

Tab 1	SB 290 by Rouson ; (Identical to H 0641) Criminal Justice				
554674	A	S	RCS	CJ, Rouson	Delete L.241 - 246: 02/21 12:13 PM
Tab 2	SB 296 by Bracy ; (Identical to H 0453) Statements Made by a Criminal Defendant				
699482	A	S	RCS	CJ, Baxley	Delete L.51 - 57: 02/21 12:13 PM
Tab 4	SB 350 by Clemens ; (Similar to CS/H 0345) Criminal Justice Standards and Training Commission				
Tab 5	SB 494 by Bradley ; (Identical to H 0393) Compensation of Victims of Wrongful Incarceration				
Tab 6	SB 550 by Bracy ; (Similar to CS/H 0111) Public Records/Murder Witness				
973740	A	S	RCS	CJ, Bracy	Delete L.17 - 43: 02/21 12:13 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Bracy, Chair
Senator Baxley, Vice Chair

MEETING DATE: Tuesday, February 21, 2017

TIME: 9:00—11:30 a.m.

PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Bracy, Chair; Senator Baxley, Vice Chair; Senators Bean, Bradley, Brandes, Clemens, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 290 Rouson (Identical H 641)	<p>Criminal Justice; Requiring that a court sentence a defendant who is convicted of a primary offense of possession of a controlled substance committed on or after a specified date to a nonstate prison sanction under certain circumstances; creating the Sentencing Commission within the Supreme Court; requiring the Office of the State Courts Administrator to act as staff for the commission; authorizing a nonstate prison sanction under a prison diversion program for certain offenders who commit a nonviolent felony of the second degree on or after a specified date, etc.</p> <p style="text-align: center;">CJ 02/21/2017 Fav/CS JU ACJ AP</p>	Fav/CS Yea 7 Nays 0
2	SB 296 Bracy (Identical H 453)	<p>Statements Made by a Criminal Defendant; Requiring that hearsay statements made during certain custodial interrogations comply with specified requirements in order to be admissible; describing circumstances in which an oral, written, or sign-language statement made by an interrogee during a custodial interrogation is presumed inadmissible as evidence against such person unless certain requirements are met; providing for the admissibility of certain statements of an interrogee when made in certain proceedings or when obtained by federal officers or officers from other jurisdictions, etc.</p> <p style="text-align: center;">CJ 02/21/2017 Favorable JU RC</p>	Favorable Yea 7 Nays 0
3	SB 312 Baxley (Identical H 643)	<p>Eyewitness Identification; Citing this act as the "Eyewitness Identification Reform Act"; requiring state, county, municipal, or other law enforcement agencies that conduct lineups to follow specified procedures; requiring the Criminal Justice Standards and Training Commission to create educational materials and provide training programs on how to conduct lineups, etc.</p> <p style="text-align: center;">CJ 02/21/2017 Fav/CS JU RC</p>	Fav/CS Yea 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 21, 2017, 9:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 350 Clemens (Similar CS/H 345)	Criminal Justice Standards and Training Commission; Requiring the Criminal Justice Standards and Training Commission to implement, administer, maintain, and revise a basic abilities examination by a specified date; requiring that examination fees be deposited in the Criminal Justice Standards and Training Trust Fund; reenacting provisions relating to examinations, administration, and materials not being public records, to incorporate the amendment made to provisions in a reference thereto, etc.	Favorable Yea 7 Nays 0
		CJ 02/21/2017 Favorable ACJ AP	
5	SB 494 Bradley (Identical H 393, S 556)	Compensation of Victims of Wrongful Incarceration; Revising the circumstances under which a wrongfully incarcerated person is not eligible for compensation under the Victims of Wrongful Incarceration Compensation Act; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation, etc.	Favorable Yea 7 Nays 0
		CJ 02/21/2017 Favorable JU AP	
6	SB 550 Bracy (Similar CS/H 111)	Public Records/Murder Witness ; Providing an exemption from public records requirements for personal identifying information of a witness to a murder for a specified period; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.	Fav/CS Yea 4 Nays 3
		CJ 02/21/2017 Fav/CS JU GO RC	

Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate Committee page on the Senate's website, www.flsenate.gov.

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 290

INTRODUCER: Criminal Justice Committee and Senator Rouson

SUBJECT: Criminal Justice

DATE: February 21, 2017 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Hrdlicka	CJ	<u>Fav/CS</u>
2.		JU	
3.		ACJ	
4.		AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 290 makes significant changes to Florida's sentencing laws. Several of these changes involve prison diversion for certain nonviolent felony offenders. Specifically, the bill:

- Requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public;
- Authorizes a court to depart from a mandatory minimum term of imprisonment for a nonviolent felony or misdemeanor if the court finds that specified criteria are met;
- Reestablishes a sentencing commission to provide recommendations regarding offense severity level rankings of noncapital felonies;
- Authorizes a court to sentence a defendant to a nonstate prison sanction within a prison diversion program if the defendant is convicted of a nonviolent second degree felony and meets other criteria;
- Restores a circumstance for mitigating (reducing) a sentence based on substance abuse or addiction and amenability to treatment and creates a new mitigating circumstance for certain nonviolent felony offenders; and
- Requires diversion through drug court, residential drug treatment, or drug offender probation for certain nonviolent felony offenders who are amenable to substance abuse treatment.

According to the Legislature's Office of Economic and Demographic Research's (EDR's) preliminary estimate, provisions of the bill relating to prison diversion and departure from mandatory minimum terms will result in a decrease in prison beds. However, the Office of State

Courts Administrator (OSCA) estimates an indeterminate fiscal impact due to an anticipated increase in judicial time and workload as a result of increased sentencing hearing time. See Section V. Fiscal Impact Statement.

The EDR's preliminary estimate is that prison diversion for certain drug possession offenders will result in a cumulative decrease of 1,001 prison beds over 5 years (FY 2017-18 to FY 2021-22) with a cumulative cost avoidance of \$131,965,742. Prison diversion for certain nonviolent second degree felony offenders will result in a cumulative decrease of 2,027 prison beds over 5 years (FY 2017-18 to FY 2021-22) with a cumulative cost avoidance of \$263,156,174. Other provisions of the bill will result in a decrease in prison beds but that decrease cannot be quantified. The actual appropriation associated with passage of the bill will differ depending on a number of factors including the existing inventory of prison beds.

The OSCA's preliminary estimate is that operating costs of the commission will be \$46,588 per year. Costs may be subject to change based upon changes to underlying factors and actual costs.

The Department of Corrections has also provided preliminary impact estimates for the various sections of the bill. See Section V. Fiscal Impact Statement.

II. Present Situation:

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code¹ (Code) as Florida's "primary sentencing policy."² Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).³ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.⁴ Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. 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. Absent mitigation,⁵ 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.⁶

¹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

² *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013)* (Executive Summary), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on January 24, 2017).

³ 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.

⁴ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

⁵ 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.

⁶ 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.

Length of Stay

According to a recent study of the operations of the Department of Corrections (DOC), length of stay (LOS) in Florida correctional facilities exceeds the national LOS average (30 months). LOS has consistently increased in Florida “from just under 30 months on average in 2008 to almost 40 months by 2015.”⁷ According to the study’s authors, the longer average LOS in Florida “explains to a large degree Florida’s significantly higher incarceration rate of 522 per 100,000 population versus the U.S. state incarceration rate of 416 per 100,000.”⁸

Departure from a Code Sentence

An exception to typical Code sentencing is found in s. 775.082(10), F.S. Under this subsection, if a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony,⁹ and if the total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility.

Mandatory Minimum Terms of Imprisonment

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.”¹⁰ Generally, the sentencing range under the Code is the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed: the mandatory minimum sentence up to and including the statutory maximum penalty.

Staff identified 118 mandatory minimum terms in Florida law. This inventory excludes repeat offender sanctions. Mandatory minimum terms for felony offenses range from 18 months in prison to life imprisonment. Mandatory minimum terms for misdemeanors range from 5 days to one year. Section 893.135, F.S., which punishes drug trafficking, contains the most mandatory

⁷ *Study of Operations of the Florida Department of Corrections* (prepared by Carter Goble Associates, LLC), Report No. 15-FDC (November 2015), Office of Program Policy Analysis and Government Accountability, Florida Legislature, p. 80 (footnote omitted). This study is available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=15-FDC> (last visited on January 24, 2017).

⁸ *Id.*

⁹ Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

¹⁰ Fla. R. Crim. P. 3.704(d)(26). There are limited circumstances in which departure from a mandatory minimum term is authorized. *See e.g.*, the defendant is a youthful offender (s. 958.04, F.S.); state attorney waiver of “10/20/Life” mandatory minimum term (s. 27.366, F.S.); state attorney waiver based on substantial assistance rendered (ss. 790.163(2), 790.164(2), and 893.135(4), F.S.); departure from mandatory minimum term for a violation s. 316.027(2)(c), F.S. (driver involved in a fatal crash fails to stop and remain at the scene of a crash as required by s. 316.027(2)(g), F.S.). *But see State v. Vanderhoff*, 14 So.3d 1185, 1189 (Fla. 5th DCA 2009) (“the parties incorrectly assumed that a mitigating factor that would justify a downward departure under the Criminal Punishment Code, could also allow the trial court to waive a mandatory sentence”).

minimum terms (47) for felonies. Section 379.407, F.S., which punishes saltwater product violations, contains the most mandatory minimum terms (12) for misdemeanors.

INVENTORY OF FLORIDA'S MANDATORY MINIMUM TERMS	
Offense/Penalty Provision & Number of Mandatory Minimum Terms	Description of Mandatory Minimum Term(s)
Driving under the influence; various offenses (ss. 316.027 and 316.193, F.S.). Nine mandatory minimum terms.	4 years, imprisonment: 12 months maximum; 9 months maximum, 6 months maximum, at least 30 days, at least 10 days
Fleeing or eluding; various offenses (s. 316.1935, F.S.). Two mandatory minimum terms.	3 years
Boating under the influence; various offenses (s. 327.35, F.S.). Seven mandatory minimum terms.	Imprisonment: 12 months maximum, 9 months maximum, 6 months maximum, at least 30 days, at least 10 days
Saltwater product violations; various offenses (s. 379.407, F.S.). Twelve mandatory minimum terms.	1 year, 6 months
Phosphogypsum management violation (s. 403.4154, F.S.). One mandatory minimum term.	5 years
Unlawfully practicing health care profession; various offenses (s. 456.065, F.S.). Three mandatory minimum terms.	1 year, 30 days
Unlawfully selling, etc., horse meat (s. 500.451, F.S.). One mandatory minimum term.	1 year
Unlawfully acting as insurer; various offenses (s. 624.401, F.S.). Three mandatory minimum terms.	2 years, 18 months, 1 year
Domestic violence offender intentionally causes bodily harm (s. 741.283, F.S.). One mandatory minimum term.	5 days (does not apply if court imposes a prison sentence)
“10-20-Life” (s. 775.087, F.S.). Eight mandatory minimum terms.	Not less than 25 years and not more than life, 20 years, 15 years, 10 years, 3 years
Murder or attempted murder of law enforcement officer (s. 782.065, F.S.). One mandatory minimum term.	Life
Assault or battery on law enforcement officer or other specified persons (s. 784.07, F.S.). Four mandatory minimum terms.	8 years, 5 years, 3 years
Aggravated assault or aggravated battery upon person 65 years of age or older (s. 784.08, F.S.). One mandatory minimum term.	3 years

INVENTORY OF FLORIDA'S MANDATORY MINIMUM TERMS	
Offense/Penalty Provision & Number of Mandatory Minimum Terms	Description of Mandatory Minimum Term(s)
Possession of a firearm, etc., by a violent career criminal (s. 790.235, F.S.). One mandatory minimum term.	15 years
Deriving support from proceeds of prostitution; third or subsequent violation (s. 796.05, F.S.). One mandatory minimum term.	10 years
Prostitution-related offenses; second or subsequent violation (s. 796.07, F.S.). One mandatory minimum term.	10 days
Fraud; motor vehicle crash offenses (s. 817.234, F.S.). Two mandatory minimum terms.	2 years
Criminal use of personal ID information; various offenses (s. 817.568, F.S.). Six mandatory minimum terms.	10 years, 5 years, 3 years
Animal cruelty (death, etc.); second or subsequent violation (s. 828.12, F.S.). One mandatory minimum term.	6 months
Unlawful killing, etc., of horse or cattle (s. 828.125, F.S.). Two mandatory minimum terms.	1 year
Intentionally defective workmanship; defense or war materials (s. 876.39, F.S.). One mandatory minimum term.	Not less than 1 year in state prison (effectively more than 1 year because a state prison sentence requires more than a 12 month sentence)
Sale, etc., of specified controlled substances within 1,000 feet of real property of K-12 school and other places (s. 893.13, F.S.). One mandatory minimum term.	3 years
Manufacturing methamphetamine/phencyclidine; various offenses (child present) (s. 893.13, F.S.). Two mandatory minimum terms.	10 years, 5 years
Drug trafficking; various offenses (s. 893.135, F.S.). Forty-seven mandatory minimum terms.	Life, 25 years, 15 years, 7 years, 3 years
TOTAL MANDATORY MINIMUM TERMS: 118	

Former Sentencing Commission

A 17-member sentencing commission operated in Florida from 1982 until 1997.¹¹ The former sentencing commission was charged with the following duties:

- Reviewing sentencing practices and recommending modifications to the sentencing guidelines;
- Estimating how sentencing score thresholds and weights assigned to sentencing factors affect rates of incarceration and the levels of the prison population and recommending sentencing score thresholds, weights assigned to sentencing factors, and an appropriation sufficient to fund the estimated prison population;
- Conducting ongoing research on the impact of the sentencing guidelines, the use of imprisonment and alternatives to imprisonment, and plea bargaining; and
- Estimating the impact of any proposed changes to the sentencing guidelines on future rates of incarceration and levels of prison population, reviewing those projections, and making them available to other appropriate agencies of state government and the Legislature.¹²

The commission provided recommendations regarding sentencing guidelines revisions to the Supreme Court, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the relevant substantive committees of both houses. Sentencing guidelines revisions recommended by the commission were effective only upon subsequent adoption by the Legislature of legislation implementing the revisions.

Prison Diversion for Certain Nonviolent Third Degree Felony Offenders

Section 921.00241, F.S., authorizes a court to sentence an offender to a nonstate prison sanction if the offender committed his or her offense on or after July 1, 2009, and absent this diversion, the offender would otherwise be sentenced to state prison. In order to be diverted the offender must meet all of following criteria:

- The offender's primary offense is a third degree felony.
- The offender's total sentence points score, as provided in s. 921.0024, F.S., is not more than 48 points, or the offender's total sentence points score is 54 points and 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law.
- The offender has not been convicted or previously convicted of a forcible felony.
- The offender's primary offense does not require a mandatory minimum sentence.

If the court elects to impose a sentence as provided in this section, then the court must sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a DOC prison diversion program if such program is funded and exists in the judicial circuit in which the offender is sentenced. The prison diversion program must be designed to meet the unique needs of each judicial circuit and of the offender population of that circuit. The program may require residential, nonresidential, or day-reporting requirements;

¹¹ Chapter 82-145, LO.F., created s. 921.001, F.S., which established the commission. Chapter 97-194, L.O.F., repealed s. 921.001, F.S.

¹² See s. 921.001, F.S. (2008). All further information in this section of the analysis regarding the former sentencing commission is from this source.

substance abuse treatment; employment; restitution; academic or vocational opportunities; or community service work.

A court sentencing an offender pursuant to this section must make written findings that the offender meets the previously-described criteria. The sentencing order must indicate that the offender was sentenced to the prison diversion program. The court may order the offender to pay all or a portion of the costs related to the program if the court determines that the offender has the ability to pay.

Sentence Mitigating Circumstances

As previously noted, the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to and including the maximum penalty provided under s. 775.082, F.S. However, the court may “depart downward” from the scored lowest permissible sentence if the court finds there is a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.¹³

Relevant to the bill, pre-Code sentencing guidelines provided for the following mitigating circumstance: “The defendant requires specialized treatment for addiction, mental disorder, or physical disability, and the defendant is amenable to treatment.”¹⁴

With the enactment of the Code, this mitigating circumstance was modified.¹⁵ As modified, the mitigating circumstance read: “The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.”¹⁶ The Code also specified that the defendant’s “substance abuse or addiction, including intoxication,¹⁷ at the time of the offense” was not a mitigating factor and did “not, under any circumstance, justify a downward departure from the permissible sentencing range.”¹⁸

In 2009, the Legislature created a mitigating circumstance in which substance abuse or addiction could be considered: “The defendant’s offense is a nonviolent felony, the defendant’s Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory

¹³ Section 921.0026(4)(d), F.S., specifies that mitigating circumstances include, but are not limited to, the mitigating circumstances specified in that section.

¹⁴ Section 921.0016, F.S. (1996). In 1993, the Legislature codified this mitigating factor which was created by the Florida Supreme Court in 1987. Chapter 93-406, s. 13, L.O.F.; *Barbera v. State*, 505 So.2d 413 (Fla. 1987). In *Barbera*, the court was persuaded that intoxication and drug dependency could mitigate a sentence because the defense of intoxication could be used by a jury to justify convicting a defendant of a lesser offense. In 1999, the Legislature eliminated the voluntary intoxication defense. Chapter 99-174, L.O.F.; s. 775.051, F.S.

¹⁵ Chapter 97-194, s. 8, L.O.F.

¹⁶ Section 921.0026(2)(d), F.S. (1997).

¹⁷ While s. 775.051, F.S., provides that voluntary intoxication resulting from the consumption, injection, or other use of alcohol or other controlled substances (except those legally prescribed) is not a defense to any offense, this does not necessarily preclude the Legislature from addressing substance abuse or addiction, including intoxication, as a mitigating circumstance. For example, while a defendant may not raise as a defense that the victim was a willing participant in the crime, the Legislature has authorized mitigation of a Code sentence based on this circumstance. Section 921.0026(2)(f), F.S.; *State v. Rife*, 789 So.2d 288 (Fla. 2001).

¹⁸ Section 921.0026(3), F.S. (1997).

treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence.”¹⁹ The only subsequent change to this mitigating circumstance occurred in 2011 when the Legislature increased total sentence points from 52 points to 60 points.²⁰ Further, since the 2009 change, the law specifies that, except for this mitigating circumstance, the defendant’s substance abuse or addiction, including intoxication, is not a mitigating factor.²¹

Drug Court Diversion for Certain Nonviolent Felony Offenders

Section 948.01, F.S., in part, authorizes a court to place a defendant into a postadjudicatory treatment-based drug court program if the defendant’s offense is a nonviolent felony²² committed on or after July 1, 2009, the defendant’s Code scoresheet total sentence points under s. 921.0024, F.S., are 60 points or fewer, the defendant is amenable to substance abuse treatment, and the defendant otherwise qualifies under s. 397.334(3), F.S.²³

The satisfactory completion of the program is a required condition of the defendant’s probation or community control. The defendant must be fully advised of the purpose of the program and must agree to enter the program. The original sentencing court must relinquish jurisdiction of the defendant’s case to the postadjudicatory drug court program until the defendant is no longer active in the program, the case is returned to the sentencing court due to the defendant’s termination from the program for failure to comply with the terms thereof, or the defendant’s sentence is completed.

III. Effect of Proposed Changes:

The bill, which takes effect October 1, 2017, makes significant changes to Florida’s sentencing laws. Several of these changes involve prison diversion for certain nonviolent felony offenders from prison. The changes are described in more detail as follows.

Requiring Prison Diversion for Certain Drug Possession Offenders (Section 1)

Section 1 of the bill requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public. Section 775.082(10), F.S., currently provides that a court must sentence a defendant to a nonstate prison sanction if the defendant is sentenced for a third degree felony that is not a forcible felony and total sentence points under the Code are 22 points or fewer, unless the court determines such sentence could present a danger to the public.

¹⁹ Section 921.0026(2)(m) and (3), F.S.; ch. 2009-64, s. 2, L.O.F. The term “nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S., which defines “nonviolent felony” as a third degree felony violation of ch. 810, F.S., or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

²⁰ Chapter 2011-33, s. 2, L.O.F.

²¹ Section 921.0026(3), F.S. Further, while current law provides for a mitigating circumstance based on the defendant requiring specialized treatment for a mental disorder if the defendant is amenable to treatment, that mental disorder cannot be related to substance abuse or addiction or a physical disability. Section 921.0026(2)(d), F.S.

²² “Nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S.

²³ Section 948.01(7), F.S. Section 397.334(3)(a), F.S., provides that entry into any postadjudicatory treatment-based drug court program as a condition of probation or community control pursuant to s. 948.01, F.S., s. 948.06, F.S., or s. 948.20, F.S., must be based upon the sentencing court’s assessment of the defendant’s criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, the recommendation of the state attorney and the victim, if any, and the defendant’s agreement to enter the program.

The bill amends s. 775.082, F.S., to provide that if a defendant is sentenced for a primary offense of possession of a controlled substance committed on or after October 1, 2017, and if the total sentence points under the Code are 60 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility.

The bill defines “possession of a controlled substance” as possession of a controlled substance in violation of s. 893.13, F.S., but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135, F.S., which punishes drug trafficking.

Staff notes that this diversion provision could apply to a defendant who has a prior record, which might include a prior violent offense. For example, a defendant with a current offense of possession of a controlled substance and a prior offense of aggravated assault would score fewer than 60 total points. However, under the bill, the court could elect not to divert this defendant from prison if it found that the diversion could present a danger to the public.

Authorizing Departure from a Mandatory Minimum Term (Section 1)

Section 1 of the bill also authorizes a court to depart from a mandatory minimum term of imprisonment for a nonviolent felony or misdemeanor if the court finds that specified criteria are met. Currently, such departure may only occur in very limited circumstances, such as when the sentencing court agrees to a state attorney’s request for departure based on substantial assistance rendered by the defendant.

The bill amends s. 775.082, F.S., to provide that a person who is convicted of an offense committed on or after October 1, 2017, which requires that a mandatory minimum term of imprisonment be imposed, may move the sentencing court to depart from the mandatory minimum term and, if applicable, the mandatory fine. The state attorney may file an objection to the motion.

The court may grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence that all of the following criteria are met:

- The defendant has not previously received a departure under this section and has not been previously convicted for the same offense for which the defendant requests a departure under this section;
- The offense is not a forcible felony²⁴ or a misdemeanor that involves the use or threat of physical force or violence against another person;
- The offense does not involve physical injury to another person or coercion of another person; and
- The offense does not involve a victim who is a minor or the use of a minor in the commission of the offense.

²⁴ Burglary of an unoccupied structure or conveyance is not a disqualifying offense for departure.

The bill defines “coercion” as:

- Using or threatening to use physical force against another person; or
- Restraining or confining or threatening to restrain or confine another person without lawful authority and against her or his will.

The bill specifies that the departure provision does not apply to repeat offender sentencing pursuant to s. 775.082(9), F.S. (prison release reoffender), s. 775.0837, F.S. (habitual misdemeanor offender), s. 775.084, F.S. (habitual felony offender, habitual violent felony offender, three-time violent felony offender, and violent career criminal), or s. 794.0115, F.S. (dangerous sexual felony offender).

Even if a defendant meets all specified criteria, the court is not required to depart from the mandatory minimum term of imprisonment.

Reestablishing a Sentencing Commission (Section 2)

Section 2 of the bill reestablishes a sentencing commission to provide recommendations regarding offense severity level rankings of noncapital felonies. A 17-member sentencing commission operated in Florida from 1982 until 1997. The reestablished commission mirrors the former sentencing commission in regard to composition and staffing but, unlike the former sentencing commission, the only duty of the reestablished sentencing commission is to provide recommendations regarding offense severity level rankings of noncapital felonies.

The bill creates s. 921.00215, F.S., which establishes a sentencing commission. The commission is composed of the following 17 members:

- Two members of the Senate (one a member of the majority party appointed by the Senate President and the other a member of the minority party appointed by the Senate Minority Leader);
- Two members of the House of Representatives (one a member of the majority party appointed by the Speaker of the House of Representatives and the other a member of the minority party appointed by the House Minority Leader);
- The Chief Justice of the Supreme Court or a member of the Supreme Court designated by the Chief Justice (the Chief Justice or the Chief Justice’s designee is the chair of the commission);
- Three circuit court judges appointed by the Chief Justice;
- One county court judge appointed by the Chief Justice;
- One representative of the victim advocacy profession appointed by the Chief Justice;
- The Attorney General or his or her designee;
- The Secretary of the Department of Corrections or his or her designee;
- One state attorney recommended by the Florida Prosecuting Attorneys Association and appointed by the Governor;
- One public defender recommended by the Public Defenders Association and appointed by the Governor;
- One private attorney recommended by the President of The Florida Bar and appointed by the Governor; and
- Two persons appointed by the Governor to represent the public.

Commission membership must reflect the geographic and ethnic diversity of the state. Membership does not disqualify a member from holding any other public office or from being employed by a public entity. Members serve without compensation but are entitled to be reimbursed for per diem and travel.

Members appointed by the Governor and the members from the Senate and the House of Representatives serve two-year terms. The members appointed by the Chief Justice of the Supreme Court serve at his or her pleasure. The Attorney General and Secretary of the Department of Corrections continue as long as they serve in those positions.

The OSCA acts as staff for the commission and provides necessary data collection, analysis and research, and support services. For the purpose of assisting the commission in its review and in preparing its recommendations, upon request of the commission, the DOC estimates the prison bed impact of any change to offense severity level rankings being considered by the commission and provides technical assistance to the commission.

The commission meets annually or at the call of the chair to:

- Review the offense severity level ranking assigned to noncapital felony offenses under s. 921.0022, F.S. (the offense severity ranking chart), or s. 921.0023, F.S. (designation of ranking if the offense is not ranked in the chart);
- Recommend the inclusion of any noncapital felony offense, including a newly created noncapital felony offense, on the offense severity ranking chart and recommend the appropriate offense severity level ranking to assign to each offense that the commission recommends for inclusion;
- Recommend the removal of any noncapital felony offense ranked on the offense severity ranking chart and rank such noncapital felony offense pursuant to s. 921.0023, F.S.; and
- Recommend a revision to the level of any noncapital felony offense ranked on the offense severity ranking chart and recommend the appropriate offense severity level ranking to assign to each offense that the commission recommends be revised.

The commission, no later than October 1 of each year, makes recommendations to the Governor, members of the Supreme Court, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the relevant substantive committees of both houses on appropriate offense severity level rankings for noncapital felonies. The recommendations must include reasons for each recommendation and an estimate of the prison bed impact of each recommendation.

Authorizing Prison Diversion for Certain Nonviolent Second Degree Felony Offenders (Section 3)

Section 3 of the bill authorizes a court to sentence a defendant to a nonstate prison sanction within a prison diversion program if the defendant is convicted of a nonviolent *second* degree felony and meets other criteria. Section 921.00241, F.S., currently authorizes a court to sentence an offender to a nonstate prison sanction if the offender is convicted of a nonviolent *third* degree felony and meets other criteria specified in the statute.

The bill amends s. 921.00241, F.S., to provide that, notwithstanding s. 921.0024, F.S., and effective for offenses committed on or after October 1, 2017, a court may divert from the state correctional system an offender who would otherwise be sentenced to a state facility by sentencing the offender to a nonstate prison sanction if the offender's primary offense is a nonviolent third degree felony or second degree felony and the offender meets all of the following criteria:

- The offender's total sentence points are 60 points or fewer.²⁵
- The offender has not been convicted or previously convicted of a forcible felony, but excluding any third degree felony violation under ch. 810, F.S. (theft and related offenses).
- The offender's primary offense does not require a mandatory minimum sentence.

If the court elects to impose a sentence as provided in this section, the court must sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a DOC prison diversion program if such program is funded and exists in the judicial circuit in which the offender is sentenced. The prison diversion program must be designed to meet the unique needs of each judicial circuit and of the offender population of that circuit. The program may require residential, nonresidential, or day-reporting requirements; substance abuse treatment; employment; restitution; academic or vocational opportunities; or community service work.

A court sentencing an offender pursuant to this section must make written findings that the offender meets the previously-described criteria, and the sentencing order must indicate that the offender was sentenced to a DOC prison diversion program. The court may order the offender to pay all or a portion of the costs related to the program if the court determines that the offender has the ability to pay.

Restoring and Creating Sentence Mitigating Circumstances (Section 4)

Section 4 of the bill restores a circumstance for mitigating (reducing) a Code sentence. This mitigating circumstance, which was authorized under the pre-Code sentencing guidelines until it was removed in 1997, was based on the defendant's substance abuse or addiction and amenability to treatment. Section 4 also creates a mitigating circumstance for certain nonviolent felony offenders.

The bill amends s. 921.0026, F.S., to add the following circumstances for mitigation of a scored lowest permissible sentence under the Code:

- For an offense committed on or after October 1, 2017, the defendant requires specialized treatment for addiction, a mental disorder, or a physical disability, and the defendant is amenable to treatment.
- For an offense committed on or after October 1, 2017, the defendant's offense is a nonviolent felony, and the defendant's Code scoresheet total sentence points are 60 points or fewer.

²⁵ For offenses committed on or after July 1, 2009, and before October 1, 2017, current law applies: total sentence points must not be more than 48 points, or the total sentence points score must be 54 points and 6 of those points must be for a violation of supervision and not involve a new violation of law. *See* s. 921.00241(1)(b), F.S.

Requiring Drug Court, Treatment, or Probation for Certain Nonviolent Felony Offenders (Section 5)

Section 5 of the bill *requires* diversion through drug court, residential drug treatment, or drug offender probation for certain nonviolent felony offenders who are amenable to substance abuse treatment. Section 948.01, F.S., in part, currently *authorizes* a court to place a defendant into a postadjudicatory treatment-based drug court program if the defendant's offense is a nonviolent felony committed on or after July 1, 2009, total sentence points under the Code are 60 points or fewer, the defendant is amenable to substance abuse treatment, and the defendant otherwise qualifies under s. 397.334(3), F.S. (criteria for entry into a post adjudicatory treatment-based drug court program).

The bill amends s. 948.01(7), F.S., to *require* a court to place a defendant into a postadjudicatory treatment-based drug court program, residential drug treatment, or drug offender probation if the defendant committed a nonviolent felony offense on or after October 1, 2017, the defendant's Code scoresheet total sentence points are 60 points or fewer, the defendant is amenable to substance abuse treatment, the defendant's criminal behavior is related to substance abuse or addiction, and the defendant otherwise qualifies under s. 397.334(3), F.S. The satisfactory completion of the program is a required condition of the defendant's probation or community control.

Reenacting Statutes Amended by the Bill

The bill also reenacts several statutes to incorporate the amendments made by the bill, as discussed above.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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 has not yet reviewed the provisions of the bill. However, the Legislature's Office of Economic and Demographic Research (EDR) has provided a preliminary estimate of the prison bed impact of the provisions of the bill.²⁶ The EDR's preliminary estimate is that the entire bill will have a "negative significant" prison bed impact. "Negative" means a decrease in prison beds. "Negative significant" means a decrease of more than 25 prisons beds.

The EDR notes that its impact statement "is not intended to represent the direct appropriations impact of this bill. Rather, it provides a standalone estimate of the prison bed need of this particular bill. Cost data are included to allow a comparison of the impact of this bill with other proposed legislation. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds." Stated another way, the two prison bed impacts for which the EDR provides specific prison bed numbers (diversion of certain drug offenders and diversion of certain nonviolent second degree felony offenders) are subsets of the effect, and do not estimate the potential overlap that both policies would create (i.e., drug possession offenders could be in the nonviolent second degree felony pool). Therefore, it cannot be immediately assumed that both policies together are the sum of their parts.

The DOC has also provided preliminary impact estimates of many sections of the bill, which are noted in the discussion of each section.²⁷ The DOC notes that if a significant number of defendants that otherwise would have been sentenced to prison are diverted to supervision under any provision of the bill, there would be a critical need for additional probation staff to manage the additional workload. There would also be a need for additional co-occurring beds and funding for offenders who are in need of outpatient substance abuse treatment services, including assessment, individual counseling, group counseling, treatment plan review, and aftercare services.

The Office of the State Courts Administrator (OSCA) states that the bill "is likely to lead to an increase in judicial workload because there will be much lengthier sentencing hearings as defendants will attempt to prove to the judge that they have a drug problem and that they are amenable to treatment." However, the fiscal impact is indeterminate because the OSCA does not currently have data needed to quantifiably establish the increase in judicial time and workload as a result of increased sentencing hearing time. "Trial court judicial workload is measured using a case weighting system that calculates the amount of time that it takes for a judge to dispose of a case. Passage of this bill may impact the case weighting system. The number of case filings using the case weighting system is used to determine the needs for additional judicial resources each year. Any

²⁶ Prison bed impact information provided by the Office of Economic and Demographic Research, The Florida Legislature (on file with the Senate Committee on Criminal Justice). All information in this section of the analysis regarding EDR estimates is from this source.

²⁷ 2017 Legislative Bill Analysis (SB 290) (February 16, 2017) (on file with the Senate Committee on Criminal Justice). Unless otherwise noted, all information in this section of the analysis regarding DOC estimates is from this source.

judicial workload increases in the future as a result of this bill will be reflected in the Supreme Court's annual opinion *In re: Certification of Need for Additional Judges*.²⁸

Requiring Prison Diversion for Certain Drug Possession Offenders (Section 1)

The EDR's preliminary estimate is that prison diversion for certain drug possession offenders will result in a cumulative decrease of 1,001 prison beds over 5 years (FY 2017-18 to FY 2021-22) with a cumulative cost avoidance of \$131,965,742 (\$64,993,112 in operating costs²⁹ and \$66,972,630 in fixed capital outlay costs³⁰). The complete breakdown of projected annual prison bed reductions and cost savings is provided in the table below:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2017-2018	-155	-155	(\$1,580,380)	(\$36,210,390)	(\$37,790,770)	(\$37,790,770)
2018-2019	-570	-415	(\$7,569,725)	(\$16,015,650)	(\$23,585,375)	(\$61,376,145)
2019-2020	-815	-245	(\$14,807,728)	(\$8,475,390)	(\$23,283,118)	(\$84,659,263)
2020-2021	-941	-126	(\$19,243,126)	(\$4,144,860)	(\$23,387,986)	(108,047,249)
2021-2022	-1,001	-60	(\$21,792,153)	(\$2,126,340)	(\$23,918,493)	(\$131,965,742)
Total	-1,001	-1,001	(\$64,993,112)	(\$66,972,630)	(\$131,965,742)	(\$131,965,742)

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 10, 2017.

The DOC's preliminarily estimate is that this diversion provision will impact the end of year prison population along with a corresponding increase to the supervised population. The chart provided below estimates impact based on certain percentages of the affected population being diverted from prison to supervision and drug treatment pursuant to this diversion provision. For example, for FY 2017-18 to FY 2021-22, the entire population that could be affected (100 percent) is estimated to be 5,287 persons. If five percent of this population (264 persons) were incarcerated, it would cost \$2,610,122. If, instead, these persons were diverted under this provision, the cost of supervision would be \$536,729. The "total cost to implement" (\$2,610,122 minus \$536,729) is a cost savings of \$2,073,383.

²⁸ Information provided by the Office of the State Courts Administrator (January 23, 2017) (on file with the Senate Committee on Criminal Justice). All information in this section of the analysis regarding OSCA estimates is from this source.

²⁹ FY 2015-16 operating costs per inmate were obtained from the DOC. DOC per diem and prison bed costs have not yet been discussed at the CJIC. The EDR states: "The \$53.49 per diem (\$19,524 annual cost) is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference." "PRCs" means probation and restitution centers.

³⁰ The EDR states: "FY 2006-07 capital costs per bed were based on Department of Corrections' cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc."

FY 2017-2018 to FY 2021-2022				
% of Inmates Affected	Affected Population	Inmate Costs	Supervision Costs	Total Cost to Implement
5%	264	(2,610,112)	536,729	(2,073,383)
10%	528	(5,220,223)	1,073,360	(4,146,863)
15%	792	(7,830,335)	1,610,088	(6,220,247)
20%	1,059	(10,469,510)	2,152,872	(8,316,638)
25%	1,321	(13,062,186)	2,685,569	(10,376,617)
50%	2,646	(26,159,244)	5,379,103	(20,780, 141)
75%	3,966	(39,209,801)	8,062,551	(31,147,250)
100%	5,287	(52,271,986)	10,748,119	(41,523,867)

Data from the Florida Department of Corrections, February 10, 2017.³¹

Authorizing Departure from a Mandatory Minimum Term (Section 1)

The EDR's preliminary estimate is that authorizing courts to depart from a mandatory term of imprisonment will have a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds): "Per DOC, in FY 15-16, 1,237 inmates were admitted to prison who received mandatory minimum sentences that could be impacted by this bill language. However, there is no data available to determine what type of sentences offenders with mandatory minimums might receive once they are no longer subject to a required sentencing option."

The DOC's preliminary estimate is that this departure provision will have an indeterminate impact.³²

Reestablishing a Sentencing Commission (Section 2)

Section 2 of the bill reestablishes a sentencing commission and tasks the commission with providing offense-ranking recommendations. Commission members serve without compensation but are entitled to be reimbursed for per diem and travel. The commission is staffed by the OSCA. The OSCA's preliminary estimate is that total operating costs of the sentencing commission will be \$46,588 per year. Costs may be subject to change based upon changes to underlying factors and actual costs.

³¹ This data is on file with the Senate Committee on Criminal Justice.

³² The DOC notes that "in FY 15/16, of defendants committed to prison or probation, courts did not impose the minimum mandatory requirement in approximately 47% of the cases involving crimes that carry a mandatory minimum. Of roughly 2,100 total admissions for crimes requiring a statutory minimum term of incarceration, approximately 520 were placed on supervision, and about 470 prison sentences were less than the required mandatory term. Given this existing rate of deviation from the minimum, there is no way to project how explicit statutory authority to depart from the mandatory will alter sentencing practices."

Provided is the OSCA's breakdown of estimated costs:

- \$2,000 in administrative supplies.
- \$120 for six conference calls.
- \$33,468 in travel costs for four in-person meetings (\$8,367 per meeting).³³
- \$11,000 for maintenance of an information-sharing site about the commission, which would include schedules, agendas, meeting materials, historical information, etc.³⁴

Authorizing Prison Diversion for Certain Nonviolent Second Degree Felony Offenders (Section 3)

The EDR's preliminary estimate is that prison diversion for certain nonviolent second degree felony offenders will result in a cumulative decrease of 2,027 prison beds over 5 years (FY 2017-18 to FY 2021-22) with a cumulative cost avoidance of \$263,156,174 (\$120,826,265 in operating costs and \$142,329,909 in fixed capital outlay costs).³⁵ The complete breakdown of projected annual prison bed reductions and cost savings is provided in the table below:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2017-2018	-247	-247	(\$2,518,412)	(\$60,604,758)	(\$63,123,170)	(\$63,123,170)
2018-2019	-954	-707	(\$12,539,641)	(\$35,430,540)	(\$47,970,181)	(\$111,093,351)
2019-2020	-1,496	-542	(\$26,194,175)	(\$21,995,655)	(\$48,189,830)	(\$159,283,181)
2020-2021	-1,823	-327	(\$36,371,262)	(\$14,092,524)	(\$50,463,786)	(209,746,967)
2021-2022	-2,027	-204	(\$43,202,775)	(\$10,206,432)	(\$53,409,207)	(\$263,156,174)
Total	-2,027	-2,027	(\$120,826,265)	(\$142,329,909)	(\$263,156,174)	(\$263,156,174)

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 10, 2017.

The DOC's preliminary estimate is that this diversion provision will have an indeterminate impact.³⁶

³³ Costs include \$1,000 for a meeting space per meeting and travel costs for all commission members. Further, this estimate assumes the courts would bear the cost of the travel, because the bill would require the OSCA to process the travel. Travel costs were calculated by assuming the meetings would take place in Tallahassee. Local members of the commission, such as the Attorney General, were not included in the travel estimate.

³⁴ This estimate includes a preliminary estimate of 0.25 of a \$40,000 FTE position (\$10,000) for staff maintenance of the website and \$1,000 for hosting.

³⁵ See footnotes 29 and 30.

³⁶ "By expanding the eligibility criteria to include second degree felonies, it is reasonable to expect some additional diversions from prison. Because one of the criteria for diversion under s. 921.00241, F.S., is that the primary offense does not require a mandatory, this provision may also intersect with the provision to allow defendants to request waiver of mandatory sentences to allow even defendants facing a minimum mandatory to be diverted from prison. In addition, some defendants will receive non-prison sanctions under the provision in section 5 of this bill. As prison diversion remains a discretionary option for the court, and the manner in which these different sentencing options in combination may influence sentencing practices is unknown, the impact of this section is indeterminate."

Restoring and Creating Sentence Mitigating Circumstances (Section 4)

Section 4 of the bill restores a previous mitigating circumstance based on the defendant's substance abuse or addiction and amenability to treatment. It also creates a mitigating circumstance for certain nonviolent felony offenders. The EDR's preliminary estimate is that these changes will have a "negative indeterminate" prison bed impact: "The available data does not have the information necessary to determine which offenders entering prison might require specialized treatment for addiction. Per DOC, in FY 15-16, there were 54,444 (adj.)³⁷ offenders sentenced for a nonviolent felony with total sentencing points between 22 and 60 points, and 12,929 (adj.) of these offenders were sentenced to prison (mean sentence length=26.1 m, incarceration rate: 23.8% adj-23.8% unadj). However, it cannot be determined what sentencing patterns judges might adopt with this new factor at their disposal."

The DOC's preliminary estimate is that the amendments of mitigating circumstances will have an indeterminate impact.³⁸

Requiring Drug Court, Treatment, or Probation for Certain Nonviolent Felony Offenders (Section 5)

Section 5 of the bill requires the court to place certain nonviolent felony offenders into a drug court program, residential drug treatment, or drug offender probation if certain criteria are met. The EDR preliminary estimates that this change will have a "negative indeterminate" prison bed impact: "The available data does not have the information necessary to determine which offenders entering prison might be amenable to substance abuse treatment, nor can it be determined if an offender's criminal behavior was related to substance abuse or addiction."

Because the DOC does not have the ability to predict how many defendants are "amenable to treatment" and whose "criminal behavior is related to substance abuse or addiction," the DOC's preliminary estimate is that the diversion provision will have an indeterminate impact.

The chart provided below estimates impact based on certain percentages of the affected population being diverted from prison to supervision and drug treatment pursuant to this diversion provision. For example, for FY 2017-18 to FY 2021-22, the entire population that could be affected (100 percent) is estimated to be 24,607 persons. If five percent of this population (1,230 persons) were incarcerated, it would cost \$24,014,335. If, instead, these persons were diverted under this diversion provision, the total cost of supervision and drug treatment would be \$15,618,678 (\$2,499,538 for supervision plus \$13,119,141 for treatment). The "total cost to implement" (\$24,014,335 minus \$15,618,678) would be a cost savings of \$8,395,656.

³⁷ The abbreviation "adj." means "adjusted." The abbreviation "unadj." means "unadjusted." Sentencing data from the DOC is incomplete, which means that the numbers 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.

³⁸ "Although the bill changes the factors that a court may consider in imposing a downward departure sentence, such sentences remain discretionary. As a result the projected impact of these changes is indeterminate."

FY 2017-2018 to FY 2021-2022					
% of Inmates Affected	Affected Population	Inmate Costs	Supervision Costs	Drug Treatment Costs	Total Cost to Implement
5%	1,230	(24,014,335)	2,499,538	13,119,141	(8,395,656)
10%	2,462	(48,067,719)	5,003,212	26,238,281	(16,826,226)
15%	3,692	(72,082,055)	7,502,751	39,357,422	(25,221,882)
20%	4,921	(96,076,866)	10,000,223	52,476,564	(33,600,079)
25%	6,152	(120,110,725)	12,501,777	65,595,704	(42,013,244)
50%	12,305	(240,240,975)	25,005,817	131,191,408	(84,043,750)
75%	18,456	(360,332,176)	37,505,579	196,787,112	(126,039,485)
100%	24,607	(480,423,376)	50,005,434	262,382,817	(168,035,125)

Data from the Florida Department of Corrections, February 10, 2017.³⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

Oklahoma's "Justice Safety Valve Act" (Departure from Mandatory Minimum Terms)

The mandatory minimum departure provision of the bill bears some similarity to recent legislation passed by the Oklahoma Legislature.⁴⁰ The Oklahoma legislation allows a court to depart from mandatory minimum terms applicable to many nonviolent offenses if the court finds that certain criteria are met. However, unlike the bill, the Oklahoma legislation does not preclude a departure if the offender previously received a departure.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.082, 921.00241, 921.0026, and 948.01.

This bill creates section 921.00215 of the Florida Statutes.

This bill reenacts provisions of sections 394.47892, 397.344, 775.08435, 910.035, 921.002, 921.00265, 921.187, and 943.04352 of the Florida Statutes. These reenactments are to incorporate amendments made to statutes that are referenced in the reenacted provisions.

³⁹ This data is on file with the Senate Committee on Criminal Justice.

⁴⁰ HB 1528 ("Justice Safety Valve Act"), 55th Leg., 1st Reg. Sess., Okla. Stat., tit. 22, ss. 22-985, 22-985.1, and 22-985.2 (effective November 1, 2015), available at http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20ENR/hB/HB1518%20ENR.PDF (last visited on January 24, 2017).

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Criminal Justice on February 21, 2017:

The CS requires that the offender's total sentence points be 60 points or fewer for prison diversion pursuant to s. 921.0014, F.S. (supervision with mandatory participation in a DOC prison diversion program).

B. Amendments:

None.

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



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2017	.	
	.	
	.	
	.	

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

1 **Senate Amendment**

2

3 Delete lines 241 - 246

4 and insert:

5 (a)1.-(b) For offenses committed on or after July 1, 2009,
6 and before October 1, 2017, the offender's total sentence points
7 score, as provided in s. 921.0024, is not more than 48 points,
8 or the offender's total sentence points score is 54 points and 6
9 of those points are for a violation of probation, community
10 control, or other community supervision, and do not involve a



554674

11 new violation of law.

12 2. For offenses committed on or after October 1, 2017, the
13 offender's Criminal Punishment Code scoresheet total sentence
14 points under s. 921.0024 are 60 points are fewer.

By Senator Rouson

19-00366-17

A bill to be entitled

2017290

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Supreme Court, and the Legislature; amending s. 921.00241, F.S.; revising the circumstances under which an offender may be sentenced to a nonstate prison sanction; authorizing a nonstate prison sanction under a prison diversion program for certain offenders who commit a nonviolent felony of the second degree on or after a specified date; amending s. 921.0026, F.S.; revising the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified; making technical changes; amending s. 948.01, F.S.; requiring a sentencing court to place certain defendants who commit an offense on or after a specified date into a postadjudicatory treatment-based drug court program, into residential drug treatment, or on drug offender probation; making technical changes; reenacting ss. 775.08435(1)(b) and (c), 921.002(3), and 921.00265(1), F.S., relating to the prohibition on withholding adjudication in felony cases, the Criminal Punishment Code, and recommended and departure sentences, respectively, to incorporate the amendment made to s. 921.0026, F.S., in references thereto; reenacting ss. 394.47892(2) and (4)(a), 397.334(3)(a) and (5), 910.035(5)(a), 921.187(1)(c), and 943.04352, F.S., relating to mental health court programs, treatment-based drug court programs, transfer for participation in a problem-solving court, offender probation with or without adjudication of guilt, and court placement of a defendant on misdemeanor probation, respectively, to

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62 incorporate the amendment made to s. 948.01, F.S., in
 63 references thereto; providing an effective date.
 64

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

66 Section 1. Present subsection (11) of section 775.082,
 67 Florida Statutes, is redesignated as subsection (13), and a new
 68 subsection (11) and subsection (12) are added to that section,
 69 to read:

70 775.082 Penalties; applicability of sentencing structures;
 71 mandatory minimum sentences for certain reoffenders previously
 72 released from prison.-

73 (11) If a defendant is sentenced for a primary offense of
 74 possession of a controlled substance committed on or after
 75 October 1, 2017, and if the total sentence points pursuant to s.
 76 921.0024 are 60 points or fewer, the court must sentence the
 77 offender to a nonstate prison sanction. However, if the court
 78 makes written findings that a nonstate prison sanction could
 79 present a danger to the public, the court may sentence the
 80 offender to a state correctional facility pursuant to this
 81 section. As used in this subsection, the term "possession of a
 82 controlled substance" means possession of a controlled substance
 83 in violation of s. 893.13, but does not include possession with
 84 intent to sell, manufacture, or deliver a controlled substance
 85 or possession of a controlled substance in violation of s.
 86 893.135.

87 (12) (a) A person who is convicted of an offense committed
 88 on or after October 1, 2017, which requires that a mandatory
 89 minimum prison sentence be imposed may move the sentencing court

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91 to depart from the mandatory minimum prison sentence and, if
 92 applicable, the mandatory fine. The state attorney may file an
 93 objection to the motion.

94 (b) The court may grant the motion if the court finds that
 95 the defendant has demonstrated by a preponderance of the
 96 evidence that all of the following criteria are met:

97 1. The defendant has not previously received a departure
 98 under this subsection and has not been previously convicted of
 99 the same offense for which the defendant requests a departure
 100 under this subsection;

101 2. The offense is not a forcible felony as defined in s.
 102 776.08 or a misdemeanor that involves the use or threat of
 103 physical force or violence against another person. However,
 104 burglary of an unoccupied structure or conveyance is not
 105 considered a forcible felony for purposes of this subparagraph;

106 3. The offense does not involve physical injury to another
 107 person or coercion of another person; and
 108 4. The offense does not involve a victim who is a minor or
 109 the use of a minor in the commission of the offense.

110 (c) As used in this subsection, the term "coercion" means:
 111 1. Using or threatening to use physical force or violence
 112 against another person; or

113 2. Restraining or confining or threatening to restrain or
 114 confine another person without lawful authority and against the
 115 other person's will.

116 (d) This subsection does not apply to sentencing pursuant
 117 to subsection (9), s. 775.0837, s. 775.084, or s. 794.0115.

118 Section 2. Section 921.00215, Florida Statutes, is created
 119 to read:

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120 921.00215 Sentencing Commission; recommendations regarding
 121 offense severity level rankings for noncapital felonies.—
 122 (1) The Legislature, in the exercise of its authority to
 123 determine appropriate offense severity level rankings for
 124 noncapital felony offenses sentenced under the Criminal
 125 Punishment Code, finds that it is in the best interest of the
 126 state to create a Sentencing Commission for the purpose of
 127 providing advice and recommendations to the Governor, the
 128 Supreme Court, and the Legislature regarding the appropriate
 129 offense severity level rankings for noncapital felonies.
 130 (2) (a) The Sentencing Commission is created exclusively as
 131 an advisory body within the Supreme Court.
 132 (b) The commission consists of the following 17 members:
 133 1. Two members of the Senate, one of whom is a member of
 134 the majority party appointed by the President of the Senate and
 135 one of whom is a member of the minority party appointed by the
 136 Minority Leader of the Senate;
 137 2. Two members of the House of Representatives, one of whom
 138 is a member of the majority party appointed by the Speaker of
 139 the House of Representatives and one of whom is a member of the
 140 minority party appointed by the Minority Leader of the House of
 141 Representatives;
 142 3. The Chief Justice of the Supreme Court, or a member of
 143 the Supreme Court designated by the Chief Justice, who shall
 144 serve as chair of the commission;
 145 4. Five members appointed by the Chief Justice of the
 146 Supreme Court, three of whom are circuit court judges, one of
 147 whom is a county court judge, and one of whom is a
 148 representative of the victim advocacy profession;

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149 5. The Attorney General or his or her designee;
 150 6. The Secretary of Corrections or his or her designee; and
 151 7. Five members appointed by the Governor, one of whom is a
 152 state attorney recommended by the Florida Prosecuting Attorneys
 153 Association, one of whom is a public defender recommended by the
 154 Public Defenders Association, one of whom is a private attorney
 155 recommended by the president of The Florida Bar, and two of whom
 156 are representatives of the general public.
 157
 158 The membership of the commission must reflect the geographic and
 159 ethnic diversity of the state.
 160 (c) The commission members appointed by the Governor and
 161 the legislative appointees serve 2-year terms. The members
 162 appointed by the Chief Justice of the Supreme Court serve at his
 163 or her pleasure. The terms of the Attorney General or his or her
 164 designee, the Secretary of Corrections or his or her designee,
 165 and the Chief Justice of the Supreme Court or his or her
 166 designee continue as long as the Attorney General, the Secretary
 167 of Corrections, and the Chief Justice of the Supreme Court serve
 168 in their respective positions.
 169 (d) Commission membership does not disqualify a member from
 170 holding any other public office or from being employed by a
 171 public entity. The Legislature finds and declares that the
 172 commission serves a state, county, and municipal purpose and
 173 that service on the commission is consistent with a member's
 174 principal service in a public office or in public employment.
 175 (e) Members of the commission serve without compensation
 176 but are entitled to be reimbursed for per diem and travel
 177 expenses as provided in s. 112.061.

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178 (f) The Office of the State Courts Administrator shall act
 179 as staff for the commission and, except as otherwise provided in
 180 paragraph (3) (b), shall provide all necessary data collection,
 181 analysis, and research and support services.

182 (3) (a) The commission shall meet annually or at the call of
 183 the chair to:

184 1. Review the offense severity level ranking assigned to
 185 noncapital felony offenses under s. 921.0022 or s. 921.0023.

186 2. Recommend the inclusion of any noncapital felony
 187 offense, including a newly created noncapital felony offense, on
 188 the offense severity ranking chart provided in s. 921.0022 and
 189 recommend the appropriate offense severity level ranking to
 190 assign to each offense that the commission recommends for
 191 inclusion.

192 3. Recommend the removal of any noncapital felony offense
 193 ranked on the offense severity ranking chart provided in s.
 194 921.0022 and rank such noncapital felony offense pursuant to s.
 195 921.0023.

196 4. Recommend a revision to the level of any noncapital
 197 felony offense ranked on the offense severity ranking chart
 198 provided in s. 921.0022 and recommend the appropriate offense
 199 severity level ranking to assign to each offense that the
 200 commission recommends be revised.

201 (b) Upon the request of the commission, the Department of
 202 Corrections shall provide an estimate of the prison bed impact
 203 of any change to an offense severity level ranking which the
 204 commission is considering and shall provide technical assistance
 205 to the commission for the purpose of assisting it in reviewing
 206 the offense severity level rankings and in preparing its

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207 recommendations pursuant to paragraph (c).

208 (c) The commission shall make recommendations no later than
 209 October 1 of each year to the Governor, the justices of the
 210 Supreme Court, the President of the Senate, the Speaker of the
 211 House of Representatives, and the chairs of the relevant
 212 legislative committees of both houses on appropriate offense
 213 severity level rankings for noncapital felonies. The basis for
 214 each recommendation must be identified and explained, and each
 215 recommendation must include an estimate of the associated prison
 216 bed impact.

217 Section 3. Section 921.00241, Florida Statutes, is amended
 218 to read:

219 921.00241 Prison diversion program.—

220 (1) Notwithstanding s. 921.0024 and effective for offenses
 221 committed on or after July 1, 2009, a court may divert from the
 222 state correctional system an offender who would otherwise be
 223 sentenced to a state facility by sentencing the offender to a
 224 nonstate prison sanction as provided in subsection (4) ~~+2~~. An
 225 offender may be sentenced to a nonstate prison sanction if the
 226 offender's primary offense is a felony of the third degree and
 227 the offender meets all of the following criteria in subsection
 228 (3).⁺

229 (2) Notwithstanding s. 921.0024 and effective for offenses
 230 committed on or after October 1, 2017, a court may divert from
 231 the state correctional system an offender who would otherwise be
 232 sentenced to a state facility by sentencing the offender to a
 233 nonstate prison sanction as provided in subsection (4). An
 234 offender may be sentenced to a nonstate prison sanction if the
 235 offender's primary offense is a felony of the second degree and

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236 the offender meets all of the criteria in subsection (3).
 237 (3) The court shall consider the following criteria for a
 238 nonstate prison sanction:
 239 (a) The offender's primary offense is a felony of the third
 240 degree.
 241 (a) The offender's total sentence points score, as
 242 provided in s. 921.0024, is not more than 48 points, or the
 243 offender's total sentence points score is 54 points and 6 of
 244 those points are for a violation of probation, community
 245 control, or other community supervision, and do not involve a
 246 new violation of law.
 247 (b) The offender has not been convicted or previously
 248 convicted of a forcible felony as defined in s. 776.08, but
 249 excluding any third degree felony violation under chapter 810.
 250 (c) The offender's primary offense does not require a
 251 minimum mandatory sentence.
 252 (4) If the court elects to impose a sentence as provided
 253 in this section, the court shall sentence the offender to a term
 254 of probation, community control, or community supervision with
 255 mandatory participation in a prison diversion program of the
 256 Department of Corrections if such program is funded and exists
 257 in the judicial circuit in which the offender is sentenced. The
 258 prison diversion program shall be designed to meet the unique
 259 needs of each judicial circuit and of the offender population of
 260 that circuit. The program may require residential,
 261 nonresidential, or day-reporting requirements; substance abuse
 262 treatment; employment; restitution; academic or vocational
 263 opportunities; or community service work.
 264 (5) The court that sentences a defendant to a nonstate

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265 prison sanction pursuant to subsection (4) shall make
 266 written findings that the defendant meets the criteria in
 267 subsection (1) or subsection (2); and the sentencing order must
 268 indicate that the offender was sentenced to the prison diversion
 269 program pursuant to subsection (4). The court may order the
 270 offender to pay all or a portion of the costs related to the
 271 prison diversion program if the court determines that the
 272 offender has the ability to pay.
 273 Section 4. Section 921.0026, Florida Statutes, is amended
 274 to read:
 275 921.0026 Mitigating circumstances.—This section applies to
 276 any felony offense, except any capital felony, committed on or
 277 after October 1, 1998.
 278 (1) A downward departure from the lowest permissible
 279 sentence, as calculated according to the total sentence points
 280 pursuant to s. 921.0024, is prohibited unless there are
 281 circumstances or factors that reasonably justify the downward
 282 departure. Mitigating factors to be considered include, but are
 283 not limited to, those listed in subsection (2). The imposition
 284 of a sentence below the lowest permissible sentence is subject
 285 to appellate review under chapter 924, but the extent of
 286 downward departure is not subject to appellate review.
 287 (2) Mitigating circumstances under which a departure from
 288 the lowest permissible sentence is reasonably justified include,
 289 but are not limited to:
 290 (a) The departure results from a legitimate, uncoerced plea
 291 bargain.
 292 (b) The defendant was an accomplice to the offense and was
 293 a relatively minor participant in the criminal conduct.

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294 (c) The capacity of the defendant to appreciate the
 295 criminal nature of the conduct or to conform that conduct to the
 296 requirements of law was substantially impaired.

297 (d) For an offense committed on or after October 1, 1998,
 298 but before October 1, 2017, the defendant requires specialized
 299 treatment for a mental disorder that is unrelated to substance
 300 abuse or addiction or for a physical disability, and the
 301 defendant is amenable to treatment.

302 (e) For an offense committed on or after October 1, 2017,
 303 the defendant requires specialized treatment for an addiction, a
 304 mental disorder, or a physical disability, and the defendant is
 305 amenable to treatment.

306 (f) ~~(e)~~ The need for payment of restitution to the victim
 307 outweighs the need for a prison sentence.

308 (g) ~~(f)~~ The victim was an initiator, willing participant,
 309 aggressor, or provoker of the incident.

310 (h) ~~(g)~~ The defendant acted under extreme duress or under
 311 the domination of another person.

312 (i) ~~(h)~~ Before the identity of the defendant was determined,
 313 the victim was substantially compensated.

314 (j) ~~(i)~~ The defendant cooperated with the state to resolve
 315 the current offense or any other offense.

316 (k) ~~(j)~~ The offense was committed in an unsophisticated
 317 manner and was an isolated incident for which the defendant has
 318 shown remorse.

319 (l) ~~(k)~~ At the time of the offense the defendant was too
 320 young to appreciate the consequences of the offense.

321 (m) ~~(l)~~ The defendant is to be sentenced as a youthful
 322 offender.

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323 (n) ~~(m)~~ For an offense committed on or after October 1,
 324 1998, but before October 1, 2017, the defendant's offense is a
 325 nonviolent felony, the defendant's Criminal Punishment Code
 326 scoresheet total sentence points under s. 921.0024 are 60 points
 327 or fewer, and the court determines that the defendant is
 328 amenable to the services of a postadjudicatory treatment-based
 329 drug court program and is otherwise qualified to participate in
 330 the program as part of the sentence. Except as provided in this
 331 paragraph, the defendant's substance abuse or addiction,
 332 including intoxication at the time of the offense, is not a
 333 mitigating factor for an offense committed on or after October
 334 1, 1998, but before October 1, 2017, and does not, under any
 335 circumstance, justify a downward departure from the permissible
 336 sentencing range For purposes of this paragraph, the term
 337 "nonviolent felony" has the same meaning as provided in s.
 338 948.08(6).

339 (o) For an offense committed on or after October 1, 2017,
 340 the defendant's offense is a nonviolent felony, and the
 341 defendant's Criminal Punishment Code scoresheet total sentence
 342 points under s. 921.0024 are 60 points or fewer.

343 (p) ~~(n)~~ The defendant was making a good faith effort to
 344 obtain or provide medical assistance for an individual
 345 experiencing a drug-related overdose.

346 (3) As used in subsection (2), the term "nonviolent felony"
 347 has the same meaning as provided in s. 948.08 Except as provided
 348 in paragraph (2)(m), the defendant's substance abuse or
 349 addiction, including intoxication at the time of the offense, is
 350 not a mitigating factor under subsection (2) and does not, under
 351 any circumstances, justify a downward departure from the

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 352 ~~permissible sentencing range.~~

353 Section 5. Subsection (7) of section 948.01, Florida
 354 Statutes, is amended to read:

355 948.01 When court may place defendant on probation or into
 356 community control.—

357 (7) (a) Notwithstanding s. 921.0024 and effective for
 358 offenses committed on or after July 1, 2009, the sentencing
 359 court may place the defendant into a postadjudicatory treatment-
 360 based drug court program if the defendant's Criminal Punishment
 361 Code scoresheet total sentence points under s. 921.0024 are 60
 362 points or fewer, the offense is a nonviolent felony, the
 363 defendant is amenable to substance abuse treatment, and the
 364 defendant otherwise qualifies under s. 397.334(3). The
 365 satisfactory completion of the program shall be a condition of
 366 the defendant's probation or community control. ~~As used in this~~
 367 ~~subsection, the term "nonviolent felony" means a third-degree~~
 368 ~~felony violation under chapter 810 or any other felony offense~~
 369 ~~that is not a forcible felony as defined in s. 776.08.~~

370 (b) Notwithstanding s. 921.0024 and effective for offenses
 371 committed on or after October 1, 2017, the sentencing court must
 372 place the defendant into a postadjudicatory treatment-based drug
 373 court program, into residential drug treatment, or on drug
 374 offender probation if the defendant's Criminal Punishment Code
 375 scoresheet total sentence points under s. 921.0024 are 60 points
 376 or fewer, the offense is a nonviolent felony, the defendant is
 377 amenable to substance abuse treatment, the defendant's criminal
 378 behavior is related to substance abuse or addiction, and the
 379 defendant otherwise qualifies under s. 397.334(3). The
 380 satisfactory completion of the program must be a condition of

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 381 ~~the defendant's probation or community control.~~

382 (c) (b) In order to be placed in a postadjudicatory
 383 treatment-based drug court program under paragraph (a) or
 384 paragraph (b), the defendant must be fully advised of the
 385 purpose of the program, and the defendant must agree to enter
 386 the program. The original sentencing court shall relinquish
 387 jurisdiction of the defendant's case to the postadjudicatory
 388 drug court program until the defendant is no longer active in
 389 the program, the case is returned to the sentencing court due to
 390 the defendant's termination from the program for failure to
 391 comply with the terms thereof, or the defendant's sentence is
 392 completed.

393 (d) As used in this subsection, the term "nonviolent
 394 felony" means a third degree felony violation under chapter 810
 395 or any other felony offense that is not a forcible felony as
 396 defined in s. 776.08.

397 Section 6. For the purpose of incorporating the amendment
 398 made by this act to section 921.0026, Florida Statutes, in
 399 references thereto, paragraphs (b) and (c) of subsection (1) of
 400 section 775.08435, Florida Statutes, are reenacted to read:

401 775.08435 Prohibition on withholding adjudication in felony
 402 cases.—

403 (1) Notwithstanding the provisions of s. 948.01, the court
 404 may not withhold adjudication of guilt upon the defendant for:

405 (b) A second degree felony offense unless:
 406 1. The state attorney requests in writing that adjudication
 407 be withheld; or
 408 2. The court makes written findings that the withholding of
 409 adjudication is reasonably justified based on circumstances or

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410 factors in accordance with those set forth in s. 921.0026.

411
412 Notwithstanding any provision of this section, no adjudication
413 of guilt shall be withheld for a second degree felony offense if
414 the defendant has a prior withholding of adjudication for a
415 felony that did not arise from the same transaction as the
416 current felony offense.

417 (c) A third degree felony offense if the defendant has a
418 prior withholding of adjudication for a felony offense that did
419 not arise from the same transaction as the current felony
420 offense unless:

421 1. The state attorney requests in writing that adjudication
422 be withheld; or

423 2. The court makes written findings that the withholding of
424 adjudication is reasonably justified based on circumstances or
425 factors in accordance with those set forth in s. 921.0026.

426
427 Notwithstanding any provision of this section, no adjudication
428 of guilt shall be withheld for a third degree felony offense if
429 the defendant has two or more prior withholdings of adjudication
430 for a felony that did not arise from the same transaction as the
431 current felony offense.

432 Section 7. For the purpose of incorporating the amendment
433 made by this act to section 921.0026, Florida Statutes, in a
434 reference thereto, subsection (3) of section 921.002, Florida
435 Statutes, is reenacted to read:

436 921.002 The Criminal Punishment Code.—The Criminal
437 Punishment Code shall apply to all felony offenses, except
438 capital felonies, committed on or after October 1, 1998.

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439 (3) A court may impose a departure below the lowest
440 permissible sentence based upon circumstances or factors that
441 reasonably justify the mitigation of the sentence in accordance
442 with s. 921.0026. The level of proof necessary to establish
443 facts supporting the mitigation of a sentence is a preponderance
444 of the evidence. When multiple reasons exist to support the
445 mitigation, the mitigation shall be upheld when at least one
446 circumstance or factor justifies the mitigation regardless of
447 the presence of other circumstances or factors found not to
448 justify mitigation. Any sentence imposed below the lowest
449 permissible sentence must be explained in writing by the trial
450 court judge.

451 Section 8. For the purpose of incorporating the amendment
452 made by this act to section 921.0026, Florida Statutes, in a
453 reference thereto, subsection (1) of section 921.00265, Florida
454 Statutes, is reenacted to read:

455 921.00265 Recommended sentences; departure sentences;
456 mandatory minimum sentences.—This section applies to any felony
457 offense, except any capital felony, committed on or after
458 October 1, 1998.

459 (1) The lowest permissible sentence provided by
460 calculations from the total sentence points pursuant to s.
461 921.0024(2) is assumed to be the lowest appropriate sentence for
462 the offender being sentenced. A departure sentence is prohibited
463 unless there are mitigating circumstances or factors present as
464 provided in s. 921.0026 which reasonably justify a departure.

465 Section 9. For the purpose of incorporating the amendment
466 made by this act to section 948.01, Florida Statutes, in
467 references thereto, subsection (2) and paragraph (a) of

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468 subsection (4) of section 394.47892, Florida Statutes, are
 469 reenacted to read:

470 394.47892 Mental health court programs.—

471 (2) Mental health court programs may include pretrial
 472 intervention programs as provided in ss. 948.08, 948.16, and
 473 985.345, postadjudicatory mental health court programs as
 474 provided in ss. 948.01 and 948.06, and review of the status of
 475 compliance or noncompliance of sentenced defendants through a
 476 mental health court program.

477 (4) (a) Entry into a postadjudicatory mental health court
 478 program as a condition of probation or community control
 479 pursuant to s. 948.01 or s. 948.06 must be based upon the
 480 sentencing court's assessment of the defendant's criminal
 481 history, mental health screening outcome, amenability to the
 482 services of the program, and total sentence points; the
 483 recommendation of the state attorney and the victim, if any; and
 484 the defendant's agreement to enter the program.

485 Section 10. For the purpose of incorporating the amendment
 486 made by this act to section 948.01, Florida Statutes, in
 487 references thereto, paragraph (a) of subsection (3) and
 488 subsection (5) of section 397.334, Florida Statutes, are
 489 reenacted to read:

490 397.334 Treatment-based drug court programs.—

491 (3) (a) Entry into any postadjudicatory treatment-based drug
 492 court program as a condition of probation or community control
 493 pursuant to s. 948.01, s. 948.06, or s. 948.20 must be based
 494 upon the sentencing court's assessment of the defendant's
 495 criminal history, substance abuse screening outcome, amenability
 496 to the services of the program, total sentence points, the

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497 recommendation of the state attorney and the victim, if any, and
 498 the defendant's agreement to enter the program.

499 (5) Treatment-based drug court programs may include
 500 pretrial intervention programs as provided in ss. 948.08,
 501 948.16, and 985.345, treatment-based drug court programs
 502 authorized in chapter 39, postadjudicatory programs as provided
 503 in ss. 948.01, 948.06, and 948.20, and review of the status of
 504 compliance or noncompliance of sentenced offenders through a
 505 treatment-based drug court program. While enrolled in a
 506 treatment-based drug court program, the participant is subject
 507 to a coordinated strategy developed by a drug court team under
 508 subsection (4). The coordinated strategy may include a protocol
 509 of sanctions that may be imposed upon the participant for
 510 noncompliance with program rules. The protocol of sanctions may
 511 include, but is not limited to, placement in a substance abuse
 512 treatment program offered by a licensed service provider as
 513 defined in s. 397.311 or in a jail-based treatment program or
 514 serving a period of secure detention under chapter 985 if a
 515 child or a period of incarceration within the time limits
 516 established for contempt of court if an adult. The coordinated
 517 strategy must be provided in writing to the participant before
 518 the participant agrees to enter into a treatment-based drug
 519 court program.

520 Section 11. For the purpose of incorporating the amendment
 521 made by this act to section 948.01, Florida Statutes, in a
 522 reference thereto, paragraph (a) of subsection (5) of section
 523 910.035, Florida Statutes, is reenacted to read:

524 910.035 Transfer from county for plea, sentence, or
 525 participation in a problem-solving court.—

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526 (5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—
527 (a) For purposes of this subsection, the term "problem-
528 solving court" means a drug court pursuant to s. 948.01, s.
529 948.06, s. 948.08, s. 948.16, or s. 948.20; a military veterans'
530 and servicemembers' court pursuant to s. 394.47891, s. 948.08,
531 s. 948.16, or s. 948.21; a mental health court program pursuant
532 to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16;
533 or a delinquency pretrial intervention court program pursuant to
534 s. 985.345.

Section 12. For the purpose of incorporating the amendment made by this act to section 948.01, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 921.187, Florida Statutes, is reenacted to read:

921.187 Disposition and sentencing; alternatives; restitution.—

541 (1) The alternatives provided in this section for the
542 disposition of criminal cases shall be used in a manner that
543 will best serve the needs of society, punish criminal offenders,
544 and provide the opportunity for rehabilitation. If the offender
545 does not receive a state prison sentence, the court may:

546 (c) Place the offender on probation with or without an
547 adjudication of guilt pursuant to s. 948.01.

548 Section 13. For the purpose of incorporating the amendment
549 made by this act to section 948.01, Florida Statutes, in a
550 reference thereto, section 943.04352, Florida Statutes, is
551 reenacted to read:

552 943.04352 Search of registration information regarding
553 sexual predators and sexual offenders required when placement on
554 misdemeanor probation.—When the court places a defendant on

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555 misdemeanor probation pursuant to ss. 948.01 and 948.15, the
556 public or private entity providing probation services must
557 conduct a search of the probationer's name or other identifying
558 information against the registration information regarding
559 sexual predators and sexual offenders maintained by the
560 Department of Law Enforcement under s. 943.043. The probation
561 services provider may conduct the search using the Internet site
562 maintained by the Department of Law Enforcement. Also, a
563 national search must be conducted through the Dru Sjodin
564 National Sex Offender Public Website maintained by the United
565 States Department of Justice.

Section 14. This act shall take effect October 1, 2017.

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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)

2/21/2017
Meeting Date

290

Bill Number (if applicable)

Topic SENTENCING

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850)681-0024

Street Tallahassee, FL 32301

City Tallahassee State FL Zip 32301

Email jorge@flapartners.com

Speaking: For Against Information

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

Representing Fla Assoc of Criminal Defense Lawyers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/21/17

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

SB 290

Meeting Date

Bill Number (if applicable)

Topic Criminal Justice Reform/Sentencing Reform

Amendment Barcode (if applicable)

Name Scott D. McCoyJob Title Senior Policy CounselAddress P.O. Box 10788Phone 850-521-3042

Street

TallahasseeFL32302

City

State

Zip

Email scott.mccoy@splcenter.orgSpeaking: For Against InformationWaive Speaking: In Support Against
*(The Chair will read this information into the record.)*Representing Southern Poverty Law CenterAppearing at request of Chair: Yes NoLobbyist 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

February 21, 2017

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

290

Meeting Date

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Hon. Bob Dillinger

Job Title Public Defender, 6th Circuit

Address 14250 49th Street, North

Phone 727-464-6516

Street

Clearwater

FL

33762

City

State

Zip

Email bdilling@wearethehope.org

Speaking: For Against Information

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

Representing Florida Public Defender Association, Inc.

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)

Meeting Date

290

Bill Number (if applicable)

Topic 58290

Amendment Barcode (if applicable)

Name Jim DeBeaugraine

Job Title CEO - Center to Advance Justice

Address 862 215 S. Monroe 862 Phone 850508-8908
Street

Tallahassee FL 32301 Email Jim.debeaugraine@comcast.net
City State Zip

Speaking: For Against Information

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

Representing Center to Advance Justice

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)

3-21-17
Meeting Date

SB 290

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

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Gainesville

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State

Zip

Speaking: For Against Information

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

Representing Families Against Mandatory Minimums (FAMM)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Randolph Bracy, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 8, 2017

I respectfully request that **Senate Bill #290**, relating to Criminal Justice, be placed on the:

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

A handwritten signature in black ink that reads "Darryl Rouson".

Senator Darryl Rouson
Florida Senate, District 19

CC: Senator Baxley, VC; Jennifer Hrdlicka, SD; Sue Arnold, AA;

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 296**

INTRODUCER: Senator Bracy

SUBJECT: Statements Made by a Criminal Defendant

DATE: February 20, 2017 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	Favorable
2. _____	_____	<u>JU</u>	_____
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 296 creates statutory requirements for the electronic recording of custodial interrogations by law enforcement for the admission into evidence of an interrogee's statement, as an exception to the rule against hearsay, in a criminal court proceeding.

The bill provides exceptions to the rule against hearsay in ss. 90.803(18) and 90.804(2)(c), F.S., related to "admissions" and "statements against interest."

For the interrogee's statement to be admissible under either of the hearsay exceptions, law enforcement is required to produce a complete recording of the interrogation under specific circumstances set forth in the bill. Otherwise, the statement is subject to a rebuttable presumption of inadmissibility.

Provisions are made for the prosecution to rebut the presumption against admissibility of the interrogee's statement by showing, by clear and convincing evidence, that:

- The statement was freely and voluntarily given after the interrogee was advised of his or her constitutional rights, and
- Law enforcement had good cause, as defined, not to record the statement.

The bill contains legislative findings that support the determination that the act fulfills an important state interest.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Current Law

The law governing the voluntariness of a defendant's statement and the admissibility of the statement against him or her in court is a creature of both case law and statutory law in Florida.

Constitutional Issues

For a defendant's statement to become evidence in a criminal case, the judge must first determine whether the statement was freely and voluntarily given, particularly if the statement was obtained by law enforcement during interrogation of the suspect or defendant.¹ The court may make that threshold determination during a pretrial hearing or during the trial. The court will consider the totality of the circumstances surrounding the statement, including:

- Whether the defendant was in custody at the time of the statement;
- Whether the defendant was unlawfully coerced to give the statement;
- The length of time and circumstances under which the defendant was in custody and being interrogated; and
- Whether the defendant understood his or her rights associated with custodial interrogation, and if those rights were waived by the defendant.

There is no current requirement that an interrogee's statement to law enforcement be electronically recorded; therefore, a judge in Florida will generally rely on witness testimony regarding the circumstances surrounding the statement.

If the judge concludes that the statement was freely and voluntarily given, it is likely that defense counsel will challenge the admissibility of the statement into evidence as a violation of the rule against hearsay evidence.

Hearsay Evidence

Hearsay evidence is inadmissible in court unless otherwise provided in statute.² Hearsay is defined in s. 90.801, F.S., as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."³

For example, a law enforcement officer who was a witness to a defendant's interrogation, which yielded a statement, may be called upon by the prosecutor to testify in court about the content of the defendant's statement. Defense counsel, based on the rule against hearsay, would likely object to the officer's testimony. The judge must then make a ruling on the admissibility of the

¹ No person shall be . . . compelled in any criminal matter to be a witness against himself. Art. I, s. 9, Fla. Const.; "[P]rior to custodial interrogation in Florida suspects must be told that they have a right to remain silent, that anything they say will be used against them in court, that they have a right to a lawyer's help, and that if they cannot pay for a lawyer one will be appointed to help them." *Traylor v. State*, 596 So. 2d 957, 966 (Fla. 1992); No person...shall be compelled in any criminal case to be a witness against himself. USCS Const. Amend. 5; "The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it." *Miranda v. Ariz.*, 384 U.S. 436, 469 (U.S. 1966).

² Section 90.802, F.S.

³ Section 90.801(1)(c), F.S.

defendant's statement by determining whether a statutory exception to the rule against hearsay renders the statement admissible.⁴

The defendant's or coconspirator's statement might be offered through the law enforcement officer's testimony as an "admission" under s. 90.803(18), F.S., which would make the hearsay testimony "not inadmissible."⁵

Additionally, a codefendant's or other witness's statement may be offered into evidence under s. 90.804(2)(c), F.S., as a "statement against interest."⁶

Other States

Currently twenty-three states and the District of Columbia record custodial interrogations statewide.⁷ These states have statutes, court rules, or court cases that require law enforcement to make the recordings or allow the court to consider the failure to record a statement in determining the admissibility of a statement.⁸ Although Florida is not one of these states, fifty-seven Florida law enforcement agencies have been identified as recording custodial interrogations, voluntarily, at least to some extent.⁹

False Confessions

In a comprehensive study of 125 false confession cases that only looked into "proven" false confessions, the confessions were found to be false under the following four circumstances:

- The suspect confessed to a crime that did not actually happen;¹⁰

⁴ For example see ss. 90.803 and 90.804, F.S.

⁵ Section 90.803(18)(a), F.S., defines an "admission" as a statement that is offered against a party and is the party's own statement. It may also be a statement that is offered against a party and made by a person who was a coconspirator of the party during the course, and in furtherance, of the conspiracy. s. 90.803(18)(e), F.S.

⁶ A "statement against interest" is not excluded as hearsay provided that the declarant is not available as a witness. It is defined as "a statement which, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject the declarant to liability or to render invalid a claim by the declarant against another, so that a person in the declarant's position would not have made the statement unless he or she believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is inadmissible, unless corroborating circumstances show the trustworthiness of the statement." s. 90.804(2)(c), F.S.

⁷ *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, August, 2016, National Association of Criminal Defense Lawyers, found at <https://www.nacdl.org/electronicrecordingproject> (last visited February 16, 2017).

⁸ See *Stephan v. State*, 711 P.2d 1156 (AK 1985); Ark. R. Crim. P. Rule 4.7 (2012); Cal Pen Code s. 859.5 (2016) and Cal Wel & Inst Code s. 626.8 (2014); C.R.S. 16-3-601 (2016); CT Gen. Stat. s. 54-1o (2011); D.C. Code s. 5-116.01 (2005); Hawaii was verified by the four departments that govern law enforcement in the state; 705 ILCS 405/5-401.5 (2016), 725 ILCS 5/103-2.1 (2017); Ind. R. Evid. 617 (2014); 25 M.R.S. s. 2803-B(1)(K) (2015); Md. CRIMINAL PROCEDURE Code Ann. ss. 2-401 – 2-402 (2008); MCLS ss. 763.7 – 763.9 (2013); *State v. Scales*, 518 N.W.2d 587 (MN 1994); MO Rev. Stat. s. 590.700 (2017); MT Code Ann. ss. 46-4-406 – 46-4-411 (2009); NE Rev. Stat. Ann. ss. 29-4501 – 29-4508 (2008); NJ Court Rules, R. 3:17 (2006); N.M. Stat. Ann. s. 29-1-16 (2006); N.C. Gen. Stat. s. 15A-211 (2011); OR Rev. Stat. s. 133.400 (2009); RIPAC, Accreditation Standards Manual, ch. 8, s. 8.10 (Rev. 2015); Utah R. Evid. Rule 616 (2016); 13 V.S.A. s. 5585 (2015); *State v. Jerrell C.J.*, 699 N.W.2d 110 (WI 2005); Wis. Stat. ss. 968.073 and 972.115 (2005); from *Compendium: Electronic Recording of Custodial Interrogations*, at page 8.

⁹ *Compendium: Electronic Recording of Custodial Interrogations*, at pages 36-37.

¹⁰ For example in the case of Dianne Tucker, Medell Banks, and Victoria Banks, three mentally-challenged defendants were convicted of killing Banks's newborn child. After serving several years in prison it was determined that Banks could not have given birth as she had a tubal ligation that prevented her from becoming pregnant. *The Problem of False Confessions in the Post-DNA World*, Steven A. Drizin, Richard A. Leo; March, 2004; 82 N.C.L. 891, 925.

- It was objectively established that it was a physical impossibility for the suspect to have committed the crime;¹¹
- The true perpetrator was identified and his guilt was objectively established;¹² and
- When scientific evidence, most commonly DNA, establishes the suspect's innocence.¹³

The study determined that, most likely due to advancement in DNA technology but also possibly because of the increased use of recording in custodial interrogations, false confessions are being recognized earlier in the criminal justice process.¹⁴

Of the 125 cases, the outcomes were:

- Ten persons (8%) were arrested but never charged;
- Sixty-four (more than 50%) were indicted but charges were dropped before trial;
- Seven (6%) were prosecuted but acquitted; and
- Forty-four persons (35%) were convicted.¹⁵

III. Effect of Proposed Changes:

The bill creates circumstances under which a person's statement, obtained during custodial interrogation, may be admitted as hearsay evidence in a criminal hearing or trial.

The requirements for admissibility as an "admission" under s. 90.803(18), F.S., or as a "statement against interest" under s. 90.804(2)(c), F.S., focus on electronic recording by law enforcement in custodial interrogation situations.¹⁶

Section 1

The bill creates a new "admission" hearsay exception that provides for the admissibility of an interrogee's¹⁷ custodial interrogation statement if the interrogation complies with the following requirements:

- The interrogation is reproduced in its entirety by an electronic recording;
- Before the interrogation begins, Miranda warnings must be given and waived by the suspect or defendant, all of which must be included on the recording;

¹¹ "In three different Chicago cases – Mario Hayes, Miguel Castillo, and Peter Williams – jail records showed the suspects were in jail at the time the crimes were committed." *The Problem of False Confessions in the Post-DNA World*, at 925-926.

¹² Christopher Ochoa, who confessed to the sexual battery and murder of Nancy DePriest, was freed in 2001 when Achim Marino came forward and confessed to the crime. Marino led law enforcement to the murder weapon and his DNA matched the semen found at the crime scene. *The Problem of False Confessions in the Post-DNA World*, at 926.

¹³ Three teenage boys – Michael Crowe, Joshua Treadway, and Aaron Houser - were about to stand trial for the murder of Crowe's sister, Stephanie, when DNA testing proved that blood found on the sweatshirt of Richard Tuite was Stephanie's. Charges against the boys were dropped and Tuite was indicted for Stephanie's murder. *The Problem of False Confessions in the Post-DNA World*, at 926.

¹⁴ *The Problem of False Confessions in the Post-DNA World*, at 950-951.

¹⁵ *The Problem of False Confessions in the Post-DNA World*, Steven A. Drizin, Richard A. Leo; March, 2004; 82 N.C.L. 891, at 950-951.

¹⁶ See footnotes 5 and 6.

¹⁷ "Interrogee" is defined by the Merriam-Webster dictionary as "one who is interrogated." The use of this term throughout the bill could include any person who makes a statement while under custodial interrogation and therefore would not limit application of the hearsay exceptions to persons who are suspects, defendants, codefendants, or coconspirators. The bill provides that the interrogee is a person who is charged with a felony or suspected of involvement in a felony.

- The electronic recording device must be capable of making a true, complete, and accurate recording, the operator of the device must be competent, and the recording may not be altered;
- All persons appearing on the recording must be identified on the recording if those persons are material witnesses; and
- Under the rules of pretrial discovery,¹⁸ the state must disclose and provide the suspect or defendant's attorney with a true, complete, and accurate copy of all electronic recordings of interrogations, no later than 20 days prior to the date of the proceeding at which the state will offer the evidence.

If no true, complete, and accurate electronic recording of the interrogation exists, the suspect or defendant's statement is presumed to be inadmissible hearsay evidence. The state may rebut the presumption against admissibility only by offering clear and convincing evidence that:

- The suspect or defendant made the statement voluntarily after receiving Miranda warnings, and the statement is reliable; and
- Law enforcement officers had good cause not to record all or part of the interrogation.

Under the bill, the term "good cause" includes but is not limited to the following circumstances:

- The interrogation took place under exigent circumstances in a location where recording equipment was not available;
- The interrogatee refused to have the interrogation recorded and the refusal itself was recorded;
- Failure to record the interrogation in its entirety was the result of equipment failure and obtaining replacement equipment was not feasible; or
- The interrogatee's statement was obtained during a legally conducted intercept of wire, oral, or electronic communication.

Statements obtained by federal officers conducting a federal investigation in compliance with federal law, or by an officer in another jurisdiction who is acting independently of officers in Florida and who follows the law of that jurisdiction, are admissible in a Florida court.

The bill provides for the preservation of recorded interrogations until certain case actions occur or deadlines are met.

The admissibility of statements that are not obtained as a result of a custodial interrogation is not limited by the bill's interrogation requirements.¹⁹

Section 2

The bill amends s. 90.804, F.S., the section of the evidence code containing exceptions to the rule against the admissibility of hearsay evidence when the one who made the hearsay statement is unavailable as a witness.

¹⁸ Rule 3.220, Florida Rules of Criminal Procedure.

¹⁹ The bill does not preclude the admission into evidence the interrogatee's statement before a grand jury, spontaneous statement, statement that is part of the circumstances surrounding the crime or arrest itself, or statement made at trial or other hearing in open court.

Specifically, s. 90.804(2)(c), F.S., addresses “statements against interest” made by an unavailable witness (declarant). These are often statements made by an alleged coconspirator or codefendant. Such statements are inadmissible hearsay unless corroborating circumstances show trustworthiness of the absent witness’s statement.²⁰

The bill requires that if the statement of a witness who is unavailable is considered by the court for admission into evidence, and the statement was given under interrogation, it must meet the requirements set forth in the amendment created by the bill in s. 90.803(18)(f), F.S.

The bill makes certain findings resulting in the Legislature determining and declaring that the act fulfills an important state interest.

Finally, the bill states that the purpose of the act is to require complete electronic recordings of custodial interrogations in order to eliminate disputes about interrogations, improve prosecution of the guilty, protect the innocent, and increase court efficiency.

The bill becomes effective on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁰ Section 90.804(2)(c), F.S.

C. Government Sector Impact:

The Justice Administrative Commission reports no direct policy or fiscal impacts to the Commission.²¹

The Office of the State Courts Administrator reports: “On the one hand, there may be fewer pretrial motion to suppress hearings, which would reduce judicial workload. On the other hand, it seems likely that suspects will be less willing to speak with law enforcement if they know they are being recorded. Fewer defendant statements are likely to lead to fewer pleas and more trials, which would increase judicial workload. The net effect is too speculative to estimate.”²²

Although the Florida Police Chiefs Association believes there will be a fiscal impact for local law enforcement to purchase recording equipment, retain recorded statements, and store electronic recordings, the impact is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 90.803 and 90.804.

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.

²¹ Justice Administrative Commission Impact Statement, Memorandum No. 004-17, Exec, January 18, 2017.

²² Office of the State Courts Administrator, Judicial Impact Statement, January 24, 2017.

By Senator Bracy

11-00403-17

2017296__

1 A bill to be entitled

2 An act relating to statements made by a criminal
 3 defendant; amending s. 90.803, F.S.; requiring that
 4 hearsay statements made during certain custodial
 5 interrogations comply with specified requirements in
 6 order to be admissible; defining terms; describing
 7 circumstances in which an oral, written, or sign-
 8 language statement made by an interrogee during a
 9 custodial interrogation is presumed inadmissible as
 10 evidence against such person unless certain
 11 requirements are met; describing circumstances in
 12 which the prosecution may rebut such presumption;
 13 describing circumstances in which law enforcement
 14 officers may have had good cause not to electronically
 15 record all or part of an interrogation; defining the
 16 term "good cause"; providing for the admissibility of
 17 certain statements of an interrogee when made in
 18 certain proceedings or when obtained by federal
 19 officers or officers from other jurisdictions;
 20 requiring the preservation of electronic recordings;
 21 providing that admissibility is not precluded for
 22 certain statements of an interrogee; amending s.
 23 90.804, F.S.; specifying requirements that must be met
 24 for a hearsay statement against interest made during
 25 certain custodial interrogations to be admissible when
 26 the declarant is unavailable; providing a finding of
 27 important state interest; specifying the purpose of
 28 the act; providing an effective date.

29

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

31

32 Section 1. Subsection (18) of section 90.803, Florida

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33 Statutes, is amended to read:

34 90.803 Hearsay exceptions; availability of declarant
 35 immaterial.—The provision of s. 90.802 to the contrary
 36 notwithstanding, the following are not inadmissible as evidence,
 37 even though the declarant is available as a witness:

38 (18) ADMISSIONS.—A statement that is offered against a
 39 party and is:

40 (a) The party's own statement in either an individual or a
 41 representative capacity;

42 (b) A statement of which the party has manifested an
 43 adoption or belief in its truth;

44 (c) A statement by a person specifically authorized by the
 45 party to make a statement concerning the subject;

46 (d) A statement by the party's agent or servant concerning
 47 a matter within the scope of the agency or employment thereof,
 48 made during the existence of the relationship; ~~or~~

49 (e) A statement by a person who was a coconspirator of the
 50 party during the course, and in furtherance, of the conspiracy.
 51 Upon request of counsel, the court shall instruct the jury that
 52 the conspiracy itself and each member's participation in it must
 53 be established by independent evidence, either before the
 54 introduction of any evidence or before evidence is admitted
 55 under this paragraph; or.

56 (f) The party's own statement that is the result of a
 57 custodial interrogation conducted in compliance with this
 58 paragraph.

59 1. As used in this paragraph, the term:

60 a. "Custodial interrogation" or "interrogation" means
 61 questioning of an interrogee in circumstances in which a

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62 reasonable person placed in the same position would believe that
 63 his or her freedom of action was curtailed to a degree
 64 associated with actual arrest.
 65 b. "Electronic recording" means a true, complete, and
 66 accurate reproduction of a custodial interrogation. An
 67 electronic recording may be created through the use of
 68 videotape, audiotape, or digital or other media.
 69 c. "Interrogation facility" means a law enforcement
 70 facility, correctional facility, community correctional center,
 71 detention facility, law enforcement vehicle, courthouse, or
 72 other secure environment.
 73 d. "Interrogee" means a person who, at the time of the
 74 interrogation and concerning any topic of the interrogation, is:
 75 (I) Charged with a felony; or
 76 (II) Suspected by those conducting the interrogation of
 77 involvement in a felony.
 78 e. "Involvement" means participation in a crime as a
 79 principal or an accessory.
 80 2. An oral, written, or sign-language statement made by an
 81 interrogee during a custodial interrogation is inadmissible as
 82 evidence against such person in a criminal proceeding unless all
 83 of the following requirements are met:
 84 a. The interrogation is reproduced in its entirety by means
 85 of an electronic recording.
 86 b. Immediately before the interrogation begins, and as part
 87 of the electronic recording, the interrogee is given all
 88 constitutionally required warnings and the interrogee knowingly,
 89 intelligently, and voluntarily waives any rights set out in the
 90 warnings that would, absent such waiver, otherwise preclude the

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 91 admission of the statement.

92 c. The electronic recording device was capable of making a
 93 true, complete, and accurate recording of the interrogation, the
 94 operator of such device was competent, and the electronic
 95 recording has not been altered.

96 d. All persons recorded on the electronic recording who are
 97 material to the custodial interrogation are identified on the
 98 electronic recording.

99 e. During discovery pursuant to Rule 3.220, Florida Rules
 100 of Criminal Procedure, but in no circumstances later than the
 101 20th day before the date of the proceeding in which the
 102 prosecution intends to offer the statement, the attorney
 103 representing an interrogee is provided with true, complete, and
 104 accurate copies of all electronic recordings of the interrogee
 105 which are made pursuant to this paragraph.

106 3.a. In the absence of a true, complete, and accurate
 107 electronic recording, the prosecution may rebut a presumption of
 108 inadmissibility only by offering clear and convincing evidence
 109 that:

110 (I) The statement was both voluntary and reliable, made
 111 after the interrogee was fully advised of all constitutionally
 112 required warnings; and

113 (II) Law enforcement officers had good cause not to
 114 electronically record all or part of the interrogation.

115 b. For purposes of sub subparagraph a., the term "good
 116 cause" includes, but is not limited to, the following:

117 (I) The interrogation occurred in a location other than an
 118 interrogation facility under exigent circumstances where the
 119 requisite recording equipment was not readily available and

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120 there was no reasonable opportunity to move the interrogee to an
 121 interrogation facility or to another location where the
 122 requisite recording equipment was readily available;

123 (II) The interrogee refused to have the interrogation
 124 electronically recorded, and such refusal was electronically
 125 recorded;

126 (III) The failure to electronically record an entire
 127 interrogation was the result of equipment failure, and obtaining
 128 replacement equipment was not feasible; or

129 (IV) The statement of the interrogee was obtained in the
 130 course of intercepting wire, oral, or electronic communication
 131 which was being conducted pursuant to a properly obtained and
 132 issued warrant or which required no warrant and was otherwise
 133 legally conducted.

134 4. Notwithstanding any other provision of this paragraph, a
 135 written, oral, or sign-language statement of the interrogee
 136 which was made as a result of a custodial interrogation is
 137 admissible in a criminal proceeding against the interrogee in
 138 this state if:

139 a. The statement was obtained in another jurisdiction by
 140 investigative personnel of that jurisdiction, acting
 141 independently of law enforcement personnel of this state, in
 142 compliance with the laws of that jurisdiction; or

143 b. The statement was obtained by a federal officer in this
 144 state or another jurisdiction during a lawful federal
 145 investigation and was obtained in compliance with the laws of
 146 the United States.

147 5. Every electronic recording of a custodial interrogation
 148 made pursuant to this paragraph must be preserved until the

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149 interrogee's conviction for any offense relating to the
 150 interrogation is final and all direct appeals and collateral
 151 challenges are exhausted, the prosecution of such offenses is
 152 barred by law, or the state irrevocably waives in writing any
 153 future prosecution of the interrogee for any offense relating to
 154 the interrogation.

155 6. This paragraph does not preclude the admission into
 156 evidence of a statement made by the interrogee:

157 a. At his or her trial or other hearing held in open court;
 158 b. Before a grand jury;
 159 c. Which is the res gestae of the arrest or the offense; or
 160 d. Which does not arise from a custodial interrogation or
 161 which is a spontaneous statement.

162 Section 2. Paragraph (c) of subsection (2) of section
 163 90.804, Florida Statutes, is amended to read:

164 90.804 Hearsay exceptions; declarant unavailable.—

165 (2) HEARSAY EXCEPTIONS.—The following are not excluded
 166 under s. 90.802, provided that the declarant is unavailable as a
 167 witness:

168 (c) Statement against interest.—A statement which, at the
 169 time of its making, was so far contrary to the declarant's
 170 pecuniary or proprietary interest or tended to subject the
 171 declarant to liability or to render invalid a claim by the
 172 declarant against another, so that a person in the declarant's
 173 position would not have made the statement unless he or she
 174 believed it to be true. A statement tending to expose the
 175 declarant to criminal liability and offered to exonerate the
 176 accused is inadmissible, unless corroborating circumstances show
 177 the trustworthiness of the statement. However, any statement

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178 made during a custodial interrogation of an interrogatee as
179 defined in s. 90.803(18)(f) must comply with that paragraph when
180 required in order for the statement to be admissible under this
181 paragraph.

182 Section 3. (1) The Legislature finds that the reputations
183 of countless hard-working law enforcement officers are
184 needlessly attacked by criminal suspects who falsely claim the
185 officers violated the suspects' constitutional rights, that
186 limited trial court resources are squandered in hearings on
187 motions to suppress statements made by criminal suspects who are
188 able to make such claims because no recordings of their
189 interrogations exist, and, further, that judicial resources are
190 squandered when criminal suspects, after having been convicted
191 of their crimes, file frivolous and unnecessary appeals. This
192 process costs the taxpayers of this state untold dollars each
193 year, dollars that could be better spent enhancing the
194 administration of the criminal justice system. Low-cost
195 technology is now available in every jurisdiction to record each
196 custodial interrogation of a criminal suspect, eliminating this
197 gross waste of resources and enhancing the reliability and
198 reputation of law enforcement officers. Therefore, the
199 Legislature determines and declares that this act fulfills an
200 important state interest.

201 (2) The purpose of this act is to require the creation of
202 an electronic record of an entire custodial interrogation in
203 order to eliminate disputes about interrogations, thereby
204 improving prosecution of the guilty while affording protection
205 to the innocent and increasing court efficiency.

206 Section 4. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/17
Meeting Date

296
Bill Number (if applicable)

Topic Recording Interrogations

Amendment Barcode (if applicable)

Name Seth Miller

Job Title Exec. Director

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Street

Phone 850-561-6767

Tallahassee FL 32301
City State Zip

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Speaking: For Against Information

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

Representing Innocence Project of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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Meeting Date

Bill Number (if applicable)

Topic Statements Made by a Criminal Defendant

Amendment Barcode (if applicable)

Name Hon. Bob Dillinger

Job Title Public Defender, 6th Circuit

Address 14250 49th Street, North

Phone 727-464-6516

Street

Clearwater

FL

33762

City

State

Zip

Email bdilling@wearethehope.org

Speaking: For Against Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/12/17

Meeting Date

SB 296

Bill Number (if applicable)

Topic Recording Interrogations- SB296

Amendment Barcode (if applicable)

Name Michelle Feldman

Job Title State Policy Advocate, The Innocence Project

Address 40 worth street, Suite 702

Phone 516 557 6650

Street

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NY

10007

State

Zip

City

Email MFeldman@innocenceproject.org

Speaking: For Against Information

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

Representing The Innocence Project

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

2/21/17

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

SB 296

Meeting Date

Bill Number (if applicable)

Topic Criminal Justice Reform

Amendment Barcode (if applicable)

Name Scott D. McCoyJob Title Senior Policy CounselAddress P.O. Box 10788Phone 850-521-3042

Street

TallahasseeFL32302Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against InformationWaive Speaking: In Support Against
(The Chair will read this information into the record.)Representing Southern Poverty Law CenterAppearing at request of Chair: Yes NoLobbyist 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

2/21/2017

Meeting Date

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

296

Bill Number (if applicable)

Topic Felony Interrogation Recordings

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Street

Tallahassee, FL 32301

State

Zip

Phone

(850) 681-0024

Email

jorge@flapathet.com

Speaking: For Against Information

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

Representing Fla Association of Criminal Defense Lawyers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

21 Feb 17

Meeting Date

296

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe St., Ste. 201

Phone 850.510.9922

Street

Tallahassee

Fl

32301

City

State

Zip

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 312

INTRODUCER: Criminal Justice Committee and Senator Baxley

SUBJECT: Eyewitness Identification

DATE: February 22, 2017 REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 312 creates s. 92.70, F.S., relating to eyewitness identifications in criminal cases.

The bill sets forth specific procedures that state, county, municipal, or other law enforcement agencies must implement when conducting lineups in Florida. The bill also provides certain alternative procedures that should benefit smaller law enforcement agencies with staffing issues related to conducting lineups.

The bill also provides judicial remedies should the requirements of the lineup procedure not be followed.

The bill becomes effective on October 1, 2017.

II. Present Situation:

Eyewitness misidentification of crime suspects has contributed to 64 percent of the Florida cases in which DNA evidence later exonerated the defendant.¹ Of the 349 DNA exonerations nationwide, more than 70 percent had a mistaken identification issue.²

¹ This represents nine of the 14 DNA-based exonerations in Florida. Information provided by Seth Miller, Executive Director, The Innocence Project of Florida (February 8, 2017, e-mail on file with Criminal Justice Committee staff).

² Information provided by Seth Miller, Executive Director, The Innocence Project of Florida (February 8, 2017, e-mail on file with Criminal Justice Committee staff).

Conducting Suspect Lineups

Suspect lineups are conducted when law enforcement has developed a suspect in a criminal investigation. A live lineup includes the suspect in a group of individuals who should look similar to the suspect, and the witness or victim views the lineup to see if he or she recognizes the suspect. The same is true of photographic lineups where a group of photos including the suspect is shown to the witness or victim for identification purposes.

There are many variables in common eyewitness identification procedures. For example, in the presentation of photo lineups, there are two main methods: sequential (only one photo is shown at a time) and simultaneous (photo array shows all photos at once in what is commonly referred to as a photo-pack).

Additional variables include whether the officer conducting the lineup has knowledge of the suspect's identity or is a "blind (or independent) administrator"³; how the witness is instructed about the process⁴; and what level of documentation of the process the administrator does.⁵

Standards for Suspect Lineups

In 2010, the Legislature provided funding for the creation of a commission to study the causes of wrongful conviction and subsequent incarceration. In response, the Florida Supreme Court established the Florida Innocence Commission "to conduct a comprehensive study of the causes of wrongful conviction and of measures to prevent such convictions."⁶

In 2011 the commission voted to support legislation setting forth procedures law enforcement officers must follow when they are conducting photo and live lineups with eyewitnesses to crimes.⁷ The Senate bill presented during the 2011 Legislative Session died in messages.⁸

Also in 2011, a collaboration by the Florida Department of Law Enforcement, Florida Sheriffs Association, Florida Police Chiefs Association, and the Florida Prosecuting Attorneys Association, as part of a commission workgroup, created "Standards for Florida State and Local Law Enforcement Agencies Dealing with Photographic or Live Lineups in Eyewitness Identification" and "Commentary and Instructions" regarding conducting eyewitness lineups. The commission voted to recommend that Florida law enforcement agencies adopt the

³ Using a blind administrator helps to prevent any conscious or unconscious cues about the suspect's photo location or appearance in a line-up from being conveyed to the witness. *Identifying the Culprit: Assessing Eyewitness Identification*, National Academy of Sciences (2014), pages 24, 106-107.

⁴ Reading standardized instructions to the witness helps minimize the possibility of biasing. *Identifying the Culprit: Assessing Eyewitness Identification*, National Academy of Sciences (2014), pages 25, 107.

⁵ For example, does the administrator ask the witness for a "confidence level" when the witness has made an identification? *Identifying the Culprit: Assessing Eyewitness Identification*, National Academy of Sciences (2014), pages 25, 108; see also pages 108-109 recommending recording of the identification process.

⁶ Fla. Supreme Court, Admin. Order No. AOSC10-39, *In Re: Florida Innocence Commission* (July 2, 2010). The Commission's Final Report may be accessed online at <http://www.flcourts.org/core/fileparse.php/248/urll/finalreport2012.rtf>.

⁷ The Florida Innocence Commission, *Interim Report to the Supreme Court of Florida* (June 2011), discussion of March 21, 2011, meeting.

⁸ Senate Bill 1206 and House Bill 821 (2011). SB 312, as originally filed, is similar to the 2011 bills.

documents with changes suggested by the commission. The primary suggested change created a requirement that a blind administrator conduct lineups.⁹ The workgroup declined to adopt the suggested changes. The standards were revised in June 2011 to state that the law enforcement agency may choose to have an independent administrator; it is not required as suggested by the commission.

According to the Florida Department of Law Enforcement, in 2011 the Commission for Florida Law Enforcement Accreditation adopted standards based upon the “Standards for Florida State and Local Law Enforcement Agencies in Dealing with Photographic or Live Lineups in Eyewitness Identification.”¹⁰ Currently, 157 law enforcement agencies are accredited and, thus, maintain compliance with the standards for conducting lineups adopted by the Commission for Florida Law Enforcement Accreditation.

Florida statutes do not currently set forth requirements for law enforcement officers to follow when conducting eyewitness identification procedures during criminal investigations. At least eleven other states have enacted statutes requiring implementation of specific eyewitness identification procedures.¹¹

Standards Compliance

If a law enforcement agency has a particular protocol in place and the protocol is not followed, the issue becomes ripe for a challenge on the issue of reliability and therefore, admissibility, of the identification evidence at trial. This possibility provides an incentive for protocol compliance. Conversely, if the protocol is followed, motions to suppress the evidence of identity should rarely be filed as there is likely no good-faith basis for filing them.

Florida Law Enforcement Training

The Criminal Justice Standards and Training Commission (CJSTC), created within the Florida Department of Law Enforcement, is responsible for, among other things, establishing uniform minimum training standards for training officers in the various criminal justice disciplines and establishing minimum curricular requirements for criminal justice training schools.¹²

⁹ See *Final Report to the Supreme Court of Florida*, page 20.

¹⁰ Standards for Florida State and Local Law Enforcement Agencies in Dealing with Photographic or Live Lineups in Eyewitness Identification (rev. June 15, 2011), available at <http://www.fdle.state.fl.us/cms/Documents/Eyewitness-ID/Eyewitness-Identification-Standards.aspx>; Commentary and Instructions: Instructional Suggestions (rev. June 15, 2011), available at <http://www.fdle.state.fl.us/cms/Documents/Eyewitness-ID/Eyewitness-Identification-Commentary-and-Instructi.aspx> (both sites last visited February 14, 2017). Additionally, the FDLE agency bill analysis contains excerpts from the Basic Recruit Training Program related to conducting lineups. Florida Department of Law Enforcement, *2017 Bill Analysis: SB 312* (January 17, 2017).

¹¹ The eleven states are Connecticut, Illinois, Maryland, Nevada, North Carolina, Ohio, Texas, West Virginia, Wisconsin, Vermont, and Virginia. For example see Ga. Code Ann. Sec. 17-20-1 – 17-20-3 (2016); Conn. Gen. Stat. Sec. 54-1p (2012); N.C. Gen Stat. Sec. 15A-284.52 (2015); and ORC Ann. 2933.83 (2010). In total at least 18 states have passed legislation to study or regulate procedures regarding eyewitness identification, have had state courts address it, or have had the state Attorney General adopt regulations on procedures. National Conference of State Legislatures (NCSL), Practices in Eyewitness Identification (Nov. 2014), available at

<http://www.ncsl.org/Documents/cj/PracticesInEyewitnessIdentification.pdf> (last visited February 14, 2017).

¹² Sections 943.11 and 943.12(5) and (8), F.S.

Additionally, the CJSTC is tasked with designing, implementing, maintaining, evaluating, revising, or adopting certain statutorily approved training programs. These programs include basic recruit, advanced, career development, and specialized training.¹³

III. Effect of Proposed Changes:

The bill creates s. 92.70, F.S., relating to eyewitness identifications in criminal cases.

Lineup Procedures

The bill sets forth specific procedures that state, county, municipal, or other law enforcement agencies must implement when conducting lineups in Florida.

Prior to the lineup, officers are required to give the eyewitness five instructions. These are:

- 1) The perpetrator might or might not be in the lineup;
- 2) The lineup administrator does not know the suspect's identity (this instruction is not necessary if an alternative method is used in lieu of using an independent administrator);
- 3) The eyewitness should not feel compelled to make an identification;
- 4) It is as important to exclude innocent persons as it is to identify the perpetrator; and
- 5) The investigation will continue with or without an identification.

The eyewitness must be given a copy of these instructions. If he or she refuses to sign a document acknowledging receipt of the instructions, the lineup administrator is directed to sign it and make a notation of the eyewitness refusal.

The lineup must be conducted by an independent administrator. This approach is sometimes referred to as "blind" administration. The independent administrator does not know the identity of the suspect.

In the case of photo lineups, the bill provides that an alternative method may be used in lieu of an independent administrator.

Two required features of any alternative method are: achieving neutral administration and preventing the administrator from knowing which photograph is being presented to the eyewitness. The alternative methods may include:

- Using automated computer programs that administer the photo lineup directly to the eyewitness in a manner such that the administrator cannot see which photograph is being viewed;
- Placing randomly numbered photographs in folders, shuffling them, and then presenting them in a manner such that the administrator cannot see or track which photograph is being presented to the eyewitness; or
- Employing any other procedure that achieves neutral administration and prevents the administrator from knowing which photograph is being presented to the eyewitness during the process.

¹³ Section 943.17(1)(a)-(e), F.S.

The alternative photo lineup procedures should help eliminate staffing issues that otherwise could arise in smaller agencies if using an independent administrator were the only statutorily approved procedure.

Remedies for Noncompliance

The bill also provides judicial remedies should the requirements of the lineup procedure not be followed.

The court may consider noncompliance with the statutory suspect identification procedures when deciding a defense motion to suppress the identification of the defendant from being presented as evidence at trial.

The bill also provides that the court may allow the jury to hear evidence of noncompliance in support of claims of eyewitness misidentification raised by the defendant. Additionally, if evidence of compliance or noncompliance with the statutory requirements is presented at trial, the jury must be instructed that it can consider that evidence to determine the reliability of eyewitness identification.

Because the bill creates specific judicial remedies and the possibility that the jury may hear evidence of compliance or noncompliance with the statutory procedures, jury instructions must be adopted by the Florida Supreme Court. Standard Jury Instructions for criminal cases are quite often proposed and adopted based upon the Legislature's revision of the criminal statutes, soon after the end of each legislative session.

Education and Training

The bill requires the CJSTC, in consultation with the Florida Department of Law Enforcement, to develop educational materials and conduct training programs for law enforcement on the eyewitness identification procedures set forth in the bill.

This bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

It is possible that the requirements of the bill could result in local fund expenditures due to staffing issues related to the accessibility of an independent lineup administrator, however the bill does provide for alternative methods of conducting lineups. If local funding for additional staffing becomes necessary, such funding will directly relate to the process of crime suspect arrest, therefore under subsection (d) of Article VII, Section 18 of the Florida Constitution, it appears there is no unfunded mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement does not anticipate any expenditures associated with the bill.

The Florida Police Chiefs Association has not yet determined the potential impact of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 92.70 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on February 21, 2017:

The CS eliminated the Criminal Justice Standards and Training responsibility of specifying and approving alternative lineup procedures as these are spelled out in the bill.

B. Amendments:

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2017	.	
	.	
	.	
	.	

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

1 **Senate Amendment**

2

3 Delete lines 51 - 57

4 and insert:

5 in subparagraphs 1.-3. of this paragraph. Any alternative method
6 must be carefully structured to achieve neutral administration
7 and to prevent the lineup administrator from knowing which
8 photograph is being presented to the eyewitness during the
9 identification procedure. Alternative methods may include any of
10 the following:

By Senator Baxley

12-00308A-17

2017312__

1 A bill to be entitled

2 An act relating to eyewitness identification; creating
 3 s. 92.70, F.S.; providing a short title; defining
 4 terms; requiring state, county, municipal, or other
 5 law enforcement agencies that conduct lineups to
 6 follow specified procedures; requiring eyewitnesses to
 7 sign an acknowledgment that they have received the
 8 instructions about the lineup procedures from the law
 9 enforcement agency; requiring lineup administrators to
 10 document the refusal of an eyewitness to acknowledge
 11 such receipt; specifying remedies for failing to
 12 adhere to the eyewitness identification procedures;
 13 requiring the Criminal Justice Standards and Training
 14 Commission to create educational materials and provide
 15 training programs on how to conduct lineups; providing
 16 an effective date.

17

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

19 Section 1. Section 92.70, Florida Statutes, is created to
 20 read:

21 92.70 Eyewitness identification.—

22 (1) SHORT TITLE.—This section may be cited as the
 23 "Eyewitness Identification Reform Act."

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

25 (a) "Eyewitness" means a person whose identification by
 26 sight of another person may be relevant in a criminal
 27 proceeding.

28 (b) "Independent administrator" means a person who is not
 29 participating in the investigation of a criminal offense and is
 30 unaware of which person in the lineup is the suspect.

31 (c) "Lineup" means a photo lineup or live lineup.

32 Page 1 of 4

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

12-00308A-17

2017312__

33 (d) "Lineup administrator" means the person who conducts a
 34 lineup.

35 (e) "Live lineup" means a procedure in which a group of
 36 people is displayed to an eyewitness for the purpose of
 37 determining if the eyewitness can identify the perpetrator of a
 38 crime.

39 (f) "Photo lineup" means a procedure in which an array of
 40 photographs is displayed to an eyewitness for the purpose of
 41 determining if the eyewitness can identify the perpetrator of a
 42 crime.

43 (3) EYEWITNESS IDENTIFICATION PROCEDURES.—A lineup
 44 conducted in this state by a state, county, municipal, or other
 45 law enforcement agency must meet all of the following
 46 requirements:

47 (a) The lineup must be conducted by an independent
 48 administrator. In lieu of using an independent administrator, a
 49 law enforcement agency may conduct a photo lineup eyewitness
 50 identification procedure using an alternative method specified
 51 and approved by the Criminal Justice Standards and Training
 52 Commission. Any alternative method must be carefully structured
 53 to achieve neutral administration and to prevent the lineup
 54 administrator from knowing which photograph is being presented
 55 to the eyewitness during the identification procedure. An
 56 alternative method approved by the Criminal Justice Standards
 57 and Training Commission may include any of the following:

58 1. An automated computer program that can automatically
 59 administer the photo lineup directly to an eyewitness and
 60 prevent the lineup administrator from seeing which photograph
 61 the eyewitness is viewing until after the procedure is

Page 2 of 4

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

12-00308A-17

2017312__

62 completed.

63 2. A procedure in which photographs are placed in folders,
 64 randomly numbered, and shuffled and then presented to an
 65 eyewitness such that the lineup administrator cannot see or
 66 track which photograph is being presented to the eyewitness
 67 until after the procedure is completed.

68 3. Any other procedure that achieves neutral administration
 69 and prevents the lineup administrator from knowing which
 70 photograph is being presented to the eyewitness during the
 71 identification procedure.

72 (b) Before a lineup, the eyewitness must be instructed
 73 that:

74 1. The perpetrator might or might not be in the lineup;
 75 2. The lineup administrator does not know the suspect's
 76 identity, except that this instruction need not be given when a
 77 specified and approved alternative method of neutral
 78 administration is used;

79 3. The eyewitness should not feel compelled to make an
 80 identification;

81 4. It is as important to exclude innocent persons as it is
 82 to identify the perpetrator; and

83 5. The investigation will continue with or without an
 84 identification.

85
 86 The eyewitness shall acknowledge, in writing, having received a
 87 copy of the lineup instructions. If the eyewitness refuses to
 88 sign a document acknowledging receipt of the instructions, the
 89 lineup administrator must document the refusal of the eyewitness
 90 to sign a document acknowledging receipt of the instructions,

Page 3 of 4

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

12-00308A-17

2017312__

91 and the lineup administrator must sign the acknowledgment
 92 document himself or herself.

93 (4) REMEDIES.—All of the following remedies are available
 94 as consequences of compliance or noncompliance with any
 95 requirement of this section:

96 (a)1. A failure on the part of a person to comply with any
 97 requirement of this section shall be considered by the court
 98 when adjudicating motions to suppress eyewitness identification.

99 2. A failure on the part of a person to comply with any
 100 requirement of this section is admissible in support of a claim
 101 of eyewitness misidentification, as long as such evidence is
 102 otherwise admissible.

103 (b) If evidence of compliance or noncompliance with any
 104 requirement of this section is presented at trial, the jury
 105 shall be instructed that the jury may consider credible evidence
 106 of compliance or noncompliance to determine the reliability of
 107 eyewitness identifications.

108 (5) EDUCATION AND TRAINING.—The Criminal Justice Standards
 109 and Training Commission, in consultation with the Department of
 110 Law Enforcement, shall create educational materials and provide
 111 training programs on how to conduct lineups in compliance with
 112 this section.

113 Section 2. This act shall take effect October 1, 2017.

Page 4 of 4

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/17

Meeting Date

Topic Eyewitness ID

Name AMY MERCER

Job Title Executive Director, FPCA

Address PO Box 14038
Street

Tallahassee FL 32317
City State Zip

Phone 850-219-3631

Email amercera@FPCA.OM

Speaking: For Against Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

21 Feb 17

Meeting Date

312

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe St. Ste. 201
Street

Tall

FL

32301

City

State

Zip

Phone 850.510.9922

Email [Email address circled]

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/21/2017

Meeting Date

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

312

Bill Number (if applicable)

Topic Eyewitness Identification

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Street

Tallahassee, FL 32301

State

Zip

Speaking: For Against Information

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

Representing Fla Association of Criminal Defense Lawyers (FACDL)

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

2/21/17

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

SB 312

Meeting DateBill Number (if applicable)Topic Criminal Justice Reform--Eyewitness IdentificationAmendment Barcode (if applicable)Name Scott D. McCoyJob Title Senior Policy CounselAddress P.O. Box 10788Phone 850-521-3042

Street

TallahasseeFL32302Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against InformationWaive Speaking: In Support Against
*(The Chair will read this information into the record.)*Representing Southern Poverty Law CenterAppearing at request of Chair: Yes NoLobbyist 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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2/21/17

Meeting Date

312

Bill Number (if applicable)

Topic Eyewitness ID

Amendment Barcode (if applicable)

Name AMY Mercer

Job Title Executive Director; FPCA

Address PO Box 14038
Street

Tallahassee FL 32317
City State Zip

Phone 850-219-3631

Email amercer@FPCA.COM

Speaking: For Against Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
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February 21, 2017

312

Meeting Date

Bill Number (if applicable)

Topic Eyewitness Identification

Amendment Barcode (if applicable)

Name Hon. Bob Dillinger

Job Title Public Defender, 6th Circuit

Address 14250 49th Street, North

Phone 727-464-6516

Street

Clearwater

FL

33762

City

State

Zip

Email bdilling@wearethehope.org

Speaking: For Against Information

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

Representing Florida Public Defender Association, Inc.

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

2/21/17

Meeting Date

312

Bill Number (if applicable)

Topic Effectiveness ID

Amendment Barcode (if applicable)

Name Seth Miller

Job Title Exec. Dir. Innocence Project of Florida

Address 1100 E. Park Ave Phone 850-561-6767
Street

Tallahassee City FL State 32301 Zip Email smiller@floridainnocence.org

Speaking: For Against Information

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

Representing Innocence Project of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/2/11/17

Meeting Date

SB 312

Bill Number (if applicable)

Topic SB 312-Eventness ID

Amendment Barcode (if applicable)

Name Michelle Feldman

Job Title State Policy Advocate, the Innocence Project

Address 40 Worth Street, Suite 701

Phone 516 557 6650

Street

New York, NY

State

10007

Zip

Speaking: For Against Information

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

Representing The Innocence Project

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



SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and
Human Services
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

January 30, 2017

The Honorable Senator Randolph Bracy
213 Senate Office Building
Tallahassee, Florida 32399

Dear Chairman Bracy,

I respectfully request you place Senate Bill 312, relating to Eyewitness Protection on your Criminal Justice agenda at your earliest convenience.

This bill requires state, county, municipal, or other law enforcement agencies that conduct lineups to follow specified procedures. It includes that a lineup must be conducted by an independent administrator or an alternative method such as using a computer or photo lineup. Any alternative method must be carefully structured and approved by the Criminal Justice and Standards and Training Commission.

I appreciate your favorable consideration.

Onward & Upward,

A handwritten signature in black ink, appearing to read "Dennis Baxley".
Dennis Baxley
Senator, District 12

DKB/dd

cc: Jennifer Hrdlicka, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 350

INTRODUCER: Senator Clemens

SUBJECT: Criminal Justice Standards and Training Commission

DATE: February 20, 2017 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Hrdlicka	CJ	Favorable
2.		ACJ	
3.		AP	

I. Summary:

SB 350 requires the Criminal Justice Standards and Training Commission (CJSTC) to implement, administer, maintain, and revise a basic abilities examination for all applicants for basic recruit training in law enforcement and corrections. This examination is formally referred to as the Basic Abilities Test (BAT). The CJSTC must also establish by rule procedures for administering the BAT and standards for acceptable performance on the BAT.

The CJSTC must set a nonrefundable fee, not to exceed \$50, for the BAT. Funds collected from the examination fee must be deposited in the Criminal Justice Standards and Training Commission Trust Fund. The fee does not take effect until implementation of the revised BAT, which must occur on or before January 1, 2019.

The Florida Department of Law Enforcement (FDLE) estimates that the bill will result in an additional \$400,000 to the Criminal Justice Standards and Training Trust Fund. The FDLE will absorb the costs of data transfer modifications using current FDLE staff and resources.

The FDLE proposed the provisions of the bill in a recent report on the BAT. If the bill becomes law, the FDLE will develop and maintain the BAT and contract with Miami Dade College to administer the BAT statewide.

II. Present Situation:

The Criminal Justice Standards and Training Commission

The 19-member Criminal Justice Standards and Training Commission (CJSTC) is established pursuant to s. 943.11, F.S.¹ The CJSTC has a number of responsibilities relating to the training,

¹ The 19 members include: the Secretary of the Department of Corrections (DOC) or a designated assistant; the Attorney General or a designee; the Director of the Division of the Florida Highway Patrol; and 16 members appointed by the

certification, and discipline of full-time, part-time, and auxiliary law enforcement officers, correctional officers, and correctional probation officers. Relevant to training responsibilities, s. 943.12, F.S., requires the CJSTC to:

- Adopt rules for the administration of ss. 943.085-943.255, F.S. (relating to officer standards, employment, training, certification, and discipline);
- Certify and revoke the certification of officers, instructors, including agency in-service training instructors, and criminal justice training schools;²
- Establish uniform minimum training standards for the training of officers in the various criminal justice disciplines;
- Consult and cooperate with municipalities or the state or any political subdivision of the state and with universities, colleges, community colleges, and other educational institutions concerning the development of criminal justice training schools and programs or courses of instruction, including education and training in the areas of criminal justice administration and all allied and supporting disciplines;
- Conduct official inquiries or require criminal justice training schools to conduct official inquiries of criminal justice training instructors who are certified by the CJSTC;
- Establish minimum curricular requirements for criminal justice training schools;
- Make, publish, or encourage studies on any aspect of criminal justice education and training or recruitment, including the development of defensible and job-related psychological, selection, and performance evaluation tests;
- With the approval of the FDLE Commissioner, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as the CJSTC determines are necessary, expedient, or incidental to the performance of its duties or the execution of its powers; and
- Adopt rules for the certification, maintenance, and discipline of officers who engage in those specialized areas found to present a high risk of harm to the officer or the public at large and which would in turn increase the potential liability of an employing agency.³

Additionally, s. 943.17, F.S., requires the CJSTC to assure that entrance into the basic recruit training program for law enforcement and correctional officers is limited to those who have passed a basic skills examination and assessment instrument, based on a job task analysis in each discipline and adopted by the CJSTC.⁴ This examination is formally referred to as the Basic Abilities Test (BAT). The BAT predicts the likelihood for success in basic recruit training and

Governor. The Governor's appointees include: three sheriffs; three police chiefs; five law enforcement officers who are of the rank of sergeant or below within the employing agency; two correctional officers, one of whom is an administrator of a state correctional institution and one of whom is of the rank of sergeant or below within the employing agency; one training center director; one person who is in charge of a county correctional institution; and one resident of the state who falls into none of the foregoing classifications. Prior to appointment, the sheriff, police chief, law enforcement officer, and correctional officer members must have had at least four years' experience as law enforcement officers or correctional officers.

² Section 943.10(16), F.S., defines "criminal justice training school" as any private or public criminal justice training school certified by the CJSTC.

³ This responsibility includes adopting rules relating to firearms proficiency by law enforcement officers.

⁴ See Rule 11B-35.0011, F.A.C. This requirement does not apply to correctional probation officers. Correctional probation officers must have a bachelor's degree. See "Officer Requirements," Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/cms/CJSTC/Officer-Requirements/How-to-Become-an-Officer.aspx> (last visited on February 3, 2017).

the State Officer Certification Examination (SOCE).⁵ The BAT assesses written comprehension and expression, information ordering, spatial orientation, memorization, problem sensitivity, and inductive and deductive reasoning.⁶ The BATs is administered in Florida and tailored to the applicable discipline for which the recruit is seeking program admission.⁷

2017 FDLE Report on the BAT

Proviso language in the 2016-17 General Appropriations Act required the FDLE, on or before January 1, 2017, to report to the Governor and the Legislature “on the status of development of the basic abilities test for all applicants for basic recruit training in law enforcement and corrections. The report shall include recommendations regarding statutory language necessary for implementation of the basic abilities test, including establishment of a standardized fee structure that does not deter low-income and middle-income persons from taking the test.”⁸

The FDLE submitted its report to the Governor and the Legislature on December 30, 2016.⁹ The report, which is discussed in detail in this section of the analysis, includes but is not limited to, a brief legislative history regarding the basic skills examination; a discussion of the current system of developing and administering the BAT test and its fee structure; problems the FDLE identified with the current system; and the FDLE’s proposed changes to the current system, including proposed statutory language.

Current Status of the BAT and Problems Identified by the FDLE

The CJSTC, through the FDLE, contracted with three providers to develop and administer the BAT. Two of the providers, I/O Solutions and Morris & McDaniel, are out-of-state vendors. The third provider is Miami Dade College. The providers follow basic contractual requirements established by the FDLE.

The FDLE stated that the goal of the contract is to standardize testing between providers; however, the exam development process does not lend itself to extensive regulation and contract requirements are limited. The contract:

- Specifies that the providers must develop and maintain a test that will measure minimum competency of individuals seeking enrollment in an academy or employment in Florida’s criminal justice system;
- Requires that the test specifically assess an applicant’s written comprehension and expression, as well as abilities in organizing information, spatial orientation, memorization, problem sensitivity, and inductive and deductive reasoning; and
- Specifies that items on the test must be based on a Florida job task analysis adopted by the CJSTC.

⁵ “Basic Abilities Test (BAT),” Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/cms/CJSTC/Officer-Requirements/Basic-Abilities-Test.aspx> (last visited on February 3, 2017).

⁶ *Id.*

⁷ See Rule 11B-35.0011, F.A.C.

⁸ Proviso for specific appropriations 1267-1276, ch. 2016-66, L.O.F.

⁹ *Report on the Status of Development of the Basic Abilities Test*, Florida Department of Law Enforcement, and report transmittal letters to the Governor, President of the Senate, and Speaker of the House of Representatives (December 30, 2017) (on file with the Senate Committee on Criminal Justice). Unless otherwise indicated, all information in this section of the analysis is from this report.

Although the FDLE provides the job task analysis to each provider, the department does not play a role in designing, administering, or delivering the BAT or the selection of exam site locations. This is the responsibility of the providers. The FDLE assists the CJSTC by providing oversight of the BAT providers to ensure compliance with the basic contractual requirements for development and delivery of the BAT. The FDLE also collects required data from each provider to ensure entry of examination results into the officer records system and correct errors in the data.¹⁰

The FDLE identified three problems with providers developing and administering the BAT:

- Three unique tests, each with their own level of difficulty cause confusing and unnecessary problems for the schools and agencies that administer the test, the test takers, and the employing agencies;
- Disparate testing standards and procedures result from training and selection centers having the discretion to choose which test to administer or endorse; and
- Because of these disparities and miscommunication, test centers and applicants often misunderstand the process, and these misunderstandings are time-consuming to resolve and unduly complicate the program.¹¹

Although the tests are developed and defended by the three providers, there are occasions when the FDLE can be held accountable for the providers' actions. The FDLE stated that this problem has been most pronounced in its interaction with the Department of Justice, Office for Civil Rights (OCR). On June 23, 2015, the OCR sent a letter to the FDLE requesting data concerning test results for the BAT. The OCR subsequently raised a concern that I/O Solutions' test exhibited a higher degree of adverse impact¹² compared to those of Morris & McDaniel and Miami Dade College. The OCR recommended that the FDLE discontinue using I/O Solutions; however, this would have left a large void in service throughout the state. After several communications with the OCR and I/O Solutions, the parties agreed that I/O Solutions would change its test and lower the passing rate. The FDLE also agreed to retroactively apply the new passing rate to applicants who had taken the test during the previous five years.¹³

¹⁰ When applicants register to take the BAT, they contact the school or agency that administers the test. The provider is responsible for providing applicant information and test results to the FDLE, including demographic information that is entered into the FDLE's Automated Training Management System. This produces the initial record of the applicant in the CJSTC officer records system and follows the applicant throughout his or her entire law enforcement or corrections career. Before manually uploading this key information, the FDLE must review the applicant information in detail to ensure its accuracy. The FDLE is required to troubleshoot any discrepancies in the data and respond to inquiries regarding test results. Any errors created by the provider must be resolved by the FDLE.

¹¹ The FDLE stated that it has conducted workshops and distributed memorandums to make the testing process more clear; however, in spite of explaining that a passing score from any of the providers qualifies the applicant to enter an academy, some academies are still hesitant to enroll the recruit unless he or she can show a passing score from a particular provider. Similarly, some agencies are reluctant to hire applicants unless they can show a passing score from a preferred provider.

¹² Federal Uniform Guidelines on employee selection procedures define "adverse impact" as "[a] selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact." 29 CFR 1607.4 (Information on Impact).

¹³ The FDLE stated that the OCR is aware of the proposal to develop a single test and sees this as a major part of the solution to address adverse impact. The OCR will continue to monitor the situation.

Because the providers are responsible for the entire development and delivery of the BAT, they establish and collect all examination fees. The FDLE does not recover any costs; the providers and test sites retain all revenue. The FDLE and the CJSTC do not currently have statutory authority to collect funds generated from the BAT or direct those funds to the Criminal Justice Standards and Training Commission Trust Fund.

The FDLE stated that the BAT fees are generally inconsistent, and in most cases, based on what the market can bear.¹⁴ The fees range from \$18 to \$75 and the statewide average is \$46. Two of the providers, I/O Solutions and Morris & McDaniel, rely on CJSTC-certified training schools and agencies to administer the test. Miami Dade College administers the BAT on campus, but relies on CJSTC-certified training schools and agencies to administer the BAT at other locations. The training schools and agencies often apply a surcharge fee to administer the test. While this surcharge is also inconsistent statewide, a majority of test sites charge \$25. The DOC charges the lowest BAT fee, \$18, at test sites for its applicants. The DOC does not include an administrative surcharge.

FDLE's Proposed Changes

Based on the problems the FDLE identified, it concluded that the best alternative is to establish a single test developed and maintained by the FDLE,¹⁵ thereby eliminating a role of third-party providers in developing and maintaining the BAT. The FDLE would develop and maintain the BAT and contract for administrative services with a single provider.¹⁶

The FDLE's role in developing the BAT would include:

- Evaluating each question's validity based on the performance of the test takers;
- Ensuring that test questions meet the rules and requirements in Florida Statutes and administrative rules;
- Reviewing the content on a regular basis to ensure the validity and applicability of the test questions to standardize the content and difficulty level of the BAT;
- Eliminating much of the confusion that now exists between stakeholders; and
- Having direct control over the management of adverse impact, which would make the FDLE better positioned to address any legal challenges to the test.

¹⁴ The FDLE stated that the fees and administrative charges are comparable to other similar exams. Examples cited by the FDLE include: the Test of Essential Academic Skills (TEAS), an assessment of entry-level skills and abilities required to enter a nursing program (standardized fee of \$55 and surcharges ranging from \$10 to \$55); the National Criminal Justice Officer Selection Inventory (NCJOSI), a cognitive abilities exam designed to measure minimum competency of people attempting to enter the field of criminal justice (fees ranging from \$50 to \$75); and the ACT and SAT, college-readiness exams (fees of \$43 and \$45, respectively, and substantial additional fees for scores, phone registration, test date changes, location changes, etc.).

¹⁵ Based on its prior experience in delivering both paper-and-pencil testing and computer-based testing, the FDLE determined computer-based testing is the best option.

¹⁶ As previously noted, the FDLE, through the CJSTC, already has oversight of the development and administration of the BAT and the contractual agreement with the vendors currently administering the examinations. This change would move FDLE's responsibility from contract monitoring for compliance to development and administration of the examinations. The CJSTC currently is responsible for the development and administration of the SOCE, so this added responsibility would be an extension of existing functions.

The FDLE's role in maintaining the BAT would include:

- Item development;
- Standards setting;
- Validation studies;
- Statistical analysis;
- Legal defensibility;
- Customer service to examinees;
- The processing of all public records requests; and
- Oversight and maintenance of the BAT results in the Automated Training Management System.

The FDLE determined that contracting with Miami Dade College, a current provider, would be the best option to administer to the BAT statewide.¹⁷ Miami Dade College would be responsible for registration and administration of the test; directing and managing the work efforts of subcontractor personnel and ensuring the quality of their work; and ensuring the security of the test items during testing. The FDLE stated that the existence of a single examination administrator would reduce execution errors; help prevent mistakes in the collection and dissemination of testing data; and increase the efficiency, expediency, and consistency of the testing process. If, for any reason, the FDLE is unable to finalize an agreement with Miami Dade College, it would seek an alternative vendor.

The FDLE proposed to cap the test fee for applicants at \$50, which includes an allowance for up to \$10 for the administrative surcharge. The fee is structured to allow all parties responsible for the development and administration of the BAT to recover some, if not all, of their costs. The fee is based on expected costs for both Miami Dade College¹⁸ and the FDLE.¹⁹ Miami Dade College proposed a fee of \$20 per test to cover their costs and the FDLE estimated its costs will also be covered by receiving \$20 per test.

III. Effect of Proposed Changes:

This bill adopts the proposed statutory language in the 2017 FDLE report on the BAT. The bill amends s. 943.12, F.S., to require the CJSTC to implement, administer, maintain, and revise the BAT. The CJSTC must also establish by rule procedures for administering the BAT and standards for acceptable performance on the BAT.

The bill also amends s. 943.17, F.S., to require the CJSTC to set a nonrefundable fee, not to exceed \$50, for the BAT. Funds collected from the examination fee must be deposited in the Criminal Justice Standards and Training Commission Trust Fund. The fee does not take effect until implementation of the revised BAT, which must occur on or before January 1, 2019.

¹⁷ The FDLE has been in formal discussion with college representatives and has a tentative agreement with them through a proposed memorandum of understanding. Under the agreement, Miami Dade College will assume sole responsibility for administration of the BAT and will ensure the test is consistently and fairly administered. As with any test proctoring, Miami Dade College will be responsible for ensuring security of the test items during testing.

¹⁸ Further details are provided in the "Private Sector Impact" statement in this analysis.

¹⁹ Further details are provided in the "Government Sector Impact" statement in this analysis.

The bill also amends s. 943.25, F.S., relating to criminal justice trust funds, to correct a reference to conform to changes made to s. 943.12, F.S., and reenacts s. 943.173(3), F.S.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The FDLE reports that the bill will not have any impact on local government revenues or expenditures.²⁰ BAT fees are paid by the individuals taking the test.

B. Private Sector Impact:

If the bill becomes law, the FDLE will contract for administrative services with Miami Dade College. Miami Dade College will be responsible for registration and administration of the test, as well as managing the relationship with all subcontractor organizations. Costs of administering the examinations will be borne by Miami-Dade College.

The two out-of-state vendors currently used, I/O Solutions and Morris & McDaniel, would no longer administer their tests for entrance into a basic recruit training program, which may impact their revenue from Florida.

C. Government Sector Impact:

The bill caps the test fee for applicants at \$50, which includes an allowance for up to \$10 for the administrative surcharge. According to the FDLE, the fee is structured to allow all parties responsible for the development and administration of the BAT to recover some, if not all, of their costs. The fee is based on expected costs for both Miami Dade College and the FDLE. Miami Dade College proposed a fee of \$20 per test to cover their costs and the FDLE estimated its costs will also be covered by receiving \$20 per test.

²⁰ 2017 FDLE Legislative Bill Analysis (SB 350) (January 20, 2017) (on file with the Senate Committee on Criminal Justice). All information in this section of the analysis is from this document.

The FDLE estimates that the bill will result in an additional \$400,000 to the Criminal Justice Standards and Training Trust Fund. This is an estimate of net revenue based on 20,000 examinees per year and accounts for Miami-Dade College's costs for administering the examinations.

The FDLE will absorb the costs of data transfer modifications using current FDLE staff and resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.12, 943.17, and 943.25.

This bill also reenacts section 943.173 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 Clemens

31-00362A-17

2017350__

1 A bill to be entitled

2 An act relating to the Criminal Justice Standards and
 3 Training Commission; amending s. 943.12, F.S.;
 4 requiring the Criminal Justice Standards and Training
 5 Commission to implement, administer, maintain, and
 6 revise a basic abilities examination by a specified
 7 date; requiring the commission to establish specified
 8 procedures and standards; amending s. 943.17, F.S.;
 9 requiring the commission to set a fee for the basic
 10 abilities examination; requiring a nonrefundable fee
 11 for each examination attempt; requiring that
 12 examination fees be deposited in the Criminal Justice
 13 Standards and Training Trust Fund; providing a
 14 condition for when the examination fee takes effect;
 15 reenacting s. 943.173(3), F.S., relating to
 16 examinations, administration, and materials not being
 17 public records, to incorporate the amendment made to
 18 s. 943.17, F.S., in a reference thereto; reenacting
 19 and amending s. 943.25(2), F.S., relating to criminal
 20 justice trust funds; conforming a provision to changes
 21 made by the act; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Subsection (18) is added to section 943.12,
 26 Florida Statutes, to read:

27 943.12 Powers, duties, and functions of the commission.—The
 28 commission shall:

29 (18) On or before January 1, 2019, implement, administer,
 30 maintain, and revise a basic abilities examination for all
 31 applicants for basic recruit training in law enforcement and
 32 corrections. The commission shall establish by rule procedures

Page 1 of 4

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

31-00362A-17

2017350__

33 for the administration of the basic abilities examination. The
 34 commission shall also establish standards for acceptable
 35 performance on the examination.

36 Section 2. Paragraph (g) of subsection (1) of section
 37 943.17, Florida Statutes, is amended, and paragraph (h) is added
 38 to that subsection, to read:

39 943.17 Basic recruit, advanced, and career development
 40 training programs; participation; cost; evaluation.—The
 41 commission shall, by rule, design, implement, maintain,
 42 evaluate, and revise entry requirements and job-related
 43 curricula and performance standards for basic recruit, advanced,
 44 and career development training programs and courses. The rules
 45 shall include, but are not limited to, a methodology to assess
 46 relevance of the subject matter to the job, student performance,
 47 and instructor competency.

48 (1) The commission shall:

49 (g) Assure that entrance into the basic recruit training
 50 program for law enforcement and correctional officers be limited
 51 to those who have passed a basic abilities skills examination
 52 and assessment instrument, based on a job task analysis in each
 53 discipline and adopted by the commission.

54 (h) Set a fee, not to exceed \$50, for the basic abilities
 55 examination. The fee applies to one scheduled examination
 56 attempt and is not refundable. Fees collected pursuant to this
 57 paragraph shall be deposited in the Criminal Justice Standards
 58 and Training Trust Fund. This paragraph shall take effect upon
 59 the implementation of the revised basic abilities examination on
 60 or before January 1, 2019, as specified in s. 943.12(18).

61 Section 3. For the purpose of incorporating the amendment

Page 2 of 4

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31-00362A-17

2017350

62 made by this act to section 943.17, Florida Statutes, in a
63 reference thereto, subsection (3) of section 943.173, Florida
64 Statutes, is reenacted to read:

65 943.173 Examinations; administration; materials not public
66 records; disposal of materials.—

67 (3) All examinations, assessments, and instruments and the
68 results of examinations, other than test scores on officer
69 certification examinations, including developmental materials
70 and workpapers directly related thereto, prepared, prescribed,
71 or administered pursuant to ss. 943.13(9) or (10) and 943.17 are
72 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
73 of the State Constitution. Provisions governing access to,
74 maintenance of, and destruction of relevant documents pursuant
75 to this section shall be prescribed by rules adopted by the
76 commission.

77 Section 4. Subsection (2) of section 943.25, Florida
78 Statutes, is reenacted and amended to read:

79 943.25 Criminal justice trust funds; source of funds; use
80 of funds.—

81 (2) There is created, within the Department of Law
82 Enforcement, the Criminal Justice Standards and Training Trust
83 Fund for the purpose of providing for the payment of necessary
84 and proper expenses incurred by the operation of the commission
85 and the Criminal Justice Professionalism Program and providing
86 commission-approved criminal justice advanced and specialized
87 training and criminal justice training school enhancements and
88 of establishing the provisions of s. 943.17 and developing the
89 specific tests provided under s. 943.12 s. 943.12(9). The
90 program shall administer the Criminal Justice Standards and

Page 3 of 4

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

31-00362A-17

2017350

91 Training Trust Fund and shall report the status of the fund at
92 each regularly scheduled commission meeting.

93 Section 5. This act shall take effect July 1, 2017.

Page 4 of 4

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

THE FLORIDA SENATE
APPEARANCE RECORD

2.21.17

Meeting Date

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

350

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name RON DRAA

Job Title EXTERNAL AFFAIRS DIRECTOR

Address 2331 PHILLIPS ROAD
Street

TALLAHASSEE
City

FL
State

32308
Zip

Phone 850.410.7020

Email RONALD.DRAA@FDLE.STATE.FL.US

Speaking: For Against Information

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

Representing FDLE

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

2/21/17

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

SB 350

Meeting Date

Bill Number (if applicable)

Topic Criminal Justice Standards and Training Commission

Amendment Barcode (if applicable)

Name Scott D. McCoyJob Title Senior Policy CounselAddress P.O. Box 10788Phone 850-521-3042

Street

TallahasseeFL32302

City

State

Zip

Email scott.mccoy@splcenter.orgSpeaking: For Against InformationWaive Speaking: In Support Against
*(The Chair will read this information into the record.)*Representing Southern Poverty Law CenterAppearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/21/17

Meeting Date

350

Bill Number (if applicable)

Topic CJSTC

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

Address P. O. Box 14038

Phone 850-219-3631

Street

TALLAHASSEE, FL

State

Zip

Email amercer@fpcat.com

Speaking: For Against Information

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

Representing

Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

21 Feb 17

Meeting Date

350

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

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Phone 850.510.9922

Email barney@smartjusticealliance.org

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JEFF CLEMENS

Democratic Whip
31st District

COMMITTEES:

Community Affairs, Vice Chair
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Higher Education
Communications, Energy, and Public Utilities
Criminal Justice

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

January 26, 2017

Senator Randolph Bracy, Chair
Senate Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Bracy:

I respectfully request that SB 350 – Criminal Justice Standards and Training Commission be added to the agenda for the next Senate Committee on Criminal Justice meeting.

SB 350, at the request of the Florida Department of Law Enforcement, authorizes the department to implement, administer, maintain and revise a basic abilities examination for all applicants for basic recruit training in law enforcement and corrections as required by law.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 31

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: **SB 494**

INTRODUCER: Senator Bradley

SUBJECT: Compensation of Victims of Wrongful Incarceration

DATE: February 20, 2017 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	Favorable
2. _____	_____	<u>JU</u>	_____
3. _____	_____	<u>AP</u>	_____

I. Summary:

SB 494 amends ch. 961, F.S., which provides a process whereby a person who has been wrongfully incarcerated may, under limited circumstances, seek a court order finding the person to be eligible for compensation.

Under current law, regardless of the fact of his or her wrongful incarceration, the person is not eligible for compensation if he or she has a criminal history that includes any felony.¹ This is commonly called the “clean hands” provision of Florida’s wrongful incarceration compensation law.

The bill creates a definition of the term “violent felony” in s. 961.02, F.S. The bill provides that in order to be ineligible for compensation under ss. 961.04(1) or (2), or 961.06(2), F.S., the person must have committed a violent felony, not a simple felony, under the circumstances set forth in those sections.

The practical effect of the bill cannot be determined with any certainty. It appears the bill could increase the pool of people who could seek compensation under the statute based upon the relaxation of the ineligibility standard from “simple felony” to “violent felony.” However, it cannot be predicted how many cases of wrongful incarceration currently exist or may occur in the future, or whether a person in the expanded pool will be or currently is wrongfully incarcerated. Without the existence of a wrongful incarceration, the standard for seeking redress is immaterial.

¹ Section 961.04, F.S.

II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.² The Act provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation from the state.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.³ The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.⁴

To date, four persons have been compensated under the Act for a total of \$4,276,901.⁵

“Clean Hands” Provision of the Act – Section 961.04, F.S.

In cases where sufficient evidence of actual innocence exists, a person is nonetheless *ineligible* for compensation if:

- *Before* the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any felony offense*, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- *During* the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any felony offense*; or
- *During* the person's wrongful incarceration, the person was also serving a *concurrent sentence for another felony* for which the person was not wrongfully convicted.⁶

Of the states that have statutes that provide for compensation for wrongfully incarcerated persons, Florida is the only state with a “clean hands” provision.⁷

² Chapter 961, F.S. (2008-39, Laws of Florida). To date, four persons have been compensated under the Act. (February 10, 2017, e-mail from Attorney General's Office staff on file with Criminal Justice staff.)

³ Section 961.05, F.S.

⁴ Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any state college as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets certain requirements; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; the amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction; and notwithstanding any provision to the contrary in s. 943.0583, F.S., or s. 943.0585, F.S., immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.

⁵ Correspondence with the Office of the Attorney General, February 18, 2015; Chief Financial Officer, October 23, 2015.

⁶ Section 961.04, F.S.

⁷ *Making Up for Lost Time*, page 19, (2009), The Innocence Project, Benjamin N. Cardozo School of Law.

Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense

A person could be wrongfully incarcerated for a crime and then placed on parole or community supervision for that crime after the incarcerative part of the sentence is served.⁸

Section 961.06(2), F.S., addresses this situation in terms of eligibility for compensation for the period of wrongful incarceration. Under this provision, if a person commits a misdemeanor or some technical violation of his or her supervision that results in revocation of the community supervision or parole, the person is still eligible for compensation. If, however, any felony law violation results in revocation, the person is no longer eligible for compensation.⁹

III. Effect of Proposed Changes:

The bill amends the Wrongful Incarceration Compensation Act so that a person who otherwise meets the statutory criteria¹⁰ for compensation is no longer ineligible due to a prior nonviolent felony, a nonviolent felony committed while wrongfully incarcerated, or a nonviolent felony committed while on parole or community supervision.¹¹

“Violent felony” is defined in the bill by cross-referencing ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar.

The violent felony offenses that would preclude a wrongfully incarcerated person from being eligible for compensation under the bill are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;

⁸ Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines, which was October 1, 1983, and only then if they meet the statutory criteria. ch. 82-171, Laws of Florida; s. 947.16, F.S. The term “community supervision” as used in s. 961.06(2), F.S., could include control release, conditional medical release, or conditional release under the authority of the Commission on Offender Review (ch. 947, F.S.), or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

⁹ Section 961.06(2), F.S.

¹⁰ The person committed neither the act nor the offense that served as the basis for the conviction and incarceration and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense. s. 961.03(3) and (7), F.S.

¹¹ Sections 961.04 and 961.06, F.S.

- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

The bill reorganizes s. 961.02, F.S., the “definitions” section of the Act and adds a definition of “violent felony.” Additionally, the bill reenacts s. 961.03(1)(a), (2), (3), and (4), F.S., s. 961.05(6), F.S., s. 961.055(1), F.S., and s. 961.056(4) F.S., to incorporate the amendments made by the bill.

The bill takes effect October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is possible that more persons will be eligible for compensation under the provisions of the bill. A person who is entitled to compensation under the Act will be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person.

C. Government Sector Impact:

More persons are potentially eligible for compensation under the provisions of the bill. A person who is entitled to compensation based on wrongful incarceration would be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million.¹² Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

Although statutory limits on compensation under the Act are clear, the fiscal impact of the bill is unquantifiable. The possibility that a person would be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total \$4,276,901.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.04, and 961.06.

The bill reenacts the following sections of the Florida Statutes: 961.03, 961.05, 961.055, and 961.056.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

¹² The Chief Financial Officer may adjust the annual rate of compensation for inflation for persons found to be wrongfully incarcerated after December 31, 2008. s. 961.06(1)(a), F.S.

B. Amendments:

None.

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

By Senator Bradley

5-00262-17

2017494

A bill to be entitled

An act relating to compensation of victims of wrongful incarceration; reordering and amending s. 961.02, F.S.; making technical changes; defining the term "violent felony"; amending s. 961.04, F.S.; revising the circumstances under which a wrongfully incarcerated person is not eligible for compensation under the Victims of Wrongful Incarceration Compensation Act; amending s. 961.06, F.S.; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation; reenacting s. 961.03(1)(a), (2), (3), and (4), F.S., relating to determination of status as a wrongfully incarcerated person and of eligibility for compensation, to incorporate the amendment made to s. 961.04, F.S., in references thereto; reenacting ss. 961.05(6), 961.055(1), and 961.056(4), F.S., relating to determination of entitlement to compensation, application for compensation for a wrongfully incarcerated person, and an alternative application for compensation for a wrongfully incarcerated person, respectively, to incorporate the amendment made to s. 961.06, F.S., in references thereto; providing an effective date.

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

Section 1. Section 961.02, Florida Statutes, is reordered and amended to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

Page 1 of 7

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5-00262-17

2017494

(1) "Act" means the Victims of Wrongful Incarceration Compensation Act.

(2) "Department" means the Department of Legal Affairs.

(3) "Division" means the Division of Administrative Hearings.

~~(7) (4) "Wrongfully incarcerated person" means a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and who is the subject of an order issued by the original sentencing court pursuant to s. 961.03, with respect to whom pursuant to the requirements of s. 961.03, the original sentencing court has issued its order finding that the person did not commit neither committed the act or nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.~~

~~(4) (5) "Eligible for compensation" means that a person meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.~~

~~(5) (6) "Entitled to compensation" means that a person meets the definition of the term "eligible for compensation" and satisfies the application requirements prescribed in s. 961.05, and may receive compensation pursuant to s. 961.06.~~

(6) "Violent felony" means a felony listed in s. 775.084(1)(c)1. or s. 948.06(8)(c).

Section 2. Section 961.04, Florida Statutes, is amended to read:

961.04 Eligibility for compensation for wrongful

Page 2 of 7

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62 incarceration.—A wrongfully incarcerated person is not eligible
 63 for compensation under the act if:
 64 (1) Before the person's wrongful conviction and
 65 incarceration, the person was convicted of, or pled guilty or
 66 nolo contendere to, regardless of adjudication, any violent
 67 felony offense, or a crime committed in another jurisdiction the
 68 elements of which would constitute a violent felony in this
 69 state, or a crime committed against the United States which is
 70 designated a violent felony, excluding any delinquency
 71 disposition;

72 (2) During the person's wrongful incarceration, the person
 73 was convicted of, or pled guilty or nolo contendere to,
 74 regardless of adjudication, any violent felony offense; or

75 (3) During the person's wrongful incarceration, the person
 76 was also serving a concurrent sentence for another felony for
 77 which the person was not wrongfully convicted.

78 Section 3. Subsection (2) of section 961.06, Florida
 79 Statutes, is amended to read:

80 961.06 Compensation for wrongful incarceration.—

81 (2) In calculating monetary compensation under paragraph
 82 (1)(a), a wrongfully incarcerated person who is placed on parole
 83 or community supervision while serving the sentence resulting
 84 from the wrongful conviction and who commits anything less than
 85 a violent felony law violation that results in revocation of the
 86 parole or community supervision is eligible for compensation for
 87 the total number of years incarcerated. A wrongfully
 88 incarcerated person who commits a violent felony law violation
 89 that results in revocation of the parole or community
 90 supervision is ineligible for any compensation under subsection

Page 3 of 7

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91 (1).
 92 Section 4. For the purpose of incorporating the amendment
 93 made by this act to section 961.04, Florida Statutes, in
 94 references thereto, paragraph (a) of subsection (1) and
 95 subsections (2), (3), and (4) of section 961.03, Florida
 96 Statutes, are reenacted to read:
 97 961.03 Determination of status as a wrongfully incarcerated
 98 person; determination of eligibility for compensation.—
 99 (1)(a) In order to meet the definition of a "wrongfully
 100 incarcerated person" and "eligible for compensation," upon entry
 101 of an order, based upon exonerating evidence, vacating a
 102 conviction and sentence, a person must set forth the claim of
 103 wrongful incarceration under oath and with particularity by
 104 filing a petition with the original sentencing court, with a
 105 copy of the petition and proper notice to the prosecuting
 106 authority in the underlying felony for which the person was
 107 incarcerated. At a minimum, the petition must:
 108 1. State that verifiable and substantial evidence of actual
 109 innocence exists and state with particularity the nature and
 110 significance of the verifiable and substantial evidence of
 111 actual innocence; and
 112 2. State that the person is not disqualified, under the
 113 provisions of s. 961.04, from seeking compensation under this
 114 act.
 115 (2) The prosecuting authority must respond to the petition
 116 within 30 days. The prosecuting authority may respond:
 117 (a) By certifying to the court that, based upon the
 118 petition and verifiable and substantial evidence of actual
 119 innocence, no further criminal proceedings in the case at bar

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120 can or will be initiated by the prosecuting authority, that no
 121 questions of fact remain as to the petitioner's wrongful
 122 incarceration, and that the petitioner is not ineligible from
 123 seeking compensation under the provisions of s. 961.04; or

124 (b) By contesting the nature, significance, or effect of
 125 the evidence of actual innocence, the facts related to the
 126 petitioner's alleged wrongful incarceration, or whether the
 127 petitioner is ineligible from seeking compensation under the
 128 provisions of s. 961.04.

129 (3) If the prosecuting authority responds as set forth in
 130 paragraph (2)(a), the original sentencing court, based upon the
 131 evidence of actual innocence, the prosecuting authority's
 132 certification, and upon the court's finding that the petitioner
 133 has presented clear and convincing evidence that the petitioner
 134 committed neither the act nor the offense that served as the
 135 basis for the conviction and incarceration, and that the
 136 petitioner did not aid, abet, or act as an accomplice to a
 137 person who committed the act or offense, shall certify to the
 138 department that the petitioner is a wrongfully incarcerated
 139 person as defined by this act. Based upon the prosecuting
 140 authority's certification, the court shall also certify to the
 141 department that the petitioner is eligible for compensation
 142 under the provisions of s. 961.04.

143 (4)(a) If the prosecuting authority responds as set forth
 144 in paragraph (2)(b), the original sentencing court shall make a
 145 determination from the pleadings and supporting documentation
 146 whether, by a preponderance of the evidence, the petitioner is
 147 ineligible for compensation under the provisions of s. 961.04,
 148 regardless of his or her claim of wrongful incarceration. If the

Page 5 of 7

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149 5-00262-17
 150 court finds the petitioner ineligible under the provisions of s.
 151 961.04, it shall dismiss the petition.

152 (b) If the prosecuting authority responds as set forth in
 153 paragraph (2)(b), and the court determines that the petitioner
 154 is eligible under the provisions of s. 961.04, but the
 155 prosecuting authority contests the nature, significance or
 156 effect of the evidence of actual innocence, or the facts related
 157 to the petitioner's alleged wrongful incarceration, the court
 158 shall set forth its findings and transfer the petition by
 159 electronic means through the division's website to the division
 160 for findings of fact and a recommended determination of whether
 161 the petitioner has established that he or she is a wrongfully
 162 incarcerated person who is eligible for compensation under this
 163 act.

164 Section 5. For the purpose of incorporating the amendment
 165 made by this act to section 961.06, Florida Statutes, in a
 166 reference thereto, subsection (6) of section 961.05, Florida
 167 Statutes, is reenacted to read:

168 961.05 Application for compensation for wrong
 169 ful incarceration; administrative expunction; determination of
 170 entitlement to compensation.-

171 (6) If the department determines that a claimant meets the
 172 requirements of this act, the wrongfully incarcerated person who
 173 is the subject of the claim becomes entitled to compensation,
 174 subject to the provisions in s. 961.06.

175 Section 6. For the purpose of incorporating the amendment
 176 made by this act to section 961.06, Florida Statutes, in a
 177 reference thereto, subsection (1) of section 961.055, Florida
 178 Statutes, is reenacted to read:

Page 6 of 7

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5-00262-17

2017494__

178 961.055 Application for compensation for a wrongfully
179 incarcerated person; exemption from application by nolle
180 prosequi.—
181 (1) A person alleged to be a wrongfully incarcerated person
182 who was convicted and sentenced to death on or before December
183 31, 1979, is exempt from the application provisions of ss.
184 961.03, 961.04, and 961.05 in the determination of wrongful
185 incarceration and eligibility to receive compensation pursuant
186 to s. 961.06 if:
187 (a) The Governor issues an executive order appointing a
188 special prosecutor to review the defendant's conviction; and
189 (b) The special prosecutor thereafter enters a nolle
190 prosequi for the charges for which the defendant was convicted
191 and sentenced to death.
192 Section 7. For the purpose of incorporating the amendment
193 made by this act to section 961.06, Florida Statutes, in a
194 reference thereto, subsection (4) of section 961.056, Florida
195 Statutes, is reenacted to read:
196 961.056 Alternative application for compensation for a
197 wrongfully incarcerated person.—
198 (4) If the department determines that a claimant making
199 application under this section meets the requirements of this
200 chapter, the wrongfully incarcerated person is entitled to
201 compensation under s. 961.06.
202 Section 8. This act shall take effect October 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

21 Feb 17

Meeting Date

494

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe St., Ste. 201

Phone 850.510.9922

Street

Tall

FL

32301

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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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/21/17

Meeting Date

53 494

Bill Number (if applicable)

Topic Compensation of victims

Amendment Barcode (if applicable)

Name Herman Lindsey

Job Title _____

Address 5301 N.E. 17th Ave
Street

Pompano Bch, FL 33064
City State Zip

Phone 954-991-8731

Email Herm4Justice.O.
gmail.com

Speaking: For Against Information

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

Representing WII, EJUSA, FADP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/21/2017

Meeting Date

494

Bill Number (if applicable)

Topic Comp. for Wrongful Incarceration

Amendment Barcode (if applicable)

Name Jorge Chambo

Job Title Attorney

Address 108 South Monroe Street

Street

Tallahassee, FL 32301

City

State

Zip

Phone (850) 681-0024

Email jorge@plpartners.com

Speaking: For Against Information

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

Representing Florida Assoc of Criminal Defense Lawyers (FACDL)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/2/17

Meeting Date

SB 494

Bill Number (if applicable)

Topic SB 494 - Compensation for Wrongfully Convicted Amendment Barcode (if applicable)

Name Michelle Feldman

Job Title State Policy Advocate, The Innocence Project

Address 40 worth Street, suite 702

Street

New York, NY

City

State

10007

Zip

Phone

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

2/21/17

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

SB 494

Meeting Date

Bill Number (if applicable)

Topic Compensation of Victims of Wrongful Incarceration

Amendment Barcode (if applicable)

Name Scott D. McCoyJob Title Senior Policy CounselAddress P.O. Box 10788Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against InformationWaive Speaking: In Support Against
*(The Chair will read this information into the record.)*Representing Southern Poverty Law CenterAppearing at request of Chair: Yes NoLobbyist 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

February 21, 2017

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

494

Meeting Date

Bill Number (if applicable)

Topic Compensation of Victims of Wrongful Incarceration

Amendment Barcode (if applicable)

Name Hon. Bob Dillinger

Job Title Public Defender, 6th Circuit

Address 14250 49th Street, North

Phone 727-464-6516

Street

Clearwater

FL

33762

City

State

Zip

Email bdilling@wearethehope.org

Speaking: For Against Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/21/17

Meeting Date

494

Bill Number (if applicable)

Topic Exoneree Compensation

Amendment Barcode (if applicable)

Name Seth Miller

Job Title Exec. Dir.

Address 1100 E. Park Ave.

Phone 850-561-6767

Street

Tallahassee

FL

32301

City

State

Zip

Email smiller@floridainnovation.org

Speaking: For Against Information

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

Representing Innovation Project of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



The Florida Senate
Committee Agenda Request

To: Senator Randolph Bracy, Chair
Committee on Criminal Justice

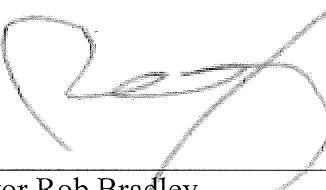
✓

Subject: Committee Agenda Request

Date: February 13, 2017

I respectfully request that **Senate Bill #494**, relating to Compensation of Victims of Wrongful Incarceration, be placed on the:

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



Senator Rob Bradley

Florida Senate, District 5

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 550

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Public Records/Murder Witness

DATE: February 22, 2017 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2. _____	_____	<u>JU</u>	_____
3. _____	_____	<u>GO</u>	_____
4. _____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 550 creates a public records exemption by making confidential and exempt criminal intelligence or investigative information that reveals the personal identifying information of a witness to a murder. The exemption applies to each witness for a period of 2 years following the commission of the murder observed by the witness.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

The Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

The bill becomes effective on July 1, 2017.

II. Present Situation:

Public Records Exemptions for Certain Investigation Information

Currently, s. 119.071(2), F.S., in relevant part, provides public records exemptions for various types of personal information of specified parties involved in the investigation of a crime. Information exempt from public records requirements includes information revealing the identity of a confidential informant or a confidential source,¹ information revealing the identity of a victim of a child abuse offense,² and information revealing the identity of a victim of any sexual offense.³

Witness to a Murder

“A witness’s fear [of retaliation] is perhaps the greatest threat to the criminal justice system’s ability to prosecute cases.”⁴ A witness’s intimidation may cause that person to decide not to come forward and provide crucial evidence to police or to refuse to testify in a case. “[I]nstances of witness intimidation create the perception that the law cannot protect its citizens and thereby undermines public confidence in the police and government. If individuals believe that they cannot be adequately protected, they are less likely to cooperate with the police, which in turn impedes the ability of the police to gather evidence in an attempt to stop criminal behavior.”⁵

News articles have recently reported on several homicides that occurred in 2015 in the Tampa area that remain unsolved.⁶ The victim of one of the unsolved murders was Edward Harris, a 14-year-old boy who was murdered in a park.⁷ A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015, Mr. Harris was the witness to multiple crimes that resulted in arrests.⁸ Mr. Harris’s family has made statements indicating they believe he was murdered as a result of talking to police.

The “confrontation clause” of the U.S. Constitution⁹ preserves a defendant’s right to confront a witness against him or her and to bring forward information that aids the jury in determining the

¹ Section 119.071(2)(f), F.S.

² Section 119.071(2)(h)1.a., F.S.

³ Section 119.071(2)(h)1.b., F.S.

⁴ Lisa I. Karsai, “You Can’t Give My Name: Rethinking Witness Anonymity In Light of the United States and British Experience” (Fall, 2011), 79 Tenn. L. Rev. 29.

⁵ Judge Joan Compart-Cassani, “Balancing the Anonymity of Threatened Witnesses Versus a Defendant’s Right of Confrontation: The Waiver Doctrine After Alvarado” (Fall, 2002), 39 San Diego L. Rev. 1165. “Even though the United States Department of Justice has conducted surveys about witness intimidation, the results of which indicate that it is increasing and widespread, the Department acknowledged that the exact extent of intimidation is unknown.”

⁶ Dan Sullivan, “Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders” (October 29, 2015), Tampa Bay Times, available at <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784> (last visited on February 10, 2017); Sue Carlton, “Solutions to street violence elusive amid anti-snitching culture” (June 2, 2015), Tampa Bay Times, available at <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047> (last visited on February 10, 2017).

⁷ Stephanie Slifer, “Dad believes son was killed in Tampa drive-by shooting for talking to cops” (June 2, 2015), CBS News, available at <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/> (last visited on February 10, 2017).

⁸ *Id.*

⁹ Sixth Amendment, U.S. Constitution.

truthfulness and reliability of the witness. For example, the defendant might expose a witness's prejudice, bias, or ulterior motivation to lie; expose lies; test a witness's ability to perceive and remember; or expose weaknesses in the witness's testimony. This right "minimizes the risk that a judgment will be predicated on incomplete, misleading, or even deliberately fabricated testimony."¹⁰

Florida Rules of Criminal Procedure require the prosecutor to disclose information about witnesses in discovery.¹¹ However, the rules do allow a court, on its own initiative or upon a motion of counsel, to restrict disclosure if the court finds that "there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure, that outweighs any usefulness of the disclosure to either party."¹²

Currently, there is no public record exemption for the personal identifying information of a witness to a crime of any sort.

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹³ The records of the legislative, executive, and judicial branches are specifically included.¹⁴

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act¹⁵ guarantees every person's right to inspect and copy any state or local government public record¹⁶ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁷

Only the Legislature may create an exemption to public records requirements.¹⁸ This exemption must be created by general law and must specifically state the public necessity justifying the

¹⁰ Judge Joan Compart-Cassani, "Balancing the Anonymity of Threatened Witnesses Versus a Defendant's Right of Confrontation: The Waiver Doctrine After Alvarado" (Fall, 2002), 39 San Diego L. Rev. 1165.

¹¹ Fla. R. Crim. P. 3.220(b) (Discovery: Prosecutor's Discovery Obligation). Section 119.07(8), F.S., addresses the relationship between discovery obligations and public records.

¹² Fla. R. Crim. P. 3.220(e) (Discovery: Restricting Disclosure).

¹³ FLA. CONST., art. I, s. 24(a).

¹⁴ *Id.*

¹⁵ Chapter 119, F.S.

¹⁶ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "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." The Public Records Act does not apply to legislative or judicial records *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992).

¹⁷ Section 119.07(1)(a), F.S.

¹⁸ FLA. CONST., art. I, s. 24(c).

exemption.¹⁹ A record classified as exempt from public disclosure may be disclosed under certain circumstances.²⁰

If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption.²¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.

A bill enacting an exemption may not contain other substantive provisions²² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.²³

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created public records exemptions.²⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁵

The OGSR provides that a public records exemption may be created only if it serves an identifiable public purpose and is no broader than necessary.²⁶ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption.
- The release of sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt.
- It protects trade or business secrets.²⁷

In addition, the Legislature must find that the purpose of the exemption overrides Florida’s public policy strongly favoring open government.

¹⁹ *Id.*

²⁰ *WFTV, Inc. v. School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); and *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

²¹ *WFTV, Inc. v. School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004) and *Wait v. Florida Power and Light Co.*, 372 So.2d 420 (Fla. 1979).

²² However, the bill may contain multiple exemptions that relate to one subject.

²³ FLA. CONST., art. I, s. 24(c).

²⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²⁵ Section 119.15(3), F.S.

²⁶ Section 119.15(6)(b), F.S.

²⁷ Section 119.15(6)(b)1.-3., F.S.

The OGSR also requires specified questions to be considered during the review process.²⁸ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. These 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?²⁹

To enact an exemption, the Legislature must pass a bill by a two-thirds vote and the bill must include a public necessity statement justifying the exemption.³⁰

III. Effect of Proposed Changes:

The bill creates s. 119.071(2)(m), F.S., (Section 2), to provide that criminal intelligence or investigative information that reveals the personal identifying information of a witness to a murder is confidential and exempt from s. 119.07(1), F.S., and Article I, Section 24(a), of the Florida Constitution. The exemption applies to each witness for a period of 2 years following the commission of the murder observed by the witness.

The bill provides that the information may be disclosed by a criminal justice agency:

- In the furtherance of its official duties and responsibilities;
- To assist in locating or identifying the witness if he or she is believed to be missing or endangered; or
- To another governmental entity for use in the performance of its official duties and responsibilities.

Section 119.011(3)(c)5., F.S., (Section 1), defining what “criminal intelligence information” and “criminal investigative information” do not include, is amended by the bill. The amendment specifically excludes the personal identifying information of a witness to a murder, created in s. 119.071(2)(m), F.S., from the definition of “criminal intelligence information” documents or “criminal investigative information” documents required to be given to the person arrested.

It should be noted that s. 119.011(3)(c)5.a., F.S., provides “except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1), F.S.,³¹ until released at trial if it is found that the release of such information would... jeopardize the safety of such victim or witness.”

²⁸ Section 119.15(6)(a), F.S.

²⁹ Section 119.15(6)(a)1.-6., F.S.

³⁰ Section 119.15(7), F.S.

³¹ “Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”

The bill amends s. 119.0714, F.S., (Section 3), to convey the same confidential and exempt status to the witness's personal identifying information should that information become part of a court file.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution.³² This statement includes the following findings:

- The judicial system cannot function without the participation of witnesses.
- Complete cooperation and truthful testimony of witnesses are essential to the determination of the facts of a case.
- The public disclosure of personal identifying information of a witness to a murder could have a chilling effect on persons stepping forward and providing their accounts of a murder that has been witnessed.
- A witness to a murder may be unwilling to cooperate fully with law enforcement officers if the witness knows his or her personal identifying information can be made publicly available.
- A witness may be less likely to call a law enforcement officer and report a murder if his or her personal identifying information is made available in connection with the murder that is being reported or under investigation.
- A witness could become the subject of intimidation tactics or threats by the perpetrator of the murder³³ if the witness's personal identifying information is publicly available.

The bill takes effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

³² FLA. CONST., art. I, s. 24(c).

³³ Murder is defined by reference to s. 782.04, F.S., which is the murder statute.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption and includes a public necessity statement.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the bill does not appear to be in conflict with this constitutional requirement.

C. Trust Funds Restrictions:

None.

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 the following sections of the Florida Statutes: 119.011, 119.071, and 119.0714.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on February 21, 2017:**

The CS:

- Amends s. 119.011(3)(c), F.S., to include a cross reference to the newly created s. 119.071(2)(m), F.S.
- Makes *criminal intelligence information or criminal investigative information that reveals* the personal identifying information of a witness to a murder confidential and exempt for 2 years after the date on which the murder is observed by the witness in s. 119.071(2)(m), F.S.; provides for disclosure of that information under limited circumstances.
- Eliminates the creation of s. 119.0714(1)(k), F.S., and instead amends s. 119.0714(1)(h), F.S., to create a cross reference to s. 119.071(2)(m), F.S.

B. Amendments:

None.

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



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2017	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**

2

3 Delete lines 17 - 43

4 and insert:

5 Section 1. Paragraph (c) of subsection (3) of section
6 119.011, Florida Statutes, is amended to read:

7 119.011 Definitions.—As used in this chapter, the term:

8 (3)

9 (c) "Criminal intelligence information" and "criminal
10 investigative information" shall not include:



973740

11 1. The time, date, location, and nature of a reported
12 crime.
13 2. The name, sex, age, and address of a person arrested or
14 of the victim of a crime except as provided in s. 119.071(2)(h).
15 3. The time, date, and location of the incident and of the
16 arrest.
17 4. The crime charged.
18 5. Documents given or required by law or agency rule to be
19 given to the person arrested, except as provided in s.
20 119.071(2)(h) or (2)(m), and, except that the court in a
21 criminal case may order that certain information required by law
22 or agency rule to be given to the person arrested be maintained
23 in a confidential manner and exempt from the provisions of s.
24 119.07(1) until released at trial if it is found that the
25 release of such information would:
26 a. Be defamatory to the good name of a victim or witness or
27 would jeopardize the safety of such victim or witness; and
28 b. Impair the ability of a state attorney to locate or
29 prosecute a codefendant.
30 6. Informations and indictments except as provided in s.
31 905.26.
32 Section 2. Paragraph (m) is added to subsection (2) of
33 section 119.071, Florida Statutes, to read:
34 119.071 General exemptions from inspection or copying of
35 public records.—
36 (2) AGENCY INVESTIGATIONS.—
37 (m)1. Criminal intelligence information or criminal
38 investigative information that reveals the personal identifying
39 information of a witness to a murder, as described in s. 782.04,



40 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
41 I of the State Constitution for 2 years after the date on which
42 the murder is observed by the witness. A criminal justice agency
43 may disclose such information:

44 a. In the furtherance of its official duties and
45 responsibilities.

46 b. To assist in locating or identifying the witness if the
47 agency believes the witness to be missing or endangered.

48 c. To another governmental agency for use in the
49 performance of its official duties and responsibilities.

50 2. This paragraph is subject to the Open Government Sunset
51 Review Act in accordance with s. 119.15 and shall stand repealed
52 on October 2, 2022, unless reviewed and saved from repeal
53 through reenactment by the Legislature.

54 Section 3. Paragraph (h) of subsection (1) of section
55 119.0714, Florida Statutes, is amended to read:

56 119.0714 Court files; court records; official records.—

57 (1) COURT FILES.—Nothing in this chapter shall be construed
58 to exempt from s. 119.07(1) a public record that was made a part
59 of a court file and that is not specifically closed by order of
60 court, except:

61 (h) Criminal intelligence information or criminal
62 investigative information that is confidential and exempt as
63 provided in s. 119.071(2)(h) or (2)(m).

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

65 And the title is amended as follows:

66 Delete lines 3 - 4

67 and insert:



69 119.011, F.S.; providing that the personal identifying
70 information of a witness to a murder remains
71 confidential and exempt for a specified period;
72 amending s. 119.071, F.S.; providing an exemption from
73 public records requirements for criminal intelligence
74 or criminal investigative information that reveals the
75 personal identifying

By Senator Bracy

11-00666-17

2017550

1 A bill to be entitled

2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for personal identifying
 5 information of a witness to a murder for a specified
 6 period; authorizing specified entities to receive the
 7 information; providing for future legislative review
 8 and repeal of the exemption; amending s. 119.0714,
 9 F.S.; providing that the public records exemption
 10 applies to personal identifying information of a
 11 witness to a murder that is made part of a court file;
 12 providing a statement of public necessity; providing
 13 an effective date.

14

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

16

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

19 119.071 General exemptions from inspection or copying of
 20 public records.—

21

(2) AGENCY INVESTIGATIONS.—

22

(m)1. Notwithstanding any other provision of this
 23 subsection, the personal identifying information of a witness to
 24 a murder, as described in s. 782.04, is confidential and exempt
 25 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 26 for 2 years after the date on which the murder is observed by
 27 the witness. The personal identifying information may be
 28 disclosed only to a criminal justice agency or governmental
 29 entity for use in the performance of its official duties and
 30 responsibilities.

31

2. This paragraph is subject to the Open Government Sunset
 32 Review Act in accordance with s. 119.15 and shall stand repealed

Page 1 of 3

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

11-00666-17

2017550

33 on October 2, 2022, unless reviewed and saved from repeal
 34 through reenactment by the Legislature.

35 Section 2. Paragraph (k) is added to subsection (1) of
 36 section 119.0714, Florida Statutes, to read:

37 119.0714 Court files; court records; official records.—

38 (1) COURT FILES.—Nothing in this chapter shall be construed
 39 to exempt from s. 119.07(1) a public record that was made a part
 40 of a court file and that is not specifically closed by order of
 41 court, except:

42 (k) Personal identifying information of a witness to a
 43 murder as provided in s. 119.071(2)(m).

44 Section 3. The Legislature finds that it is a public
 45 necessity that personal identifying information of a witness to
 46 a murder, as described in s. 782.04, Florida Statutes, be made
 47 confidential and exempt from s. 119.07(1), Florida Statutes, and
 48 s. 24(a), Article I of the State Constitution for 2 years after
 49 the date on which the murder is observed by the witness. The
 50 judicial system cannot function without the participation of
 51 witnesses. Complete cooperation and truthful testimony of
 52 witnesses is essential to the determination of the facts of a
 53 case. The public disclosure of personal identifying information
 54 of a witness to a murder could have an undesirable chilling
 55 effect on witnesses stepping forward and providing their
 56 eyewitness accounts of murders. A witness to a murder may be
 57 unwilling to cooperate fully with law enforcement officers if
 58 the witness knows his or her personal identifying information
 59 can be made publicly available. A witness may be less likely to
 60 call a law enforcement officer and report a murder if his or her
 61 personal identifying information is made available in connection

Page 2 of 3

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

11-00666-17

2017550__

62 with the murder that is being reported or under investigation.
63 The Legislature further finds that a witness could become the
64 subject of intimidation tactics or threats by the perpetrator of
65 the murder if the witness's personal identifying information is
66 publicly available. For these reasons, the Legislature finds
67 that it is a public necessity that the personal identifying
68 information of a witness to a murder, as described in s. 782.04,
69 Florida Statutes, be made confidential and exempt from public
70 record requirements.

71 Section 4. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/21/17

Meeting Date

550

Bill Number (if applicable)

Topic Witness Protection Bill

Amendment Barcode (if applicable)

Name GARY BRADFORD

Job Title Government Relations

Address 300 E. Brund St
Street

Tallahassee FL 32301
City State Zip

Phone 800-733-3722

Email Gary_B.FLPBA.com

Speaking: For Against Information

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

Representing FLORIDA POLICE Benevolent Association (PBA)

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

2/21/17

Meeting Date

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

50

Bill Number (if applicable)

Topic The Witness Protection Bill

Amendment Barcode (if applicable)

Name Wanda Jones

Job Title NIA

Address 20431 NW 17 Ave

Phone 786-487-2565

Street

Miami Gardens 1-F1

33056

City

State

Zip

Email

Speaking: For Against Information

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

Representing Parents of murdered kid

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)

1/21/17
Meeting Date

550

Bill Number (if applicable)

Topic The Witness Protection Bill

Amendment Barcode (if applicable)

Name Tangela SEARS

Job Title WIA

Address 1270 NW 25 St

Phone 786286-1104

Street

City

State

Zip

Email

Speaking: For Against Information

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

Representing Parent of Murdered kids

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/21/17

Meeting Date

550

Bill Number (if applicable)

Topic Witness Protection Bill

Amendment Barcode (if applicable)

Name Jeanne Brad

Job Title NA

Address 10759 SW 226st Goulds, Fla 33170

Phone 786-234-8364

Street

Miami, FL

City

State

Zip

Email hellisrealdontgo2@yahoo.com

Speaking: For Against Information

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

Representing Parents of Murdered Kids

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/21/17
Meeting Date

SB 550
Bill Number (if applicable)

Topic PUBLIC RECORDS EXEMPTION

Amendment Barcode (if applicable)

Name WITNESSES TO MURDER
DIANA RAGBEER

Job Title DIRECTOR PUBLIC POLICY &

Address COMMUNITY ENGAGEMENT
3150 SW 3RD AVE, 8TH FLOOR
Street

Phone 305 571 5718

MIAMI
City

FL

State

33129

Zip

Email diaria@the
childrenstrust.org

Speaking: For Against Information

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

Representing THE CHILDREN'S TRUST

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/17
Meeting Date

SB-550
Bill Number (if applicable)

Topic SB-550

Amendment Barcode (if applicable)

Name Cynthia Stafford / Kione McElhee

Job Title State Rep.

Address _____
Street _____

Phone _____

City _____ State _____ 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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/17

Meeting Date

550

Bill Number (if applicable)

Topic Public Records / Murder Witness Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director; FPCA

Address PO Box 14038
Street

Tallahassee FL
City State

32317
Zip

Phone 850-219-3631

Email amer Mercer@FPCA.com

Speaking: For Against Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/21/17

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

SB 550

Meeting Date

Bill Number (if applicable)

Topic Public Records/Murder Witness

Amendment Barcode (if applicable)

Name Scott D. McCoyJob Title Senior Policy CounselAddress P.O. Box 10788Phone 850-521-3042

Street

TallahasseeFL32302

City

State

Zip

Speaking: For Against InformationWaive Speaking: In Support Against
(The Chair will read this information into the record.)Representing Southern Poverty Law CenterAppearing at request of Chair: Yes NoLobbyist 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)

5/21/17

Meeting Date

550

Bill Number (if applicable)

Topic The Women Protection Bill

Amendment Barcode (if applicable)

Name Frances Dukes

Job Title NA

786

Address 10044 W. Guava St

Phone 366-2997

Street

Miami

Fla 33157

State

Zip

Email MFFJ411@gmail.com

Speaking: For Against Information

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

Representing Parent of Murder Children (mother)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/17
Meeting Date

550
Bill Number (if applicable)

Topic The Witness Protection Bill

Amendment Barcode (if applicable)

Name Allyraun William

Job Title WPA

Address 2545 25th Street

Phone 786 712-8581

Street

Miami, FL, FL

City

33154

State

Zip

Email allyraun.common@gmail.com

Speaking: For Against Information

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

Representing Parents of Murdered Kids

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/17
Meeting Date

550

Bill Number (if applicable)

Topic The Witness Protection Bill

Amendment Barcode (if applicable)

Name Arlene Byrd

Job Title 41A

Address 1057 West Fairway Rd

Street

Miami, FL

City

State

Zip

Phone

305 915-9840

Email

Speaking: For Against Information

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

Representing Parents of Murdered Kids

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

2-21-17

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

550

Meeting Date

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JESS McCARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1st ST 2810

Street

MIAMI

FL

33128

City

State

Zip

Speaking: For Against Information

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

Representing MIAMI - DADE

COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/21/17

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

Meeting Date

550

Bill Number (if applicable)

Topic Witness Protection

Amendment Barcode (if applicable)

Name Mario J. BaileyJob Title Senior Gov Relations ConsultantAddress 1 East Broward Blvd

Phone _____

Street

FT. LauderdaleFL

City

State

Zip

Speaking For Against InformationWaive Speaking: In Support Against
(The Chair will read this information into the record.)Representing Miami-Dade County Public SchoolsAppearing at request of Chair: Yes NoLobbyist 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)

02/21/17
Meeting Date

550
Bill Number (if applicable)

Topic SB 550

Amendment Barcode (if applicable)

Name Jamayne Henderson

Job Title Attorney

Address 1028 East Park Avenue

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information

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

Representing City of Orlando

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)

21 Feb 17

Meeting Date

550

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe St., Ste. 201

Phone 850.510.9922

Street

Tall

Fl

32301

City

State

Zip

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

550

Meeting Date

Bill Number (if applicable)

Topic Witness Protection Records Exemption

Amendment Barcode (if applicable)

Name Volanda Cash Jackson

Job Title Att'y

Address 1 East Broward

Phone 954-985-4132

Street

Ft Land

Email

City

State

Zip

Speaking: For Against Information

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

Representing Citizen

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

CourtSmart Tag Report

Room: LL 37

Caption: Criminal Justice Committee

Case No.:

Type:

Judge:

Started: 2/21/2017 9:01:55 AM

Ends: 2/21/2017 10:56:24 AM

Length: 01:54:30

9:02:07 AM Roll Call - Quorum
9:02:39 AM Tab 1 Senate Bill 290 by Senator Rouson, Criminal Justice
9:03:44 AM Senator Rouson
9:06:06 AM Senator Rouson
9:06:36 AM Senator Bean
9:07:01 AM Senator Rouson
9:08:04 AM Amendment Barcode 554674
9:09:01 AM Amendment Adopted
9:09:55 AM Greg Newburn, Families Against Mandatory Minimums
9:12:30 AM Jim DeBeaugrin, Center to Advance Justice
9:15:08 AM Honorable Bob Dillinger, Florida Public Defender Association waives in support
9:15:14 AM Scott Mccoy, Southern Poverty Law center waives in support
9:15:21 AM Jorge Chamizo , Florida Association of Criminal Defense Lawyers, waives in support
9:15:37 AM Senator Rouson
9:16:33 AM Roll Call
9:16:40 AM CS/Senate Bill 290 Favorable
9:16:57 AM Senator Bracy turns chair over to Vice Chair Baxley
9:17:34 AM Tab 2 Senate Bill 296 by Senator Bracy, Statements Made by a Criminal Defendant
9:18:51 AM Seth Miller, Florida Smart Justice Alliance
9:23:04 AM Honorable Bob Dillinger, Florida Public Defender Association, Inc.
9:25:27 AM Michelle Feldman, The Innocence Project
9:29:26 AM Scott McCoy, Southern Poverty Law center, waives in support
9:29:35 AM Jorge Chamizo, FL Association of Criminal Defense Lawyers waives in support
9:29:47 AM Senator Bracy
9:30:32 AM Roll Call
9:30:37 AM Senate Bill 296 Favorable
9:30:50 AM Tab 3 Senate Bill 312 by Senator Baxley, Eyewitness Identification
9:31:08 AM Senator Baxley
9:33:09 AM Senator Rouson
9:34:34 AM Amendment Barcode 699482
9:35:21 AM Amy Mercer, FL Police Chiefs Association waives in support
9:35:41 AM Michelle Feldman, The Innocence Project
9:39:44 AM Seth Miller, Innocence Project waives in support
9:40:15 AM Hon. Bob Dillinger, FL Public Defender Association, waives in support
9:40:27 AM Scott Mccoy, Southern Poverty Law Center waives in support
9:40:36 AM Jorge Chamizo, FACDL, waives in support
9:40:41 AM Barney Bishop , FL Smart Justice Alliance, waives in support
9:40:55 AM Senator Baxley
9:41:38 AM Roll Call
9:41:41 AM CS/Senate Bill 312 Favorable
9:42:00 AM Tab 4 Senate Bill 350 By Senator Clemens, Criminal Justice Standards and Training Commission
9:43:06 AM Amy Mercer, FL Police Chiefs Association, waives in support
9:43:19 AM Scott McCoy, Southern Poverty Law Center waives in support
9:43:31 AM Ron Draa, FDLE waives in support
9:43:38 AM Roll Call
9:43:46 AM Senate Bill 350 Favorable
9:44:00 AM Motion
9:44:19 AM Senator Baxley Motion SB 290
9:44:40 AM Tab 5 Senate Bill 494 By Senator Bradley, Compensation of Victims of Wrongful Incarceration
9:44:48 AM Senator Bradley
9:47:30 AM Seth Miller, Innocence Project recognized
9:48:44 AM Hon. Bob Dillinger waives in support

9:48:48 AM Scott McCoy, Southern Poverty Law Center waives in support
9:48:53 AM Michelle Feldman waives in support
9:48:56 AM Jorge Chamizo, FACDL, waives in support
9:48:57 AM Hermian Lidsey Recognized
9:52:59 AM Barney Bishop waives in support
9:53:07 AM Senator Brandes
9:53:54 AM Senator Rouson
9:54:58 AM Senator Clemens
9:55:28 AM Senator Bradley
9:57:09 AM Roll Call
9:58:10 AM Senate Bill 494 Favorable
9:58:23 AM Tab 6 Senate Bill 550 by Senator Brady, Public Records/Murder Witness
9:59:02 AM Senator Brady
9:59:09 AM Amendment Barcode 973740
9:59:23 AM Amendment Adopted
9:59:57 AM Senator Brady
10:00:47 AM Senator Brandes
10:02:19 AM Senator Baxley
10:04:13 AM Senator Bradley
10:06:13 AM Senator Rouson
10:06:36 AM Senator Brady
10:07:07 AM Senator Brandes
10:08:38 AM Senator Clemens
10:08:53 AM Senator Bradley
10:10:51 AM Senator Rouson
10:11:05 AM Wanda Jones, Parents of Murdered Kids recognized
10:12:45 AM Tangela Sears, Parents of Murdered Kids recognized
10:17:54 AM Joanne Brady, Parents of Murdered Kids recognized
10:22:22 AM Diana Ragbeer, The Children's Trust recognized
10:23:56 AM State Representative Cynthia Stafford recognized
10:27:39 AM State Representative Kionne McGhee recognized
10:31:42 AM Amy Mercer waives in support
10:32:45 AM Scott Mccoy waives in support
10:32:57 AM Romania Dukes, Parent of Murdered Children recognized
10:35:16 AM Myrain William, Parents of Murdered Kids recognized
10:36:05 AM Arlene Byrd, Parents of Murdered Kids recognized
10:38:23 AM Jess Mccarty, Miami-Dade County waives in support
10:38:31 AM Mario Bailey, Miami-Dade County Public Schools waives in support
10:38:47 AM Jasmyne Henderson, City of Orlando waives in support
10:38:56 AM Barney Bishop waives in support
10:39:08 AM Yolanda Jackson waives in support
10:39:28 AM Senator Rouson
10:42:38 AM Senator Bradley
10:46:42 AM Senator Brandes
10:48:10 AM Senator Clemens
10:50:10 AM Senator Brady
10:54:28 AM Roll Call
10:54:30 AM CS/Senate Bill 550 Favorable
10:54:56 AM Closing Remarks
10:55:30 AM Senator Baxley
10:55:43 AM Meeting Adjourned