable)

Topic ASSAULTS ON SPECIFIED PERSONS

Amendment Barcode (if applicable)

Name GUENDA ABBICANT (PRONOUNCED ABBOTT)

Job Title SERVICES TECHNICIAN

Address 4305 SW 98 AV Street

Phone 786-326-1181

MIAMI City FL State 33165 Zip

Email GUENDA.ABBICANT@GMAIL.COM

Speaking: [] For [] Against [] Information

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

Representing SELF

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/20
Meeting Date

SB 1416
Bill Number (if applicable)

Topic Assaults on Specified Persons

Amendment Barcode (if applicable)

Name Rick Clapur

Job Title Wire Tech

Address 13900 Pine Blvd

Phone (305) 588-2508

Street
Pembroke Pines FL

Email rickclapur@yahoo.com

City State Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

1

Meeting Date

SB 1416

Bill Number (if applicable)

Topic Transit workers

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title

Address 133 S. Monroe

Phone 850-224-6920

Street

Tallahassee

FL

32301

City

State

Zip

Email

Speaking: [X] For [] Against [] Information

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

Representing Florida AFL-CIO

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.

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S-001 (10/14/14)

SB 1416 – Assaults on Specified Persons (Identical HB 951)

This bill creates s. 341.0611, F.S., requiring that a transit provider include a sign noting that assault is a felony punishable by up to five years in prison, as well creating assault mitigating infrastructure and conflict de-escalation training for transit operators. It also amends s. 784.07, F.S., changing the current reclassification of a 2nd degree assault to a 1st degree misdemeanor, where a 2nd degree misdemeanor assault would now be a 3rd degree felony.

Per DOC, in FY 18-19, there were 400 new commitments to prison for these offenses, though it is not known how many transit workers were victims. In FY 17-18, simple battery had an incarceration rate of 16.3% (adj.). Per FDLE, in FY 18-19, there were 259 guilty/convicted and 77 adjudication withheld where a 2nd degree misdemeanor was increased to a 1st degree felony under s. 784.07, F.S. While it is expected that 2nd degree assault would have a lower incarceration rate as a 3rd degree felony, the large number of those impacted would be expected to be enough to reach significance.

EDR PROPOSED ESTIMATE: Positive Significant

Requested by: Senate

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 1718

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Public Meetings and Records/Conditional Aging Inmate Release Program

DATE: January 29, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1718, which is linked to PCS/CS/SB 574, adds a new subsection to s. 945.0912, F.S., as created in the linked bill, exempting certain records and portions of public meetings from the related the conditional aging inmate release (CAIR) program.

Specifically, the bill provides that the portion of a panel review hearing conducted in accordance with s. 945.0912, F.S., during which the panel determining release onto or revocation from the CAIR program will discuss protected information that is confidential and exempt under state or federal law is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also provides that certain requirements must be met if the panel must discuss exempt information during the course of its meeting.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CAIR, which includes any of the inmate's protected information, is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill exempts from public records requirements any portion of the audio or video recording of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel. The bill requires that such audio or video recording and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting and provides that any closure of the meetings must be limited so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

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

Because the bill creates a new public meetings and 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 does not appear to have a fiscal impact on state or local governments. Costs incurred by the DOC in closing such meetings and responding to public records requests regarding these exemptions should be offset by savings realized through the CAIR program. See Section V. Fiscal Impact Statement.

The bill is effective on the same date that PCS/CS/SB 574 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy 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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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 the statutory definition of “public record” to include “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 public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any 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

General exemptions from the public records requirements are contained in the Public Records Act.¹⁰ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹¹

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹² Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹³

⁵ Section 119.01(1), F.S. 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.”

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.”

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 *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹¹ *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹² *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹³ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ 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.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”¹⁷ or the “Sunshine Law,”¹⁸ 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.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ 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.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

Constitutional Requirements for Passage of Public Records or Open Meetings Exemptions

The Legislature may create an exemption for public records or open meetings requirements by passing a general law by a two-thirds vote of both the House and the Senate.²⁵ The exemption must state with specificity the public necessity justifying the exemption and must be no broader

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ *Id.*

¹⁶ 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 time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST. art. I, s. 24(c).

than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act²⁸ (the Act) prescribes a legislative review process for newly created or substantially amended²⁹ public records or open meetings exemptions, with specified exceptions.³⁰ 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.³¹

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.³² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³³
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁴ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁵

²⁶ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

²⁷ *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.

²⁸ Section 119.15, F.S.

²⁹ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³⁰ 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.

³¹ Section 119.15(3), F.S.

³² Section 119.15(6)(b), F.S.

³³ Section 119.15(6)(b)1., F.S.

³⁴ Section 119.15(6)(b)2., F.S.

³⁵ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.³⁶ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁷ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁸

Special Health Considerations for Aging Inmates

Aging inmates are more likely to experience certain medical and health conditions, including, in part, dementia, impaired mobility, loss of hearing and vision, cardiovascular disease, cancer, osteoporosis, and other chronic conditions.³⁹ However, such ailments present special challenges within a prison environment and may result in the need for increased staffing levels and enhanced officer training.⁴⁰ Such aging inmates can also require structural accessibility adaptations, such as special housing and wheelchair ramps. For example, in Florida, four facilities serve relatively large populations of older inmates, which help meet special needs such as palliative and long-term care.⁴¹

Aging Inmate Statistics in Florida

The Department of Corrections (DOC) reports that the elderly inmate⁴² population has increased by 353 inmates or 1.5 percent from June 30, 2017 to June 30, 2018 and that this trend has been

³⁶ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

³⁷ See generally s. 119.15, F.S.

³⁸ Section 119.15(7), F.S.

³⁹ McKillop, M. and McGaffey, F., The PEW Charitable Trusts, *Number of Older Prisoners Grows Rapidly, Threatening to Drive Up Prison Health Costs*, October 7, 2015, available at <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/10/07/number-of-older-prisoners-grows-rapidly-threatening-to-drive-up-prison-health-costs> (hereinafter cited as “PEW Trusts Older Prisoners Report”); See also Jaul, E. and Barron, J., *Frontiers in Public Health, Age-Related Diseases and Clinical and Public Health Implications for the 85 Years Old and Over Population*, December 11, 2017, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5732407/>; HealthinAging.org, *A Guide to Geriatric Syndromes: Common and Often Related Medical Conditions in Older Adults*, available at <https://www.healthinaging.org/tools-and-tips/guide-geriatric-syndromes-common-and-often-related-medical-conditions-older-adults> (all sites last visited January 23, 2020).

⁴⁰ The PEW Charitable Trusts Older Prisoners Report.

⁴¹ *Id.*

⁴² Section 944.02(4), F.S., defines “elderly offender” to mean prisoners age 50 or older in a state correctional institution or facility operated by the DOC or the Department of Management Services.

steadily increasing over the last five years for an overall increase of 2,585 inmates or 12.5 percent.⁴³

The DOC further reports that during Fiscal Year 2017-18, there were 3,594 elderly or aging inmates admitted to Florida prisons, which was a 2.8 percent decrease from Fiscal Year 2017-18. The majority of such inmates were admitted for violent offenses, property crimes, and drug offenses. The oldest male inmate admitted was 92 years of age with a conviction of manslaughter and the oldest female inmate admitted was 77 years of age with a conviction of drug trafficking.⁴⁴

Aging Inmate Discretionary Release

Many states, the District of Columbia, and the federal government authorize discretionary release programs for certain inmates that are based on an inmate's age without regard to the medical condition of the inmate.⁴⁵ The National Conference of State Legislatures (NCSL) reports such discretionary release based on age has been legislatively authorized in 17 states.⁴⁶ The NCSL also reports that such statutes typically require an inmate to be of a certain age and to have served either a specified number of years or a specified percentage of his or her sentence. The NCSL reports that Alabama has the lowest age for aging inmate discretionary release, which is 55 years of age, whereas most other states set the age limit somewhere between 60 and 65. Additionally, some states do not set a specific age.⁴⁷

Most states require a minimum of 10 years of an inmate's sentence to be served before being eligible for consideration for aging inmate discretionary release, but some states, such as California, set the minimum length of time served at 25 years.⁴⁸ Other states, such as Mississippi and Oklahoma, provide a term of years or a certain percentage of the sentence to be served.⁴⁹

Inmates who are sentenced to death or serving a life sentence are typically ineligible for release. Some states specify that inmates must be sentenced for a non-violent offense or specify offenses which are not eligible for release consideration.

Florida does not currently address discretionary release based on an inmate's age alone.

⁴³ The DOC, *2017-18 Annual Report*, p. 19, available at http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf (last visited January 23, 2020).

⁴⁴ *Id.*, at p. 20.

⁴⁵ The National Conference of State Legislatures (NCSL), *State Medical and Geriatric Parole Laws*, August 27, 2018, available at <http://www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx> (hereinafter cited as "The NCSL Aging Inmate Statistics"); Code of the District of Columbia, *Section 24-465 Conditions for Geriatric Release*, available at <https://code.dccouncil.us/dc/council/code/sections/24-465.html>; Section 603(b) of the First Step Act, codified at 18 USC s. 3582. *See also* U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 6-7, available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (all sites last visited January 23, 2020).

⁴⁶ The NCSL Aging Inmate Statistics. Also, the NCSL states that at least 16 states have established both medical and aging inmate discretionary release programs legislatively and that Virginia is the only state that has aging inmate discretionary release but not medical discretionary release.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ The NCSL Aging Inmate Statistics.

Conditional Aging Inmate Release Program Created By PCS/CS/SB 574

PCS/CS/SB 574, to which this bill is linked, creates s. 945.0912, F.S., to establish a conditional aging inmate release (CAIR) program within the DOC with the purpose of determining whether such release is appropriate for specified eligible inmates, supervising the released inmates, and conducting revocation hearings.

The CAIR program must include a panel of at least three people appointed by the Secretary for the purpose of determining the appropriateness of CAIR and conducting revocation hearings on the inmate releases.

The DOC must identify inmates who may be eligible for CAIR and, upon such identification, the DOC must refer such inmate to the panel. In considering an inmate for the CAIR program, the DOC may require the production of additional evidence or any other additional investigations that the DOC deems necessary for determining the appropriateness of the eligible inmate's release. This production can cover protected or confidential information, such as medical records.

The bill requires the panel to conduct a hearing to determine, by a majority, whether CAIR is appropriate for the inmate and creates a process for an inmate who is denied CAIR by the panel to have the decision reviewed. Confidential records that are produced in the above-mentioned investigation may be discussed in the hearings by the panel members to aide in the determination of whether the inmate is appropriate for release.

Further, the bill provides that CAIR may be revoked for a violation of any release conditions the DOC establishes, and requires the panel to conduct a CAIR revocation hearing as prescribed by rule. A majority of the panel must agree that revocation is appropriate for the aging releasee's CAIR to be revoked. The panel may need to discuss confidential information in a similar manner during the revocation hearings as is possible during the original release hearing.

III. Effect of Proposed Changes:

The bill adds a new subsection to s. 945.0912, F.S., creating an exemption to the public records and public meetings requirements related to the hearings conducted for the CAIR program. Specifically, the bill provides that the portion of a panel review hearing conducted in accordance with s. 945.0912, F.S., during which the panel will discuss protected information that is confidential and exempt under state or federal law, such as protected health information covered by the Health Insurance Portability and Protection Act, is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also provides that certain requirements must be met if the panel must discuss exempt information during the course of its meeting, including that:

- The panel must announce at the public meeting that, in connection with the performance of the panel's duties, protected information must be discussed;
- The panel must declare the specific reasons that it is necessary to close the meeting, or a portion thereof, in a document that is a public record and filed with the official records of the program; and

- The entire closed hearing must be recorded where the recording, which must be maintained by the DOC, includes the times of commencement and termination of the closed hearing or portion thereof, all discussion and proceedings, and the names of the persons present.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CAIR, which includes any of the inmate's protected information, is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill provides that any audio or video recording of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel are confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The bill requires that such audio or video recording and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting, including members of the panel, staff supporting the panel's functions, and other persons whose presence has been authorized by the panel. The panel must limit any closure of its meetings so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution, which notes:

The Legislature finds that it is a public necessity that the hearings or portions of hearings during which an inmate's personal information is discussed by the review panel considering an inmate's conditional aging inmate release be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature finds that the rights of an inmate afforded under other state or federal laws that deem certain personal information confidential, such as protected health information covered by the Health Insurance Portability and Protection Act, be upheld and that the inmate's personal information not be disclosed to the public during such hearings. The Legislature also finds that the recordings of a panel review hearing and the records used by the panel to make its determination be made confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Article I of the State Constitution. The inmate's personal health information, if publicly available, could be used to invade his or her personal privacy. Making these reports and discussions of such information confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to the privacy rights of the inmate. The Legislature therefore finds that it is a public necessity that such protected information remain confidential and exempt.

The bill is effective on the same date that PCS/CS/SB 574 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida 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 or open meeting requirements. This bill enacts a new exemption for portions of a panel meeting that discusses confidential information related to an inmate being considered for release into the CAIR program from open meetings requirements as well as any records that are created in support of such exemptions. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding an exemption to the public records or open meeting requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires an exemption to the public records requirements and open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect confidential and exempt information of an inmate or aging releasee who is being considered for the program or for revocation of the release, respectively. This bill exempts only that portion of a panel meeting that discusses confidential information related to the inmate or releasee from open meetings requirements as well as any records that are created in support of such exemptions. The exemption does not appear to be broader than necessary to accomplish the 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:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by the DOC in closing such meetings and responding to public records requests regarding these exemptions should be offset by savings realized through the CAIR program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.0912 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on January 28, 2020:

The committee substitute provides the public records exempted by the bill are confidential and exempt, rather than just exempt, ensuring that the confidential status of protected health information that may be discussed in such hearings is maintained.

B. Amendments:

None.

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



707688

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/28/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 51 - 79
and insert:
portion of a hearing of the panel are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such audio or video recording and minutes and notes must be retained pursuant to the requirements of s. 119.021.

(c) Only members of the panel, staff supporting the panel's



11 functions, and other persons whose presence has been authorized
12 by the panel shall be allowed to attend the closed portions of
13 panel hearings. The panel shall ensure that any closure of its
14 meetings as authorized by this section is limited so that the
15 policy of the state in favor of public meetings is maintained.

16 (d) This subsection is subject to the Open Government
17 Sunset Review Act in accordance with s. 119.15 and shall stand
18 repealed on October 2, 2025, unless reviewed and saved from
19 repeal through reenactment by the Legislature.

20 Section 2. The Legislature finds that it is a public
21 necessity that the hearings or portions of hearings during which
22 an inmate's personal information is discussed by the review
23 panel considering an inmate's conditional aging inmate release
24 be made exempt from s. 286.011, Florida Statutes, and s. 24(b),
25 Article I of the State Constitution. The Legislature finds that
26 the rights of an inmate afforded under other state or federal
27 laws that deem certain personal information confidential, such
28 as protected health information covered by the Health Insurance
29 Portability and Protection Act, be upheld and that the inmate's
30 personal information not be disclosed to the public during such
31 hearings. The Legislature also finds that the recordings of a
32 panel review hearing and the records used by the panel to make
33 its determination be made confidential and exempt from
34 disclosure under s.

35
36 ===== T I T L E A M E N D M E N T =====

37 And the title is amended as follows:

38 Delete line 13

39 and insert:



707688

40

providing a contingent effective date.

By Senator Brandes

24-01992-20

20201718__

A bill to be entitled

An act relating to public meetings and records; amending s. 945.0912, F.S.; exempting from public meetings requirements the protected health information of specified inmates being considered for the conditional aging inmate release program; exempting from public records requirements certain records used by the reviewing panel to make a determination of the appropriateness of conditional aging inmate release and the recordings of closed panel review hearings; providing for legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Present subsection (7) of section 945.0912, Florida Statutes, as created by SB 574, 2020 Regular Session, is redesignated as subsection (8), and a new subsection (7) is added to that section, to read:

945.0912 Conditional aging inmate release.—

(7) PUBLIC MEETINGS AND RECORDS EXEMPTIONS.—

(a) That portion of a panel review hearing conducted in accordance with this section during which the panel will discuss protected information that is confidential and exempt under state or federal law, such as protected health information covered by the Health Insurance Portability and Protection Act, is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. If the panel must discuss exempt information

Page 1 of 4

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24-01992-20

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during the course of its meeting, the following requirements must be met:

1. The panel must announce at the public meeting that, in connection with the performance of the panel's duties, protected information must be discussed;

2. The panel must declare the specific reasons that it is necessary to close the meeting, or a portion thereof, in a document that is a public record and filed with the official records of the program; and

3. The entire closed hearing must be recorded. The recording must include the times of commencement and termination of the closed hearing or portion thereof, all discussion and proceedings, and the names of the persons present. The department shall maintain the recording.

(b)1. That portion of the records the panel uses to determine the appropriateness of conditional aging inmate release which includes any of the inmate's protected information is confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Any audio or video recording of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel are exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such audio or video recording and minutes and notes must be retained pursuant to the requirements of s. 119.021.

(c) Only members of the panel, staff supporting the panel's functions, and other persons whose presence has been authorized by the panel shall be allowed to attend the closed portions of

Page 2 of 4

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59 panel hearings. The panel shall ensure that any closure of its
 60 meetings as authorized by this section is limited so that the
 61 policy of the state in favor of public meetings is maintained.

62 (d) This subsection is subject to the Open Government
 63 Sunset Review Act in accordance with s. 119.15 and shall stand
 64 repealed on October 2, 2025, unless reviewed and saved from
 65 repeal through reenactment by the Legislature.

66 Section 2. The Legislature finds that it is a public
 67 necessity that the hearings or portions of hearings during which
 68 an inmate's personal information is discussed by the review
 69 panel considering an inmate's conditional aging inmate release
 70 be made exempt from s. 286.011, Florida Statutes, and s. 24(b),
 71 Article I of the State Constitution. The Legislature finds that
 72 the rights of an inmate afforded under other state or federal
 73 laws that deem certain personal information confidential, such
 74 as protected health information covered by the Health Insurance
 75 Portability and Protection Act, be upheld and that the inmate's
 76 personal information not be disclosed to the public during such
 77 hearings. The Legislature also finds that the recordings of a
 78 panel review hearing and the records used by the panel to make
 79 its determination be made exempt from disclosure under s.
 80 119.07(1) and s. 24(a), Article I of the State Constitution. The
 81 inmate's personal health information, if publicly available,
 82 could be used to invade his or her personal privacy. Making
 83 these reports and discussions of such information confidential
 84 and exempt from disclosure will protect information of a
 85 sensitive personal nature, the release of which could cause
 86 unwarranted damage to the privacy rights of the inmate. The
 87 Legislature therefore finds that it is a public necessity that

Page 3 of 4

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24-01992-20 20201718__

88 such protected information remain confidential and exempt.

89 Section 3. This act shall take effect on the same date that
 90 SB 574 or similar legislation relating to conditional aging
 91 inmate release takes effect, if such legislation is adopted in
 92 the same legislative session or an extension thereof and becomes
 93 a law.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 21, 2019

I respectfully request that **Senate Bill #1718**, relating to **Public Records/Conditional Aging Inmate Release Program**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

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 1728

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Public Meetings and Records/Conditional Medical Release Program

DATE: January 29, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1728, which is linked to PCS/CS/SB 556, adds a new subsection to s. 945.0911, F.S., as created in the linked bill, exempting certain records and portions of public meetings from the related conditional medical release (CMR) program.

Specifically, the bill provides that the portion of a panel review hearing conducted in accordance with s. 945.0911, F.S., during which the panel determining release onto or revocation from the CMR program will discuss protected information that is confidential and exempt under state or federal law is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also provides that certain requirements must be met if the panel must discuss exempt information during the course of its meeting.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CMR which includes any of the inmate's protected information is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill exempts from public records requirements any portion of the audio or video recording of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel. The bill requires that such audio or video recording and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting and provides that any closure of the meetings must be limited so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

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

Because the bill creates a new public meetings and 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 does not appear to have a fiscal impact on state or local governments. Costs incurred by the DOC in closing such meetings and responding to public records requests regarding these exemptions should be offset by savings realized through the CMR program. See Section V. Fiscal Impact Statement.

The bill is effective on the same date that PCS/CS/SB 556 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy 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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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 the statutory definition of “public record” to include “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 public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any 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

General exemptions from the public records requirements are contained in the Public Records Act.¹⁰ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹¹

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹² Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹³

⁵ Section 119.01(1), F.S. 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.”

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.”

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 *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹¹ *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹² *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹³ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ 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.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”¹⁷ or the “Sunshine Law,”¹⁸ 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.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ 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.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

Constitutional Requirements for Passage of Public Records or Open Meetings Exemptions

The Legislature may create an exemption for public records or open meetings requirements by passing a general law by a two-thirds vote of both the House and the Senate.²⁵ The exemption must state with specificity the public necessity justifying the exemption and must be no broader

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ *Id.*

¹⁶ 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 time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST. art. I, s. 24(c).

than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act²⁸ (the Act) prescribes a legislative review process for newly created or substantially amended²⁹ public records or open meetings exemptions, with specified exceptions.³⁰ 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.³¹

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.³² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³³
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁴ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁵

²⁶ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

²⁷ *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.

²⁸ Section 119.15, F.S.

²⁹ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³⁰ 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.

³¹ Section 119.15(3), F.S.

³² Section 119.15(6)(b), F.S.

³³ Section 119.15(6)(b)1., F.S.

³⁴ Section 119.15(6)(b)2., F.S.

³⁵ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.³⁶ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁷ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁸

Conditional Medical Release

Conditional Medical Release (CMR), outlined in s. 947.149, F.S., was created by the Florida Legislature in 1992,³⁹ as a discretionary release of inmates who are “terminally ill” or “permanently incapacitated” and who are not a danger to themselves or others.⁴⁰ The Florida Commission on Offender Review (FCOR), which consists of three members, reviews eligible inmates for release under the CMR program pursuant to the powers established in s. 947.13, F.S.⁴¹ In part, s. 947.149, F.S., authorizes the FCOR to determine what persons will be released on CMR, establish the conditions of CMR, and determine whether a person has violated the conditions of CMR and take actions with respect to such a violation.

Florida Statistics for CMR

The FCOR has approved and released 73 inmates for CMR in the last three fiscal years, including:

- 38 in FY 2018-19;
- 21 in FY 2017-2018; and
- 14 in FY 2016-2017.⁴²

³⁶ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

³⁷ See generally s. 119.15, F.S.

³⁸ Section 119.15(7), F.S.

³⁹ Chapter 92-310, L.O.F.

⁴⁰ The FCOR, *Release Types, Post Release*, available at <https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease> (last visited January 23, 2020).

⁴¹ Section 947.149(3), F.S. Section 947.01, F.S., provides that the membership of the FCOR is three-members.

⁴² Emails from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data and RE: Updated Conditional Medical Release Numbers (attachments on file with the Senate Committee on Criminal Justice) (December 15, 2017 and November 1, 2019, respectively). See also FCOR Annual Report FY 2017-18, p. 8, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last visited January 23, 2020).

The DOC has recommended 149 inmates for release in the past three fiscal years, including:

- 76 in FY 2018-19;
- 39 in FY 2017-2018; and
- 34 in FY 2016-2017.⁴³

Currently, the DOC's only role in the CMR process is to make the initial designation of medical eligibility and to refer the inmate's case to the FCOR for an investigation and final decision.

Conditional Medical Release Program Created By CS/SB 556

PCS/CS/SB 556 repeals s. 947.149, F.S., which establishes the CMR program within the FCOR and creates s. 945.0911, F.S., to establish a CMR program within the DOC with the purpose of determining whether release is appropriate for eligible inmates, supervising the released inmates, and conducting revocation hearings. The CMR program established within the DOC retains similarities to the program currently in existence within the FCOR, including that the CMR program must include a panel of at least three people.

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the DOC to meet a specific definition enumerated in PCS/CS/SB 556. The bill requires the DOC to identify inmates who may be eligible for CMR based upon available medical information and authorizes the DOC to require additional medical evidence, including examinations of the inmate, or any other additional investigations it deems necessary for determining the appropriateness of the eligible inmate's release.

The bill requires the director of inmate health services to review specified evidence and provide a recommendation to the three-member panel, who must conduct a hearing within 45 days of the referral to determine whether CMR is appropriate for the inmate. A majority of the panel members must agree that release on CMR is appropriate for the inmate. Confidential records that are produced in the above-mentioned investigation may be discussed in the hearings by the panel members to aide in the determination of whether the inmate is appropriate for release.

Additionally, PCS/CS/SB 556 establishes a process for the revocation of CMR which may be based on two specified circumstances. The revocation hearing must be conducted by the three-member panel discussed above and a majority of the panel members must agree that revocation is appropriate for the medical releasee's CMR to be revoked. The bill requires the director of inmate health services or his or her designee to review any medical evidence pertaining to the medical releasee and provide the panel with a recommendation regarding the medical releasee's improvement and current medical or physical condition.

The panel may need to discuss confidential information in a similar manner during the revocation hearings as is possible during the original release hearing.

⁴³ *Id.*

III. Effect of Proposed Changes:

The bill adds a new subsection to s. 945.0911, F.S., creating an exemption to the public records and public meetings requirements related to the hearings conducted for the CMR program. Specifically, the bill provides that the portion of a panel review hearing conducted in accordance with s. 945.0911, F.S., during which the panel will discuss protected information that is confidential and exempt under state or federal law, such as protected health information covered by the Health Insurance Portability and Protection Act, is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also provides that certain requirements must be met if the panel must discuss exempt information during the course of its meeting, including that:

- The panel must announce at the public meeting that, in connection with the performance of the panel's duties, protected information must be discussed;
- The panel must declare the specific reasons that it is necessary to close the meeting, or a portion thereof, in a document that is a public record and filed with the official records of the program; and
- The entire closed hearing must be recorded where the recording, which must be maintained by the DOC, includes the times of commencement and termination of the closed hearing or portion thereof, all discussion and proceedings, and the names of the persons present.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CMR which includes any of the inmate's protected information is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill provides that any audio or video recording of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel are confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The bill requires that such audio or video recording and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting, including members of the panel, staff supporting the panel's functions, and other persons whose presence has been authorized by the panel. The panel must limit any closure of its meetings so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution, which notes:

The Legislature finds that it is a public necessity that the hearings or portions of hearings during which an inmate's personal information is discussed by the review panel considering the inmate's conditional medical release be made exempt from s. 286.011, Florida Statutes, and

s. 24(b), Article I of the State Constitution. The Legislature finds that the rights of an inmate afforded under other state or federal laws that deem certain personal information confidential, such as protected health information covered by the Health Insurance Portability and Accountability Act, be upheld and that the inmate's personal information not be disclosed to the public during such hearings. The Legislature also finds that the recordings of a panel review hearing and the records used by the panel to make its determination be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The inmate's personal health information, if publicly available, could be used to invade his or her personal privacy. Making these reports and discussions of such information confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to the privacy rights of the inmate. The Legislature therefore finds that it is a public necessity that such protected information remain confidential and exempt.

The bill is effective on the same date that PCS/CS/SB 556 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida 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 or open meeting requirements. This bill enacts a new exemption for portions of a panel meeting that discusses confidential information related to an inmate being considered for release into the CMR program from open meetings requirements as well as any records that are created in support of such exemptions. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding an exemption to the public records or open meeting requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires an exemption to the public records requirements and open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect confidential and exempt information of an inmate or medical releasee who is being considered for the program or for revocation of the release, respectively. This bill exempts only that portion of a panel meeting that discusses confidential information related to the inmate or releasee from open meetings requirements as well as any records that are created in support of such exemptions. The exemption does not appear to be broader than necessary to accomplish the 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:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by the DOC in closing such meetings and responding to public records requests regarding these exemptions should be offset by savings realized through the CMR program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.0911 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on January 28, 2020:

The committee substitute provides the public records exempted by the bill are confidential and exempt, rather than just exempt, ensuring that the confidential status of protected health information that may be discussed in such hearings is maintained.

- B. **Amendments:**

None.



149084

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/28/2020	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 51 - 79
and insert:
portion of a hearing of the panel are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such audio or video recording and minutes and notes must be retained pursuant to the requirements of s. 119.021.

(c) Only members of the panel, staff supporting the panel's



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11 functions, and other persons whose presence has been authorized
12 by the panel shall be allowed to attend the closed portions of
13 panel hearings. The panel shall ensure that any closure of its
14 meetings as authorized by this section is limited so that the
15 policy of the state in favor of public meetings is maintained.

16 (d) This subsection is subject to the Open Government
17 Sunset Review Act in accordance with s. 119.15 and shall stand
18 repealed on October 2, 2025, unless reviewed and saved from
19 repeal through reenactment by the Legislature.

20 Section 2. The Legislature finds that it is a public
21 necessity that the hearings or portions of hearings during which
22 an inmate's personal information is discussed by the review
23 panel considering the inmate's conditional medical release be
24 made exempt from s. 286.011, Florida Statutes, and s. 24(b),
25 Article I of the State Constitution. The Legislature finds that
26 the rights of an inmate afforded under other state or federal
27 laws that deem certain personal information confidential, such
28 as protected health information covered by the Health Insurance
29 Portability and Accountability Act, be upheld and that the
30 inmate's personal information not be disclosed to the public
31 during such hearings. The Legislature also finds that the
32 recordings of a panel review hearing and the records used by the
33 panel to make its determination be made confidential and exempt
34 from disclosure

By Senator Brandes

24-01991-20

20201728__

1 A bill to be entitled
 2 An act relating to public meetings and records;
 3 amending s. 945.0911, F.S.; exempting from public
 4 meetings requirements the protected health information
 5 of specified inmates being considered for the
 6 conditional medical release program; exempting from
 7 public records requirements certain records used by
 8 the reviewing panel to make a determination of the
 9 appropriateness of conditional medical release and the
 10 recordings of closed panel review hearings; providing
 11 for legislative review and repeal of the exemptions;
 12 providing a statement of public necessity; providing a
 13 contingent effective date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Present subsection (9) of section 945.0911,
 18 Florida Statutes, as created by SB 556, 2020 Regular Session, is
 19 redesignated as subsection (10), and a new subsection (9) is
 20 added to that section, to read:
 21 945.0911 Conditional medical release.—
 22 (9) PUBLIC MEETINGS AND RECORDS EXEMPTIONS.—
 23 (a) That portion of a panel review hearing conducted in
 24 accordance with this section during which the panel will discuss
 25 protected information that is confidential and exempt under
 26 state or federal law, such as protected health information
 27 covered by the Health Insurance Portability and Accountability
 28 Act, is exempt from s. 286.011 and s. 24(b), Art. I of the State
 29 Constitution. If the panel must discuss exempt information

Page 1 of 4

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

24-01991-20

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30 during the course of its meeting, the following requirements
 31 must be met:
 32 1. The panel must announce at the public meeting that, in
 33 connection with the performance of the panel's duties, protected
 34 information must be discussed;
 35 2. The panel must declare the specific reasons that it is
 36 necessary to close the meeting, or a portion thereof, in a
 37 document that is a public record and filed with the official
 38 records of the program; and
 39 3. The entire closed hearing must be recorded. The
 40 recording must include the times of commencement and termination
 41 of the closed hearing or portion thereof, all discussion and
 42 proceedings, and the names of the persons present. The
 43 department shall maintain the recording.
 44 (b)1. That portion of the records the panel uses to
 45 determine the appropriateness of conditional medical release
 46 which includes any of the inmate's protected information is
 47 confidential and exempt from disclosure under s. 119.07(1) and
 48 s. 24(a), Art. I of the State Constitution.
 49 2. Any audio or video recording of, and any minutes and
 50 notes generated during, a closed hearing of the panel or closed
 51 portion of a hearing of the panel are exempt from disclosure
 52 under s. 119.07(1) and s. 24(a), Art. I of the State
 53 Constitution. Such audio or video recording and minutes and
 54 notes must be retained pursuant to the requirements of s.
 55 119.021.
 56 (c) Only members of the panel, staff supporting the panel's
 57 functions, and other persons whose presence has been authorized
 58 by the panel shall be allowed to attend the closed portions of

Page 2 of 4

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24-01991-20 20201728__

59 panel hearings. The panel shall ensure that any closure of its
 60 meetings as authorized by this section is limited so that the
 61 policy of the state in favor of public meetings is maintained.

62 (d) This subsection is subject to the Open Government
 63 Sunset Review Act in accordance with s. 119.15 and shall stand
 64 repealed on October 2, 2025, unless reviewed and saved from
 65 repeal through reenactment by the Legislature.

66 Section 2. The Legislature finds that it is a public
 67 necessity that the hearings or portions of hearings during which
 68 an inmate's personal information is discussed by the review
 69 panel considering the inmate's conditional medical release be
 70 made exempt from s. 286.011, Florida Statutes, and s. 24(b),
 71 Article I of the State Constitution. The Legislature finds that
 72 the rights of an inmate afforded under other state or federal
 73 laws that deem certain personal information confidential, such
 74 as protected health information covered by the Health Insurance
 75 Portability and Accountability Act, be upheld and that the
 76 inmate's personal information not be disclosed to the public
 77 during such hearings. The Legislature also finds that the
 78 recordings of a panel review hearing and the records used by the
 79 panel to make its determination be made exempt from disclosure
 80 under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 81 the State Constitution. The inmate's personal health
 82 information, if publicly available, could be used to invade his
 83 or her personal privacy. Making these reports and discussions of
 84 such information confidential and exempt from disclosure will
 85 protect information of a sensitive personal nature, the release
 86 of which could cause unwarranted damage to the privacy rights of
 87 the inmate. The Legislature therefore finds that it is a public

Page 3 of 4

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24-01991-20 20201728__

88 necessity that such protected information remain confidential
 89 and exempt.

90 Section 3. This act shall take effect on the same date that
 91 SB 556 or similar legislation relating to conditional medical
 92 release takes effect, if such legislation is adopted in the same
 93 legislative session or an extension thereof and becomes a law.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 21, 2019

I respectfully request that **Senate Bill #1728**, relating to **Public Records/Conditional Medical Release Program**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

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

Cox, Ryan

From: Yarger, Alexander <alecyarger@fcor.state.fl.us>
Sent: Friday, November 1, 2019 2:08 PM
To: Cox, Ryan
Subject: Re: Updated Conditional Medical Release numbers

Good afternoon

In FY1819, the Department of Corrections referred 76 inmates for CMR and FCOR granted release to 38.

Get [Outlook for Android](#)

From: Cox, Ryan
Sent: Friday, November 1, 1:55 PM
Subject: Updated Conditional Medical Release numbers
To: Yarger, Alexander

Good afternoon, Alex:

Can you please send me the numbers for FY 2018-19 of how many people were recommended for CMR and how many were granted release by the FCOR? Thank you!

Sincerely,

Ryan C. Cox
Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

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 1802

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: Public Meetings/Urban Core Gun Violence Task Force

DATE: January 30, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1802 creates a narrowly tailored public meetings exemption from the requirements of s. 286.011, F.S., and s. 24(b), Article I of the State Constitution for the portions of the meetings of the Urban Core Gun Violence Task Force (Task Force) during which exempt or confidential and exempt information is discussed.

CS/SB 652, which creates the Task Force, provides the authority to request and be provided with access to any information or records pertaining to crime and gun violence in urban core neighborhoods and communities in order to fulfill its duties. It is likely that at least some of the information and records to which the Task Force has access may be otherwise exempt or confidential and exempt.

CS/SB 652 provides that information or records that the Task Force receives shall retain such exempt or confidential and exempt status, and that the Task Force may not disclose any such information or records. The public meetings exemption will allow the Task Force to discuss the exempt or confidential and exempt information while maintaining the protected status of that information.

This bill provides a statement of the public necessity for the exemption. It is narrowly tailored to include only the portions of meetings at which the protected information is discussed. The bill requires a two-thirds vote of the members present and voting for final passage.

There is no anticipated fiscal impact from this bill.

The bill becomes effective on the same date that CS/SB 652 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹ 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.² This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.³

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”⁴ or the “Sunshine Law,”⁵ 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.⁶ The board or commission must provide the public reasonable notice of such meetings.⁷ 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.⁸ Minutes of a public meeting must be promptly recorded and open to public inspection.⁹ Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.¹⁰ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.¹¹

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of each house of the Legislature.¹² The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than

¹ FLA. CONST., art. I, s. 24(b).

² *Id.*

³ 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 time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

⁴ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

⁵ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

⁶ Section 286.011(1)-(2), F.S.

⁷ *Id.*

⁸ Section 286.011(6), F.S.

⁹ Section 286.011(2), F.S.

¹⁰ Section 286.011(1), F.S.

¹¹ Section 286.011(3), F.S.

¹² FLA. CONST., art. I, s. 24(c).

necessary to accomplish the stated purpose of the exemption.¹³ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹⁴

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records exemptions,¹⁵ with specified exceptions.¹⁶ 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.¹⁷ The Act provides that a public records 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.¹⁸

Urban Core Gun Violence

In American urban centers with significant minority populations, like New Orleans, Detroit, and Baltimore, the homicide rate is up to 10 times higher than the national average—between 30 and 40 murders per 100,000 people.¹⁹ One study calculated that young black men living in a high-crime area of Rochester, NY, had a murder rate of 520 per 100,00, over 100 times higher than the national average.²⁰ Firearm homicide is the leading cause of death for black males ages 15–34.²¹

Urban cores can be defined as areas that have high population densities (7,500 or more per square mile or 2,900 per square kilometer or more) and high transit, walking and cycling work trip market shares (20 percent or more). Urban cores also include non-exurban sectors with median house construction dates of 1945 or before.²²

CS/SB 652 creates the Urban Core Gun Violence Task Force which is tasked with investigating system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities. The Task Force is expected to develop recommendations for

¹³ *Id.*

¹⁴ *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.

¹⁵ 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.).

¹⁶ 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.

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Giffords Law Center to Prevent Gun Violence, *Healing Communities in Crisis, Lifesaving Solutions to the Urban Gun Violence Epidemic*, p. 11, available at <https://lawcenter.giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf> (last visited January 23, 2020).

²⁰ *Id.* at 12.

²¹ *Id.*

²² Wendell Cox, *Urban Cores, Core Cities and Principal Cities*, *Newgeography*, August 1, 2014, available at <http://www.newgeography.com/content/004453-urban-cores-core-cities-and-principal-cities> (last visited January 23, 2020).

solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities.

The Task Force has the authority to request and be provided with access to *any* information or records pertaining to crime and gun violence in urban core neighborhoods and communities. Because of the nature of the Task Force's responsibilities it is likely that at least some of the information and records to which the Task Force has access may be otherwise exempt or confidential and exempt.

CS/SB 652 contains a provision stating that the information or records shall retain such exempt or confidential and exempt status, and that the Task Force may not disclose any such information or records. Any discussion at an open meeting of the Task Force related to the protected information or records would violate the exempt or confidential and exempt status of the information or records. Therefore, an exemption from the public meetings laws is necessary in order to maintain the exempt or confidential and exempt status of certain information or records the Task Force receives and discusses during the fulfillment of its duties.

III. Effect of Proposed Changes:

The bill creates a public meetings exemption from the requirements of s. 286.011, F.S., and s. 24(b), Article I of the State Constitution for the portions of the meetings of the Urban Core Gun Violence Task Force during which exempt or confidential and exempt information is discussed.

The bill sets forth the public necessity for the exemption by stating the following Legislative findings:

- The purpose of the Task Force is to investigate system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities;
- The Task Force shall develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities;
- In order to fulfill its directive, the Task Force must be able to discuss exempt or confidential and exempt information that it receives as part of its investigation;
- The public meetings exemption will allow the task force to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements and improved interagency communications;
- As such, it is necessary that those portions of meetings wherein exempt or confidential and exempt information is discussed be made exempt from public meetings requirements;
- If such portions of the meeting were not closed, the public records exemptions would be negated;
- Thus, the Legislature finds that the public meeting exemption is a public necessity in order to ensure the effective and efficient administration of the Urban Core Gun Violence Task Force.

The bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill becomes effective on the same date that CS/SB 652 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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 open meeting requirements. This bill enacts a new exemption for the portions of the meetings of the Urban Core Gun Violence Task Force during which exempt or confidential and exempt information is discussed, 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 an exemption to the open meeting requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect exempt or confidential and exempt information to which the Urban Core Gun Violence Task Force has access. This bill exempts only the portions of the meetings of the Task Force during which the exempt or confidential and exempt information is discussed by the Task Force from the open meetings requirements. The exemption does not appear to be broader than necessary to accomplish the 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.6872 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on January 28, 2020

The committee substitute amends the directory clause of the bill to redesignate certain subsections and to add a subsection to the language contained in s. 943.6872, F.S., as created by CS/SB 652.

B. Amendments:

None.



554590

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/28/2020	.	
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	.	

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

Senate Amendment

Delete lines 13 - 18
and insert:

Section 1. Present subsections (6) and (7) of section 943.6872, Florida Statutes, as created by SB 652, 2020 Regular Session, are redesignated as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

(6) Any portion of a meeting of the Urban Core Gun Violence

By Senator Pizzo

38-02131-20

20201802__

A bill to be entitled

An act relating to public meetings; amending s. 943.6872, F.S.; providing an exemption from public meetings requirements for portions of the Urban Core Gun Violence Task Force meetings at which exempt or confidential and exempt information is discussed; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Present subsections (7) and (8) of section 943.6872, Florida Statutes, as created by SB 652, 2020 Regular Session, are redesignated as subsections (8) and (9), respectively, and a new subsection (7) is added to that section, to read:

(7) Any portion of a meeting of the Urban Core Gun Violence Task Force at which exempt or confidential and exempt information is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that any portion of a meeting of the Urban Core Gun Violence Task Force at which exempt or confidential and exempt information is discussed be made exempt from s. 286.011, Florida

Page 1 of 2

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

38-02131-20

20201802__

Statutes, and s. 24(b), Article I of the State Constitution. The purpose of the task force is to investigate system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities. In addition, the task force shall develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities. In order to fulfill its directive, the task force must be able to discuss exempt or confidential and exempt information that it receives as part of its investigation. The public meetings exemption will allow the task force to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements and improved interagency communications. As such, it is necessary that those portions of meetings wherein exempt or confidential and exempt information is discussed be made exempt from public meetings requirements. If such portions of the meeting were not closed, the public records exemptions would be negated. Thus, the Legislature finds that the public meeting exemption is a public necessity in order to ensure the effective and efficient administration of the Urban Core Gun Violence Task Force.

Section 3. This act shall take effect on the same date that SB 652 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

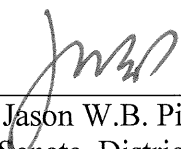
To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 21, 2020

I respectfully request that **SB 1802**, relating to Public Meetings/Urban Core Gun Violence Task Force, be placed on the:

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



Senator Jason W.B. Pizzo
Florida Senate, District 38

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 1880

INTRODUCER: Senator Perry

SUBJECT: Restitution for Juvenile Offenses

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wagoner	Jones	CJ	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 1880 adopts a uniform set of conditions of restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld.

The bill requires the court to order the child and the child's parent or guardian who has current custody of and parental responsibility for the child to pay restitution when the court has determined that restitution is appropriate. The bill authorizes the court to:

- Set up a payment plan if the child and the parent or legal guardian are unable to pay the restitution in one lump-sum payment; and
- Absolve the parent or guardian of any liability for restitution if, after a hearing, the court finds that the current offense is the child's first referral and the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; or the victim entitled to restitution is the child's parent or legal guardian.

The bill clarifies that the following entities are not considered a guardian responsible for restitution for the delinquent acts of a child: the Department of Children and Families, a foster parent, the community-based care lead agency supervising placement of the child, or a residential child-caring agency or family foster home.

The bill is effective July 1, 2020.

II. Present Situation:

Juvenile Cases in which the Court enters an Adjudication of Delinquency

A court may order children who are adjudicated delinquent of a crime into a probation program or a postcommitment probation program.¹ If the court orders probation for the child, the probation program must include a penalty component such as restitution in money or in kind, community service, a curfew, revocation or suspension of the child's driver license, or other appropriate punishment that is non-residential.² Additionally, the probation program must include a rehabilitative component such as participation in substance abuse treatment or in a school or educational program.³ The probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation.⁴

Restitution

Section 985.437, F.S., authorizes a court with jurisdiction over a child who has been adjudicated delinquent to order the child to pay restitution to the victim for any damage⁵ or loss caused by the child's offense⁶ in a reasonable amount or manner. The court may order the child to make restitution in money, through a promissory note cosigned by the child's parent or guardian⁷, or in kind.⁸ When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or the child's parent or guardian could reasonably be expected to pay or make.⁹ However, the child's parent or guardian may be absolved of any such liability for restitution if the court finds, after a hearing, that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts.¹⁰ Additionally, s. 985.513, F.S., provides that the court may order the parent or guardian of a child adjudicated delinquent to make restitution in money or in kind for any damage or loss caused by the child's offense.

¹ Section 985.435(1), F.S.

² Section 985.435(2), F.S.

³ Section 985.435(3), F.S.

⁴ Section 985.435(4), F.S.

⁵ "Any damage" has been interpreted by Florida courts to include damage for pain and suffering. *C.W. v. State*, 655 So.2d 87 (Fla. 1995).

⁶ The damage or loss must be directly or indirectly related to the child's offense or criminal episode. *L.R.L. v. State*, 9 So.3d 714 (Fla. 2d DCA 2009).

⁷ Section 985.437, F.S., does not specifically exempt the Department of Children and Families, a foster parent, or any other entity considered a guardian of a dependent child from the restitution requirements of this section.

⁸ Section 985.437(2), F.S. A parent or guardian cannot be ordered to pay restitution for offenses committed by their minor child without the court providing the parent meaningful notice, an opportunity to be heard, and a determination of the parent or guardian's ability to pay. See *S.B.L. v. State*, 737 So. 2d 1131, 1132-33 (Fla. 1st DCA 1999) (holding that the trial court violated the mother's due process right by ordering her to pay restitution without affording her meaningful opportunity to be heard at the restitution hearing); *A.T. v. State*, 706 So. 2d 109, 109 (Fla. 2d DCA 1998) (trial court erred by ordering the juvenile and her mother to pay restitution without making a determination of either's ability to do so); *C.D.D. v. State*, 684 So. 2d 866, 867 (Fla. 2d DCA 1996) (holding that the trial court was required to consider the juvenile's and mother's ability to pay before imposing a restitution order).

⁹ Section 985.437(2), F.S.

¹⁰ Section 985.437(4), F.S.

To enter an order of restitution, a court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution to which the victim is entitled.¹¹ A restitution hearing is not required if the child previously entered into an agreement to pay¹² or has waived his or her right to attend a restitution hearing.¹³

The clerk of the circuit court receives and dispenses restitution payment.¹⁴ If restitution is not made, the clerk must notify the court.¹⁵ The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied.¹⁶ If a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the real property of the child or parent.¹⁷ The court may transfer a restitution order to a collection court or a private collection agent to collect unpaid restitution.¹⁸

Juvenile Cases in which the Court enters a Withheld of Adjudication

Section 985.35, F.S., provides that if the court finds that the child has committed a delinquent act, it may enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency. Upon withholding adjudication of delinquency, the court may place the child in a probation program.¹⁹ The court may impose, as a condition of the program, a penalty component, including restitution in money or in kind, or a rehabilitative component.²⁰ Such components are identical to those available for adjudications of delinquency, however, the imposition of program conditions are not mandatory when the court withholds adjudication.²¹

III. Effect of Proposed Changes:

The bill adopts a uniform set of conditions of restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld.

The bill requires the court to order the child *and* the child's parent or guardian *who has current custody of and parental responsibility for the child* to pay restitution when the court has determined that restitution is appropriate.

¹¹ *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.

¹² *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

¹³ *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

¹⁴ Section 985.437(3), F.S.

¹⁵ *Id.*

¹⁶ Section 985.0301(5)(d), F.S.

¹⁷ Section 985.0301(5)(d), F.S., provides that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089(5), F.S. That section provides that a restitution order may be enforced in the same manner as a judgment in a civil action.

¹⁸ Section 985.045(5), F.S.

¹⁹ Section 985.35(4), F.S.

²⁰ *Id.*

²¹ *Id.*

The bill provides that a court may establish a payment plan that reflects ability to pay the restitution amount when the child and the child's parent or guardian are unable to make restitution in kind or to pay the restitution in one lump-sum payment.

Currently, a child's parent or guardian who the court finds has made diligent and good faith efforts to prevent the child's delinquency is absolved from liability for restitution. Under the bill, this ground for avoiding liability is limited to circumstances in which the child is making his or her first referral to the delinquency system. Additionally, the bill provides that a parent or guardian is not liable for damages or losses if a parent or guardian is the victim of the child's offense.

The bill provides that the following entities are not considered a guardian responsible for restitution for the delinquent acts of a child: the Department of Children and Families, a foster parent, the community-based care lead agency supervising placement of the child, or a residential child-caring agency²² or family foster home.²³

The bill amends s. 985.35, F.S., to conform to the changes made in the act.

The bill amends s. 985.513, F.S., to remove duplicative provisions.

The bill is effective July 1, 2020.

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.

²² "Residential child-caring agency" means any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth. Section 409.175, F.S.

²³ "Family foster home" means a residence licensed by the Department of Children and Families in which children who are unattended by a parent or legal guardian are provided 24-hour care. Section 409.175, F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may provide greater potential for victims to receive all or a portion of restitution. Parents ordered to pay restitution on behalf of a child may avoid a civil lien if they cannot pay restitution in a lump-sum as the bill authorizes payment plans.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.35, 985.437, and 985.513.

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.



156254

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 95 - 122

and insert:

Section 3. Section 985.513, Florida Statutes, is amended to read:

985.513 Powers of the court over parent or guardian at disposition.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a



156254

11 determination of a sanction and rehabilitative program was made
12 at the disposition hearing,~~±~~

13 ~~(a)~~ order the child's parent or guardian, together with the
14 child, to render community service in a public service program
15 or to participate in a community work project. In addition to
16 the sanctions imposed on the child, the court may order the
17 child's parent or guardian to perform community service if the
18 court finds that the child's parent or guardian did not make a
19 diligent and good faith effort to prevent the child from
20 engaging in delinquent acts.

21 ~~(b) Order the parent or guardian to make restitution in~~
22 ~~money or in kind for any damage or loss caused by the child's~~
23 ~~offense. The court may also require the child's parent or legal~~
24 ~~guardian to be responsible for any restitution ordered against~~
25 ~~the child, as provided under s. 985.437. The court shall~~
26 ~~determine a reasonable amount or manner of restitution, and~~
27 ~~payment shall be made to the clerk of the circuit court as~~
28 ~~provided in s. 985.437.~~

29 (2) Notwithstanding whether adjudication is imposed or
30 withheld, the court may retain jurisdiction, as provided under
31 s. 985.0301, over the child and the child's parent or legal
32 guardian whom the court has ordered to make restitution in kind
33 or pay restitution until the restitution order is satisfied or
34 the court orders otherwise.

35 (3)~~(2)~~ Notwithstanding whether adjudication is imposed or
36 withheld, the court may order the natural parents or legal
37 custodian or guardian of a child who is found to have committed
38 a delinquent act to participate in family counseling and other
39 professional counseling activities deemed necessary for the



156254

40 rehabilitation of the child or to enhance their ability to
41 provide the child with adequate support, guidance, and
42 supervision. The court may also order that the parent,
43 custodian, or guardian support the child and participate with
44 the child in fulfilling a court-imposed sanction. In addition,
45 the court may use its contempt powers to enforce a court-imposed
46 sanction.

47
48 ===== T I T L E A M E N D M E N T =====

49 And the title is amended as follows:

50 Delete lines 3 - 18

51 and insert:

52 amending s. 985.437, F.S.; providing a uniform set of
53 conditions of restitution for juvenile offenses,
54 regardless of whether adjudication is imposed or
55 withheld; requiring a child's parent or guardian, in
56 addition to the child, to make restitution for damage
57 or loss caused by the child's offense; authorizing the
58 court to establish a payment plan in certain
59 circumstances; authorizing the child's parent or
60 guardian to be absolved of liability for restitution
61 in certain circumstances; authorizing the court to
62 order restitution to be paid only by the parents or
63 guardians who have current custody and parental
64 responsibility; providing that the Department of
65 Children and Families, foster parents, and specified
66 facilities and agencies are not guardians for purposes
67 of restitution; amending s. 985.35, F.S.; conforming
68 provisions to changes made by the act; amending s.



69
70
71

985.513, F.S.; removing duplicative provisions;
conforming provisions to changes made by the act;
providing an effective date.

By Senator Perry

8-00302-20

20201880__

1 A bill to be entitled
 2 An act relating to restitution for juvenile offenses;
 3 amending s. 985.35, F.S.; conforming provisions to
 4 changes made by the act; amending s. 985.437, F.S.;
 5 requiring a child's parent or guardian, in addition to
 6 the child, to make restitution for damage or loss
 7 caused by the child's offense; authorizing the court
 8 to establish a payment plan in certain circumstances;
 9 authorizing the child's parent or guardian to be
 10 absolved of liability for restitution in certain
 11 circumstances; authorizing the court to order
 12 restitution to be paid only by the parents or
 13 guardians who have current custody and parental
 14 responsibility; providing that the Department of
 15 Children and Families, foster parents, and specified
 16 facilities and agencies are not guardians for purposes
 17 of restitution; amending s. 985.513, F.S.; removing
 18 duplicative provisions; providing an effective date.
 19
 20 Be It Enacted by the Legislature of the State of Florida:
 21
 22 Section 1. Paragraph (a) of subsection (4) of section
 23 985.35, Florida Statutes, is amended to read:
 24 985.35 Adjudicatory hearings; withheld adjudications;
 25 orders of adjudication.—
 26 (4) If the court finds that the child named in the petition
 27 has committed a delinquent act or violation of law, it may, in
 28 its discretion, enter an order stating the facts upon which its
 29 finding is based but withholding adjudication of delinquency.

Page 1 of 5

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

8-00302-20

20201880__

30 (a) Upon withholding adjudication of delinquency, the court
 31 may place the child in a probation program under the supervision
 32 of the department or under the supervision of any other person
 33 or agency specifically authorized and appointed by the court.
 34 The court may, as a condition of the program, impose as a
 35 penalty component restitution in money or in kind to be made by
 36 the child and the child's parent or guardian as provided in s.
 37 985.437, community service, a curfew, urine monitoring,
 38 revocation or suspension of the driver license of the child, or
 39 other nonresidential punishment appropriate to the offense, and
 40 may impose as a rehabilitative component a requirement of
 41 participation in substance abuse treatment, or school or other
 42 educational program attendance.
 43 Section 2. Present subsection (5) of section 985.437,
 44 Florida Statutes, is renumbered as subsection (7), a new
 45 subsection (5) and subsection (6) are added to that section, and
 46 subsections (1), (2), and (4) of that section are amended, to
 47 read:
 48 985.437 Restitution.—
 49 (1) Regardless of whether adjudication is imposed or
 50 withheld, the court that has jurisdiction over ~~a~~ an adjudicated
 51 ~~delinquent~~ child may, by an order stating the facts upon which a
 52 determination of a sanction and rehabilitative program was made
 53 at the disposition hearing, order the child and the child's
 54 parent or guardian to make restitution in the manner provided in
 55 this section. This order shall be part of the child's probation
 56 program to be implemented by the department or, in the case of a
 57 committed child, as part of the community-based sanctions
 58 ordered by the court at the disposition hearing or before the

Page 2 of 5

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

8-00302-20

20201880__

59 child's release from commitment.

60 (2) If the court orders restitution, the court shall may
 61 order the child and the child's parent or guardian to make
 62 restitution in money, through a promissory note assigned by the
 63 child's parent or guardian, or in kind for any damage or loss
 64 caused by the child's offense in a reasonable amount or manner
 65 to be determined by the court. When restitution is ordered by
 66 the court, the amount of restitution may not exceed an amount
 67 the child and the child's parent or guardian could reasonably be
 68 expected to pay or make. If the child and the child's parent or
 69 guardian are unable to make restitution in kind or to pay the
 70 restitution in one lump-sum payment, the court may establish a
 71 payment plan that reflects their ability to pay the restitution
 72 amount.

73 (4) The child's parent or guardian may be absolved of
 74 liability for restitution under this section if:

75 (a) After a hearing, the court finds that it is the child's
 76 first referral to the delinquency system and A finding by the
 77 court, after a hearing, that the child's parent or guardian has
 78 made diligent and good faith efforts to prevent the child from
 79 engaging in delinquent acts; or

80 (b) The victim entitled to restitution as a result of
 81 damage or loss caused by the child's offense is that child's
 82 absolves the parent or guardian of liability for restitution
 83 under this section.

84 (5) The court may order restitution to be made in kind or
 85 paid only by the parents or guardians who have current custody
 86 of and parental responsibility for the child.

87 (6) For purposes of this section, the Department of

8-00302-20

20201880__

88 Children and Families, a foster parent with whom the child is
 89 placed, the community-based care lead agency supervising the
 90 placement of the child pursuant to a contract with the
 91 Department of Children and Families, or a facility licensed or
 92 registered under s. 409.175 or s. 409.176 is not considered a
 93 guardian responsible for restitution for the delinquent acts of
 94 a child who is found to be dependent as defined in s. 39.01(15).

95 Section 3. Subsection (1) of section 985.513, Florida
 96 Statutes, is amended to read:

97 985.513 Powers of the court over parent or guardian at
 98 disposition.—

99 (1) The court that has jurisdiction over an adjudicated
 100 delinquent child may, by an order stating the facts upon which a
 101 determination of a sanction and rehabilitative program was made
 102 at the disposition hearing,±

103 ~~(a)~~ order the child's parent or guardian, together with the
 104 child, to render community service in a public service program
 105 or to participate in a community work project. In addition to
 106 the sanctions imposed on the child, the court may order the
 107 child's parent or guardian to perform community service if the
 108 court finds that the child's parent or guardian did not make a
 109 diligent and good faith effort to prevent the child from
 110 engaging in delinquent acts.

111 ~~(b) Order the parent or guardian to make restitution in~~
 112 ~~money or in kind for any damage or loss caused by the child's~~
 113 ~~offense. The court may also require the child's parent or legal~~
 114 ~~guardian to be responsible for any restitution ordered against~~
 115 ~~the child, as provided under s. 985.437. The court shall~~
 116 ~~determine a reasonable amount or manner of restitution, and~~

8-00302-20

20201880__

117 ~~payment shall be made to the clerk of the circuit court as~~
118 ~~provided in s. 985.437.~~ The court may retain jurisdiction, as
119 provided under s. 985.0301, over the child and the child's
120 parent or legal guardian whom the court has ordered to make
121 restitution in kind or pay restitution until the restitution
122 order is satisfied or the court orders otherwise.

123 Section 4. This act shall take effect July 1, 2020.

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 1/28/2020 1:47:26 PM

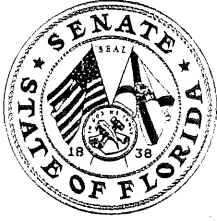
Ends: 1/28/2020 3:00:02 PM

Length: 01:12:37

1:47:25 PM Meeting called to order by Chair Brandes
1:47:27 PM Roll call by AA Sue Arnold
1:47:35 PM Quorum present
1:47:38 PM Comments from Chair Brandes
1:48:26 PM Introduction of Tab 2 by Chair Brandes
1:48:37 PM Explanation of CS/SB 728, Threats by Senator Stargel
1:49:29 PM Explanation of Amendment Barcode No. 493844
1:50:02 PM Introduction of Substitute Amendment 430974
1:50:17 PM Question from Senator Pizzo
1:50:24 PM Response from Senator Stargel
1:50:46 PM Follow-up question from Senator Pizzo
1:50:55 PM Response from Chair Brandes
1:51:33 PM Closure waived
1:51:37 PM Amendment adopted
1:51:51 PM Senator Pizzo in debate
1:52:33 PM Response from Senator Stargel
1:53:11 PM Follow-up question from Senator Pizzo
1:53:19 PM Response from Senator Stargel
1:54:08 PM Follow-up question from Senator Pizzo
1:54:19 PM Response from Senator Stargel
1:54:50 PM Additional question from Senator Pizzo
1:55:06 PM Response from Senator Stargel
1:56:43 PM Question from Chair Brandes
1:56:49 PM Response from Senator Stargel
1:57:17 PM Question from Senator Pizzo
1:57:22 PM Response from Senator Stargel
1:58:13 PM Follow-up question from Senator Pizzo
1:58:26 PM Response from Senator Stargel
1:58:56 PM Question from Senator Bracy
1:59:01 PM Response from Senator Stargel
1:59:52 PM Speaker Sheriff Mike Prendergast, Citrus County, Florida Sheriffs Association in support
2:02:20 PM Question from Senator Pizzo
2:02:58 PM Response from Sheriff Prendergast
2:04:55 PM Follow-up question from Senator Pizzo
2:05:14 PM Response from Sheriff Prendergast
2:07:09 PM Question from Chair Brandes
2:07:15 PM Response from Sheriff Prendergast
2:07:54 PM Comments from Chair Brandes
2:08:43 PM Question from Senator Bracy
2:08:52 PM Response from Sheriff Prendergast
2:10:07 PM Gary Hester, Florida Police Chiefs Association waives in support
2:10:14 PM Lt. Michael Crabb, waives in support
2:10:18 PM David Shepp, Polk County Sheriff waives in support
2:10:27 PM Khanh Banco, Florida PTA waives in support
2:10:36 PM Speaker Greg Pound
2:12:32 PM Senator Stargel moves to TP bill
2:12:49 PM Senator Pizzo moves that bill be TP'd
2:12:58 PM Introduction of Tab 5 by Chair Brandes
2:13:12 PM Explanation of SB 1286, Contraband in Specified Facilities by Senator Simmons
2:14:22 PM Introduction of Amendment Barcode No. 609888 by Chair Brandes
2:14:34 PM Explanation of Amendment by Senator Simmons
2:15:09 PM Closure waived

2:15:15 PM Amendment adopted
2:15:28 PM Question from Senator Flores
2:15:37 PM Response from Senator Simmons
2:16:32 PM Comments from Chair Brandes
2:16:38 PM Response from Senator Simmons
2:16:46 PM Follow-up question from Chair Brandes
2:16:53 PM Response from Senator Simmons
2:18:20 PM Question from Senator Bracy
2:18:26 PM Response from Senator Simmons
2:19:27 PM Question from Senator Pizzo
2:19:51 PM Response from Senator Simmons
2:20:17 PM Question from Senator Pizzo
2:20:24 PM Response from Senator Simmons
2:20:32 PM Follow-up question from Senator Pizzo
2:20:38 PM Response from Senator Simmons
2:22:10 PM Follow-up question from Senator Pizzo
2:22:20 PM Response from Senator Simmons
2:23:22 PM Comment from Senator Bracy
2:24:23 PM Response from Senator Simmons
2:24:39 PM Lauren Jackson, Seminole County Sheriff's Office waives in support
2:24:43 PM Melissa Villar, The Holistic Cannabis Community/NORML Tallahassee waives in opposition
2:25:22 PM Speaker Greg Pound
2:26:43 PM Speaker Tabitha Burress, Florida Cannabis Action Network waives in opposition
2:27:34 PM Matt Dunagan, Florida Sheriffs Association waives in support
2:27:45 PM Senator Pizzo in debate
2:28:32 PM Closure waived
2:28:48 PM Roll call by AA
2:28:53 PM CS/SB 1286 reported favorably
2:29:03 PM Introduction of Tab 3 by Chair Brandes
2:29:15 PM Explanation of SB 1018, Exposure of Sexual Organs by Senator Stewart
2:31:40 PM Question from Senator Pizzo
2:31:46 PM Response from Senator Stewart
2:32:28 PM Follow-up question from Senator Pizzo
2:32:51 PM Response from Senator Stewart
2:33:01 PM Question from Chair Brandes
2:33:06 PM Response from Senator Stewart
2:33:45 PM Question from Chair Brandes
2:33:58 PM Response from Senator Stewart
2:34:09 PM Comments from Senator Stewart
2:34:32 PM Speaker Lt. Michael Crabb, Orange County Sheriff's Office in support
2:36:07 PM Question from Senator Pizzo
2:36:14 PM Response from Lt. Crabb
2:36:31 PM Follow-up question from Senator Pizzo
2:36:44 PM Response from Lt. Crabb
2:36:52 PM Follow-up question from Senator Pizzo
2:36:59 PM Response from Lt. Crabb
2:37:13 PM Follow-up question from Senator Pizzo
2:37:25 PM Response from Lt. Crabb
2:37:40 PM Barbara DeVane, FL NOW waives in support
2:37:48 PM Raymon Maury, AANR-Florida waives in support
2:37:50 PM Matt Dungan, Florida Sheriffs Association waives in support
2:37:56 PM Speaker Greg Pound
2:38:35 PM Bill TP'd per Senator Stewart
2:39:31 PM Senator Flores moves to TP bill
2:39:43 PM SB 1880 and SB 1416 TP'd per Chair Brandes (Senator Perry's Bills)
2:40:00 PM Introduction of Tab 1 by Chair Brandes
2:40:08 PM Explanation of SB 652, Urban Core Gun Violence Task Force by Senator Pizzo
2:40:19 PM Introduction of Amendment Barcode No. 268592 by Chair Brandes
2:40:23 PM Explanation of Amendment by Senator Pizzo
2:41:01 PM Closure waived
2:41:05 PM Amendment adopted
2:41:10 PM Barbara DeVane, FL NOW waives in support

2:41:16 PM Alycia Merritt, March For Our Lives waives in support
2:41:31 PM
2:41:34 PM Khanh-Lien Banko, Florida PTA waives in support
2:41:36 PM Closure by Senator Pizzo
2:41:42 PM Roll call by AA
2:41:46 PM CS/SB 652 reported favorably
2:41:53 PM Introduction of Tab 9 by Chair Brandes
2:42:03 PM Explanation of SB 1802, Public Meetings/Urban Core Gun Violence Task Force by Senator Pizzo
2:42:18 PM Introduction of Amendment Barcode No. 554590 by Chair Brandes
2:42:22 PM Explanation of Amendment by Senator Pizzo
2:42:32 PM Closure waived
2:42:33 PM Amendment adopted
2:42:39 PM Closure waived
2:42:43 PM Roll call by AA
2:42:46 PM CS/SB 1802 reported favorably
2:42:56 PM Chair turned over to Senator Pizzo
2:43:04 PM Introduction of Tab 7 by Chair Pizzo
2:43:13 PM Explanation of SB 1781, Public Meetings and Records/Conditional Aging Inmate Release Program by Senator Brandes
2:43:28 PM Introduction of Amendment Barcode No. 707688 by Chair Pizzo
2:43:32 PM Explanation of Amendment by Senator Brandes
2:43:47 PM Closure waived
2:43:52 PM Amendment adopted
2:43:59 PM
2:44:04 PM Closure waived
2:44:10 PM Roll call by AA
2:44:13 PM CS/SB 1718 reported favorably
2:44:22 PM Introduction of Tab 8 by Chair Pizzo
2:44:27 PM Explanation of SB 1728, Public Meetings and Records/Conditional Medical Release Program by Senator Brandes
2:44:39 PM Introduction of Amendment Barcode No. 149084 by Chair Pizzo
2:44:44 PM Explanation of Amendment by Senator Brandes
2:44:56 PM Closure waived
2:44:59 PM Amendment adopted
2:45:04 PM Closure waived
2:45:06 PM Roll call by AA
2:45:10 PM CS/SB 1728 reported favorably
2:45:23 PM Chair returned to Chair Brandes
2:45:35 PM Recording Paused
2:55:10 PM Recording Resumed
2:55:14 PM
2:56:14 PM Meeting resumed
2:56:19 PM Introduction of Tab 4 by Chair Brandes
2:56:27 PM Explanation of SB 1024, Public Records/Criminal Intelligence and Criminal Investigative Information by Senator Bean
2:57:43 PM Introduction of Amendment Barcode No. 765140 by Chair Brandes
2:57:48 PM Explanation of Amendment by Senator Bean
2:58:43 PM Closure waived
2:58:47 PM Amendment adopted
2:58:53 PM Closure waived
2:58:57 PM Roll call by AA
2:59:02 PM CS/SB 1024 reported favorably
2:59:15 PM Comments from Chair Brandes
2:59:21 PM Senator Pizzo moves to adjourn, meeting adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Criminal Justice, *Chair*
Infrastructure and Security, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Education

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR KEITH PERRY
8th District

MEMORANDUM

To: President Bill Galvano
From: Senator Keith Perry
Subject: Excuse from Committee
Date: January 28, 2020

President Galvano,

Unfortunately I am unable to attend and chair the Criminal Justice Committee scheduled for today, January 28th, 2020. In my absence, I have asked Senator Jeff Brandes to lead the committee.

Thank you,

W. Keith Perry

REPLY TO:

- 2610 NW 43rd Street, Suite 2B, Gainesville, Florida 32606 (352) 264-4040
- Marion County Board of Commissioners, 115 SE 25th Avenue, Ocala, Florida 34471
- Putnam County Government Complex, 2509 Crill Avenue, Palatka, Florida 32177
- 316 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5008

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore