

Tab 6 SB 548 by Bracy; (Similar to H 00985) Comprehensive Case Information System						
881540	A	S		CJ, Bracy	Delete L.32:	03/20 04:09 PM
Tab 7 SB 564 by Campbell; (Identical to H 01287) Landlords and Tenants						
106308	PCS	S		CJ		03/17 09:47 AM
Tab 8 SB 628 by Garcia (CO-INTRODUCERS) Campbell; (Similar to H 00605) Transmission of Disease Through Bodily Fluids						
208470	D	S	RCS	CJ, Garcia	Delete everything after	03/21 06:52 PM
Tab 9 SB 776 by Baxley; (Identical to H 00879) Unlawful Acquisition of Utility Services						
319480	D	S	RS	CJ, Baxley	Delete everything after	03/21 06:52 PM
539650	SD	S	RCS	CJ, Baxley	Delete everything after	03/21 06:52 PM
Tab 10 SB 832 by Young; (Similar to CS/H 01027) Drones						
937444	A	S	RCS	CJ, Young	Delete L.55 - 115:	03/21 06:52 PM
274534	AA	S	L WD	CJ, Brandes	Delete L.63:	03/21 06:52 PM
Tab 11 SB 1248 by Steube; (Identical to H 06013) Breach of the Peace						
424774	D	S		CJ, Steube	Delete everything after	03/20 04:10 PM
214914	AA	S		CJ, Steube	In title, delete L.19:	03/20 06:13 PM
Tab 12 SB 1526 by Bracy; (Similar to H 01203) Public Records/Health Information/Department of Corrections						
Tab 13 SB 1604 by Bracy; (Similar to CS/H 01201) Department of Corrections						
843456	A	S	WD	CJ, Bracy	btw L.470 - 471:	03/21 11:05 AM
363566	A	S	L RCS	CJ, Bracy	Delete L.292 - 305:	03/21 06:52 PM
Tab 14 SB 1694 by Torres; (Identical to H 01199) Support for Parental Victims of Child Domestic Violence						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Bracy, Chair
Senator Baxley, Vice Chair

MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.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	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.			
Criminal Conflict and Civil Regional Counsel - First District Court of Appeal			
1	Brower, Candice K. ()	09/30/2019	Recommend Confirm Yeas 6 Nays 0
Criminal Conflict and Civil Regional Counsel - Second District Court of Appeal			
2	Neymotin, Ita M. ()	09/30/2019	Recommend Confirm Yeas 6 Nays 0
Criminal Conflict and Civil Regional Counsel - Third District Court of Appeal			
3	Zenobi, Eugene F. ()	09/30/2019	Recommend Confirm Yeas 6 Nays 0
Criminal Conflict and Civil Regional Counsel - Fourth District Court of Appeal			
4	Ryan, Antony Parker (Riviera Beach)	09/30/2019	Recommend Confirm Yeas 6 Nays 0
Criminal Conflict and Civil Regional Counsel - Fifth District Court of Appeal			
5	Deen, Jeffrey D. ()	09/30/2019	Recommend Confirm Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, March 21, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 548 Bracy (Similar H 985)	Comprehensive Case Information System; Requiring that the Comprehensive Case Information System be developed, operated, and maintained by the Florida Association of Court Clerks and Comptrollers, Inc., as agent of the clerks of the circuit court; authorizing the association to transfer ownership and operation of the system to an intergovernmental authority created by the clerks of the circuit court pursuant to a specified act, etc. CJ 03/21/2017 Temporarily Postponed JU ACJ AP	Temporarily Postponed
A proposed committee substitute for the following bill (SB 564) is expected to be considered:			
7	SB 564 Campbell (Identical H 1287)	Landlords and Tenants; Providing criminal penalties for specified prohibited practices by a landlord relating to maintenance of the premises, retaliatory conduct, and other protections, etc. CJ 03/21/2017 Temporarily Postponed JU RC	Temporarily Postponed
8	SB 628 Garcia (Similar H 605, Compare CS/H 165, S 1704)	Transmission of Disease Through Bodily Fluids; Reclassifying a criminal offense relating to the donation of blood, plasma, organs, skin, or other human tissue; expanding the scope of unlawful acts by a person infected with a sexually transmissible disease; requiring that a person who commits, rather than one who attempts to commit, an offense involving the transmission of semen or vaginal secretions must undergo HIV testing, etc. CJ 03/21/2017 Fav/CS HP JU RC	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, March 21, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 776 Baxley (Identical H 879)	Unlawful Acquisition of Utility Services; Revising the elements that constitute theft of utilities; clarifying that the presence of certain devices and alterations on the property of, and the actual possession by, a person constitutes a permissive inference of a violation; clarifying that specified circumstances create a permissive inference of theft of utility services for the purpose of facilitating the manufacture of a controlled substance, etc. CJ 03/21/2017 Fav/CS CU ACJ AP	Fav/CS Yeas 6 Nays 0
10	SB 832 Young (Similar H 1027)	Drones; Citing this act as "Unmanned Aircraft Systems Act"; providing that the authority to regulate the ownership or operation of unmanned aircraft systems is vested in the state; prohibiting a person from knowingly and willfully operating a drone over or allowing a drone to make contact with or come within a certain distance of certain critical infrastructure facilities; providing that the use of a drone by a communications service provider or contractor is not prohibited under certain provisions of ch. 934, etc. CJ 03/21/2017 Fav/CS TR CU RC	Fav/CS Yeas 7 Nays 0
11	SB 1248 Steube (Identical H 6013)	Breach of the Peace; Deleting provisions that provide criminal penalties for certain conduct constituting a breach of the peace, etc. CJ 03/21/2017 Temporarily Postponed RC	Temporarily Postponed
12	SB 1526 Bracy (Similar H 1203, Compare H 1201, Linked S 1604)	Public Records/Health Information/Department of Corrections; Providing that certain protected health information held by the Department of Corrections is confidential and exempt from public records requirements; providing a statement of public necessity, etc. CJ 03/21/2017 Favorable GO RC	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, March 21, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	SB 1604 Bracy (Identical H 1201, Compare H 1203, Linked S 1526)	Department of Corrections; Exempting specified positions from the career service system; authorizing the Department of Law Enforcement to issue an investigative demand seeking the production of an inmate's protected health information, medical records, or mental health records under certain circumstances; revising membership requirements for the safety and security review committee appointed by the Department of Corrections; authorizing the department to receive specified documents electronically at its discretion, etc. CJ 03/21/2017 Fav/CS GO AP	Fav/CS Yeas 7 Nays 0
14	SB 1694 Torres (Identical H 1199)	Support for Parental Victims of Child Domestic Violence; Requiring the Department of Juvenile Justice and the Florida Coalition Against Domestic Violence to collaborate to develop and maintain updated information and materials regarding specified services and resources; requiring domestic violence training for law enforcement officers to include training concerning child-to-parent cases, etc. CJ 03/21/2017 Favorable CF RC	Favorable Yeas 7 Nays 0

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.

526

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

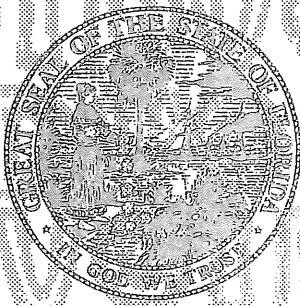
I, Ken Detzner, Secretary of State,
do hereby certify that

Candice Kaye Brower

is duly appointed a member of the

**Office of Criminal Conflict and Civil
Regional Counsel,
First District Court of Appeal**

for a term beginning on the First day of December, A.D., 2016,
until the Thirtieth day of September, A.D., 2019 and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.



*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Eighth day of February, A.D., 2017.*

Ken Detzner

Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.



RICK SCOTT
GOVERNOR

Amended
RECEIVED
17 FEB -8 AM 10:10
DIVISION OF ELECTIONS
SECRETARY OF STATE

February 7, 2017

Secretary Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have amended the following appointment under the provisions of Section 27.511, Florida Statutes:

Mrs. Candace K. Brower

as a member of the Office of Criminal Conflict and Civil Regional Counsel, succeeding Jeffrey E. Lewis, subject to confirmation by the Senate. This appointment is effective December 1, 2016, for a term ending September 30, 2019.

Sincerely,

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

Rick Scott
Governor

RS/tj

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
2017 JAN -9 AM 11:35

STATE OF FLORIDA

County of Duval

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Regional Counsel First DCA Region of Florida

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

C. K. Brower
Signature

Sworn to and subscribed before me this 4th day of January, 2017

MARK H. MAHON
Signature of Officer Administering Oath or of Notary Public

Chief Judge

Duval County Courthouse
Print, Type, or Stamp Commissioned Name of Notary Public Jacksonville, FL 32202

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

227 N. Bronough Street, Suite 1125

Street or Post Office Box

Tallahassee, Florida 32301

City, State, Zip Code

Candice K. Brower

Print Name

C. K. Brower
Signature

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Candice K. Brower

Criminal Conflict and Civil Regional Counsel - First District Court of Appeal

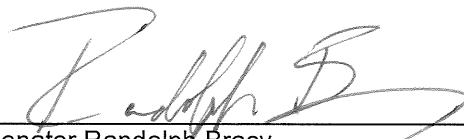
NOTICE OF HEARING

TO: Mrs. Candice K. Brower

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 21, 2017, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 4:00 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 16th day of March, 2017

Committee on Criminal Justice

A handwritten signature in black ink, appearing to read "Randolph Bracy", is written over a horizontal line.

Senator Randolph Bracy
As Chair and by authority of the committee

cc: Members, Committee on Criminal Justice
Office of the Sergeant at Arms

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

Bill Number (if applicable)

Topic Confirmation

Amendment Barcode (if applicable)

Name Candice Brower

Job Title Regional Counsel First District

Address _____
Street

Phone _____

City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information
confirmation

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

Representing Regional Counsel I

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 RECOMMENDATION ON
EXECUTIVE APPOINTMENT**

COMMITTEE: Committee on Criminal Justice
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

TO: The Honorable Joe Negron, President

FROM: Committee on Criminal Justice

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Criminal Conflict and Civil Regional Counsel - First District Court of Appeal

Appointee: Brower, Candice K.

Term: 12/1/2016-9/30/2019

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Governor.

527

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

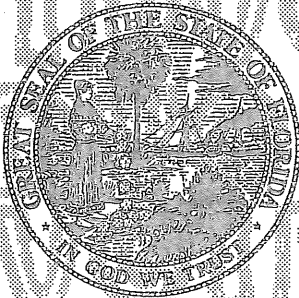
I, Ken Detzner, Secretary of State,
do hereby certify that

Ita M. Neymotin

is duly appointed a member of the

**Office of Criminal Conflict and Civil
Regional Counsel,
Second District Court of Appeal**

for a term beginning on the Fifteenth day of March, A.D., 2016,
until the Thirtieth day of September, A.D., 2019 and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.



*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twentieth day of May, A.D., 2016.*

Ken Detzner

Secretary of State



RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2016 APR -1 AM 8:53
DIVISION OF ELECTIONS
TALLAHASSEE, FL

March 16, 2016

Secretary Kenneth W. Detzner
Department of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 27.511, Florida Statutes:

Mrs. Ita M. Neymotin

as a member of the Office of Criminal Conflict and Civil Regional Counsel, subject to confirmation by the Senate. This appointment is effective March 15, 2016, for a term ending September 30, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/ah

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Lee

RECEIVED
DEPARTMENT OF STATE
2016 MAY 18 AM 9:26
DIVISION OF ELECTIONS
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Office of Criminal Conflict and Civil Regional Counsel, Second District Court of Appeal

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Ita M. Neymotin
Signature

Sworn to and subscribed before me this 17th day of May, 2016.

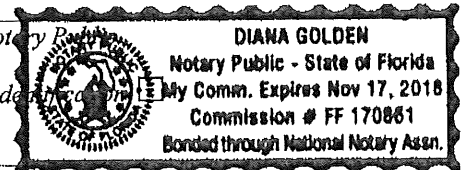
Diana Golden
Signature of Officer Administering Oath or of Notary Public

Diana Golden
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Identification

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

Street or Post Office Box

City, State, Zip Code

Ita M. Neymotin

Print name as you desire commission issued

Ita M. Neymotin
Signature

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Ita M. Neymotin

Criminal Conflict and Civil Regional Counsel - Second District Court of Appeal

NOTICE OF HEARING

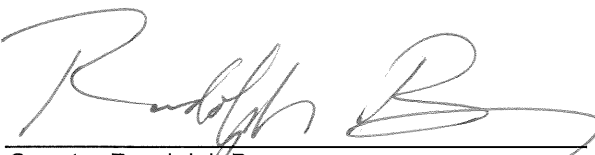
TO: Ms. Ita M. Neymotin

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 21, 2017, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 4:00 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.

DATED this the 16th day of March, 2017

Committee on Criminal Justice



Senator Randolph Bracy
As Chair and by authority of the committee

cc: Members, Committee on Criminal Justice
Office of the Sergeant at Arms

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

Bill Number (if applicable)

Topic Confirmation

Amendment Barcode (if applicable)

Name Ita Neymatin

Job Title Regional Counsel 2

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 Regional Counsel 2

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 RECOMMENDATION ON
EXECUTIVE APPOINTMENT**

COMMITTEE: Committee on Criminal Justice
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

TO: The Honorable Joe Negron, President

FROM: Committee on Criminal Justice

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Criminal Conflict and Civil Regional Counsel - Second District Court of Appeal

Appointee: Neymotin, Ita M.

Term: 3/15/2016-9/30/2019

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Governor.

528

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Eugene F. Zenobi

is duly appointed a member of the

**Office of Criminal Conflict and Civil
Regional Counsel,
Third District Court of Appeal**

for a term beginning on the Fifteenth day of March, A.D., 2016,
until the Thirtieth day of September, A.D., 2019 and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.



Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Second day of May, A.D., 2016.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.



RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2016 APR -1 AM 8:53
DIVISION OF ELECTIONS
TALLAHASSEE, FL

March 16, 2016

Secretary Kenneth W. Detzner
Department of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 27.511, Florida Statutes:

Mr. Eugene F. Zenobi

as a member of the Office of Criminal Conflict and Civil Regional Counsel, subject to confirmation by the Senate. This appointment is effective March 15, 2016, for a term ending September 30, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/ah

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of MIAMI-DADE

RECEIVED
DEPARTMENT OF STATE

2016 MAY -2 AM 10:22

DIVISION OF ELECTIONS
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Regional Counsel/Office of Criminal Conflict and Civil Regional / Thir
(Title of Office) Diste

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]
Signature

Sworn to and subscribed before me this 28 day of APRIL, 2016.

[Signature]
Signature of Officer Administering Oath or of Notary Public

Jorge Sanchez
Print, Type, or Stamp Commissioned Name of Notary Public



JORGE SANCHEZ
MY COMMISSION # FF 168558
EXPIRES: October 14, 2018
Bonded Thru Budget Notary Services

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

401 N.W. 2nd Ave./Suite S-310
Street or Post Office Box

Miami FL 33128
City, State, Zip Code

Eugene F. Zenobi
Print name as you desire commission issued

[Signature]
Signature

**The Florida Senate
Committee Notice Of Hearing**

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Eugene F. Zenobi
Criminal Conflict and Civil Regional Counsel - Third District Court of Appeal

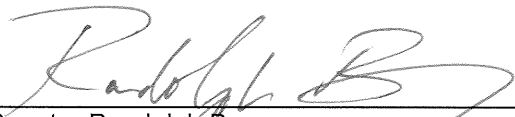
NOTICE OF HEARING

TO: Mr. Eugene F. Zenobi

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 21, 2017, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 4:00 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 16th day of March, 2017

Committee on Criminal Justice



Senator Randolph Bracy
As Chair and by authority of the committee

cc: Members, Committee on Criminal Justice
Office of the Sergeant at Arms

THE FLORIDA SENATE

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

Meeting Date

Bill Number (if applicable)

Topic Confirmation

Amendment Barcode (if applicable)

Name Gene Zenobi

Job Title Regional Counsel 3

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 Regional Counsel 3

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 RECOMMENDATION ON
EXECUTIVE APPOINTMENT**

COMMITTEE: Committee on Criminal Justice
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

TO: The Honorable Joe Negron, President

FROM: Committee on Criminal Justice

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Criminal Conflict and Civil Regional Counsel - Third District Court of Appeal

Appointee: Zenobi, Eugene F.

Term: 3/15/2016-9/30/2019

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Governor.

529

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

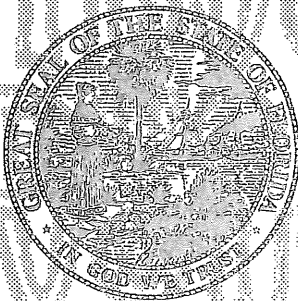
I, Ken Detzner, Secretary of State,
do hereby certify that

Antony P. Ryan

is duly appointed a member of the

**Office of Criminal Conflict and Civil
Regional Counsel,
Fourth District Court of Appeal**

for a term beginning on the Fifteenth day of March, A.D., 2016,
until the Thirtieth day of September, A.D., 2019 and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.



*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twentieth day of February, A.D., 2017.*

Ken Detzner

Secretary of State



RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2016 APR -1 AM 8:53
DIVISION OF ELECTIONS
TALLAHASSEE, FL

March 16, 2016

Secretary Kenneth W. Detzner
Department of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 27.511, Florida Statutes:

Mr. Antony P. Ryan
5024 FIVE WAY
RIVIERA BEACH, FLORIDA 33418

as a member of the Office of Criminal Conflict and Civil Regional Counsel, subject to confirmation by the Senate. This appointment is effective March 15, 2016, for a term ending September 30, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/ah

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

17 FEB 16 PM 2:38

STATE OF FLORIDA

County of

LEON

DIVISION OF ELECTIONS
SECRETARY OF STATE

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Regional Counsel for the Office of Criminal Conflict

(Title of Office) and Civil Regional Counsel,

on which I am now about to enter, so help me God.

4th DCA Region

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

APR

Signature

Sworn to and subscribed before me this 16th day of February, 2017.

Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

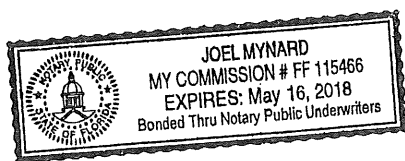
Personally Known ☐

OR

Produced Identification ☒

Type of Identification Produced

FLDL



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

ofc. of Criminal Conflict and
Civil Regional Counsel, 4th
DCA

Street or Post Office Box

Region

401 S. Dixie Highway
West Palm Beach, FL 33401

City, State, Zip Code

ANTONY P. RYAN

Print Name

Signature

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Antony Parker Ryan

Criminal Conflict and Civil Regional Counsel - Fourth District Court of Appeal

NOTICE OF HEARING

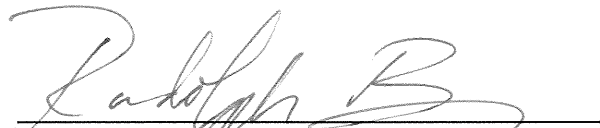
TO: Mr. Antony Parker Ryan

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 21, 2017, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 4:00 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.

DATED this the 16th day of March, 2017

Committee on Criminal Justice



Senator Randolph Bracy
As Chair and by authority of the committee

cc: Members, Committee on Criminal Justice
Office of the Sergeant at Arms

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

Bill Number (if applicable)

Topic confirmation

Amendment Barcode (if applicable)

Name Tony Ryan

Job Title Regional counsel 4

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.)

confirmation

Representing Regional counsel 4

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 RECOMMENDATION ON
EXECUTIVE APPOINTMENT**

COMMITTEE: Committee on Criminal Justice
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

TO: The Honorable Joe Negron, President

FROM: Committee on Criminal Justice

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Criminal Conflict and Civil Regional Counsel - Fourth District Court of Appeal

Appointee: Ryan, Antony Parker

Term: 3/15/2016-9/30/2019

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Governor.

530

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

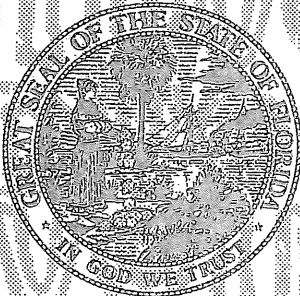
I, Ken Detzner, Secretary of State,
do hereby certify that

Jeffrey D. Deen

is duly appointed a member of the

**Office of Criminal Conflict and Civil
Regional Counsel,
Fifth District Court of Appeal**

for a term beginning on the Fifteenth day of March, A.D., 2016,
until the Thirtieth day of September, A.D., 2019 and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.



*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Eighteenth day of May, A.D., 2016.*

Ken Detzner

Secretary of State



RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2016 APR -1 AM 8:53

DIVISION OF ELECTIONS
TALLAHASSEE, FL

March 16, 2016

Secretary Kenneth W. Detzner
Department of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 27.511, Florida Statutes:

Mr. Jeffrey D. Deen

as a member of the Office of Criminal Conflict and Civil Regional Counsel, subject to confirmation by the Senate. This appointment is effective March 15, 2016, for a term ending September 30, 2019.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/ah

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE
2018 MAY 17 AM 10:06
DIVISION OF ELECTIONS
TALLAHASSEE, FL

STATE OF FLORIDA

County of Seminole

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Agency Director for the Office of Criminal Conflict + Civil
(Title of Office) Regional Counsel, 5th District

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature

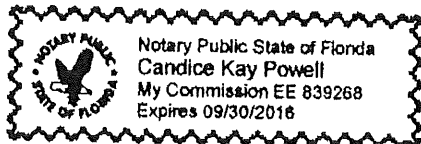
Sworn to and subscribed before me this 16th day of May, 2016.

Candice Kay Powell

Signature of Officer Administering Oath or of Notary Public

Candice Kay Powell

Print, Type, or Stamp Commissioned Name of Notary Public



Personally Known ☒ OR

Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

101 Sunnytown Rd, Suite 310
Street or Post Office Box

Casselberry, FL 32707
City, State, Zip Code

Jeffrey D. Deen
Print name as you desire commission issued

Signature

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Jeffrey D. Deen

Criminal Conflict and Civil Regional Counsel - Fifth District Court of Appeal

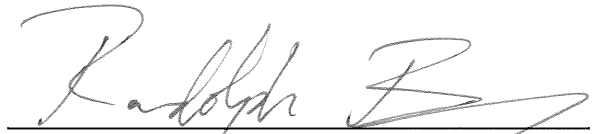
NOTICE OF HEARING

TO: Mr. Jeffrey D. Deen

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 21, 2017, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 4:00 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 16th day of March, 2017

Committee on Criminal Justice



Senator Randolph Bracy
As Chair and by authority of the committee

cc: Members, Committee on Criminal Justice
Office of the Sergeant at Arms

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

Bill Number (if applicable)

Topic Confirmation

Amendment Barcode (if applicable)

Name Jeff Deen

Job Title Regional Counsel S

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.)

Confirmation

Representing Regional

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 RECOMMENDATION ON
EXECUTIVE APPOINTMENT**

COMMITTEE: Committee on Criminal Justice
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

TO: The Honorable Joe Negron, President

FROM: Committee on Criminal Justice

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Criminal Conflict and Civil Regional Counsel - Fifth District Court of Appeal

Appointee: Deen, Jeffrey D.

Term: 3/15/2016-9/30/2019

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Governor.

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 548

INTRODUCER: Senator Bracy

SUBJECT: Comprehensive Case Information System

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	Pre-meeting
2.			JU	
3.			ACJ	
4.			AP	

I. Summary:

SB 548 clarifies the role of the Florida Association of Court Clerks and Comptrollers, Inc. (association), regarding the Comprehensive Case Information System (CCIS), a secure data hub providing access to court case data from all 67 counties. The bill also:

- Specifies that the association develops, operates, and maintains the CCIS, and in this role is an agent of the clerks of the circuit court;
- Describes the CCIS as a system that serves as a secure, single point of access for searching statewide court information, provides access to court records, and contains court records, electronic case data, and any other data necessary to support the state court system;
- Specifies that records accessed through the CCIS are official court records, and that a clerk of the circuit court is the official custodian of, and is responsible for, the court records and other data submitted by his or her office to the CCIS; and
- Authorizes the association to transfer ownership and operation of the CCIS to an intergovernmental authority created by the clerks of the circuit court.

According to the association, the bill will not have a fiscal impact on clerks of the circuit court, counties, municipalities, or the state. The development, maintenance, and operation of the CCIS are fully supported by funding from a statutorily-authorized document service charge. There is no cost to authorized users to use the system.

II. Present Situation:

Comprehensive Case Information System (CCIS)

The Florida Association of Court Clerks and Comptrollers, Inc.¹ (association), states that the CCIS was established in 2002 “as an initiative to view court case information across county and circuit lines,” and was developed by the clerks pursuant to s. 28.24(12)(e), F.S., which provides for funding of the CCIS.² (See Section V. Fiscal Impact.) Further, s. 28.2405, F.S., requires all clerks of the circuit court to participate in the CCIS of the association and submit electronic case data to the system based on the case types designated by the Florida Supreme Court.

The CCIS, which is a secure data hub providing access to court case data from all 67 counties,³ is owned and operated by the association and the Florida Association of Court Clerks Services Group.⁴ The CCIS provides read-only access to this statewide court data which originates and is stored locally in the respective clerk’s system.⁵ According to the association, there are currently more than 36,000 federal, state, and local government users, representing 19 Florida government agencies, and 134 million cases involving 400 million parties throughout the state.⁶

Intergovernmental Authority

An intergovernmental authority is a governmental entity that is created through an interlocal agreement among two or more municipalities or counties. Section 163.01, F.S., the “Florida Interlocal Cooperation Act of 1969,” is intended to allow local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis

¹ The Florida Association of Court Clerks and Comptrollers, Inc., is a nonprofit corporation comprised of the 67 elected clerks of the circuit court and the one elected county comptroller from Orange County. E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (February 28, 2017) (on file with the Senate Committee on Criminal Justice). The association acts as an agent of the individual clerks of the court in partial performance of the clerks’ court-related records maintenance function. In that role, the association is subject to all statutes, court rules, and Florida Supreme Court administrative orders applicable to the clerks in performance of that function. Analysis of SB 548 (February 10, 2017), Florida Association of Court Clerks and Comptrollers, Inc. (on file with the Senate Committee on Criminal Justice). This analysis is further referenced as “Association Analysis.”

² Association Analysis.

³ *Id.* The CCIS contains case data and provides access to court records. To avoid duplication of records, the CCIS does not contain copies of court records, but provides a single, statewide access point to the original court records maintained by the clerks. E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (February 28, 2017) (on file with the Senate Committee on Criminal Justice).

⁴ E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (March 9, 2017) (on file with the Senate Committee on Criminal Justice). The association states that the Florida Association of Court Clerks Service Group is a wholly owned subsidiary of the Florida Association of Court Clerks and Comptrollers, Inc., and was “established to provide enterprise services, including information technology, to the clerks in order to meet legislative directives and serve the public in the most efficient manner.” E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (February 28, 2017) (on file with the Senate Committee on Criminal Justice).

⁵ Association Analysis.

⁶ Association Analysis. Judges and circuit court administration have unrestricted read-only access to statewide court data. *Id.* Based on restrictions contained in court rules at the time CCIS was developed, the CCIS was only accessible by governmental agencies; however, since that time the Florida Supreme Court has adopted an access security matrix, which now provides for attorneys and the public to have limited access. Clerks are in the process of implementing the access provided by this new matrix. Implementation is expected to be completed by the end of 2017. E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (February 28, 2017) (on file with the Senate Committee on Criminal Justice).

of mutual advantage.⁷ The statute provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.⁸ Under such an agreement, the local governmental units may create a separate legal or administrative entity “to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.”⁹ A separate entity created by an interlocal agreement possesses the authority specified in the agreement.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 28.2405, F.S., to clarify the role of the Florida Association of Court Clerks and Comptrollers, Inc. (association), regarding the Comprehensive Case Information System (CCIS), a secure data hub providing access to court case data from all 67 counties. The bill also:

- Specifies that the association develops, operates, and maintains the CCIS, and in this role is an agent of the clerks of the circuit court;
- Describes the CCIS as a system that serves as a secure, single point of access for searching statewide court information, provides access to court records, and contains court records, electronic case data, and any other data necessary to support the state court system;
- Specifies that records accessed through the CCIS are official court records, and that a clerk of the circuit court is the official custodian of, and is responsible for, the court records and other data submitted by his or her office to the CCIS; and
- Authorizes the association to transfer ownership and operation of the CCIS to an intergovernmental authority created by the clerks of the circuit court.¹¹

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁷ Section 163.01(2), F.S. For example, one benefit of creating an intergovernmental authority may be operational improvements (e.g., combining resources, eliminating duplication of efforts, streamlining organizational structure, clarifying or improving allocation of functional responsibilities, and enhancing delivery of services).

⁸ Section 163.01(5), F.S.

⁹ Section 163.01(2), F.S.

¹⁰ Section 163.01(7)(b), F.S.

¹¹ The association states that if the intergovernmental authority were to be implemented, such authority would still contract with the association and the Florida Association of Court Clerks Services Group to operate the CCIS in the same manner as done today. E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (March 9, 2017) (on file with the Senate Committee on Criminal Justice). The association also states that an intergovernmental authority “provides governance as a public body that is subject to the transparencies and accountabilities required of such bodies. Also[,] it better facilitates collaboration among stakeholders.” E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (March 15, 2017) (on file with the Senate Committee on Criminal Justice).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Florida Association of Court Clerks and Comptrollers, Inc. (association), the bill will not have a fiscal impact on clerks of the court, counties, municipalities, or the state.¹² The development, maintenance, and operation of the CCIS are fully supported by funding from a statutorily-authorized document service charge. Pursuant to s. 28.24(12)(e)1., F.S., 10 cents from the \$4 recording service charge authorized in s. 28.24(12)(e), F.S.,¹³ is distributed to the association for the cost of development, implementation, operation, and maintenance of the CCIS. The association also received a federal grant, administered through the Florida Department of Law Enforcement, of \$1.79 million in September of 2014, which has allowed for recent upgrades to the system. There is no cost to authorized users to utilize the system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 28.2405 of the Florida Statutes.

¹² E-mail from the Florida Association of Court Clerks and Comptrollers, Inc. (February 10, 2017) (on file with the Senate Committee on Criminal Justice). All information regarding government sector impact of the bill is from this source.

¹³ Section 28.24(12)(e), F.S., provides, with some exceptions, that an additional service charge of \$4 per page shall be paid to the clerk of the circuit court for each instrument listed in s. 28.222, F.S. (e.g., deeds, leases, bills of sale, judgments, and certified copies of death certificates).

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.



881540

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

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

Senate Amendment

Delete line 32
and insert:
electronic case data, and any other data

By Senator Bracy

11-00616A-17

2017548__

A bill to be entitled

An act relating to the Comprehensive Case Information System; amending s. 28.2405, F.S.; requiring that the Comprehensive Case Information System be developed, operated, and maintained by the Florida Association of Court Clerks and Comptrollers, Inc., as agent of the clerks of the circuit court; specifying the purpose of the system; providing that records obtained from a clerk of the circuit court or accessed through the system are official court records; specifying that clerks of the circuit court remain the official custodians of, and are responsible for, court records and other data submitted to the system by their respective offices; authorizing the association to transfer ownership and operation of the system to an intergovernmental authority created by the clerks of the circuit court pursuant to a specified act; providing an effective date.

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

Section 1. Section 28.2405, Florida Statutes, is amended to read:

28.2405 Comprehensive Case Information System.—

(1) The ~~All~~ clerks of the circuit court shall participate in the Comprehensive Case Information System, which shall be developed, operated, and maintained by ~~of~~ the Florida Association of Court Clerks and Comptrollers, Inc., as agent of the clerks of the circuit court. The system serves as a secure, single point of access for searching statewide court information, provides access to court records, and contains court records, electronic case data, and any other data

Page 1 of 2

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

11-00616A-17

2017548__

necessary to support the state court system. The clerks of the circuit court ~~and~~ shall submit electronic case data to the system based on the case types designated by the Supreme Court.

(2) Records accessed through the system are official court records. A clerk of the circuit court is the official custodian of, and is responsible for, the court records and other data submitted by his or her office to the Comprehensive Case Information System.

(3) Ownership and operation of the Comprehensive Case Information System may be transferred by the Florida Association of Court Clerks and Comptrollers, Inc., to an intergovernmental authority created by the clerks of the circuit court pursuant to chapter 163.

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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)

3/21/17
Meeting Date

548
Bill Number (if applicable)

Topic Comprehensive Case Information System

Amendment Barcode (if applicable)

Name Judge Lisa Munyon

Job Title Circuit Judge, 9th Judicial Circuit

Address Orange County Courthouse
Street

Phone 407-836-2470

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing State Courts System

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

548
Bill Number (if applicable)

Topic Comprehensive Case Information System

Amendment Barcode (if applicable)

Name Judge Margaret Steinbeck

Job Title Circuit Court Judge, 20th Circuit

Address 1700 Monroe St.
Street

Phone 239-533-9162

Ft. Myers FL 33901
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing State Courts System

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
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: PCS/SB 564 (106308)

INTRODUCER: Criminal Justice Committee

SUBJECT: Landlords and Tenants

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Pre-meeting
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 564 provides that a landlord who violates any of the provisions in s. 83.51, F.S., governing the landlord's obligation to maintain premises and fails to remedy the violation within 15 days after written notice from the tenant is liable to the tenant for actual and consequential damages or 1 month's rent, whichever is greater, and costs, including attorney fees. Subsequent or repeated violations that are not contemporaneous with the initial violation are subject to separate awards of damages.

II. Present Situation:

Applicability of the Florida Residential Landlord and Tenant Act

Part II of ch. 83, F.S., known as the "Florida Residential Landlord and Tenant Act," governs the relationship between landlords and tenants under a residential rental agreement.¹

The act does not apply to:

- Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.²
- Occupancy under a contract of sale of a dwelling unit or property of which it is a part.³

¹ Section 83.41, F.S., provides that part II, ch. 83, F.S., applies to the rental of a dwelling unit.

² Section 83.42(1), F.S.

³ Section 83.42(2), F.S.

- Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.⁴
- Occupancy by a holder of a proprietary lease in a cooperative apartment.⁵
- Occupancy by an owner of a condominium unit.⁶

Landlord's Obligation to Maintain Premises

At all times during a tenancy, the landlord must comply with the requirements of applicable building, housing, and health codes. Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition. It requires that landlords, at the commencement of the tenancy, must ensure that screens are installed in a reasonable condition. The landlord must repair damage to the screens at least once annually, when necessary, until the termination of the rental agreement.⁷

Unless otherwise agreed in writing, in addition to the requirements described above, the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

- The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs.
- Locks and keys.
- The clean and safe condition of common areas.
- Garbage removal and outside receptacles.
- Functioning facilities for heat during winter, running water, and hot water.⁸

Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices.

Tenants are prohibited from raising the defense of noncompliance by the landlord in an action for possession by the landlord.⁹ The landlord's duties to comply with the requirements of applicable building, housing, and health codes outweighs any other duties prescribed in s. 83.51, F.S.¹⁰ The landlord is not responsible to the tenant for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises.¹¹

III. Effect of Proposed Changes:

The bill provides that a landlord who violates any of the provisions in s. 83.51, F.S., governing the landlord's obligation to maintain premises and fails to remedy the violation within 15 days

⁴ Section 83.42(3), F.S.

⁵ Section 83.42(4), F.S.

⁶ Section 83.42(5), F.S.

⁷ Section 83.51(1), F.S.

⁸ Section 83.51(2)(a), F.S.

⁹ Section 83.51(2)(c), F.S.

¹⁰ Section 83.51(3), F.S.

¹¹ Section 83.51(4), F.S.

after written notice from the tenant is liable to the tenant for actual and consequential damages or 1 month's rent, whichever is greater, and costs, including attorney fees. Subsequent or repeated violations that are not contemporaneous with the initial violation are subject to separate awards of damages.

The effective date of the bill is 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:

The bill will have an impact on landlords who are held liable to tenants for actual and consequential damages or 1 month's rent, whichever is greater.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under s. 83.67, F.S., a landlord who violates the section (prohibited practices) is liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, and costs, including attorney fees. Subsequent or repeated violations that are not contemporaneous with the initial violation are subject to separate awards of damages.

VIII. Statutes Affected:

This bill substantially amends section 83.51 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.)

PCS (106308) by Criminal Justice:

The PCS:

- Replaces the criminal penalties of the bill with civil penalties against the landlord for any violations of s. 83.51, F.S.
- Removes created criminal penalties for violations of ss. 83.64 and 83.67, 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.



106308

591-02484A-17

Proposed Committee Substitute by the Committee on Criminal
Justice

A bill to be entitled

An act relating to landlords and tenants; amending s.
83.51, F.S.; providing a civil penalty for the failure
of a landlord to remedy certain violations relating to
maintenance of the premises, after notice; providing
an effective date.

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

Section 1. Subsections (1) through (4) of section 83.51,
Florida Statutes, are republished, and subsection (5) is added
to that section, to read:

83.51 Landlord's obligation to maintain premises.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building,
housing, and health codes; or

(b) Where there are no applicable building, housing, or
health codes, maintain the roofs, windows, doors, floors, steps,
porches, exterior walls, foundations, and all other structural
components in good repair and capable of resisting normal forces
and loads and the plumbing in reasonable working condition. The
landlord, at commencement of the tenancy, must ensure that
screens are installed in a reasonable condition. Thereafter, the
landlord must repair damage to screens once annually, when
necessary, until termination of the rental agreement.

The landlord is not required to maintain a mobile home or other



106308

591-02484A-17

structure owned by the tenant. The landlord's obligations under
this subsection may be altered or modified in writing with
respect to a single-family home or duplex.

(2) (a) Unless otherwise agreed in writing, in addition to
the requirements of subsection (1), the landlord of a dwelling
unit other than a single-family home or duplex shall, at all
times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-
destroying organisms, and bedbugs. When vacation of the premises
is required for such extermination, the landlord is not liable
for damages but shall abate the rent. The tenant must
temporarily vacate the premises for a period of time not to
exceed 4 days, on 7 days' written notice, if necessary, for
extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running
water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement
of the tenancy of a single-family home or duplex, the landlord
shall install working smoke detection devices. As used in this
paragraph, the term "smoke detection device" means an electrical
or battery-operated device which detects visible or invisible
particles of combustion and which is listed by Underwriters
Laboratories, Inc., Factory Mutual Laboratories, Inc., or any
other nationally recognized testing laboratory using nationally
accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a



106308

591-02484A-17

noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

(5) A landlord who violates any provision of this section and fails to remedy the violation within 15 days after written notice from the tenant is liable to the tenant for actual and consequential damages or 1 month's rent, whichever is greater, and costs, including attorney fees. Subsequent or repeated violations that are not contemporaneous with the initial violation are subject to separate awards of damages.

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

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 564

INTRODUCER: Senator Campbell

SUBJECT: Landlords and Tenants

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 564 provides that a landlord who violates the provisions in s. 83.51, F.S., governing the landlord's obligation to maintain premises; s. 86.64, F.S., governing retaliatory conduct by a landlord; and s. 83.67, F.S., governing the prohibited practices of a landlord, commits a misdemeanor of the first degree. A second or subsequent offense constitutes a felony of the third degree.

II. Present Situation:

Applicability of the Florida Residential Landlord and Tenant Act

Part II of ch. 83, F.S., known as the "Florida Residential Landlord and Tenant Act," governs the relationship between landlords and tenants under a residential rental agreement.¹ The act does not apply to:

- Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.²
- Occupancy under a contract of sale of a dwelling unit or property of which it is a part.³
- Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.⁴
- Occupancy by a holder of a proprietary lease in a cooperative apartment.⁵
- Occupancy by an owner of a condominium unit.⁶

¹ Section 83.41, F.S., provides that part II, ch. 83, F.S., applies to the rental of a dwelling unit.

² Section 83.42(1), F.S.

³ Section 83.42(2), F.S.

⁴ Section 83.42(3), F.S.

⁵ Section 83.42(4), F.S.

⁶ Section 83.42(5), F.S.

Landlord's Obligation to Maintain Premises

At all times during a tenancy, the landlord must comply with the requirements of applicable building, housing, and health codes. Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition. It requires that landlords, at the commencement of the tenancy, must ensure that screens are installed in a reasonable condition. The landlord must repair damage to the screens at least once annually, when necessary, until the termination of the rental agreement.⁷

Unless otherwise agreed in writing, in addition to the requirements described above, the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

- The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs.
- Locks and keys.
- The clean and safe condition of common areas.
- Garbage removal and outside receptacles.
- Functioning facilities for heat during winter, running water, and hot water.⁸

Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices.

Tenants are prohibited from raising the defense of noncompliance by the landlord in an action for possession by the landlord.⁹ The landlord's duties to comply with the requirements of applicable building, housing, and health codes outweighs any other duties prescribed in s. 83.51, F.S.¹⁰ The landlord is not responsible to the tenant for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises.¹¹

Retaliatory Conduct

Section 83.64, F.S., prohibits a landlord from discriminatorily¹² increasing a tenant's rent or decreasing services, or threatening to bring an action for possession or other civil action in retaliation against a tenant. Examples of conduct by a tenant that a landlord cannot retaliate against include complaining to a government agency of a suspected code violation; participating in a tenant organization; or compelling the landlord to comply with the rental agreement.

⁷ Section 83.51(1), F.S.

⁸ Section 83.51(2)(a), F.S.

⁹ Section 83.51(2)(c), F.S.

¹⁰ Section 83.51(3), F.S.

¹¹ Section 83.51(4), F.S.

¹² "Discrimination" means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct. Section 83.64(4), F.S.

Prohibited Practices

Pursuant to s. 83.67, F.S., a landlord is prohibited from:

- Terminating or interrupting any utility service;
- Preventing a tenant from gaining reasonable access to the dwelling;
- Discriminating against a servicemember¹³ in a rental agreement;
- Preventing a tenant from displaying one portable, removable, cloth or plastic United States flag, not larger than 4.5 feet by 6 feet;
- Removing the outside doors, locks, roof, walls, or windows except for purposes of maintenance, repair, or replacement; and
- Removing the tenant's personal property from the dwelling unless taken after surrender, abandonment, or recovery of possession.

A landlord who violates any provision of this section is liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, and costs, including attorney fees.

The remedies available in this section do not preclude a tenant from pursuing any other remedy at law or equity that the tenant may have.

Mandatory Minimum Sentences

Section 775.082, F.S., provides that a person convicted of a first degree misdemeanor may be sentenced for a term of imprisonment not to exceed a year. A person convicted of a third degree felony may be sentenced to up to 5 years imprisonment.

Fines

Section 775.083, F.S., provides that a person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082, F.S. A person convicted of a first degree misdemeanor may be ordered to pay a fine of up to \$1000; for a third degree felony the fine may be up to \$5,000.

Habitual Felony Offenders

Section 775.084, F.S., provides enhanced penalties for repeat offenders. A habitual offender convicted of third degree felony may be sentenced to up to 10 years imprisonment.

III. Effect of Proposed Changes:

The bill provides that a landlord who violates the provisions in s. 83.51, F.S., governing the landlord's obligation to maintain the premises; s. 83.64, F.S., governing retaliation by the landlord; or s. 83.67, F.S., governing the prohibited practices of a landlord, commits a

¹³ Section 83.43(14), F.S., provides that "servicemember" has the same meaning as provided in s. 250.01, F.S. Section 250.01, F.S., defines "servicemember" as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

misdemeanor of the first degree. A second or subsequent offense constitutes a felony of the third degree.

The bill is effective 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:

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 this bill.¹⁴ The EDR's preliminary estimate is that the bill will have a "positive insignificant" prison bed impact. "Positive" means an increase in prison beds. "Positive insignificant" means an increase of 10 or fewer prisons beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁴ Prison bed impact information provided by the Office of Economic and Demographic Research, The Florida Legislature, March 20, 2017, (on file with the Senate Committee on Criminal Justice).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 83.51, 83.64, and 83.67.

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 Campbell

38-00759-17

2017564__

A bill to be entitled

An act relating to landlords and tenants; amending ss. 83.51, 83.64, and 83.67, F.S.; providing criminal penalties for specified prohibited practices by a landlord relating to maintenance of the premises, retaliatory conduct, and other protections; providing an effective date.

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

Section 1. Section 83.51, Florida Statutes, is amended to read:

83.51 Landlord's obligation to maintain premises.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. The landlord, at commencement of the tenancy, must ensure that screens are installed in a reasonable condition. Thereafter, the landlord must repair damage to screens once annually, when necessary, until termination of the rental agreement.

The landlord is not required to maintain a mobile home or other structure owned by the tenant. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2) (a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling

38-00759-17

2017564__

unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord is not liable for damages but shall abate the rent. The tenant must temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device that ~~which~~ detects visible or invisible particles of combustion and ~~which~~ is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the

38-00759-17

2017564

landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

(5) Any person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent offense constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 83.64, Florida Statutes, is amended to read:

83.64 Retaliatory conduct.—

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building,

Page 3 of 7

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

38-00759-17

2017564

housing, or health code of a suspected violation applicable to the premises;

(b) The tenant has organized, encouraged, or participated in a tenant organization;

(c) The tenant has complained to the landlord pursuant to s. 83.56(1);

(d) The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682;

(e) The tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association; or

(f) The tenant has exercised his or her rights under local, state, or federal fair housing laws.

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

(5) Any person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent offense

Page 4 of 7

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

38-00759-17 2017564
 120 constitutes a felony of the third degree, punishable as provided
 121 in s. 775.082, s. 775.083, or s. 775.084.

122 Section 3. Section 83.67, Florida Statutes, is amended to
 123 read:

124 83.67 Prohibited practices.—

125 (1) A landlord of any dwelling unit governed by this part
 126 shall not cause, directly or indirectly, the termination or
 127 interruption of any utility service furnished the tenant,
 128 including, but not limited to, water, heat, light, electricity,
 129 gas, elevator, garbage collection, or refrigeration, whether or
 130 not the utility service is under the control of, or payment is
 131 made by, the landlord.

132 (2) A landlord of any dwelling unit governed by this part
 133 shall not prevent the tenant from gaining reasonable access to
 134 the dwelling unit by any means, including, but not limited to,
 135 changing the locks or using any bootlock or similar device.

136 (3) A landlord of any dwelling unit governed by this part
 137 shall not discriminate against a servicemember in offering a
 138 dwelling unit for rent or in any of the terms of the rental
 139 agreement.

140 (4) A landlord shall not prohibit a tenant from displaying
 141 one portable, removable, cloth or plastic United States flag,
 142 not larger than 4 and 1/2 feet by 6 feet, in a respectful manner
 143 in or on the dwelling unit regardless of any provision in the
 144 rental agreement dealing with flags or decorations. The United
 145 States flag shall be displayed in accordance with s. 83.52(6).
 146 The landlord is not liable for damages caused by a United States
 147 flag displayed by a tenant. Any United States flag may not
 148 infringe upon the space rented by any other tenant.

38-00759-17 2017564
 149 (5) A landlord of any dwelling unit governed by this part
 150 shall not remove the outside doors, locks, roof, walls, or
 151 windows of the unit except for purposes of maintenance, repair,
 152 or replacement; and the landlord shall not remove the tenant's
 153 personal property from the dwelling unit unless such action is
 154 taken after surrender, abandonment, recovery of possession of
 155 the dwelling unit due to the death of the last remaining tenant
 156 in accordance with s. 83.59(3)(d), or a lawful eviction. If
 157 provided in the rental agreement or a written agreement separate
 158 from the rental agreement, upon surrender or abandonment by the
 159 tenant, the landlord is not required to comply with s. 715.104
 160 and is not liable or responsible for storage or disposition of
 161 the tenant's personal property; if provided in the rental
 162 agreement, there must be printed or clearly stamped on such
 163 rental agreement a legend in substantially the following form:
 164 BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON
 165 SURRENDER, ABANDONMENT, OR RECOVERY OF POSSESSION OF THE
 166 DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT, AS
 167 PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT
 168 BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE
 169 TENANT'S PERSONAL PROPERTY.
 170 For the purposes of this section, abandonment shall be as set
 171 forth in s. 83.59(3)(c).
 172 (6) A landlord who violates any provision of this section
 173 shall be liable to the tenant for actual and consequential
 174 damages or 3 months' rent, whichever is greater, and costs,
 175 including attorney's fees. Subsequent or repeated violations
 176 that are not contemporaneous with the initial violation shall be
 177 subject to separate awards of damages.

38-00759-17

2017564__

178 (7) A violation of this section constitutes irreparable
179 harm for the purposes of injunctive relief.

180 (8) The remedies provided by this section are not exclusive
181 and do not preclude the tenant from pursuing any other remedy at
182 law or equity ~~which that~~ the tenant may have. The remedies
183 provided by this section shall also apply to a servicemember who
184 is a prospective tenant who has been discriminated against under
185 subsection (3).

186 (9) Any person who violates this section commits a
187 misdemeanor of the first degree, punishable as provided in s.
188 775.082 or s. 775.083. A second or subsequent offense
189 constitutes a felony of the third degree, punishable as provided
190 in s. 775.082, s. 775.083, or s. 775.084.

191 Section 4. This act shall take effect October 1, 2017.

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 628

INTRODUCER: Criminal Justice Committee and Senators Garcia and Campbell

SUBJECT: Transmission of Disease Through Bodily Fluids

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Hrdlicka	CJ	Fav/CS
2.			HP	
3.			JU	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 628 makes numerous changes in the criminal law and public health law related to the transmission or potential transmission of disease through the exchange of bodily fluids. For example, the bill:

- Reclassifies felony offenses to misdemeanor offenses for crimes involving:
 - Donating blood, plasma, organs, skin, or other human tissue by a person who knows he or she is infected with human immunodeficiency virus (HIV); and
 - Malicious dissemination of any false information or report concerning the existence of a sexually transmissible disease.
- Creates a new misdemeanor crime for engaging in sexual conduct, without a partner's informed consent, when a person knows he or she is infected with HIV and may communicate HIV through sexual conduct with intent to transmit the disease, and actually transmits the disease.
- Includes human papilloma virus, hepatitis, and human immunodeficiency virus to the list of diseases it is unlawful to transmit with the intent to transmit (new misdemeanor).
- Eliminates repeat offenses, changes a felony to a misdemeanor, and requires screening and treatment services relating to prostitution.
- Amends s. 960.003, F.S., relating to hepatitis and HIV testing of persons charged with or alleged by petition for delinquency to have committed certain sexual and nonsexual crimes:
 - Requires the Department of Health to refer any person who alleges he or she has been the victim of sexual assault for treatment services, including postexposure prophylaxis; and

- Limits the out-of-pocket cost for the postexposure prophylaxis.

The bill was estimated by the Criminal Justice Impact Conference to likely result in a decrease of ten or fewer prison beds. The bill will have a fiscal impact on the Department of Health, but the extent of such costs is indeterminate. See Section V. Fiscal Impact Statement.

II. Present Situation:

Chapter 384, F.S., the “Control of Sexually Transmissible Disease Act,” was created in 1986, during the time the general population was becoming increasingly aware of the existence of acquired immune deficiency syndrome (AIDS)/human immunodeficiency virus (HIV).¹

In the early 1990’s, reacting to concerns that victims of crimes involving the exchange of bodily fluids might become infected with HIV, the Florida Legislature enacted laws to require HIV testing of persons accused of these crimes and providing for test result reporting to the victims.²

Current law and the amendments made to current law by the bill are discussed below in the “Effect of Proposed Changes” section of this bill analysis.

III. Effect of Proposed Changes:

Section 1 – Testing of Human Tissue

Section 381.0041, F.S., sets forth requirements for the testing of every donation of blood, plasma, organs, skin, or other human tissue for HIV and other communicable diseases, prior to transfusion or transplantation.

Subsection (11) of s. 381.0041, F.S., prohibits a person who is HIV-positive, who knows he or she is infected with HIV, and who has been informed that the virus may be communicated by donating blood, plasma, organs, skin, or other human tissue from making such a donation.

Currently, violating the prohibition subjects the person who commits this crime to 3rd degree felony penalties.³ The bill amends this provision to make the crime a 1st degree misdemeanor offense and permits such a donation if it is deemed medically necessary by a licensed physician.⁴

Section 2 – Definitions in ch. 384, F.S., the “Control of Sexually Transmissible Disease Act”

Section 324.23, F.S., currently contains three definitions:

- “Department” means the Department of Health.

¹ See U.S. Department of Health and Human Services, Aids.gov, “A Timeline of HIV/AIDS,” available at <https://www.aids.gov/hiv-aids-basics/hiv-aids-101/aids-timeline/> (last visited March 15, 2016). HIV is the Human Immunodeficiency Virus.

² These laws include s. 960.003, F.S. (1990), and s. 775.0877, F.S. (1993).

³ A 3rd degree felony is punishable by up to 5 years’ imprisonment and up to a \$5,000 fine pursuant to ss. 775.082 and 775.083, F.S. A habitual offender who commits a 3rd degree felony is punishable by up to 10 years’ imprisonment pursuant to s. 775.084, F.S.

⁴ A 1st degree misdemeanor is punishable by up to 1 year imprisonment and up to a \$1,000 fine pursuant to ss. 775.082 and 775.083, F.S.

- “County health department” means agencies and entities designated in ch. 154, F.S.
- “Sexually transmissible disease” means “a bacterial, viral, fungal, or parasitic disease determined by rule of the department to be sexually transmissible, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for prevention, elimination, control, and treatment.”

The bill creates definitions for the terms “sexual conduct” and “substantial risk of transmission”:

- “Sexual conduct” means conduct between persons, regardless of gender, which is capable of transmitting a sexually transmissible disease, including, but not limited to, contact between a
 - Penis and a vulva or an anus; or
 - Mouth and a penis, a vulva, or an anus.
- “Substantial risk of transmission” means a reasonable probability of disease transmission as proven by competent medical or epidemiological evidence.

Section 3 – Unlawful Acts

This section of the bill substantially amends s. 384.24, F.S.

It replaces current law references to “sexual intercourse” in subsection (1) of s. 384.24, F.S., with the newly created term “sexual conduct.” Not limiting the application of s. 384.24, F.S., to only acts of “intercourse” could result in greater informed consent between partners who engage in other sexual activities since the term seems to include a broader range of sexual activity.⁵

The bill also adds “human papillomavirus,” “hepatitis,” and “human immunodeficiency virus” to the list of sexually transmissible diseases in subsection (1) of s. 384.24, F.S., and makes it unlawful for a person who knows he or she is infected with a listed disease and who has been informed that the disease may be transmitted through sexual conduct, to:

- Act with the intent to transmit one of the listed diseases;
- Engage in conduct that poses a substantial risk of transmission when the other person is unaware that the person is a carrier of the disease; and
- Transmit the disease to the other person.

Section 384.24(2), F.S., as amended by the bill, provides that a person does not act with the intent required under subsection (1) if he or she:

- In good faith complies with a prescribed treatment regimen or the behavioral recommendations of the person’s health care provider or public health officials; or
- Offers to comply but that offer is rejected by his or her sexual partner.

“Behavioral recommendations” includes the use of a prophylactic device to measurably limit the risk of disease transmission.

⁵ It should be noted that the Florida Supreme Court determined in *Debaun v. State*, No. SC13-2336, March 16, 2017, that the term “sexual intercourse” in s. 384.24(2), F.S., “denotes sexual conduct that includes acts of oral and anal intercourse.” Thus, it appears this definitional change by the bill may not be necessary due to the court ruling, but it does not seem to run afoul of the court’s decision.

The bill provides that evidence of the person's failure to comply with the treatment regimen or behavioral recommendations is not sufficient, without more, to establish the element of intent.

Section 4 – Penalties

Section 384.34, F.S., sets forth the penalties related to s. 384.24, F.S., which contains unlawful conduct or actions related to sexually transmissible diseases and a partner's informed consent.

Current law provides that:

- Violation of s. 384.24(1), F.S., is a 1st degree misdemeanor (not informing partner of having a list of diseases).
- The first violation of s. 384.24(2), F.S., is a 3rd degree felony, while subsequent violations are 1st degree felonies (not informing partner of having HIV).⁶

The bill eliminates the current felony penalties and the unlawful act proscribed in s. 384.24(2), F.S.

Instead, under the bill it is a 1st degree misdemeanor to commit the offense created by the bill in s. 384.24(1), F.S., (explained above in Section 3 – Unlawful Acts).

A person who maliciously disseminates any false information or report concerning the existence of a sexually transmissible disease is currently subject to prosecution for a 3rd degree felony under s. 384.34(3), F.S. The bill changes the penalty to a 1st degree misdemeanor.

Additionally, the bill deletes the current prohibition of any person violating a DOH rule relating to sexually transmissible diseases, which subjects a person to a fine of up to \$500 and any other applicable penalties found in ch. 384, F.S.

A person who obtains the identifying information of an individual who has a sexually transmissible disease and who knows or should have known the nature of the information and maliciously, or for monetary gain, disseminates the information to an unauthorized person is currently subject to prosecution for a 3rd degree felony under s. 384.34(6), F.S. The bill changes the penalty to a 1st degree misdemeanor.

Section 5 – Criminal Transmission of HIV

Section 775.0877(1), F.S., currently requires the court to order a person who has pled guilty or no contest, or who is convicted of a crime in the list of offenses or the attempt to commit one of the listed offenses, which involves the transmission of "body" fluids from one person to another, to undergo HIV testing.

⁶ A 1st degree felony is punishable by up to 30 years' imprisonment and up to a \$10,000 fine pursuant to ss. 775.082 and 775.083, F.S. A habitual offender who commits a 1st degree felony is punishable by life imprisonment pursuant to s. 775.084, F.S.

The crimes listed in s. 775.0877(1), F.S., are:

- Section 794.011, F.S., relating to sexual battery;
- Section 826.04, F.S., relating to incest;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Sections 784.011, 784.07(2)(a), and 784.08(2)(d), F.S., relating to assault;
- Sections 784.021, 784.07(2)(c), and 784.08(2)(b), F.S., relating to aggravated assault;
- Sections 784.03, 784.07(2)(b), and 784.08(2)(c), F.S., relating to battery;
- Sections 784.045, 784.07(2)(d), and 784.08(2)(a), F.S., relating to aggravated battery;
- Section 827.03(2)(c), F.S., relating to child abuse;
- Section 827.03(2)(a), F.S., relating to aggravated child abuse;
- Section 825.102(1), F.S., relating to abuse of an elderly person or disabled adult;
- Section 825.102(2), F.S., relating to aggravated abuse of an elderly person or disabled adult;
- Section 827.071, F.S., relating to sexual performance by a person less than 18 years of age;
- Sections 796.07 and 796.08, F.S., relating to prostitution;
- Section 381.0041(11)(b), F.S., relating to donation of blood, plasma, organs, skin, or other human tissue; or
- Sections 787.06(3)(b), (d), (f), and (g), F.S., relating to human trafficking.

The court ordered HIV test is not required if the offender has been tested voluntarily or pursuant to procedures set forth in s. 381.004(2)(h)6., F.S., s. 951.27, F.S., or other applicable law.

Section 381.004(2)(h)6., F.S., provides that the person to be tested does not have the right to decline testing under the following HIV testing circumstances:

- For the performance of an HIV test upon a defendant pursuant to the victim's request in a prosecution for any type of sexual battery⁷ where a blood sample is taken from the defendant voluntarily;
- Pursuant to court order for any purpose; or
- Pursuant to ss. 775.0877, 951.27, or 960.003, F.S.

However, the results of an HIV test performed under s. 381.004(2)(h)6., F.S., shall be disclosed solely to the victim and the defendant, except as provided in ss. 775.0877, 951.27, and 960.003, F.S.

Section 951.27, F.S., currently provides for local (city or county) inmates to be tested for HIV and other infectious diseases. Test results may be divulged in accordance with ss. 775.0877 and 960.003, F.S.

Additionally, s. 951.27, F.S., specifically provides that:

...upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the results of any HIV test performed on an inmate who has been arrested for any sexual offense involving

⁷ "Sexual battery" is defined in s. 794.011(1)(h), F.S., as "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose."

oral, anal, or vaginal penetration by, or union with, the sexual organ of another, shall be disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor. In such cases, the county or municipal detention facility shall furnish the test results to the Department of Health, which is responsible for disclosing the results to public health agencies as provided in s. 775.0877 and to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, as provided in s. 960.003(3).

The bill amends s. 775.0877, F.S., by:

- Changing the term “body fluids” to “semen or vaginal secretions”;
- Eliminating court ordered HIV testing for attempts to commit the listed crimes;
- Deleting s. 381.0041(11)(b), F.S., relating to donation of blood, plasma, organs, skin, or other human tissue from the list of crimes for which a court must order HIV testing of the offender; and
- Reducing the penalty in s. 775.0877(3), F.S., for criminal transmission of HIV for a second or subsequent violation of the offenses in s. 775.0877(1), F.S., from a 3rd degree felony to a 1st degree misdemeanor and adding that HIV actually be transmitted to the victim as an element of the crime.

Section 6 – Screening for Sexually Transmissible Diseases for Prostitution

Section 796.07, F.S., prohibits prostitution and prostitution-related activities.⁸ Under s. 796.07(2), F.S., it is unlawful:

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution;
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act;
- To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose;
- To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;
- For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation;
- To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation;
- To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation;
- To aid, abet, or participate in any of the acts or things enumerated in s. 796.07(2), F.S.; or
- To purchase the services of any person engaged in prostitution.

⁸ “Prostitution” means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses. s. 796.07(1)(a), F.S.

Section 796.08(2), F.S., currently provides that a person arrested under s. 796.07, F.S., may request screening for a sexually transmissible disease, as defined in s. 796.08(1), F.S., and pay any associated costs. If the person tests positive, he or she is required to submit to appropriate treatment and counseling.

The bill amends s. 796.08(2), F.S., to *require* screening for sexually transmissible diseases. The bill also requires that DOH pay costs associated with the screening and to ensure that an infected person who chooses to take a postexposure prophylaxis medication pays only up to \$30 out-of-pocket for the medication.

The bill amends or repeals the remaining provisions in s. 796.08(3), (4), and (5), F.S. These changes include:

- Repealing a 3rd degree felony of committing prostitution or procuring another to commit prostitution knowing he or she had previously tested positive for HIV, under s. 796.08(5), F.S. (now a misdemeanor crime in s. 796.08(3), F.S.); and
- Repeal of subsection (5), allowing for dissemination of test results beyond the offender, to include state attorneys and courts for the purposes of future charges and sentences under s. 796.08(5), F.S. (the repealed crime).

Section 7 – Victims

Section 960.003, F.S., requires AIDS/HIV and hepatitis testing of persons accused of committing sexual offenses proscribed in ch. 794, F.S. (sexual battery), s. 800.04, F.S. (lewd or lascivious offenses), and the crimes listed in s. 775.0877(1), F.S.⁹ This includes the testing of juvenile offenders. This section of the law also provides for disclosure of the test results to the crime victim, and includes legislative intent language.

As amended by the bill, s. 960.003, F.S., provides legislative findings related to victims of “sexual assault” having access to medical care and affordable postexposure prophylaxis, and also:

- Requires the DOH to refer for medical services any person who alleges he or she has been the victim of a “sexual assault”¹⁰ involving an exchange of bodily fluids which presents a “substantial risk of transmission” of HIV; and
- Specifies that services must include the offer of postexposure prophylaxis to prevent the acquisition of HIV, which the DOH must ensure does not cost the person more than \$30 in out-of-pocket expenses.

⁹ Chapter 90-201, L.O.F. (see also HB 1115, SB 914 (1990)). For a good historical perspective see Michael Bruyere, “Damage Control for Victims of Physical Assault – Testing the Innocent for AIDS,” 21 Fla.St.U.L.Rev. 945 (Winter 1994). See also, chs. 1993-230 and 2011-220, L.O.F.

¹⁰ “Sexual assault” is not a term used to describe sex crimes defined in the criminal statutes. “Sexual battery” or “Lewd or lascivious molestation or battery” are examples of sex crimes proscribed in the Florida Statutes. See ss. 794.011 and 800.04, F.S. (This is not an exhaustive list.) The term also appears in the Legislative findings in Section 7 of the bill.

Section 8 – Offense Severity Ranking Chart

The bill amends s. 921.0022, F.S., the Criminal Punishment Code Offense Severity Ranking Chart, to delete the 3rd degree felony, Level 5 offense, because Section 1 of the bill made the crime a misdemeanor offense.

Section 9 – Effective Date

The bill is effective 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:**

None.

B. Private Sector Impact:

A person arrested for prostitution and prostitution-related activities under s. 796.07, F.S., will be required to submit to screening, which will now be paid for by the DOH.

A victim of “sexual assault” may be able to get access to postexposure prophylaxis to prevent the acquisition of HIV for no more than \$30 in out-of-pocket expenses.

C. Government Sector Impact:

On March 2, 2017, the Criminal Justice Impact Conference considered the identical House bill (HB 605) and determined that the bill would have a negative insignificant impact on the number of prison beds, meaning the bill would likely result in a decrease of ten or fewer prison beds.

The bill requires the DOH to pay for any costs associated with screening for a sexually transmissible disease for anyone requesting the screening under s. 796.08, F.S. (Section 6) and to ensure that access to postexposure prophylaxis (PEP) to prevent the acquisition

of HIV is available for no more than \$30 in out-of-pocket expenses (Section 7). The DOH estimated the following fiscal impacts:¹¹

- One FTE to manage the PEP and testing program: Sr. Human Services Program Specialist for nPEP coordination \$30,000, standard DOH professional package with limited travel at a cost of \$10,841, and computed with 28 percent fringe at a cost of \$8,400.
- “Cost of PEP medication is given at the 340B price minus the maximum \$30 the [DOH] can charge a victim for the medications. Some victims may have health insurance that will pay for the treatment, or access patient assistance programs, but there is no way to estimate those numbers.”
- “The total expenditures the [DOH] would incur for providing PEP medications are unknown but potentially significant. The [US] Bureau of Justice Statistics estimates that only 35 percent of sexual assaults were reported in 2015. It is indeterminate how many individuals would report a sexual assault and also utilize this program. The cost to the [DOH] for providing PEP medications could be \$1,687 (\$30 deducted for fee paid by victim) for PEP treatment [times] the number of sexual assault victims that utilize this program who do not have insurance or an ability to pay.”

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOH noted the following issues in its bill analysis:¹²

- Because only about 35 percent of victims of sexual assault report the assault, “this behavior complicates where and when sexual assault victims are likely to seek treatment, if at all. The time sensitivity of providing PEP [(postexposure prophylaxis)] for sexual assault victims is crucial, as well as knowing which health care entities are best equipped to timely respond to the situation. In many situations, the [DOH] may not be the entity examining the person or making the referral for medical services. If the medications are not started within 72 hours, it is not effective in preventing the transmission of HIV.”
- “PEP medicine provided to children is determined by the weight of the child and is provided in liquid form. The availability of this medicine outside a licensed pharmacy environment will be extremely limited.”
- So long as the service of providing the PEP is provided at a DOH facility, the DOH will be able to ensure that the out-of-pocket costs are no more than \$30; otherwise, the DOH will not have any authority over the expense of the PEP.
- Limiting “bodily fluids” to semen and vaginal secretions in Section 5 of the bill, relating to screening for sexually transmissible diseases for prostitution, would exclude other fluids, like exposure to blood.

¹¹ Department of Health, *Agency Bill Analysis: SB 628*, March 20, 2017.

¹² *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0041, 384.23, 384.24, 384.34, 775.0877, 796.08, 960.003, and 921.0022.

IX. Additional Information:

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

CS by Criminal Justice on March 21, 2017:

The CS:

- Changes the definition of “sexual conduct” (Section 2).
- Substantially amends the unlawful acts set forth in s. 384.24(1), F.S., (Section 3) by adding the human papillomavirus, hepatitis, and HIV to the list of sexually transmissible diseases in s. 384.24(1), F.S., and prohibiting a person infected with a listed disease from:
 - Acting with intent to transmit the disease;
 - Engaging in conduct that poses a substantial risk of transmission when a sex partner is unaware that the person is a carrier of the disease; and
 - Transmitting the disease to another person.However, the person does not act with intent if he or she complies with a certain treatment regimen or behavioral recommendations, or offers to comply but the person’s sex-partner rejects that offer. Additionally, “failure to comply,” without more, is not sufficient to establish intent.
- Restores ss. 790.07 and 796.08, F.S., relating to prostitution, to the list of crimes for which a court must order HIV testing of the offender, in s. 775.0877, F.S. (Section 5).
- Restores the reference to s. 960.003, F.S., in s. 775.0877(2), F.S., related to disclosure of HIV test results to a crime victim or other family members (Section 5).
- Requires that a person arrested under s. 796.07, F.S., be screened for a sexually transmissible disease and restores the requirement that a person who tests positive shall submit to treatment and counseling (Section 6). Requires the Department of Health to ensure that such person pay no more than \$30 out-of-pocket for a postexposure prophylaxis, if the person elects to take the medicine (Section 6).
- Restores the 1st degree misdemeanor of committing prostitution or procuring another to commit prostitution knowing he or she had previously tested positive for a sexually transmissible disease, which is now found under s. 796.08(3), F.S. (Section 6).
- Restores current law in s. 960.003, F.S., and the amendatory language setting forth legislative findings and victim services as provided in the bill remains. Also, adds a new cross-reference to the definition of “substantial risk of transmission” (Section 7).
- Eliminates sections 8 and 10 of the bill because the cross-references deleted in those bill sections are restored by the amendment.

B. Amendments:

None.

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



208470

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (11) of section
381.0041, Florida Statutes, is amended to read:

381.0041 Donation and transfer of human tissue; testing
requirements.—

(11)

(b) Except when the donation is deemed medically



208470

appropriate by a licensed physician, any person who has human immunodeficiency virus infection, who knows he or she is infected with human immunodeficiency virus, and who has been informed that he or she may communicate this disease by donating blood, plasma, organs, skin, or other human tissue who donates blood, plasma, organs, skin, or other human tissue commits ~~is guilty of a misdemeanor felony~~ of the first ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083, ~~or s. 775.084.~~

Section 2. Section 384.23, Florida Statutes, is amended to read:

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

(1) "Department" means the Department of Health.

(2) "County health department" means agencies and entities as designated in chapter 154.

(3) "Sexual conduct" means conduct between persons, regardless of gender, which is capable of transmitting a sexually transmissible disease, including, but not limited to, contact between a:

(a) Penis and a vulva or an anus; or

(b) Mouth and a penis, a vulva, or an anus.

~~(4)-(3)~~ "Sexually transmissible disease" means a bacterial, viral, fungal, or parasitic disease determined by rule of the department to be sexually transmissible, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for prevention, elimination, control, and treatment. The department must, by rule, determine which diseases are to be designated as sexually transmissible diseases and shall consider the



208470

recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized medical authorities in that determination. Not all diseases that are sexually transmissible need be designated for the purposes of this act.

(5) "Substantial risk of transmission" means a reasonable probability of disease transmission as proven by competent medical or epidemiological evidence.

Section 3. Section 384.24, Florida Statutes, is amended to read:

384.24 Unlawful acts.—

(1) It is unlawful for a ~~any~~ person who has chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, human papillomavirus, hepatitis, or syphilis, or human immunodeficiency virus infection, when the ~~such~~ person knows he or she is infected with one or more of these diseases and when the ~~such~~ person has been informed that he or she may communicate this disease to another person through sexual conduct ~~intercourse,~~ to act with the intent to transmit the disease, engage in conduct that poses a substantial risk of transmission to another person when the other person is unaware that the person is a carrier of the disease, and transmit the disease to the other person ~~have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual intercourse.~~

(2) A person does not act with the intent required under



208470

subsection (1) if he or she in good faith complies with a treatment regimen prescribed by his or her health care provider or with the behavioral recommendations of his or her health care provider or public health officials, or if he or she offers to comply, but that offer is rejected by the other person. For purposes of this section, the term "behavioral recommendations" includes, but is not limited to, the use of a prophylactic device to measurably limit the risk of transmission of the disease. Evidence of the person's failure to comply with such a treatment regimen or such behavioral recommendations is not, in and of itself, sufficient to establish that he or she acted with the intent required under subsection (1) ~~It is unlawful for any person who has human immunodeficiency virus infection, when such person knows he or she is infected with this disease and when such person has been informed that he or she may communicate this disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual intercourse.~~

Section 4. Section 384.34, Florida Statutes, is amended to read:

384.34 Penalties.—

(1) Any person who violates s. 384.24 ~~the provisions of s. 384.24(1)~~ commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who violates ~~the provisions of~~ s. 384.26 or s. 384.29 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.



208470

(3) Any person who maliciously disseminates any false information or report concerning the existence of any sexually transmissible disease commits a misdemeanor of the first degree ~~felony of the third degree~~, punishable as provided in s. 775.082 ~~or s. 775.083 ss. 775.082, 775.083, and 775.084.~~

~~(4) Any person who violates the provisions of the department's rules pertaining to sexually transmissible diseases may be punished by a fine not to exceed \$500 for each violation. Any penalties enforced under this subsection shall be in addition to other penalties provided by this chapter. The department may enforce this section and adopt rules necessary to administer this section.~~

~~(5) Any person who violates s. 384.24(2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who commits multiple violations of s. 384.24(2) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(4)~~(6)~~ Any person who obtains information that identifies an individual who has a sexually transmissible disease, who knew or should have known the nature of the information and maliciously, or for monetary gain, disseminates this information or otherwise makes this information known to any other person, except by providing it either to a physician or nurse employed by the Department of Health or to a law enforcement agency, commits a misdemeanor of the first degree ~~felony of the third degree~~, punishable as provided in s. 775.082 or ~~s. 775.083, or s. 775.084.~~

Section 5. Section 775.0877, Florida Statutes, is amended to read:



208470

775.0877 Criminal transmission of HIV; procedures;
penalties.—

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, ~~or the attempt thereof~~, which offense ~~or attempted offense~~ involves the transmission of semen or vaginal secretions ~~body fluids~~ from one person to another:

(a) Section 794.011, relating to sexual battery;

(b) Section 826.04, relating to incest;

(c) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;

(d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault;

(e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault;

(f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery;

(g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery;

(h) Section 827.03(2)(c), relating to child abuse;

(i) Section 827.03(2)(a), relating to aggravated child abuse;

(j) Section 825.102(1), relating to abuse of an elderly person or disabled adult;

(k) Section 825.102(2), relating to aggravated abuse of an elderly person or disabled adult;

(l) Section 827.071, relating to sexual performance by



208470

person less than 18 years of age;

(m) Sections 796.07 and 796.08, relating to prostitution;

~~(n) Section 381.004(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue, or~~

~~(n)~~ (n) Sections 787.06(3)(b), (d), (f), and (g), relating to human trafficking,

the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

(2) The results of the HIV test must be disclosed under the direction of the Department of Health, to the offender who has been convicted of or pled nolo contendere or guilty to an offense specified in subsection (1) and to the public health agency of the county in which the conviction occurred and, if different, the county of residence of the offender, and, upon request pursuant to s. 960.003, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor.

(3) An offender who has undergone HIV testing pursuant to



208470

subsection (1), and to whom positive test results have been disclosed pursuant to subsection (2), who commits a second or subsequent offense enumerated in paragraphs (1)(a)-(n) which results in transmission of HIV to the victim ~~(1)(a)-(n)~~, commits criminal transmission of HIV, a misdemeanor of the first degree ~~felony of the third degree~~, punishable as provided in s. 775.082 ~~or~~ s. 775.083, ~~or s. 775.084~~. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime enumerated in paragraphs (1)(a)-(n).

(4) An offender may challenge the positive results of an HIV test performed pursuant to this section and may introduce results of a backup test performed at her or his own expense.

~~(5) Nothing in this section requires that an HIV infection have occurred in order for an offender to have committed criminal transmission of HIV.~~

~~(5)(6)~~ For an alleged violation of any offense enumerated in paragraphs (1)(a)-(n) for which the consent of the victim may be raised as a defense in a criminal prosecution, it is an affirmative defense to a charge of violating this section that the person exposed knew that the offender was infected with HIV, knew that the action being taken could result in transmission of the HIV infection, and consented to the action voluntarily with that knowledge.

Section 6. Section 796.08, Florida Statutes, is amended to read:

796.08 Screening for HIV and sexually transmissible diseases; providing penalties.—

(1)(a) For the purposes of this section, the term "sexually transmissible disease" means a bacterial, viral, fungal, or



208470

parasitic disease, determined by rule of the Department of Health to be sexually transmissible, a threat to the public health and welfare, and a disease for which a legitimate public interest is served by providing for regulation and treatment.

(b) In considering which diseases are designated as sexually transmissible diseases, the Department of Health shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, syphilis, and human immunodeficiency virus infection for designation and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized authorities. Not all diseases that are sexually transmissible need be designated for purposes of this section.

(2) A person arrested under s. 796.07 shall be screened ~~may request screening~~ for a sexually transmissible disease under direction of the Department of Health and, if infected, shall submit to appropriate treatment and counseling. The Department of Health shall ~~A person who requests screening for a sexually transmissible disease under this subsection must~~ pay any costs associated with such screening. Such appropriate treatment and counseling must include the offer of postexposure prophylaxis (PEP) to prevent the acquisition of HIV. The Department of Health shall ensure that any person electing to take PEP under this subsection does not incur out-of-pocket expenses of more than \$30 in obtaining this medication.

~~(3) A person convicted under s. 796.07 of prostitution or procuring another to commit prostitution must undergo screening~~



208470

~~for a sexually transmissible disease, including, but not limited to, screening to detect exposure to the human immunodeficiency virus, under direction of the Department of Health. If the person is infected, he or she must submit to treatment and counseling prior to release from probation, community control, or incarceration. Notwithstanding the provisions of s. 384.29, the results of tests conducted pursuant to this subsection shall be made available by the Department of Health to the offender, medical personnel, appropriate state agencies, state attorneys, and courts of appropriate jurisdiction in need of such information in order to enforce the provisions of this chapter.~~

~~(3)(4)~~ A person who commits prostitution or procures another for prostitution and who, prior to the commission of such crime, had tested positive for a sexually transmissible disease ~~other than human immunodeficiency virus infection~~ and knew or had been informed that he or she had tested positive for such sexually transmissible disease and could possibly communicate such disease to another person through sexual activity commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.

~~(5) A person who:~~

~~(a) Commits or offers to commit prostitution; or~~

~~(b) Procures another for prostitution by engaging in sexual activity in a manner likely to transmit the human immunodeficiency virus,~~



208470

~~and who, prior to the commission of such crime, had tested positive for human immunodeficiency virus and knew or had been informed that he or she had tested positive for human immunodeficiency virus and could possibly communicate such disease to another person through sexual activity commits criminal transmission of HIV, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.~~

Section 7. Section 960.003, Florida Statutes, is amended to read:

960.003 Preventive medical treatment and care for victims of sexual assault involving the exchange of bodily fluids presenting a substantial risk of transmission of HIV; hepatitis and HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.—

(1) LEGISLATIVE FINDINGS ~~INTENT~~.—The Legislature finds that victims of sexual assault involving the exchange of bodily fluids that present a substantial risk of transmission of the human immunodeficiency virus (HIV) should have access to appropriate medical care and affordable postexposure prophylaxis to prevent the acquisition of HIV. Further, a victim of a criminal offense which involves the transmission of body fluids, or which involves certain sexual offenses in which the victim is a minor, disabled adult, or elderly person, is entitled to know at the earliest possible opportunity whether the person charged with or alleged by petition for delinquency to have committed



208470

the offense has tested positive for hepatitis or human immunodeficiency virus (HIV) infection. The Legislature finds that to deny victims access to hepatitis and HIV test results causes unnecessary mental anguish in persons who have already suffered trauma. The Legislature further finds that since medical science now recognizes that early diagnosis is a critical factor in the treatment of hepatitis and HIV infection, both the victim and the person charged with or alleged by petition for delinquency to have committed the offense benefit from prompt disclosure of hepatitis and HIV test results.

(2) REFERRAL TO MEDICAL SERVICES REQUIRED.—The Department of Health shall refer for medical services any person who alleges that he or she has been the victim of a sexual assault involving an exchange of bodily fluids which presents a substantial risk of transmission of the human immunodeficiency virus (HIV). Such services must include the offer of postexposure prophylaxis (PEP) to prevent the acquisition of HIV. The Department of Health shall ensure that any person electing to take PEP under this subsection does not incur out-of-pocket expenses of more than \$30 in obtaining this medication. The term "substantial risk of transmission" has the same meaning as in s. 384.23.

(3) ~~(2)~~ TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.—

(a) In any case in which a person has been charged by information or indictment with or alleged by petition for delinquency to have committed any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, upon request of the victim or



208470

the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo hepatitis and HIV testing within 48 hours after the information, indictment, or petition for delinquency is filed. In the event the victim or, if the victim is a minor, the victim's parent or legal guardian requests hepatitis and HIV testing after 48 hours have elapsed from the filing of the indictment, information, or petition for delinquency, the testing shall be done within 48 hours after the request.

(b) However, when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at the time the offense was committed or when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) or s. 825.1025 is a disabled adult or elderly person as defined in s. 825.1025 regardless of whether the offense involves the transmission of bodily fluids from one person to another, then upon the request of the victim or the victim's legal guardian, or of the parent or legal guardian, the court shall order such person to undergo hepatitis and HIV testing within 48 hours after the information, indictment, or petition for delinquency is filed. In the event the victim or, if the victim is a minor, the victim's parent or legal guardian requests hepatitis and HIV testing after 48 hours have elapsed from the filing of the indictment, information, or petition for delinquency, the testing shall be done within 48 hours after the request. The testing shall be performed under the direction of the Department of Health in accordance with s. 381.004. The results of a hepatitis and HIV test performed on a defendant or juvenile offender pursuant to this subsection shall not be admissible in any criminal or juvenile proceeding arising



208470

out of the alleged offense.

(c) If medically appropriate, followup HIV testing shall be provided when testing has been ordered under paragraph (a) or paragraph (b). The medical propriety of followup HIV testing shall be based upon a determination by a physician and does not require an additional court order. Notification to the victim, or to the victim's parent or legal guardian, and to the defendant of the results of each followup test shall be made as soon as practicable in accordance with this section.

(4)~~(3)~~ DISCLOSURE OF RESULTS.—

(a) The results of the test shall be disclosed no later than 2 weeks after the court receives such results, under the direction of the Department of Health, to the person charged with or alleged by petition for delinquency to have committed or to the person convicted of or adjudicated delinquent for any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, and to public health agencies pursuant to s. 775.0877. If the alleged offender is a juvenile, the test results shall also be disclosed to the parent or guardian. When the victim is a victim as described in paragraph (3)(b) ~~(2)(b)~~, the test results must also be disclosed no later than 2 weeks after the court receives such results, to the person charged with or alleged by petition for delinquency to have committed or to the person convicted of or adjudicated delinquent for any offense enumerated in s. 775.0877(1)(a)-(n), or s. 825.1025 regardless of whether the offense involves the transmission of bodily



208470

fluids from one person to another, and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim, and to public health agencies pursuant to s. 775.0877. Otherwise, hepatitis and HIV test results obtained pursuant to this section are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to any other person except as expressly authorized by law or court order.

(b) At the time that the results are disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of a victim if the victim is a minor, the same immediate opportunity for face-to-face counseling which must be made available under s. 381.004 to those who undergo hepatitis and HIV testing shall also be afforded to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor.

(4) POSTCONVICTION TESTING.—If, for any reason, the testing requested under subsection (3) ~~(2)~~ has not been undertaken, then upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the court shall order the offender to undergo hepatitis and HIV testing following conviction or delinquency adjudication. The testing shall be performed under the direction of the Department of Health, and the results shall be disclosed in accordance with the provisions of subsection (3).

(5) EXCEPTIONS.—Subsections (3) and (5) ~~(2) and (4)~~ do not apply if:

(a) The person charged with or convicted of or alleged by petition for delinquency to have committed or been adjudicated



208470

delinquent for an offense described in subsection (3) ~~(2)~~ has undergone hepatitis and HIV testing voluntarily or pursuant to procedures established in s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or rule providing for hepatitis and HIV testing of criminal defendants, inmates, or juvenile offenders, subsequent to his or her arrest, conviction, or delinquency adjudication for the offense for which he or she was charged or alleged by petition for delinquency to have committed; and

(b) The results of such hepatitis and HIV testing have been furnished to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor.

(6) TESTING DURING INCARCERATION, DETENTION, OR PLACEMENT; DISCLOSURE.—In any case in which a person convicted of or adjudicated delinquent for an offense described in subsection (3) ~~(2)~~ has not been tested under subsection (3) ~~(2)~~, but undergoes hepatitis and HIV testing during his or her incarceration, detention, or placement, the results of the initial hepatitis and HIV testing shall be disclosed in accordance with subsection (4) ~~(3)~~. Except as otherwise requested by the victim or the victim's legal guardian, or the parent or guardian of the victim if the victim is a minor, if the initial test is conducted within the first year of the imprisonment, detention, or placement, the request for disclosure shall be considered a standing request for any subsequent hepatitis and HIV test results obtained within 1 year after the initial hepatitis and HIV tests are performed, and need not be repeated for each test administration. Where the inmate or juvenile offender has previously been tested pursuant to subsection (3) ~~(2)~~ the request for disclosure under this



208470

subsection shall be considered a standing request for subsequent hepatitis and HIV results conducted within 1 year of the test performed pursuant to subsection (3) ~~(2)~~. If the hepatitis and HIV testing is performed by an agency other than the Department of Health, that agency shall be responsible for forwarding the test results to the Department of Health for disclosure in accordance with the provisions of subsection (4) ~~(3)~~. This subsection shall not be limited to results of hepatitis and HIV tests administered subsequent to June 27, 1990, but shall also apply to the results of all hepatitis and HIV tests performed on inmates convicted of or juvenile offenders adjudicated delinquent for sex offenses as described in subsection (3) ~~(2)~~ during their incarceration, detention, or placement prior to June 27, 1990.

Section 8. Paragraph (e) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.



208470

468	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
469	316.80 (2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
470	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
471	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
472	379.365 (2) (c) 1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in



208470

supplying, or giving
away stone crab trap
tags or certificates;
making, altering,
forging, counterfeiting,
or reproducing stone
crab trap tags;
possession of forged,
counterfeit, or
imitation stone crab
trap tags; and engaging
in the commercial
harvest of stone crabs
while license is
suspended or revoked.

473

379.367(4)

3rd

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

474

379.407(5)(b)3.

3rd

Possession of 100 or
more undersized spiny
lobsters.

475

~~381.0041(11)(b)~~

~~3rd~~

~~Donate blood, plasma, or
organs knowing HIV
positive.~~

476



208470

477	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
478	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
479	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
480	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
481	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
	790.01 (2)	3rd	Carrying a concealed



208470

482			firearm.
	790.162	2nd	Threat to throw or discharge destructive device.
483			
	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
484			
	790.221 (1)	2nd	Possession of short- barreled shotgun or machine gun.
485			
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
486			
	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
487			
	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
488			
	800.04 (7) (b)	2nd	Lewd or lascivious



208470

489			exhibition; offender 18 years of age or older.
	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
490			
	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
491			
	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
492			
	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
493			
	812.131 (2) (b)	3rd	Robbery by sudden snatching.
494			
	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
495			
	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to



208470

\$50,000.

496

817.234 (11) (b)

2nd

Insurance fraud;
property value \$20,000
or more but less than
\$100,000.

497

817.2341 (1),
(2) (a) & (3) (a)

3rd

Filing false financial
statements, making false
entries of material fact
or false statements
regarding property
values relating to the
solvency of an insuring
entity.

498

817.568 (2) (b)

2nd

Fraudulent use of
personal identification
information; value of
benefit, services
received, payment
avoided, or amount of
injury or fraud, \$5,000
or more or use of
personal identification
information of 10 or
more persons.

499

817.611 (2) (a)

2nd

Traffic in or possess 5



208470

to 14 counterfeit credit
cards or related
documents.

817.625 (2) (b)

2nd

Second or subsequent
fraudulent use of
scanning device or
reencoder.

825.1025 (4)

3rd

Lewd or lascivious
exhibition in the
presence of an elderly
person or disabled
adult.

827.071 (4)

2nd

Possess with intent to
promote any photographic
material, motion
picture, etc., which
includes sexual conduct
by a child.

827.071 (5)

3rd

Possess, control, or
intentionally view any
photographic material,
motion picture, etc.,
which includes sexual
conduct by a child.



208470

505	839.13 (2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
506	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
507	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
508	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
509	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang;



208470

second or subsequent
offense.

510

874.05 (2) (a)

2nd

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

511

893.13 (1) (a) 1.

2nd

Sell, manufacture, or
deliver cocaine (or
other s. 893.03 (1) (a),
(1) (b), (1) (d), (2) (a),
(2) (b), or (2) (c) 4.
drugs).

512

893.13 (1) (c) 2.

2nd

Sell, manufacture, or
deliver cannabis (or
other s. 893.03 (1) (c),
(2) (c) 1., (2) (c) 2.,
(2) (c) 3., (2) (c) 5.,
(2) (c) 6., (2) (c) 7.,
(2) (c) 8., (2) (c) 9., (3),
or (4) drugs) within
1,000 feet of a child
care facility, school,
or state, county, or
municipal park or
publicly owned
recreational facility or



208470

community center.

513

893.13(1)(d)1.

1st

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),
(1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4.
drugs) within 1,000 feet
of university.

514

893.13(1)(e)2.

2nd

Sell, manufacture, or
deliver cannabis or
other drug prohibited
under s. 893.03(1)(c),
(2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3),
or (4) within 1,000 feet
of property used for
religious services or a
specified business site.

515

893.13(1)(f)1.

1st

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),
(1)(b), (1)(d), or
(2)(a), (2)(b), or
(2)(c)4. drugs) within



208470

1,000 feet of public
housing facility.

893.13(4)(b)

2nd

Use or hire of minor;
deliver to minor other
controlled substance.

893.1351(1)

3rd

Ownership, lease, or
rental for trafficking
in or manufacturing of
controlled substance.

Section 11. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to transmission of disease through
bodily fluids; amending s. 381.0041, F.S.;
reclassifying a criminal offense relating to the
donation of blood, plasma, organs, skin, or other
human tissue; providing an exception to allow such
donation when deemed medically appropriate by a
licensed physician; amending s. 384.23, F.S.; defining
the terms "sexual conduct" and "substantial risk of



208470

transmission"; amending s. 384.24, F.S.; expanding the scope of unlawful acts by a person infected with a sexually transmissible disease; expanding the list of sexually transmittable diseases; specifying that a certain act is unlawful if the person committing the act acts with the intent to transmit a specified disease, engages in conduct that poses a substantial risk of transmission of that disease to another person who is unaware that the person who transmits the disease is a carrier of the disease, and actually transmits the disease; providing that certain actions are not sufficient to establish intent on the part of the person who transmits the disease; amending s. 384.34, F.S.; reclassifying specified criminal offenses; eliminating a fine for specified rule violations; amending s. 775.0877, F.S.; requiring that a person who commits, rather than one who attempts to commit, an offense involving the transmission of semen or vaginal secretions must undergo HIV testing; eliminating the application of the section to certain offenses; revising disclosure requirements; reclassifying specified criminal offenses; amending s. 796.08, F.S.; requiring an infected arrestee to submit to appropriate treatment; requiring the Department of Health to pay any costs associated with the screening of such arrestees; requiring that the medical services include the offer of postexposure prophylaxis; requiring the department to ensure that certain out-of-pocket expenses to victims not exceed a specified



208470

amount; eliminating requirements that persons
convicted of specified offenses undergo screening for
a sexually transmitted disease; amending s. 960.003,
F.S.; revising legislative findings; requiring that
the department refer such victims to medical services;
requiring that the medical services include the offer
of postexposure prophylaxis; requiring the department
to ensure that certain out-of-pocket expenses to
victims not exceed a specified amount; correcting
cross-references; amending s. 921.0022, F.S.;
conforming provisions to changes made by the act;
providing an effective date.

By Senator Garcia

36-00181B-17

2017628__

1 A bill to be entitled
 2 An act relating to transmission of disease through
 3 bodily fluids; amending s. 381.0041, F.S.;
 4 reclassifying a criminal offense relating to the
 5 donation of blood, plasma, organs, skin, or other
 6 human tissue; providing an exception to allow such
 7 donation when deemed medically appropriate by a
 8 licensed physician; amending s. 384.23, F.S.; defining
 9 the terms "sexual conduct" and "substantial risk of
 10 transmission"; amending s. 384.24, F.S.; expanding the
 11 scope of unlawful acts by a person infected with a
 12 sexually transmissible disease; amending s. 384.34,
 13 F.S.; reclassifying specified criminal offenses;
 14 eliminating a fine for specified rule violations;
 15 amending s. 775.0877, F.S.; requiring that a person
 16 who commits, rather than one who attempts to commit,
 17 an offense involving the transmission of semen or
 18 vaginal secretions must undergo HIV testing;
 19 eliminating the application of the section to certain
 20 offenses; revising disclosure requirements;
 21 reclassifying specified criminal offenses; amending s.
 22 796.08, F.S.; authorizing, rather than requiring, an
 23 infected arrestee to request, rather than to submit
 24 to, appropriate treatment; requiring the Department of
 25 Health to pay any costs associated with the screening
 26 of such arrestees; eliminating requirements that
 27 persons convicted of specified offenses undergo
 28 screening for a sexually transmitted disease;
 29 eliminating certain crimes related to prostitution;
 30 amending s. 960.003, F.S.; substantially revising the
 31 focus of the section from the testing of alleged
 32 perpetrators and the disclosure of results of that

Page 1 of 35

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

36-00181B-17

2017628__

33 testing to the medical treatment and care of victims
 34 of sexual assault involving the exchange of bodily
 35 fluids presenting a substantial risk of HIV infection;
 36 revising legislative findings; requiring that the
 37 department refer such victims to medical services;
 38 requiring that the medical services include the offer
 39 of postexposure prophylaxis; requiring the department
 40 to ensure that certain out-of-pocket expenses to
 41 victims not exceed a specified amount; amending ss.
 42 381.004, 921.0022, and 951.27, F.S.; conforming
 43 provisions to changes made by the act; providing an
 44 effective date.

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Paragraph (b) of subsection (11) of section
 49 381.0041, Florida Statutes, is amended to read:

50 381.0041 Donation and transfer of human tissue; testing
 51 requirements.—

52 (11)

53 (b) Except when the donation is deemed medically
 54 appropriate by a licensed physician, any person who has human
 55 immunodeficiency virus infection, who knows he or she is
 56 infected with human immunodeficiency virus, and who has been
 57 informed that he or she may communicate this disease by donating
 58 blood, plasma, organs, skin, or other human tissue who donates
 59 blood, plasma, organs, skin, or other human tissue commits ~~is~~
 60 guilty of a misdemeanor felony of the first ~~third~~ degree,
 61 punishable as provided in s. 775.082 or ~~s. 775.083, or s.~~

Page 2 of 35

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

36-00181B-17

2017628__

775.084.

Section 2. Section 384.23, Florida Statutes, is amended to read:

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

(1) "Department" means the Department of Health.

(2) "County health department" means agencies and entities as designated in chapter 154.

(3) "Sexual conduct" means any sexual activity involving the physical contact of the sexual organs of a person with the genitals, mouth, or anus of another person, whether such persons are of the same or the opposite sex.

(4)~~(3)~~ "Sexually transmissible disease" means a bacterial, viral, fungal, or parasitic disease determined by rule of the department to be sexually transmissible, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for prevention, elimination, control, and treatment. The department must, by rule, determine which diseases are to be designated as sexually transmissible diseases and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized medical authorities in that determination. Not all diseases that are sexually transmissible need be designated for the purposes of this act.

(5) "Substantial risk of transmission" means a reasonable probability of disease transmission as proven by competent medical or epidemiological evidence.

Section 3. Section 384.24, Florida Statutes, is amended to read:

36-00181B-17

2017628__

384.24 Unlawful acts.—

(1) It is unlawful for any person who has chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, or syphilis, when such person knows he or she is infected with one or more of these diseases and ~~when such person~~ has been informed that he or she may communicate the this disease to another person through sexual conduct intercourse, to engage in have sexual conduct intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual conduct intercourse.

(2) It is unlawful for any person who has human immunodeficiency virus infection, when such person knows he or she is infected with this disease and when such person has been informed that he or she may communicate this disease to another person through sexual conduct intercourse, to engage in have sexual conduct intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual conduct intercourse.

Section 4. Section 384.34, Florida Statutes, is amended to read:

384.34 Penalties.—

(1) Any person who violates s. 384.24 ~~the provisions of s. 384.24(1)~~ commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who violates ~~the provisions of~~ s. 384.26 or

36-00181B-17

2017628__

s. 384.29 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who maliciously disseminates any false information or report concerning the existence of any sexually transmissible disease commits a misdemeanor of the first degree ~~felony of the third degree~~, punishable as provided in s. 775.082 ~~or s. 775.083 ss. 775.082, 775.083, and 775.084.~~

~~(4) Any person who violates the provisions of the department's rules pertaining to sexually transmissible diseases may be punished by a fine not to exceed \$500 for each violation. Any penalties enforced under this subsection shall be in addition to other penalties provided by this chapter. The department may enforce this section and adopt rules necessary to administer this section.~~

~~(5) Any person who violates s. 384.24(2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who commits multiple violations of s. 384.24(2) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(4)(6)~~ Any person who obtains information that identifies an individual who has a sexually transmissible disease, who knew or should have known the nature of the information and maliciously, or for monetary gain, disseminates this information or otherwise makes this information known to any other person, except by providing it either to a physician or nurse employed by the Department of Health or to a law enforcement agency, commits a misdemeanor of the first degree ~~felony of the third degree~~, punishable as provided in s. 775.082 or ~~s. 775.083, or s. 775.084.~~

Page 5 of 35

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

36-00181B-17

2017628__

Section 5. Section 775.0877, Florida Statutes, is amended to read:

775.0877 Criminal transmission of HIV; procedures; penalties.—

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, ~~or the attempt thereof~~, which offense ~~or attempted offense~~ involves the transmission of semen or vaginal secretions ~~body fluids~~ from one person to another:

(a) Section 794.011, relating to sexual battery;

(b) Section 826.04, relating to incest;

(c) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;

(d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault;

(e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault;

(f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery;

(g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery;

(h) Section 827.03(2)(c), relating to child abuse;

(i) Section 827.03(2)(a), relating to aggravated child abuse;

(j) Section 825.102(1), relating to abuse of an elderly person or disabled adult;

(k) Section 825.102(2), relating to aggravated abuse of an

Page 6 of 35

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

36-00181B-17

2017628__

elderly person or disabled adult;

(1) Section 827.071, relating to sexual performance by person less than 18 years of age;

~~(m) Sections 796.07 and 796.08, relating to prostitution;~~

~~(n) Section 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue; or~~

~~(m)(e)~~ Sections 787.06(3)(b), (d), (f), and (g), relating to human trafficking,

the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(l) ~~(a)-(n)~~ for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

(2) The results of the HIV test must be disclosed under the direction of the Department of Health, to the offender who has been convicted of or pled nolo contendere or guilty to an offense specified in subsection (1) and to, the public health agency of the county in which the conviction occurred and, if different, the county of residence of the offender, ~~and, upon request pursuant to s. 960.003, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if~~

36-00181B-17

2017628__

~~the victim is a minor.~~

(3) An offender who has undergone HIV testing pursuant to subsection (1), and to whom positive test results have been disclosed pursuant to subsection (2), who commits a second or subsequent offense enumerated in paragraphs (1)(a)-(l) which results in transmission of HIV to the victim ~~(1)(a)-(n)~~, commits criminal transmission of HIV, a misdemeanor of the first degree ~~felony of the third degree~~, punishable as provided in s. 775.082 or, s. 775.083, ~~or s. 775.084~~. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime enumerated in paragraphs (1)(a)-(l) ~~(1)(a)-(n)~~.

(4) An offender may challenge the positive results of an HIV test performed pursuant to this section and may introduce results of a backup test performed at her or his own expense.

~~(5) Nothing in this section requires that an HIV infection have occurred in order for an offender to have committed criminal transmission of HIV.~~

(5)(6) For an alleged violation of any offense enumerated in paragraphs (1)(a)-(l) ~~(1)(a)-(n)~~ for which the consent of the victim may be raised as a defense in a criminal prosecution, it is an affirmative defense to a charge of violating this section that the person exposed knew that the offender was infected with HIV, knew that the action being taken could result in transmission of the HIV infection, and consented to the action voluntarily with that knowledge.

Section 6. Section 796.08, Florida Statutes, is amended to read:

796.08 Screening for HIV and sexually transmissible

36-00181B-17

2017628__

diseases; providing penalties.—

(1) (a) For the purposes of this section, the term “sexually transmissible disease” means a bacterial, viral, fungal, or parasitic disease, determined by rule of the Department of Health to be sexually transmissible, a threat to the public health and welfare, and a disease for which a legitimate public interest is served by providing for regulation and treatment.

(b) In considering which diseases are designated as sexually transmissible diseases, the Department of Health shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, syphilis, and human immunodeficiency virus infection for designation and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized authorities. Not all diseases that are sexually transmissible need be designated for purposes of this section.

(2) A person arrested under s. 796.07 may request screening for a sexually transmissible disease under direction of the Department of Health and, if infected, may request ~~shall submit~~ to appropriate treatment and counseling. The Department of Health shall ~~A person who requests screening for a sexually transmissible disease under this subsection must~~ pay any costs associated with such screening.

~~(3) A person convicted under s. 796.07 of prostitution or procuring another to commit prostitution must undergo screening for a sexually transmissible disease, including, but not limited to, screening to detect exposure to the human immunodeficiency~~

36-00181B-17

2017628__

~~virus, under direction of the Department of Health. If the person is infected, he or she must submit to treatment and counseling prior to release from probation, community control, or incarceration. Notwithstanding the provisions of s. 384.29, the results of tests conducted pursuant to this subsection shall be made available by the Department of Health to the offender, medical personnel, appropriate state agencies, state attorneys, and courts of appropriate jurisdiction in need of such information in order to enforce the provisions of this chapter.~~

~~(4) A person who commits prostitution or procures another for prostitution and who, prior to the commission of such crime, had tested positive for a sexually transmissible disease other than human immunodeficiency virus infection and knew or had been informed that he or she had tested positive for such sexually transmissible disease and could possibly communicate such disease to another person through sexual activity commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.~~

~~(5) A person who:~~

~~(a) Commits or offers to commit prostitution; or~~

~~(b) Procures another for prostitution by engaging in sexual activity in a manner likely to transmit the human immunodeficiency virus,~~

~~and who, prior to the commission of such crime, had tested positive for human immunodeficiency virus and knew or had been informed that he or she had tested positive for human~~

36-00181B-17

2017628

~~immunodeficiency virus and could possibly communicate such disease to another person through sexual activity commits criminal transmission of HIV, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.~~

Section 7. Section 960.003, Florida Statutes, is amended to read:

960.003 Preventive medical treatment and care for victims of sexual assault involving the exchange of bodily fluids presenting a substantial risk of transmission of HIV Hepatitis and HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.

(1) LEGISLATIVE FINDINGS INTENT.—The Legislature finds that victims of sexual assault involving the exchange of bodily fluids that present a substantial risk of transmission of the human immunodeficiency virus (HIV) should have access to appropriate medical care and affordable postexposure prophylaxis to prevent the acquisition of HIV a victim of a criminal offense which involves the transmission of body fluids, or which involves certain sexual offenses in which the victim is a minor, disabled adult, or elderly person, is entitled to know at the earliest possible opportunity whether the person charged with or alleged by petition for delinquency to have committed the offense has tested positive for hepatitis or human immunodeficiency virus (HIV) infection. The Legislature finds that to deny victims access to hepatitis and HIV test results

36-00181B-17

2017628

~~causes unnecessary mental anguish in persons who have already suffered trauma. The Legislature further finds that since medical science now recognizes that early diagnosis is a critical factor in the treatment of hepatitis and HIV infection, both the victim and the person charged with or alleged by petition for delinquency to have committed the offense benefit from prompt disclosure of hepatitis and HIV test results.~~

(2) REFERRAL TO MEDICAL SERVICES REQUIRED TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.—

~~(a) In~~ The Department of Health shall refer for medical services any case in which a person who alleges that he or she has been the victim of a sexual assault involving an exchange of bodily fluids which presents a substantial risk of transmission of the human immunodeficiency virus (HIV). Such services must include the offer of postexposure prophylaxis (PEP) to prevent the acquisition of HIV. The Department of Health shall ensure that any person electing to take PEP under this subsection does not incur out-of-pocket expenses of more than \$30 in obtaining this medication has been charged by information or indictment with or alleged by petition for delinquency to have committed any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, upon request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo hepatitis and HIV testing within 48 hours after the information, indictment, or petition for delinquency is filed. In the event the victim or, if the victim is a minor, the victim's parent or legal guardian

36-00181B-17

2017628

requests hepatitis and HIV testing after 48 hours have elapsed from the filing of the indictment, information, or petition for delinquency, the testing shall be done within 48 hours after the request.

~~(b) However, when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at the time the offense was committed or when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) or s. 825.1025 is a disabled adult or elderly person as defined in s. 825.1025 regardless of whether the offense involves the transmission of bodily fluids from one person to another, then upon the request of the victim or the victim's legal guardian, or of the parent or legal guardian, the court shall order such person to undergo hepatitis and HIV testing within 48 hours after the information, indictment, or petition for delinquency is filed. In the event the victim or, if the victim is a minor, the victim's parent or legal guardian requests hepatitis and HIV testing after 48 hours have elapsed from the filing of the indictment, information, or petition for delinquency, the testing shall be done within 48 hours after the request. The testing shall be performed under the direction of the Department of Health in accordance with s. 381.004. The results of a hepatitis and HIV test performed on a defendant or juvenile offender pursuant to this subsection shall not be admissible in any criminal or juvenile proceeding arising out of the alleged offense.~~

~~(c) If medically appropriate, followup HIV testing shall be provided when testing has been ordered under paragraph (a) or paragraph (b). The medical propriety of followup HIV testing shall be based upon a determination by a physician and does not~~

36-00181B-17

2017628

require an additional court order. Notification to the victim, or to the victim's parent or legal guardian, and to the defendant of the results of each followup test shall be made as soon as practicable in accordance with this section.

~~(3) DISCLOSURE OF RESULTS.~~

~~(a) The results of the test shall be disclosed no later than 2 weeks after the court receives such results, under the direction of the Department of Health, to the person charged with or alleged by petition for delinquency to have committed or to the person convicted of or adjudicated delinquent for any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, and to public health agencies pursuant to s. 775.0877. If the alleged offender is a juvenile, the test results shall also be disclosed to the parent or guardian. When the victim is a victim as described in paragraph (2)(b), the test results must also be disclosed no later than 2 weeks after the court receives such results, to the person charged with or alleged by petition for delinquency to have committed or to the person convicted of or adjudicated delinquent for any offense enumerated in s. 775.0877(1)(a)-(n), or s. 825.1025 regardless of whether the offense involves the transmission of bodily fluids from one person to another, and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim, and to public health agencies pursuant to s. 775.0877. Otherwise, hepatitis and HIV test results obtained pursuant to this section are confidential and exempt from the provisions of~~

36-00181B-17

2017628

s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to any other person except as expressly authorized by law or court order.

(b) ~~At the time that the results are disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of a victim if the victim is a minor, the same immediate opportunity for face-to-face counseling which must be made available under s. 381.004 to those who undergo hepatitis and HIV testing shall also be afforded to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor.~~

(4) ~~POSTCONVICTION TESTING. If, for any reason, the testing requested under subsection (2) has not been undertaken, then upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the court shall order the offender to undergo hepatitis and HIV testing following conviction or delinquency adjudication. The testing shall be performed under the direction of the Department of Health, and the results shall be disclosed in accordance with the provisions of subsection (3).~~

(5) ~~EXCEPTIONS. Subsections (2) and (4) do not apply if:~~

(a) ~~The person charged with or convicted of or alleged by petition for delinquency to have committed or been adjudicated delinquent for an offense described in subsection (2) has undergone hepatitis and HIV testing voluntarily or pursuant to procedures established in s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or rule providing for hepatitis and HIV testing of criminal defendants, inmates, or juvenile offenders, subsequent to his or her arrest, conviction, or delinquency~~

36-00181B-17

2017628

adjudication for the offense for which he or she was charged or alleged by petition for delinquency to have committed; and

(b) ~~The results of such hepatitis and HIV testing have been furnished to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor.~~

(6) ~~TESTING DURING INCARCERATION, DETENTION, OR PLACEMENT; DISCLOSURE. In any case in which a person convicted of or adjudicated delinquent for an offense described in subsection (2) has not been tested under subsection (2), but undergoes hepatitis and HIV testing during his or her incarceration, detention, or placement, the results of the initial hepatitis and HIV testing shall be disclosed in accordance with subsection (3). Except as otherwise requested by the victim or the victim's legal guardian, or the parent or guardian of the victim if the victim is a minor, if the initial test is conducted within the first year of the imprisonment, detention, or placement, the request for disclosure shall be considered a standing request for any subsequent hepatitis and HIV test results obtained within 1 year after the initial hepatitis and HIV tests are performed, and need not be repeated for each test administration. Where the inmate or juvenile offender has previously been tested pursuant to subsection (2) the request for disclosure under this subsection shall be considered a standing request for subsequent hepatitis and HIV results conducted within 1 year of the test performed pursuant to subsection (2). If the hepatitis and HIV testing is performed by an agency other than the Department of Health, that agency shall be responsible for forwarding the test results to the Department of Health for disclosure in accordance with the provisions of~~

36-00181B-17

2017628

subsection (3). This subsection shall not be limited to results of hepatitis and HIV tests administered subsequent to June 27, 1990, but shall also apply to the results of all hepatitis and HIV tests performed on inmates convicted of or juvenile offenders adjudicated delinquent for sex offenses as described in subsection (2) during their incarceration, detention, or placement prior to June 27, 1990.

Section 8. Paragraphs (f) and (h) of subsection (2) of section 381.004, Florida Statutes, are amended to read:

381.004 HIV testing.—

(2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

(f) Except as provided in this section, the identity of a person upon whom a test has been performed is confidential and exempt from the provisions of s. 119.07(1). No person to whom the results of a test have been disclosed may disclose the test results to another person except as authorized by this subsection and by s. 951.27 ss. 951.27 and 960.003. Whenever disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice

36-00181B-17

2017628

within 10 days, except that this notice shall not be required for disclosures made pursuant to subparagraphs (e)3. and 4.

(h) Paragraph (a) does not apply:

1. When testing for sexually transmissible diseases is required by state or federal law, or by rule, including the following situations:

a. ~~HIV testing pursuant to s. 796.08 of persons convicted of prostitution or of procuring another to commit prostitution.~~

~~b.~~ HIV testing of inmates pursuant to s. 945.355 before their release from prison by reason of parole, accumulation of gain-time credits, or expiration of sentence.

~~b.e.~~ Testing for HIV by a medical examiner in accordance with s. 406.11.

~~c.d.~~ HIV testing of pregnant women pursuant to s. 384.31.

2. To those exceptions provided for blood, plasma, organs, skin, semen, or other human tissue pursuant to s. 381.0041.

3. For the performance of an HIV-related test by licensed medical personnel in bona fide medical emergencies if the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment to the person being tested and the patient is unable to consent, as supported by documentation in the medical record. Notification of test results in accordance with paragraph (c) is required.

4. For the performance of an HIV-related test by licensed medical personnel for medical diagnosis of acute illness where, in the opinion of the attending physician, providing notification would be detrimental to the patient, as supported by documentation in the medical record, and the test results are necessary for medical diagnostic purposes to provide appropriate

36-00181B-17

2017628__

care or treatment to the person being tested. Notification of test results in accordance with paragraph (c) is required if it would not be detrimental to the patient. This subparagraph does not authorize the routine testing of patients for HIV infection without notification.

5. If HIV testing is performed as part of an autopsy for which consent was obtained pursuant to s. 872.04.

6. For the performance of an HIV test upon a defendant pursuant to the victim's request in a prosecution for any type of sexual battery where a blood sample is taken from the defendant voluntarily, pursuant to court order for any purpose, or pursuant to s. 775.0877 or s. 951.27, ~~or s. 960.003~~; however, the results of an HIV test performed shall be disclosed solely to the victim and the defendant, except as provided in ss. 775.0877 and s. 951.27, ~~and 960.003~~.

7. If an HIV test is mandated by court order.

8. For epidemiological research pursuant to s. 381.0031, for research consistent with institutional review boards created by 45 C.F.R. part 46, or for the performance of an HIV-related test for the purpose of research, if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

9. If human tissue is collected lawfully without the consent of the donor for corneal removal as authorized by s. 765.5185 or enucleation of the eyes as authorized by s. 765.519.

10. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment, within the scope of practice, or during the course

36-00181B-17

2017628__

of providing emergency medical assistance to the individual. The term "medical personnel" includes a licensed or certified health care professional; an employee of a health care professional or health care facility; employees of a laboratory licensed under chapter 483; personnel of a blood bank or plasma center; a medical student or other student who is receiving training as a health care professional at a health care facility; and a paramedic or emergency medical technician certified by the department to perform life-support procedures under s. 401.23.

a. The occurrence of a significant exposure shall be documented by medical personnel under the supervision of a licensed physician and recorded only in the personnel record of the medical personnel.

b. Costs of an HIV test shall be borne by the medical personnel or the employer of the medical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment may not be borne by the medical personnel or the employer of the medical personnel.

c. In order to use the provisions of this subparagraph, the medical personnel must be tested for HIV pursuant to this section or provide the results of an HIV test taken within 6 months before the significant exposure if such test results are negative.

d. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received and of the persons tested. Such confidential information is exempt from s. 119.07(1).

e. If the source of the exposure is not available and will

36-00181B-17

2017628__

not voluntarily present himself or herself to a health facility to be tested for HIV, the medical personnel or the employer of such person acting on behalf of the employee may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

11. For the performance of an HIV test upon an individual who comes into contact with nonmedical personnel in such a way that a significant exposure has occurred while the nonmedical personnel provides emergency medical assistance during a medical emergency. For the purposes of this subparagraph, a medical emergency means an emergency medical condition outside of a hospital or health care facility that provides physician care. The test may be performed only during the course of treatment for the medical emergency.

a. The occurrence of a significant exposure shall be documented by medical personnel under the supervision of a licensed physician and recorded in the medical record of the nonmedical personnel.

b. Costs of any HIV test shall be borne by the nonmedical personnel or the employer of the nonmedical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment may not be borne by the nonmedical personnel or the employer of

36-00181B-17

2017628__

the nonmedical personnel.

c. In order to use the provisions of this subparagraph, the nonmedical personnel shall be tested for HIV pursuant to this section or shall provide the results of an HIV test taken within 6 months before the significant exposure if such test results are negative.

d. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received and of the persons tested. Such confidential information is exempt from s. 119.07(1).

e. If the source of the exposure is not available and will not voluntarily present himself or herself to a health facility to be tested for HIV, the nonmedical personnel or the employer of the nonmedical personnel acting on behalf of the employee may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

12. For the performance of an HIV test by the medical examiner or attending physician upon an individual who expired or could not be resuscitated while receiving emergency medical assistance or care and who was the source of a significant exposure to medical or nonmedical personnel providing such assistance or care.

a. HIV testing may be conducted only after appropriate

36-00181B-17 2017628__

642 medical personnel under the supervision of a licensed physician
 643 documents in the medical record of the medical personnel or
 644 nonmedical personnel that there has been a significant exposure
 645 and that, in accordance with the written protocols based on the
 646 National Centers for Disease Control and Prevention guidelines
 647 on HIV postexposure prophylaxis and in the physician's medical
 648 judgment, the information is medically necessary to determine
 649 the course of treatment for the medical personnel or nonmedical
 650 personnel.

651 b. Costs of an HIV test performed under this subparagraph
 652 may not be charged to the deceased or to the family of the
 653 deceased person.

654 c. For this subparagraph to be applicable, the medical
 655 personnel or nonmedical personnel must be tested for HIV under
 656 this section or must provide the results of an HIV test taken
 657 within 6 months before the significant exposure if such test
 658 results are negative.

659 d. A person who receives the results of an HIV test
 660 pursuant to this subparagraph shall comply with paragraph (e).

661 13. For the performance of an HIV-related test medically
 662 indicated by licensed medical personnel for medical diagnosis of
 663 a hospitalized infant as necessary to provide appropriate care
 664 and treatment of the infant if, after a reasonable attempt, a
 665 parent cannot be contacted to provide consent. The medical
 666 records of the infant must reflect the reason consent of the
 667 parent was not initially obtained. Test results shall be
 668 provided to the parent when the parent is located.

669 14. For the performance of HIV testing conducted to monitor
 670 the clinical progress of a patient previously diagnosed to be

36-00181B-17 2017628__

671 HIV positive.

672 15. For the performance of repeated HIV testing conducted
 673 to monitor possible conversion from a significant exposure.

674 Section 9. Paragraph (e) of subsection (3) of section
 675 921.0022, Florida Statutes, is amended to read:

676 921.0022 Criminal Punishment Code; offense severity ranking
 677 chart.—

678 (3) OFFENSE SEVERITY RANKING CHART

679 (e) LEVEL 5

680

Florida Statute	Felony Degree	Description
681 316.027(2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
682 316.1935(4) (a)	2nd	Aggravated fleeing or eluding.
683 316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
684 322.34(6)	3rd	Careless operation of motor vehicle with suspended license,

	36-00181B-17		2017628__	
			resulting in death or serious bodily injury.	
685	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.	
686	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging	

Page 25 of 35

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

	36-00181B-17		2017628__	
			in the commercial harvest of stone crabs while license is suspended or revoked.	
687	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.	
688	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.	
689	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.	
690	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.	
691	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.	
692	440.381(2)	2nd	Submission of false, misleading, or	

Page 26 of 35

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

	36-00181B-17		2017628__
			incomplete information
			with the purpose of
			avoiding or reducing
			workers' compensation
			premiums.
693	624.401(4)(b)2.	2nd	Transacting insurance
			without a certificate or
			authority; premium
			collected \$20,000 or
			more but less than
694			\$100,000.
	626.902(1)(c)	2nd	Representing an
			unauthorized insurer;
			repeat offender.
695	790.01(2)	3rd	Carrying a concealed
			firearm.
696	790.162	2nd	Threat to throw or
			discharge destructive
			device.
697	790.163(1)	2nd	False report of bomb,
			explosive, weapon of
			mass destruction, or use
			of firearms in violent
			manner.

Page 27 of 35

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

	36-00181B-17		2017628__
698	790.221(1)	2nd	Possession of short-
			barreled shotgun or
			machine gun.
699	790.23	2nd	Felons in possession of
			firearms, ammunition, or
			electronic weapons or
			devices.
700	796.05(1)	2nd	Live on earnings of a
			prostitute; 1st offense.
701	800.04(6)(c)	3rd	Lewd or lascivious
			conduct; offender less
			than 18 years of age.
702	800.04(7)(b)	2nd	Lewd or lascivious
			exhibition; offender 18
			years of age or older.
703	806.111(1)	3rd	Possess, manufacture, or
			dispense fire bomb with
			intent to damage any
			structure or property.
704	812.0145(2)(b)	2nd	Theft from person 65
			years of age or older;
			\$10,000 or more but less

Page 28 of 35

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

	36-00181B-17		2017628__
			than \$50,000.
705	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
706	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
707	812.131(2) (b)	3rd	Robbery by sudden snatching.
708	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
709	817.034(4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
710	817.234(11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
711	817.2341(1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements

Page 29 of 35

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

	36-00181B-17		2017628__
			regarding property values relating to the solvency of an insuring entity.
712	817.568(2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
713	817.611(2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
714	817.625(2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
715	825.1025(4)	3rd	Lewd or lascivious exhibition in the

Page 30 of 35

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

	36-00181B-17		2017628__	
			presence of an elderly person or disabled adult.	
716	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.	
717	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.	
718	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.	
719	843.01	3rd	Resist officer with violence to person; resist arrest with violence.	
720				

Page 31 of 35

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

	36-00181B-17		2017628__	
	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.	
721	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.	
722	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.	
723	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.	
724	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.	
725	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a),	

Page 32 of 35

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

	36-00181B-17		2017628__
			(1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).
726	893.13(1) (c) 2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
727	893.13(1) (d) 1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs) within 1,000 feet of university.
728	893.13(1) (e) 2.	2nd	Sell, manufacture, or

Page 33 of 35

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

	36-00181B-17		2017628__
			deliver cannabis or other drug prohibited under s. 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
729	893.13(1) (f) 1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), or (2) (a), (2) (b), or (2) (c) 4. drugs) within 1,000 feet of public housing facility.
730	893.13(4) (b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
731	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Page 34 of 35

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

36-00181B-17

2017628__

Section 10. Subsection (2) of section 951.27, Florida Statutes, is amended to read:

951.27 Blood tests of inmates.—

(2) Except as otherwise provided in this subsection, serologic blood test results obtained pursuant to subsection (1) are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such results may be provided to employees or officers of the sheriff or chief correctional officer who are responsible for the custody and care of the affected inmate and have a need to know such information, and as provided in s. 775.0877 ~~ss. 775.0877 and 960.003~~. In addition, upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the results of any HIV test performed on an inmate who has been arrested for any sexual offense involving oral, anal, or vaginal penetration by, or union with, the sexual organ of another, shall be disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor. In such cases, the county or municipal detention facility shall furnish the test results to the Department of Health, which is responsible for disclosing the results to public health agencies as provided in s. 775.0877 and to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, ~~as provided in s. 960.003(3)~~.

Section 11. 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)

3/21/17
Meeting Date

SB 628
Bill Number (if applicable)

Topic TRANSMISSION OF DISEASE THROUGH BODILY FLUIDS

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title LEGISLATIVE COUNSEL

Address 4500 BISCAYNE BLVD
Street

Phone 784-363-4434

MIAMI FL
City State Zip

Email KGROSS@ACLUFL.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU 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
APPEARANCE RECORD

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

3/21/2017

Meeting Date

628

Bill Number (if applicable)

Topic Transmission of Disease Through Bodily Fluids

Amendment Barcode (if applicable)

Name Honorable Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th Street

Phone 305-545-1600

Street

Miami

FL

33125

Email cmartinez@pdmiami.com

City

State

Zip

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)

3/21

Meeting Date

628

Bill Number (if applicable)

Topic HIV Criminalization Reform

Amendment Barcode (if applicable)

Name Hannah Willard

Job Title Public Policy Director

Address PO BOX 13184

Phone 407 451 5460

Street

St. Pete FL 33733

City

State

Zip

Email hannah@eqfl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

Meeting Date

628

Bill Number (if applicable)

Topic HIV Criminalization Reform

Amendment Barcode (if applicable)

Name Tami Haught

Job Title Organizing and Training Coordinator, ~~Sero Project~~

Address 2698 Exeter Ave

Phone 641-715

Street

Nashua IA 50658

City

State

Zip

Email tami.haught@^{Sero}project.^{com}

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Sero 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.

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)

3/21/2017

Meeting Date

628

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kamaria Laffrey

Job Title Community Organizer

Address 601 Maggie Circle

Phone 863-585-4594

Street

Winter Haven

FL

33880

City

State

Zip

Email kamaria.laffrey@sero-project.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL HIV Justice Coalition

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 628

Bill Number (if applicable)

Topic HIV criminalization Reform

Amendment Barcode (if applicable)

Name Michael Rajner

Job Title

Address P O Box 2133

Phone (954) 566-0144

Street

Fort Lauderdale, FL 33303

City

State

Zip

Email merajner@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 21, 2017

Meeting Date

PCS/SB 628

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Street

Tallahassee

City

FL

State

32302

Zip

Phone 850-521-3042

Email scott.mccoy@splcenter.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Center

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
State Senator René García
36th District

Please reply to:
District Office:
1490 West 68 Street
Suite # 201
Hialeah, FL 33014
Phone# (305) 364-3100

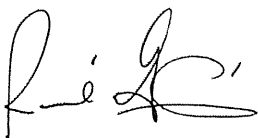
March 10th, 2017

The Honorable Randolph Bracy
Chairman, Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bracy,

Please have this letter serve as my formal request to have **SB 628: Transmission of Disease Through Bodily Fluids**, be heard during the next scheduled Criminal Justice Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 36

CC: Jennifer Hrdlicka
Sue Arnold

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 776

INTRODUCER: Criminal Justice Committee and Senator Baxley

SUBJECT: Unlawful Acquisition of Utility Services

DATE: March 22, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 776 provides that the crime of utility theft is a grand theft, punishable as a third degree felony in s. 812.014, F.S. This results in the repeal of the misdemeanor offenses of utility theft (valued under \$300).

The bill also:

- Provides that the crime of utility theft for the purposes of facilitating the manufacture of a controlled substance is a grand theft, punishable in s. 812.014, F.S.;
- Requires a court to include certain specified amounts in its order for civil damages or restitution related to the theft and labor costs.
- Allows the state to make a prima facie showing of the estimated losses of unlawfully obtained electric services based on any methodology reasonably relied upon by utilities.
- Allows the methodology to consider the estimated start date of the theft and the estimated daily or hourly use of electricity.
- Provides specified criteria to determine the estimated start date of the theft and the estimated daily or hourly use of electricity.
- Requires that once the state has made a prima facie showing the burden shifts to the defendant to demonstrate that the loss is something other than that claimed by the utility.
- Allows the court to order a defendant to pay restitution for damages to the property of a utility or for the theft of electricity for criminal offenses that are causally connected to the utility theft.

The bill may have a positive indeterminate fiscal impact on public and private utilities. The bill may also have a positive (increase) prison bed impact. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2017.

II. Present Situation:

Theft of Utilities and Marijuana

As the cost of electricity increases, the rate of theft of electricity goes up.¹ The utility industry estimates that energy theft losses are \$6 billion a year.² In Canada, the majority of electricity theft comes from the indoor cultivation of marijuana. The United States and Florida in particular are seeing an increase in indoor marijuana grow operations.³

A man in Tampa was arrested for growing marijuana and stealing over \$4,500 in electricity over a three-month period. Authorities discovered an illegal tap was supplying the unmetered power to the house where the man was growing marijuana.⁴ In Brookville, Florida, the Withlacoochee River Electric Cooperative informed the Hernando County Sheriff's Office of three different locations where irregular power usage had been detected. The sheriff's office executed search warrants and found extensive marijuana grow operations at all three locations. The cooperative approximated that its total loss due to the theft and labor costs for all three locations was over \$143,000.⁵

Section 812.14, F.S., Theft of Utilities

A utility is any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

Section 812.14(2), F.S., makes it a crime to:

- Willfully alter, tamper with, injure, or knowingly cause to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service which causes loss or damage or to prevent any meter installed for registering from registering the quantity used;

¹ dTechs Electrical Profile Management, *Power Theft*, available at <http://www.dtechsepm.com/power-theft> (last visited March 16, 2017).

² myPalmBeachPost, *Smart meters help FPL catch more electricity thieves*, Susan Salisbury, (May 8, 2016) available at <http://www.mypalmbeachpost.com/business/smart-meters-help-fpl-catch-more-electricity-thieves/QyE2N4vDV4Mm0WwjQukoXL/> (last visited March 16, 2017).

³ *Supra* note 1.

⁴ Tampa Bay Times, *Man charged with trafficking, growing marijuana using stolen electricity*, (March 20, 2016), available at <http://www.tampabay.com/news/publicsafety/crime/man-arrested-for-trafficking-growing-marijuana-using-stolen-electricity/2270101> (last visited March 16, 2017).

⁵ REALNEWSREALFAST, *Three Charged in Large Marijuana Grow Operation, Nearly \$60K in Stolen Power*, Tom Lemons, (June 23, 2016), available at <http://www.rnrfonline.com/three-charged-in-large-marijuana-grow-operation-nearly-60k-in-stolen-power/> (last visited March 16, 2017).

- Alter the index or break the seal of any meter;
- Hinder or interfere with any meter or device; or
- Knowingly use, waste, or cause the waste of electricity or gas or water passing through any meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any utility, after the meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.⁶

It is also a crime to:

- Make or cause a connection to be made with any wire, main, service pipe or other pipes, appliance, or appurtenance without the consent of the utility and take any service or electricity, gas, or water without the service being measured and reported for payment; or
- Use or receive the direct benefit from the use of a utility with the knowledge, or under such circumstances that would induce a reasonable person to believe, that such use resulted from tampering, altering, or injuring any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by the utility, for the purpose of avoiding payment.⁷

The penalties for the above-described crimes are based on the value of theft. A theft of utilities valued at:

- \$100,000 or more is a first degree felony;⁸
- \$20,000 or more but less than \$100,000 is a second degree felony;⁹
- \$300 or more but less than \$20,000 is a third degree felony;¹⁰
- \$100 or more but less than \$300 is a first degree misdemeanor;¹¹ and
- Under \$100 is a second degree misdemeanor.¹²

Any theft punishable as a felony is referred to as a **grand** theft. A theft punishable as a misdemeanor is referred to as a **petit** theft.¹³

When a person who is in actual possession of property where a device or alteration affecting the registration or reporting of the use of utility services to avoid payment is present, it is **prima facie evidence** of a violation of s. 812.14, F.S. This presumption does not apply unless the:

- Presence of the device or alteration can be attributed to a deliberate act in furtherance of an intent to avoid payment for utility services;

⁶ Section 812.14(2)(a), F.S.,

⁷ Section 812.14(2)(b) and (c), F.S.

⁸ Section 812.014(2)(a)1., F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁹ Section 812.014(2)(b)1., F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Section 812.014(2)(c), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

¹¹ Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹² Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

¹³ Section 812.014, F.S.

- Person charged has received the direct benefit of the reduction of the cost of the utility services; and
- Customer or recipient of the utility services has received the direct benefit of the utility service for at least one full billing cycle.¹⁴

It is a first degree misdemeanor for a person or entity that owns, leases, or subleases property to allow a tenant or occupant to use utility services knowing or under such circumstances that a reasonable person would believe that the utility services have been connected in one of the above listed ways.¹⁵ There is ***prima facie evidence*** of a person's intent to violate this provision if:

- A controlled substance and materials for manufacturing the controlled substance intended for sale or distribution to another were found in a dwelling or structure;
- The dwelling or structure has been visibly modified to accommodate the use of equipment to grow marijuana indoors, including, but not limited to, the installation of equipment to provide additional air conditioning, equipment to provide high-wattage lighting, or equipment for hydroponic cultivation; and
- The person or entity that owned, leased, or subleased the dwelling or structure knew of or under such circumstances believed that there was a controlled substance and materials for manufacturing a controlled substance in the dwelling or structure, regardless of whether the person or entity was involved in the manufacture or sale of a controlled substance or was in actual possession of the dwelling or structure.¹⁶

Theft of utility services for the purpose of facilitating the manufacture of a controlled substance

Theft of utility services for the purpose of facilitating the manufacture of a controlled substance is punishable as a theft under s. 812.014, F.S.¹⁷ There is ***prima facie evidence*** of a person's intent to violate this provision if:

- The person committed theft of utility services that resulted in a dwelling or structure receiving unauthorized access to utility services;¹⁸
- A controlled substance and materials for manufacturing the controlled substance were found in the dwelling or structure; and
- The person knew of the presence of the controlled substance and materials for manufacturing the controlled substance in the dwelling or structure, regardless of whether the person was involved in the manufacture of the controlled substance.¹⁹

Public Service Commission Rule 25-6.104, F.A.C.

The Public Service Commission regulates the utilities in Florida through market oversight, monitoring the safety, reliability, and services of the utilities and rate base, and economic

¹⁴ Section 812.14(3), F.S.

¹⁵ Section 812.14(5), F.S.

¹⁶ Section 812.14(6), F.S.

¹⁷ Section 812.14(8), F.S.

¹⁸ Section 810.011, F.S. defines "dwelling" as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof; and a "structure" as a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.

¹⁹ Section 812.14(9), F.S.

regulation.²⁰ The Public Service Commission rules allow a utility to bill a customer in the event of unauthorized or fraudulent use, or meter tampering. The utility may bill for a reasonable estimate of the energy that was used.²¹

Civil Damages

In a civil action, any person who is found to have committed an offense in s. 812.14, F.S., is liable to a utility involved for an amount equal to 3 times the amount of the services unlawfully obtained or \$3,000, whichever is greater.²²

Restitution in a Criminal Case

Section 775.089, F.S., requires a court to order a defendant to make restitution to the victim for:

- Damage or loss caused directly or indirectly by the defendant's offense; and
- Damage or loss related to the defendant's criminal episode.

When a court determines whether to order restitution and the amount of restitution, it must consider the amount of the loss sustained by the victim because of the offense.²³

III. Effect of Proposed Changes:

Theft of Utilities

The bill provides that the crime of utility theft is a ***grand*** theft, punishable in s. 812.014, F.S. This results in the repeal of the misdemeanor offenses of utility theft (valued under \$300).

Theft of utility services for the purpose of facilitating the manufacture of a controlled substance

The bill provides that the crime of utility theft for the purposes of facilitating the manufacture of a controlled substance is a ***grand*** theft, punishable in s. 812.014, F.S. This results in the repeal of the misdemeanor offenses of utility theft (valued under \$300) for the purposes of facilitating the manufacture of a controlled substance.

The bill also provides that prima facie evidence includes:

- Person knew ***or should have known*** of the presence of the controlled substance and materials for manufacturing the controlled substance in the dwelling or structure.

Civil Damages and Restitution in Criminal Case

The bill requires a court to include the following amounts in its order for civil damages under s. 812.14(10), F.S., or criminal restitution for theft of electricity:

- The costs to repair or replace damaged property owned by a utility, including reasonable labor costs.

²⁰ My Florida, Public Service Commission, *The PSC's Role*, available at <http://www.psc.state.fl.us/> (last visited March 16, 2017).

²¹ Rule 25-6.104, F.A.C.

²² Section 812.14(10), F.S.

²³ Section 775.089(6)(a), F.S.

- Reasonable costs for the use of specialized equipment to investigate or calculate the amount of unlawfully obtained electric services, including reasonable labor costs.
- The amount of unlawfully obtained electric services.

The bill allows the state to make a prima facie showing of the estimated losses of unlawfully obtained electric services based on any methodology reasonably relied upon by utilities. The methodology may consider the estimated start date of the theft and the estimated daily or hourly use of electricity.

The estimated start date of a theft may be based upon one or more of the following:

- The date of an overload notification from a transformer, or the tripping of a transformer, that the utility reasonably believes was overloaded because of the theft of electricity.
- The date the utility verified a substantive difference between the amount of electricity used at a property and the amount billed to the account holder.
- The date the utility or a law enforcement officer located a tap or other device bypassing a meter.
- The date the utility or a law enforcement officer observed or verified meter tampering.
- The maturity of a cannabis crop found in a dwelling or structure using unlawfully obtained electric services or the number of cannabis crops the utility or a law enforcement officer reasonably believes to have been grown in the dwelling or structure.
- The date the utility or a law enforcement agency received a report of suspicious activity potentially indicating the presence of the unlawful cultivation of cannabis in a dwelling or structure or when a law enforcement officer or an employee or contractor of a utility observes such suspicious activity.
- The date when a utility observes a significant change in metered energy usage.
- The date when an account with the utility was opened for a property that receives both metered and unlawfully obtained electric services.
- Any other facts or data reasonably relied upon by utilities to estimate the start date of a theft of electricity.

The estimated average daily or hourly use of the electricity may be based upon any, or a combination, of the following:

- The load imposed by the fixtures, appliances, or equipment powered by unlawfully obtained electric services.
- Recordings by the utility of the amount of electricity used by a property or the difference between the amount used and the amount billed.
- A comparison of the amount of electricity historically used by the property and the amount billed while the property was using unlawfully obtained electricity.
- A reasonable analysis of a meter that was altered or tampered with to prevent the creation of an accurate record of the amount of electricity obtained.
- Any other facts or data reasonably relied upon by utilities to estimate the amount of unlawfully obtained electric services.

Once the state has made a prima facie showing, the burden shifts to the defendant to demonstrate that the loss is something other than that claimed by the utility.

The bill allows the court to order a defendant to pay restitution for damages to the property of a utility or for the theft of electricity for criminal offenses that are causally connected to the damages or losses and bear a significant relationship to those damages or losses. A conviction for theft of utilities is not required for the court to issue a restitution order.

The bill specifies the criminal offenses that bear a significant relationship and are causally connected to a violation of s. 812.14, F.S., include, but are not limited to:

- Offenses relating to the unlawful cultivation of cannabis in a dwelling or structure if the theft of electricity was used to facilitate the growth of the cannabis.

The monetary threshold of any criminal charge does not limit the restitution amount that a defendant may be ordered to pay.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill specifies that criminal offenses that bear a significant relationship and are causally connected to a violation of s. 812.14, F.S., include, but are not limited to, offenses relating to the unlawful cultivation of cannabis in a dwelling or structure if the theft of electricity was used to facilitate the growth of the cannabis. Section 775.089, F.S., requires, in a restitution hearing, the state to prove the causal relationship between the defendant's offense and the damages or losses. In *J.S.H. v. State*, 472 So.2d 737, 738 (Fla. 1985), the Florida Supreme Court found that the offense charged does not have to describe the damage done for restitution to be ordered, but that the "damage bear a significant relationship to the convicted offense." If the bill allows restitution to be ordered for the theft of utility services when these requirements are not met it may be found unconstitutional.

Section 775.089(7), F.S., requires that the state prove the amount of loss sustained by a victim by the preponderance of the evidence. The bill specifies that once the state has made a prima facie showing the burden shifts to the defendant to demonstrate that the loss is something other than that claimed by a utility. If this provision shifts the burden to the defendant without the state having to prove the amount of loss by the preponderance

of the evidence and if the bill treats these defendants differently than any other defendant in a restitution hearing the bill could be found unconstitutional.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill allows the state to seek restitution for utilities for criminal offenses that are causally connected to the damages or losses and bear a significant relationship to those damages or losses. This may result in a positive indeterminate fiscal impact on private utilities.

The bill allows utilities to estimate losses of unlawfully obtained electric services based on any reasonably used utility methodology. Private utilities could use a methodology that results in the largest estimate of loss, which could have positive indeterminate fiscal impact on private utilities.

C. Government Sector Impact:

The bill allows the state to seek restitution for utilities in criminal offenses that are causally connected to the damages or losses and bears a significant relationship to those damages or losses. This may result in a positive indeterminate fiscal impact on public utilities.

The bill allows utilities to estimate losses of unlawfully obtained electric services based on any reasonably used utility methodology. Private utilities could use a methodology that results in the largest estimate of loss, which could have positive indeterminate fiscal impact on public utilities.

The bill makes the offense of utility theft a third degree felony. The Criminal Justice Impact Conference has not determined the prison impact of this bill, however it may have a positive (increase) indeterminate prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 812.14 and 812.014.

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 March 21, 2017:**

The committee substitute:

- Removes the references “of a diversion” because s. 812.14, F.S., does not criminalize such behavior or define it.
- Replaces the term “grow house” with the terms “dwelling” and “structure” to provide consistency throughout s. 812.14, F.S.
- Deletes proposed changes that would have included a person acting on the behalf of an owner, lessor, or sublessor as a person who could violate s. 812.14(5), F.S.
- Deletes the proposed change that replaced the term “prima facie evidence” with the term “permissive inference.”
- Provides that theft of utility services for the purpose of facilitating the manufacture of a controlled substance is a grand theft punishable under s. 812.014, F.S.
- Removes the requirement that the amount of taxes be included in a court’s civil damages or restitution order.
- Deletes the proposed change that allowed the number of cannabis crops that could have reasonably been grown to be used to determine the start date of the utility theft.
- Makes technical and stylistic changes.
- Changes the effective date from July 1, 2017, to October 1, 2017.

B. Amendments:

None.



319480

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/21/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 812.14, Florida Statutes, is amended to
read:

812.14 Trespass and larceny with relation to utility
fixtures; theft of utility services.—

(1) As used in this section, "utility" includes any person,
firm, corporation, association, or political subdivision,



319480

whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

(2) A person may not ~~It is unlawful to~~:

(a) Willfully alter, tamper with, damage ~~injure~~, or knowingly allow damage to a ~~suffer to be injured any~~ meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; ~~to~~

(b) Alter the index or break the seal of any such meter; ~~in any way to~~

(c) Hinder or interfere in any way with the proper action or accurate ~~just~~ registration of any such meter or device; ~~or~~

(d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste, by any means, of electricity, ~~or~~ gas, or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after the ~~such~~ meter, wire, pipe, or fitting, or other appliance or appurtenance has been tampered with, injured, or altered; ~~or~~

(e) ~~(b)~~ Connect ~~Make~~ or cause a ~~to be made any~~ connection with a ~~any~~ wire, main, service pipe or other pipes, appliance, or appurtenance in a ~~such~~ manner that uses ~~as to use~~, without the consent of the utility, any service or any electricity, gas, or water; ~~or to~~

(f) Cause a utility, without its consent, to supply any ~~to~~



319480

~~be supplied any service or electricity, gas, or water from a utility to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without reporting the such service being reported for payment; or~~

(g) Cause, without the consent of a utility, such electricity, gas, or water to bypass passing through a meter provided by the utility and used for measuring and registering the quantity of electricity, gas, or water passing through the same; or-

(h)-(e) Use or receive the direct benefit from the use of a utility knowing, or under ~~such~~ circumstances that ~~as~~ would induce a reasonable person to believe, that the such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility, for the purpose of avoiding payment.

(3) The presence on the property of and in the actual possession ~~by of~~ a person of any device or alteration that prevents ~~affects the diversion or use of the services of a utility so as to avoid the registration of the such use of services by or on a meter installed by the utility or that avoids so as to otherwise avoid the reporting of the use of services such service~~ for payment is prima facie evidence of the violation of subsection (2) ~~this section~~ by such person.+
However, this presumption does not apply unless:

(a) The presence of the such a device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility services;



319480

(b) The person charged has received the direct benefit of the reduction of the cost of the ~~such~~ utility services; and

(c) The customer or recipient of the utility services has received the direct benefit of the ~~such~~ utility service for at least one full billing cycle.

(4) A person who willfully violates subsection (2) ~~paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c)~~ commits grand theft, punishable as provided in s. 812.014.

(5) ~~It is unlawful for~~ A person or entity that owns, leases, or subleases a property, or a person acting on behalf of such person, may not ~~to~~ permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of subsection (2) ~~paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c)~~.

(6) It is prima facie evidence that an owner, lessor, or sublessor, or a person acting on behalf of such person, intended ~~It is prima facie evidence of a person's intent to violate~~ subsection (5) if:

(a) A controlled substance and materials for manufacturing the controlled substance intended for sale or distribution to another were found in a dwelling or structure;

(b) The dwelling or structure was ~~has been~~ visibly modified to accommodate the use of equipment to grow cannabis ~~marijuana~~ indoors, including, but not limited to, the installation of equipment to provide additional air conditioning, equipment to provide high-wattage lighting, or equipment for hydroponic cultivation; and

(c) The person or entity that owned, leased, or subleased



319480

the dwelling or structure knew of, or did so under such circumstances as would induce a reasonable person to believe in, the presence of a controlled substance and materials for manufacturing a controlled substance in the dwelling or structure, regardless of whether the person or entity was involved in the manufacture or sale of a controlled substance or was in actual possession of the dwelling or structure.

(7) An owner, lessor, or sublessor, or a person acting on behalf of such person, ~~A person~~ who willfully violates subsection (5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Prosecution for a violation of subsection (5) does not preclude prosecution for theft pursuant to subsection (8) or s. 812.014.

(8) Theft of utility services for the purpose of facilitating the manufacture of a controlled substance is grand theft, punishable as provided in s. 812.014.

(9) It is prima facie evidence of a person's intent to violate subsection (8) if:

(a) The person committed theft of utility services resulting in a dwelling, as defined in s. 810.011, or a structure, as defined in s. 810.011, receiving unauthorized access to utility services;

(b) A controlled substance and materials for manufacturing the controlled substance were found in the dwelling or structure; and

(c) The person knew or should have known of the presence of the controlled substance and materials for manufacturing the controlled substance in the dwelling or structure, regardless of whether the person was involved in the manufacture of the



319480

controlled substance.

(10) Whoever is found in a civil action to have violated this section is liable to the utility involved in an amount equal to 3 times the amount of services unlawfully obtained or \$3,000, whichever is greater.

(11) (a) For purposes of determining a defendant's liability for civil damages under subsection (10) or criminal restitution for the theft of electricity, the amount of civil damages or a restitution order must include all of the following amounts:

1. The costs to repair or replace damaged property owned by a utility, including reasonable labor costs.

2. Reasonable costs for the use of specialized equipment to investigate or calculate the amount of unlawfully obtained electricity services, including reasonable labor costs.

3. The amount of unlawfully obtained electricity services.

(b) A prima facie showing of the amount of unlawfully obtained electricity services may be based on any methodology reasonably relied upon by utilities to estimate such losses. The methodology may consider the estimated start date of the theft and the estimated daily or hourly use of electricity. Once a prima facie showing has been made, the burden shifts to the defendant to demonstrate that the loss is other than that claimed by the utility.

1. The estimated start date of a theft may be based upon one or more of the following:

a. The date of an overload notification from a transformer, or the tripping of a transformer, that the utility reasonably believes was overloaded as a result of the theft of electricity.

b. The date the utility verified a substantive difference



319480

between the amount of electricity used at a property and the amount billed to the accountholder.

c. The date the utility or a law enforcement officer located a tap or other device bypassing a meter.

d. The date the utility or a law enforcement officer observed or verified meter tampering.

e. The maturity of a cannabis crop found in a dwelling or structure using unlawfully obtained electricity services the utility or a law enforcement officer reasonably believes to have been grown in the dwelling or structure.

f. The date the utility or a law enforcement agency received a report of suspicious activity potentially indicating the presence of the unlawful cultivation of cannabis in a dwelling or structure or the date a law enforcement officer or an employee or contractor of a utility observes such suspicious activity.

g. The date when a utility observes a significant change in metered energy usage.

h. The date when an account with the utility was opened for a property that receives both metered and unlawfully obtained electricity services.

i. Any other facts or data reasonably relied upon by utilities to estimate the start date of a theft of electricity.

2. The estimated average daily or hourly use of the electricity may be based upon any, or a combination, of the following:

a. The load imposed by the fixtures, appliances, or equipment powered by unlawfully obtained electricity services.

b. Recordings by the utility of the amount of electricity



319480

used by a property or the difference between the amount used and the amount billed.

c. A comparison of the amount of electricity historically used by the property and the amount billed while the property was using unlawfully obtained electricity.

d. A reasonable analysis of a meter that was altered or tampered with to prevent the creation of an accurate record of the amount of electricity obtained.

e. Any other facts or data reasonably relied upon by utilities to estimate the amount of unlawfully obtained electricity services.

(12) A court order requiring a defendant to pay restitution for damages to the property of a utility or for the theft of electricity need only be based on a conviction for a criminal offense that is causally connected to the damages or losses and bears a significant relationship to those damages or losses. A conviction for a violation of this section is not a prerequisite for a restitution order. Criminal offenses that bear a significant relationship and are causally connected to a violation of this section include, but are not limited to, offenses relating to the unlawful cultivation of cannabis in a dwelling or structure if the theft of electricity was used to facilitate the growth of the cannabis.

(13) The amount of restitution that a defendant may be ordered to pay is not limited by the monetary threshold of any criminal charge on which the restitution order is based.

(14) ~~(11)~~ This section does not apply to licensed and certified electrical contractors while such persons are performing usual and ordinary service in accordance with



319480

recognized standards.

Section 2. Paragraph (c) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at \$300 or more, but less than \$5,000.

2. Valued at \$5,000 or more, but less than \$10,000.

3. Valued at \$10,000 or more, but less than \$20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a \$10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and



319480

sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

14. Utility services, in a manner as specified in s. 812.14.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at \$5,000 or more, but less than \$10,000, as provided under subparagraph 2., or if the property is valued at \$10,000 or more, but less than \$20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 3. This act shall take effect October 1, 2017.



319480

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the unlawful acquisition of utility
services; amending s. 812.14, F.S.; revising the
elements that constitute theft of utilities;
clarifying that the presence of certain devices and
alterations on the property of, and the actual
possession by, a person constitutes prima facie
evidence of a violation; clarifying that certain
evidence of controlled substance manufacture in a
leased dwelling constitutes prima facie evidence of a
violation by an owner, lessor, sublessor, or a person
acting on behalf of such persons; clarifying that
specified circumstances create prima facie evidence of
theft of utility services for the purpose of
facilitating the manufacture of a controlled
substance; revising such circumstances; specifying the
types of damages that may be recovered in as civil
damages or restitution in a criminal case for damaging
property of a utility or for the theft of electricity
services; specifying the methods and bases used to
determine and assess damages in a civil action or
restitution in a criminal case for damaging property
of a utility or for the theft of electricity services;
making technical changes; amending s. 812.014, F.S.;
conforming provisions to changes made by the act;



319480

301 providing an effective date.



539650

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2017	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (319480) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 812.14, Florida Statutes, is amended to read:

812.14 Trespass and larceny with relation to utility fixtures; theft of utility services.—

(1) As used in this section, "utility" includes any person,



539650

firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

(2) A person may not ~~It is unlawful to:~~

(a) Willfully alter, tamper with, damage ~~injure~~, or knowingly allow damage to a ~~suffer to be injured~~ any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; ~~to~~

(b) Alter the index or break the seal of any such meter; ~~in any way to~~

(c) Hinder or interfere in any way with the proper action or accurate ~~just~~ registration of any such meter or device; ~~or~~

(d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste, by any means, of electricity, ~~or~~ gas, or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after the ~~such~~ meter, wire, pipe, or fitting, or other appliance or appurtenance has been tampered with, injured, or altered; ~~or~~

(e) ~~(b)~~ Connect ~~Make~~ or cause a ~~to be made~~ any connection with a ~~any~~ wire, main, service pipe or other pipes, appliance, or appurtenance in a ~~such~~ manner that uses ~~as to use~~, without the consent of the utility, any service or any electricity, gas, or water; ~~or to~~



539650

40 (f) Cause a utility, without its consent, to supply any to
41 ~~be supplied any~~ service or electricity, gas, or water ~~from a~~
42 ~~utility~~ to any person, firm, or corporation or any lamp, burner,
43 orifice, faucet, or other outlet ~~whatsoever,~~ without reporting
44 the such service ~~being reported~~ for payment; ~~or~~

45 (g) Cause, without the consent of a utility, such
46 electricity, gas, or water to bypass ~~passing through~~ a meter
47 provided by the utility ~~and used for measuring and registering~~
48 ~~the quantity of electricity, gas, or water passing through the~~
49 ~~same; or-~~

50 (h) (e) Use or receive the direct benefit from the use of a
51 utility knowing, or under ~~such~~ circumstances that as would
52 induce a reasonable person to believe, that the such direct
53 benefits have resulted from any tampering with, altering of, or
54 injury to any connection, wire, conductor, meter, pipe, conduit,
55 line, cable, transformer, amplifier, or other apparatus or
56 device owned, operated, or controlled by such utility, for the
57 purpose of avoiding payment.

58 (3) The presence on the property of and in the actual
59 possession ~~by~~ ~~of~~ a person of any device or alteration that
60 prevents ~~affects the diversion or use of the services of a~~
61 ~~utility so as to avoid~~ the registration of the such use of
62 services by ~~or on~~ a meter installed by the utility or that
63 avoids ~~so as to otherwise avoid~~ the reporting of the use of
64 services ~~such service~~ for payment is prima facie evidence of the
65 violation of subsection (2) ~~this section~~ by such person. ~~+~~

66 However, this presumption does not apply unless:

67 (a) The presence of the such a device or alteration can be
68 attributed only to a deliberate act in furtherance of an intent



539650

to avoid payment for utility services;

(b) The person charged has received the direct benefit of the reduction of the cost of the ~~such~~ utility services; and

(c) The customer or recipient of the utility services has received the direct benefit of the ~~such~~ utility service for at least one full billing cycle.

(4) A person who willfully violates subsection (2) ~~paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c)~~ commits grand theft, punishable as provided in s. 812.014.

(5) ~~It is unlawful for~~ A person or entity that owns, leases, or subleases a property may not ~~to~~ permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of subsection (2) ~~paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c)~~.

(6) It is prima facie evidence that an owner, lessor, or sublessor intended ~~It is prima facie evidence of a person's intent~~ to violate subsection (5) if:

(a) A controlled substance and materials for manufacturing the controlled substance intended for sale or distribution to another were found in a dwelling or structure;

(b) The dwelling or structure was ~~has been~~ visibly modified to accommodate the use of equipment to grow cannabis ~~marijuana~~ indoors, including, but not limited to, the installation of equipment to provide additional air conditioning, equipment to provide high-wattage lighting, or equipment for hydroponic cultivation; and

(c) The person or entity that owned, leased, or subleased



539650

the dwelling or structure knew of, or did so under such circumstances as would induce a reasonable person to believe in, the presence of a controlled substance and materials for manufacturing a controlled substance in the dwelling or structure, regardless of whether the person or entity was involved in the manufacture or sale of a controlled substance or was in actual possession of the dwelling or structure.

(7) An owner, lessor, or sublessor ~~A person~~ who willfully violates subsection (5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Prosecution for a violation of subsection (5) does not preclude prosecution for theft pursuant to subsection (8) or s. 812.014.

(8) Theft of utility services for the purpose of facilitating the manufacture of a controlled substance is grand theft, punishable as provided in s. 812.014.

(9) It is prima facie evidence of a person's intent to violate subsection (8) if:

(a) The person committed theft of utility services resulting in a dwelling, as defined in s. 810.011, or a structure, as defined in s. 810.011, receiving unauthorized access to utility services;

(b) A controlled substance and materials for manufacturing the controlled substance were found in the dwelling or structure; and

(c) The person knew or should have known of the presence of the controlled substance and materials for manufacturing the controlled substance in the dwelling or structure, regardless of whether the person was involved in the manufacture of the controlled substance.



539650

(10) Whoever is found in a civil action to have violated this section is liable to the utility involved in an amount equal to 3 times the amount of services unlawfully obtained or \$3,000, whichever is greater.

(11) (a) For purposes of determining a defendant's liability for civil damages under subsection (10) or criminal restitution for the theft of electricity, the amount of civil damages or a restitution order must include all of the following amounts:

1. The costs to repair or replace damaged property owned by a utility, including reasonable labor costs.

2. Reasonable costs for the use of specialized equipment to investigate or calculate the amount of unlawfully obtained electricity services, including reasonable labor costs.

3. The amount of unlawfully obtained electricity services.

(b) A prima facie showing of the amount of unlawfully obtained electricity services may be based on any methodology reasonably relied upon by utilities to estimate such losses. The methodology may consider the estimated start date of the theft and the estimated daily or hourly use of electricity. Once a prima facie showing has been made, the burden shifts to the defendant to demonstrate that the loss is other than that claimed by the utility.

1. The estimated start date of a theft may be based upon one or more of the following:

a. The date of an overload notification from a transformer, or the tripping of a transformer, that the utility reasonably believes was overloaded as a result of the theft of electricity.

b. The date the utility verified a substantive difference between the amount of electricity used at a property and the



539650

amount billed to the accountholder.

c. The date the utility or a law enforcement officer located a tap or other device bypassing a meter.

d. The date the utility or a law enforcement officer observed or verified meter tampering.

e. The maturity of a cannabis crop found in a dwelling or structure using unlawfully obtained electricity services the utility or a law enforcement officer reasonably believes to have been grown in the dwelling or structure.

f. The date the utility or a law enforcement agency received a report of suspicious activity potentially indicating the presence of the unlawful cultivation of cannabis in a dwelling or structure or the date a law enforcement officer or an employee or contractor of a utility observes such suspicious activity.

g. The date when a utility observes a significant change in metered energy usage.

h. The date when an account with the utility was opened for a property that receives both metered and unlawfully obtained electricity services.

i. Any other facts or data reasonably relied upon by utilities to estimate the start date of a theft of electricity.

2. The estimated average daily or hourly use of the electricity may be based upon any, or a combination, of the following:

a. The load imposed by the fixtures, appliances, or equipment powered by unlawfully obtained electricity services.

b. Recordings by the utility of the amount of electricity used by a property or the difference between the amount used and



539650

the amount billed.

c. A comparison of the amount of electricity historically used by the property and the amount billed while the property was using unlawfully obtained electricity.

d. A reasonable analysis of a meter that was altered or tampered with to prevent the creation of an accurate record of the amount of electricity obtained.

e. Any other facts or data reasonably relied upon by utilities to estimate the amount of unlawfully obtained electricity services.

(12) A court order requiring a defendant to pay restitution for damages to the property of a utility or for the theft of electricity need only be based on a conviction for a criminal offense that is causally connected to the damages or losses and bears a significant relationship to those damages or losses. A conviction for a violation of this section is not a prerequisite for a restitution order. Criminal offenses that bear a significant relationship and are causally connected to a violation of this section include, but are not limited to, offenses relating to the unlawful cultivation of cannabis in a dwelling or structure if the theft of electricity was used to facilitate the growth of the cannabis.

(13) The amount of restitution that a defendant may be ordered to pay is not limited by the monetary threshold of any criminal charge on which the restitution order is based.

(14) ~~(11)~~ This section does not apply to licensed and certified electrical contractors while such persons are performing usual and ordinary service in accordance with recognized standards.



539650

Section 2. Paragraph (c) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at \$300 or more, but less than \$5,000.
2. Valued at \$5,000 or more, but less than \$10,000.
3. Valued at \$10,000 or more, but less than \$20,000.
4. A will, codicil, or other testamentary instrument.
5. A firearm.
6. A motor vehicle, except as provided in paragraph (a).
7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a \$10,000 fine shall be imposed.
8. Any fire extinguisher.
9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.
10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).
11. Any stop sign.
12. Anhydrous ammonia.
13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this



539650

subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

14. Utility services, in a manner as specified in s. 812.14.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at \$5,000 or more, but less than \$10,000, as provided under subparagraph 2., or if the property is valued at \$10,000 or more, but less than \$20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 3. This act shall take effect October 1, 2017.

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



539650

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to the unlawful acquisition of utility services; amending s. 812.14, F.S.; revising the elements that constitute theft of utilities; clarifying that the presence of certain devices and alterations on the property of, and the actual possession by, a person constitutes prima facie evidence of a violation; clarifying that certain evidence of controlled substance manufacture in a leased dwelling constitutes prima facie evidence of a violation by an owner, lessor, sublessor, or a person acting on behalf of such persons; clarifying that specified circumstances create prima facie evidence of theft of utility services for the purpose of facilitating the manufacture of a controlled substance; revising such circumstances; specifying the types of damages that may be recovered in as civil damages or restitution in a criminal case for damaging property of a utility or for the theft of electricity services; specifying the methods and bases used to determine and assess damages in a civil action or restitution in a criminal case for damaging property of a utility or for the theft of electricity services; making technical changes; amending s. 812.014, F.S.; conforming provisions to changes made by the act; providing an effective date.

By Senator Baxley

12-00453A-17

2017776__

A bill to be entitled

An act relating to the unlawful acquisition of utility services; amending s. 812.14, F.S.; revising the elements that constitute theft of utilities; clarifying that the presence of certain devices and alterations on the property of, and the actual possession by, a person constitutes a permissive inference of a violation; clarifying that certain evidence of controlled substance manufacture in a leased dwelling constitutes a permissive inference of a violation by an owner, lessor, sublessor, or a person acting on behalf of such persons; clarifying that specified circumstances create a permissive inference of theft of utility services for the purpose of facilitating the manufacture of a controlled substance; revising such circumstances; specifying the types of damages that may be recovered in a civil action or as restitution in a criminal case for damaging property of a utility or for the theft or diversion of electric services; specifying the methods and bases used to determine and assess such damages; making technical changes; amending s. 812.014, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 812.14, Florida Statutes, is amended to read:

812.14 Trespass and larceny with relation to utility fixtures; theft of utility services.-

(1) As used in this section, "utility" includes any person,

Page 1 of 11

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

12-00453A-17

2017776__

firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

(2) A person may not ~~It is unlawful to:~~

(a) Willfully alter, tamper with, damage ~~injure~~, or knowingly allow damage to a ~~suffer to be injured~~ any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; ~~to~~

(b) Alter the index or break the seal of any such meter; ~~in any way to~~

(c) Hinder or interfere in any way with the proper action or accurate ~~just~~ registration of any such meter or device; ~~or~~

(d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste, by any means, of electricity, ~~or~~ gas, or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after the ~~such~~ meter, wire, pipe, or fitting, or other appliance or appurtenance has been tampered with, injured, or altered; ~~or~~

(e) ~~(b)~~ Connect ~~Make~~ or cause a ~~to be made~~ any connection with a ~~any~~ wire, main, service pipe or other pipes, appliance, or appurtenance in a ~~such~~ manner that uses ~~as to use~~, without the consent of the utility, any service or any electricity, gas, or water; ~~or to~~

Page 2 of 11

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

12-00453A-17

2017776

(f) Cause a utility, without its consent, to supply any ~~to be supplied any~~ service or electricity, gas, or water ~~from a utility to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever,~~ without reporting the such service being reported for payment; ~~or~~

(g) Cause, without the consent of a utility, such electricity, gas, or water to bypass passing through a meter provided by the utility ~~and used for measuring and registering the quantity of electricity, gas, or water passing through the same; or-~~

(h) ~~(e)~~ Use or receive the direct benefit from the use of a utility knowing, or under ~~such~~ circumstances that as would induce a reasonable person to believe, that the such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility, for the purpose of avoiding payment.

(3) The presence on the property of and in the actual possession ~~by of~~ a person of any device or alteration that ~~prevents affects the diversion or use of the services of a utility so as to avoid the registration of the such use of services by or on a meter installed by the utility or that avoids so as to otherwise avoid the reporting of the use of services such service for payment creates a permissive inference is prima facie evidence of the violation of subsection (2) this section~~ by such person. ~~However, this inference presumption~~ does not apply unless:

(a) The presence of the such a device or alteration can be

Page 3 of 11

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

12-00453A-17

2017776

attributed only to a deliberate act in furtherance of an intent to avoid payment for utility services;

(b) The person charged has received the direct benefit of the reduction of the cost of the such utility services; and

(c) The customer or recipient of the utility services has received the direct benefit of the such utility service for at least one full billing cycle.

(4) A person who willfully violates subsection (2) paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) commits grand theft, punishable as provided in s. 812.014.

(5) ~~It is unlawful for~~ A person or entity that owns, leases, or subleases a property may not ~~to~~ permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of subsection (2) paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c).

(6) There exists a permissive inference that an owner, lessor, or sublessor, or a person acting on behalf of such person, intended ~~It is prima facie evidence of a person's intent~~ to violate subsection (5) if:

(a) A controlled substance and materials for manufacturing the controlled substance intended for sale or distribution to another were found in a dwelling or structure;

(b) The dwelling or structure was has been visibly modified to accommodate the use of equipment to grow cannabis marijuana indoors, including, but not limited to, the installation of equipment to provide additional air conditioning, equipment to provide high-wattage lighting, or equipment for hydroponic

Page 4 of 11

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

12-00453A-17

2017776__

cultivation; and

(c) The person or entity that owned, leased, or subleased the dwelling or structure knew of, or did so under such circumstances as would induce a reasonable person to believe in, the presence of a controlled substance and materials for manufacturing a controlled substance in the dwelling or structure, regardless of whether the person or entity was involved in the manufacture or sale of a controlled substance or was in actual possession of the dwelling or structure.

(7) An owner, lessor, or sublessor, or a person acting on behalf of such person, A person who willfully violates subsection (5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Prosecution for a violation of subsection (5) does not preclude prosecution for theft pursuant to subsection (8) or s. 812.014.

(8) Theft of utility services for the purpose of facilitating the manufacture of a controlled substance is theft, punishable as provided in s. 812.014.

(9) A permissive inference ~~It is Prima facie evidence~~ of a person's intent to violate subsection (8) exists if:

(a) The person committed theft of utility services resulting in a dwelling, as defined in s. 810.011, or a structure, as defined in s. 810.011, receiving unauthorized access to utility services;

(b) A controlled substance and materials for manufacturing the controlled substance were found in the dwelling or structure; and

(c) The person knew or should have known of the presence of the controlled substance and materials for manufacturing the

12-00453A-17

2017776__

controlled substance in the dwelling or structure, regardless of whether the person was involved in the manufacture of the controlled substance.

(10) Whoever is found in a civil action to have violated this section is liable to the utility involved in an amount equal to 3 times the amount of services unlawfully obtained or \$3,000, whichever is greater.

(11)(a) For purposes of determining a defendant's liability for civil damages or criminal restitution for the theft or diversion of electricity, the amount of civil damages or a restitution order must include all of the following amounts:

1. The costs to repair or replace damaged property owned by a utility, including reasonable labor costs.

2. Reasonable costs for the use of specialized equipment to investigate or calculate the amount of unlawfully obtained electric services, including reasonable labor costs.

3. The amount of any applicable taxes.

4. The amount of unlawfully obtained electric services.

(b) A prima facie showing of the amount of unlawfully obtained electric services may be based on any methodology reasonably relied upon by utilities to estimate such losses. The methodology may consider the estimated start date of the theft or diversion and the estimated daily or hourly use of electricity. Once a prima facie showing has been made, the burden shifts to the defendant to demonstrate that the loss is other than that claimed by the utility.

1. The estimated start date of a theft or diversion may be based upon one or more of the following:

a. The date of an overload notification from a transformer,

12-00453A-17

2017776__

or the tripping of a transformer, that the utility reasonably believes was overloaded as a result of the theft or diversion of electricity.

b. The date the utility verified a substantive difference between the amount of electricity used at a property and the amount billed to the accountholder.

c. The date the utility or a law enforcement officer located a tap or other device bypassing a meter.

d. The date the utility or a law enforcement officer observed or verified meter tampering.

e. The maturity of a cannabis crop found in a grow house or other structure using unlawfully obtained electric services or the number of cannabis crops the utility or a law enforcement officer reasonably believes to have been grown in the grow house or other structure.

f. The date the utility or a law enforcement agency received a report of suspicious activity potentially indicating the presence of the unlawful cultivation of cannabis in a grow house or other structure or when a law enforcement officer or an employee or contractor of a utility observes such suspicious activity.

g. The date when a utility observes a significant change in metered energy usage.

h. The date when an account with the utility was opened for a property that receives both metered and unlawfully obtained electric services.

i. Any other facts or data reasonably relied upon by utilities to estimate the start date of a theft or diversion of electricity.

12-00453A-17

2017776__

2. The estimated average daily or hourly use of the electricity may be based upon any, or a combination, of the following:

a. The load imposed by the fixtures, appliances, or equipment powered by unlawfully obtained electric services.

b. Recordings by the utility of the amount of electricity used by a property or the difference between the amount used and the amount billed.

c. A comparison of the amount of electricity historically used by the property and the amount billed while the property was using unlawfully obtained electricity.

d. A reasonable analysis of a meter that was altered or tampered with to prevent the creation of an accurate record of the amount of electricity obtained.

e. Any other facts or data reasonably relied upon by utilities to estimate the amount of unlawfully obtained electric services.

(c) A court order requiring a defendant to pay restitution for damages to the property of a utility or for the theft or diversion of electricity need only be based on a criminal offense that is causally connected to the damages or losses and bears a significant relationship to those damages or losses. A conviction for a violation of this section is not a prerequisite to a restitution order. Criminal offenses that bear a significant relationship and are causally connected to a violation of this section include, but are not limited to, offenses relating to the unlawful cultivation of cannabis in a grow house or other structure if the theft or diversion of electricity was used to facilitate the growth of the cannabis.

12-00453A-17

2017776__

(d) The amount of restitution that a defendant may be ordered to pay is not limited by the monetary threshold of any criminal charge on which the restitution order is based.

~~(12)(11)~~ This section does not apply to licensed and certified electrical contractors while such persons are performing usual and ordinary service in accordance with recognized standards.

Section 2. Paragraph (c) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at \$300 or more, but less than \$5,000.

2. Valued at \$5,000 or more, but less than \$10,000.

3. Valued at \$10,000 or more, but less than \$20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a \$10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

12-00453A-17

2017776__

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

14. Utility services, in a manner as specified in s. 812.14.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at \$5,000 or more, but less than \$10,000, as provided under subparagraph 2., or if the property is valued at \$10,000 or more, but less than \$20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or

12-00453A-17

2017776__

294 homeland security personnel. For purposes of sentencing under
295 chapter 921, a felony offense that is reclassified under this
296 paragraph is ranked one level above the ranking under s.
297 921.0022 or s. 921.0023 of the offense committed.

298 Section 3. 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)

3/21/2017

Meeting Date

SB 776

Bill Number (if applicable)

Topic Utility Theft

Amendment Barcode (if applicable)

Name Donna Simmons

Job Title Dir, State Gov't Relations

Address 106 E College Ave
Street

Phone _____

TLH
City

FL
State

32301
Zip

Email dssimmons@tecoenergy.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing TECO Energy

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

776

Bill Number (if applicable)

Topic Unlawful Acquisition of Utility Services

Amendment Barcode (if applicable)

Name MIKE BJORKLUND

Job Title DIR. of LEGISLATIVE AFFAIRS

Address 2916 APALACHEE PARKWAY

Phone 877-6166

Street

TALL.

City

FL

State

32317

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL ELECTRIC COOPERATIVES ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

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

SENATOR DENNIS BAXLEY
12th District

February 27, 2017

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



Dear Chairman Bracy,

I respectfully request you place Senate Bill 776 Unlawful Acquisition of Utility Services on your next available agenda.

This bill provides prosecutors and electric utility companies to obtain restitution for stolen electricity, which is often used to power illegal marijuana grow houses. It provides a methodology for utility company's estimate for stolen electricity.

It also provides the defendant, an opportunity to rebut the presumption by demonstrating that the utility's loss is something other than the utility's claim.

I appreciate your favorable consideration.

Onward & Upward,

Dennis K. 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: CS/SB 832

INTRODUCER: Criminal Justice Committee and Senator Young

SUBJECT: Drones

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Hrdlicka	CJ	Fav/CS
2.			TR	
3.			CU	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 832 creates s. 330.41, F.S., relating to the lawful use of unmanned aircraft systems (drones) around and over critical infrastructure facilities. The bill creates new misdemeanor crimes prohibiting a person from knowingly and willfully operating a drone over or around certain critical infrastructure facilities.

There is an exception from the prohibition against a person operating a drone over a critical infrastructure facility to allow a drone in transit for commercial purposes to fly over the facility.

The bill requires adherence to FAA regulatory authority by the facility seeking designation as a critical infrastructure facility for purposes of flight pattern regulation. The bill appears to exempt governmental entities and law enforcement agencies, under certain circumstances, from the drone airspace prohibition created in the bill.

The bill defines a “critical infrastructure facility” as:

- An electrical power generation or transmission facility, substation, switching station, or electrical control center;
- A natural gas compressor station, storage facility, or natural gas pipeline;
- A liquid natural gas terminal or storage facility;
- Any portion of an aboveground oil or gas pipeline; or

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

The bill provides that the state is preempting local government authority to regulate the operation of unmanned aircraft systems but carves out exceptions for local government authority not specifically related to the use of drones.

The bill also amends s. 934.50, F.S., to add an exception to the prohibited uses of drones for communications service providers or their contractors for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.

II. Present Situation:

Drones typically range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.¹ They may be controlled manually or through an autopilot which uses a data link to connect the drone's pilot to the drone.² Although "drone" has become almost a household word, the devices are also called Unmanned Aerial Vehicles (UAV) and Unmanned Aerial Systems (UAS).

Some examples of non-military uses for drones have included earthquake damage assessment at Japan's Fukushima power plant, volcano activity assessment of Mount St. Helens in Washington for the U.S. Geological Survey, and surveying wild fires in Texas.³ At the University of Florida, the Unmanned Aerial Systems Research Group has developed an 11 pound drone having a 9 foot wingspan, which is called "Nova 2.1." According to researchers, it can be used to safely and accurately gather data that will be helpful to wildlife biologists and many others.⁴

The drone industry is motivated to move into more civilian markets.⁵ It also appears that civilian markets are ready to adopt the drone industry. According to the Consumer Electronics Association, drone shipments will increase from 250,000 units in 2014 to nearly a million in 2018.⁶

Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source.⁷

¹ 14 CFR Part 91, Docket No. FAA-2006-25714, 72 FR 6689, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 13, 2007.

² *Id.*

³ James Chiles, *Drones for Hire*, Air & Space Smithsonian, January 2013, <http://www.airspacemag.com/flight-today/drones-for-hire-125909361/?all>, (last visited March 17, 2017).

⁴ James Dean, *Florida Hopes to Fill Its Skies with Unmanned Aircraft*, Florida Today, June 23, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-06-23/increased-drone-use-privacy-concerns/55783066/1>, (last visited March 17, 2017). Mickie Anderson, *UF Team's Work Pays Off With Unmanned-flight System that Captures Valuable Data*, Phys Org, October 20, 2010, <http://phys.org/news/2010-10-uf-team-unmanned-flight-captures-valuable.html>. (last visited March 17, 2017).

⁵ James Chiles, *Drones for Hire*, Air & Space Smithsonian, January 2013, <http://www.airspacemag.com/flight-today/drones-for-hire-125909361/?all>, (last visited March 17, 2017).

⁶ Larry Downes, *What's Wrong with the FAA's New Drone Rules*, Harvard Business News, March 2, 2015.

⁷ 49 U.S.C. ss. 40103, 44502, and 44701-44735.

In February 2012, Congress passed the FAA Modernization and Reform Act of 2012, which required the FAA to safely open the nation's airspace to drones by September 2015.⁸

The FAA authorized the testing of UAS at six sites around the country as part of its efforts.⁹ Many companies and individuals have applied for approval by the FAA to operate UAS in national airspace. These included airworthiness certificates to film for motion pictures, precision agriculture, and real estate, and to inspect distribution towers, wiring, and infrastructure. Over 5,000 such grants had been approved before the end of 2016, including companies such as Amazon Logistics, Inc., and Alphabet, Inc. (Google).¹⁰ Amazon is working on a package delivery system called "Prime Air."¹¹ Alphabet's Project Wing has been testing delivery of food and other perishables.¹²

In June of 2016, the FAA adopted rules for the operation of small UAS's.¹³ Small UAS's must be operated in accordance with the following limitations:

- Cannot be flown faster than a groundspeed of 87 knots (100 miles per hour);
- Cannot be flown higher than 400 feet above ground level, unless flown within a 400-foot radius of a structure and does not fly higher than 400 feet above the structure's immediate uppermost limit;
- Minimum visibility, as observed from the location of the control station, may not be less than 3 statute miles; and
- Minimum distance from clouds being no less than 500 feet below a cloud and no less than 2000 feet horizontally from the cloud.¹⁴

⁸ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; Richard Thompson, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last visited March 17, 2017).

⁹ Federal Aviation Administration, *Fact Sheet – FAA UAS Test Site Program*, December 30, 2013, available at https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=15575 (last visited March 17, 2017).

¹⁰ Federal Aviation Administration, *It's (a) Grand! FAA Passes 1,000 UAS Section 333 Exemptions*, August 4, 2015, available at <https://www.faa.gov/news/updates/?newsId=83395> (last visited March 17, 2017); *Section 333*, as of September 28, 2016, available at https://www.faa.gov/uas/beyond_the_basics/section_333/ (last visited March 17, 2017); *Amazon Gets Experimental Airworthiness Certificate*, March 19, 2015, available at <https://www.faa.gov/news/updates/?newsId=82225> (last visited March 17, 2017). Additionally, realtors and real estate-related drone operators in Texas, California, and Pennsylvania have been issued testing certificates by the FAA. Matt Carter, *FAA approves more real estate drone flights, but there's a catch*, March 9, 2015, available at <http://www.inman.com/2015/03/09/faa-approves-more-real-estate-drone-flights> (last visited March 17, 2017).

¹¹ Matt McFarland, *Amazon's delivery drones may drop packages via parachute*, CNN Tech, February 14, 2017, available at <http://money.cnn.com/2017/02/14/technology/amazon-drone-patent/> (last visited March 17, 2017).

¹² Mark Bergen, *Alphabet Taps Breaks on Drone Project, Nixes Starbucks Partnership*, Bloomberg Technology, November 8, 2016, available at <https://www.bloomberg.com/news/articles/2016-11-08/alphabet-taps-brakes-on-drone-project-nixing-starbucks-partnership> (last visited March 17, 2017).

¹³ Title 14 CFR Part 107, Small Unmanned Aircraft Systems.

¹⁴ U.S. Department of Transportation, Federal Aviation Administration, Advisory Circular No. 107-2, June 21, 2016, pages 5-8 and 5-9.

Florida enacted legislation in 2012 and 2015 to regulate the use of drones.¹⁵ The focus of the legislation was law enforcement use of drones, general privacy issues, and the authorization of some commercial use.¹⁶

III. Effect of Proposed Changes:

The bill creates s. 330.41, F.S., relating to the lawful use of unmanned aircraft systems (drones) around and over critical infrastructure facilities.

The bill also amends s. 934.50, F.S. to add an exception to the prohibited uses of drones for communications service providers or their contractors for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.

Protection of “Critical Infrastructure Facilities” from Interference by Drones (Section 1)

The bill creates new misdemeanor crimes prohibiting a person from knowingly and willfully operating a drone over or around certain critical infrastructure facilities.

There is an exception from the prohibition, which allows for operating a drone over a critical infrastructure facility if the drone is in transit for commercial purposes and is in compliance with FAA requirements.

A “critical infrastructure facility” is defined in the bill as:

- An electrical power generation or transmission facility, substation, switching station, or electrical control center;
- A natural gas compressor station, storage facility, or natural gas pipeline;
- A liquid natural gas terminal or storage facility;
- Any portion of an aboveground oil or gas pipeline; or
- A wireless communications facility, including tower, antennae, support structures, and all associated ground-based equipment.

The definition requires that the facility be completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or clearly marked with a sign or signs indicating that entry is forbidden which are posted on the property in a manner reasonably likely to come to the attention of intruders.

The definition of “drone” in s. 934.50(2), F.S., is adopted by the bill.¹⁷

¹⁵ Section 934.50, F.S.

¹⁶ Uses that are not prohibited by Florida law include: the use of drones by property appraisers to assess property for ad valorem taxation; to capture images by or for an electric, water, or natural gas utility for specified purposes; and to deliver cargo. s. 934.50(4)(e), (f), and (h), F.S.

¹⁷ “Drone” means a powered, aerial vehicle that: does not carry a human operator; uses aerodynamic forces to provide vehicle lift; can fly autonomously or be piloted remotely; can be expendable or recoverable; and can carry a lethal or nonlethal payload. s. 934.50(2)(a), F.S.

“Unmanned aircraft system” (UAS) is defined by the bill as a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently.

The bill creates a second degree misdemeanor offense¹⁸ prohibiting a person from knowingly or willfully:

- Operating a drone over a critical infrastructure facility;
- Allowing a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or
- Allowing a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

It is a first degree misdemeanor to commit a second or subsequent violation of the prohibition.¹⁹

The bill provides that s. 330.41(4), F.S., does not apply to these actions committed by the following:

- A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity;
- A law enforcement agency that is in compliance with s. 934.50, F.S., or a person under contract with or otherwise acting under the direction of such law enforcement agency; or
- An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.

The bill provides that a person or governmental entity seeking to restrict or limit the operation of drones in close proximity to “infrastructure or facilities” that the person or entity owns or operates must apply to the Federal Aviation Administration (FAA) for such affirmative designation pursuant to Section 2209 of the FAA Extension, Safety, and Security Act of 2016 (the FAA Act).²⁰

The FAA Act states that only the following may be considered by the Secretary of Transportation to be “fixed site facilities”:

- Critical infrastructure, such as energy production, transmission, and distribution facilities and equipment;
- Oil refineries and chemical facilities;
- Amusement parks; and
- Other locations that warrant such restrictions.²¹

The FAA administrator may consider aviation safety; protection of persons and property on the ground; national security; or homeland security in determining whether to grant the application for designation as a fixed site facility.²²

¹⁸ A second degree misdemeanor is punishable by up to 60 days in jail and up to a \$500 fine. ss. 775.082 and 775.083, F.S.

¹⁹ A first degree misdemeanor is punishable by up to a year in jail and up to a \$1,000 fine. ss. 775.082 and 775.083, F.S.

²⁰ Although s. 330.41(3)(d), F.S., of Section 1 of the bill refers to “infrastructure or facilities,” presumably this part of the bill is referring to “critical infrastructure facilities” as defined in the bill.

²¹ Public Law 114-190, Section 2209(b)(1)(C) (Applications for Designation); 49 USC 40101 (UAS Safety, Sec. 2209).

²² Public Law 114-190, Section 2209(b)(2)(C) (Applications for Designation); 49 USC 40101 (UAS Safety, Sec. 2209).

An affirmative designation by the FAA will outline the boundaries for UAS operation near the fixed site facility and such other limitations that the FAA administrator determines may be appropriate.²³

Preemption

The bill vests in the state the authority to regulate the operation of UAS's.

The bill does not, however, limit local government authority to enact and enforce local ordinances that do not specifically relate to the use of a UAS. This type of ordinance includes acts addressing nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of UAS's.

The bill provides that a county or municipality may not enact or enforce an ordinance or resolution relating to the:

- Design;
- Manufacture;
- Testing;
- Maintenance;
- Licensing;
- Registration;
- Certification; or
- Operation of an unmanned aircraft system, including:
 - Airspace, altitude, flight paths, equipment or technology requirements;
 - Purpose of operations; and
 - Pilot, operator, or observer qualifications, training, and certification.

There is also a provision in the bill requiring that the new statute (s. 330.41, F.S.) be construed in accordance with standards imposed by federal statutes, regulations, and FAA guidance on UAS's.

Exception Created in s. 934.50, F.S. (Section 2)

The bill amends s. 934.50(4), F.S., to create a new exception to the statutory prohibitions on the use of drones.

The bill allows a drone to be used by a communication service provider or its contractor for routing, siting, installation, maintenance, or inspection of facilities used to provide communication services.

Effective Date (Section 3)

The bill is effective on July 1, 2017.

²³ Public Law 114-190, Section 2209(b)(2)(B) (Applications for Designation); 49 USC 40101 (UAS Safety, Sec. 2209).

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Local governments that have adopted local ordinances regulating the use of UAS's that are determined to be in conflict with the provisions of the bill will need to be amended or repealed.

Examples of local ordinances include:

- Defuniak Springs has created second degree misdemeanor penalties for the violation of its ordinance which includes a requirement that commercial users of UAV's register with and notify the Defuniak Springs Police Department at least four hours prior to each commercial use.²⁴
- The Town of Palm Beach requires a permit, permit fee, \$1 million of liability insurance, and approval of the Director of Public Safety to operate a drone.²⁵

²⁴ Section 22-52, Defuniak Springs, Florida City Code (Ord. No. 866, May 23, 2016).

²⁵ Chapter 14, Article II, Section 14-35, Town of Palm Beach, Florida Code (Ord. No. 08-2016, June 14, 2016).

VIII. Statutes Affected:

This bill substantially amends section 934.50 of the Florida Statutes.

This bill creates section 330.41 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on March 21, 2017:

The CS:

- Deleted the definition of “person” used in the bill;
- Eliminated the provision wherein the state would preempt authority from local governments over unmanned aircraft systems (UAS) ownership;
- Recognized the federal government’s authority to regulate the “airspace” by including a reference to federal regulations, authorizations, or exemptions;
- Added an exception to the bill to allow for drones operating in transit for commercial purposes in compliance with federal requirements to operate a drone over a “critical infrastructure facility,” as defined in the bill; and
- Made technical changes.

- B. **Amendments:**

None.



937444

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 55 - 115
and insert:

(c) "Unmanned aircraft system" means a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently.

(3) REGULATION.—

(a) The authority to regulate the operation of unmanned



937444

aircraft systems is vested in the state except as provided in federal regulations, authorizations, or exemptions.

(b) Except as otherwise expressly provided, a political subdivision may not enact or enforce an ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements; the purpose of operations; and pilot, operator, or observer qualifications, training, and certification.

(c) This subsection does not limit the authority of a local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems if such laws or ordinances are not specifically related to the use of an unmanned aircraft system for those illegal acts.

(d) A person or governmental entity seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities that the person or governmental entity owns or operates must apply to the Federal Aviation Administration for such designation pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016.

(4) PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES.—

(a) A person may not knowingly or willfully:

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



937444

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

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

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

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

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

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

(d) Subparagraph (a)1. does not apply to a drone operating in transit for commercial purposes in compliance with Federal Aviation Administration regulations, authorizations, or exemptions.

(5) CONSTRUCTION.-This section shall be construed in accordance with standards imposed by federal statutes, regulations, and Federal Aviation Administration guidance on unmanned aircraft systems.

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



937444

And the title is amended as follows:

Delete lines 4 - 25

and insert:

that, except as provided in federal regulations, authorizations, or exemptions, the authority to regulate the operation of unmanned aircraft systems is vested in the state; prohibiting a political subdivision from enacting or enforcing certain ordinances or resolutions relating to unmanned aircraft systems; providing that the authority of local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems is not limited, subject to certain requirements; requiring persons seeking to restrict or limit the operation of drones in close proximity to certain infrastructure or facilities to apply to the Federal Aviation Administration; prohibiting a person from knowingly and willfully operating a drone over or allowing a drone to make contact with or come within a certain distance of certain critical infrastructure facilities; providing that such a violation is a misdemeanor punishable under specified provisions of ch. 775; providing an exemption from specified prohibited acts; providing construction; amending s.



274534

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/21/2017	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (937444) (with title amendment)

Delete line 63
and insert:

(5) DRONE PILOT STUDY OF CRASH INVESTIGATIONS.—
Notwithstanding any other provisions of law, beginning July 1,
2017, and ending June 30, 2019, the Department of Highway Safety
and Motor Vehicles may conduct a pilot study using drones for
the investigation of automobile accidents. This subsection also



274534

applies to any investigation of an automobile accident in which any law enforcement officer of the department is assisting the investigation of an automobile accident conducted by any other investigating entity. The department shall prepare a report of any use of drones for the investigation of automobile accidents and shall submit the report to the Governor, the President of the Senate, and the Speaker of the House not later than January 1, 2020. The report must include, at a minimum, an assessment of any cost savings by the use of drones for the investigation of an automobile accident.

(6) CONSTRUCTION.-This section shall be construed in

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

And the title is amended as follows:

Delete line 94

and insert:

prohibited acts; authorizing the Department of Highway Safety and Motor Vehicles to conduct a pilot study using drones for the investigation of automobile accidents; providing applicability; providing construction; requiring the department to prepare a specified report and submit it to specified persons by a certain date; providing minimum requirements for the report; amending s.

By Senator Young

18-00671C-17

2017832__

A bill to be entitled

An act relating to drones; creating s. 330.41, F.S.; providing a short title; defining terms; providing that the authority to regulate the ownership or operation of unmanned aircraft systems is vested in the state; prohibiting a political subdivision from enacting or enforcing certain ordinances or resolutions relating to unmanned aircraft systems; providing that this act does not limit local government authority to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems, subject to certain requirements; providing construction; requiring persons seeking to restrict or limit the operation of drones in close proximity to certain infrastructure or facilities to apply to the Federal Aviation Administration; prohibiting a person from knowingly and willfully operating a drone over or allowing a drone to make contact with or come within a certain distance of certain critical infrastructure facilities; providing that such a violation is a misdemeanor punishable under specified provisions of ch. 775; providing an exemption from specified prohibited acts; amending s. 934.50, F.S.; providing that the use of a drone by a communications service provider or contractor is not prohibited under certain provisions of ch. 934; providing an effective date.

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

18-00671C-17

2017832__

Section 1. Section 330.41, Florida Statutes, is created to read:

330.41 Unmanned Aircraft Systems Act.—

(1) SHORT TITLE.—This act may be cited as the "Unmanned Aircraft Systems Act."

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

(a) "Critical infrastructure facility" means any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

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

2. A natural gas compressor station, storage facility, or natural gas pipeline.

3. A liquid natural gas terminal or storage facility.

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

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

(b) "Drone" has the same meaning as s. 934.50(2).

(c) "Person" means an individual, a partnership, a corporation, an association, a governmental entity, or other legal entity.

(d) "Unmanned aircraft system" means a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently.

18-00671C-17

2017832__

(3) REGULATION.—

(a) The authority to regulate the ownership or operation of unmanned aircraft systems is vested in the state.

(b) Except as otherwise expressly provided, a political subdivision may not enact or enforce an ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements; the purpose of operations; and pilot, operator, or observer qualifications, training, and certification.

(c) This section does not limit local government authority to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems if such laws or ordinances are not specifically related to the use of an unmanned aircraft system for those illegal acts.

(d) This section shall be construed in accordance with standards described by federal statutes, regulations, and Federal Aviation Administration guidance on unmanned aircraft systems.

(4) PROTECTION OF INFRASTRUCTURE AND FACILITIES.—

(a) A person seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities the person owns or operates must apply to the Federal Aviation Administration for such designation pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016.

(b) Notwithstanding paragraph (a), a person may not

18-00671C-17

2017832__

knowingly or willfully:

1. Operate a drone over a critical infrastructure facility;

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

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

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

(c) This section does not apply to actions described in paragraph (b) that are committed by:

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

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

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

Section 2. Paragraph (j) is added to subsection (4) of section 934.50, Florida Statutes, to read:

934.50 Searches and seizure using a drone.—

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

18-00671C-17

2017832__

drone:

(j) By a communications service provider or a contractor
for a communications service provider for routing, siting,
installation, maintenance, or inspection of facilities used to
provide communications services.

Section 3. 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)

3/21/17

Meeting Date

832

Bill Number (if applicable)

Topic DRONES

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title _____

Address 311 EAST PARK AVENUE

Phone 224-5081

Street

TALLAHASSEE

City

FL

State

32301

Zip

Email ddaniel@smithbryanandmyers.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing UAS ASSOCIATION 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
APPEARANCE RECORD

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

3.21.17

Meeting Date

832

Bill Number (if applicable)

Topic drones

Amendment Barcode (if applicable)

Name Ashley Kalifich (ca-leafy)

Job Title lobbyist

Address 101 E Gally Ave #502

Street

Phone 222-9075

Tallahassee FL

City

State

Zip

Email akalifich@capcityconsult.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ATF

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 _____

832
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable) _____

Name ERIC POOLE

Job Title Leg Director

Address _____

Phone _____

Street

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Assoc. Counties

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 832

Bill Number (if applicable)

Topic DRONES

Amendment Barcode (if applicable)

Name MEGAN SIRJANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address P.O. Box 1757

Phone 850.701.3455

Street

TALLAHASSEE

State

FL 32302

Zip

Email MSIRJANESAMPLES@FLCITIES.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA LEAGUE OF CITIES

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

832

Bill Number (if applicable)

Topic DRONES

Amendment Barcode (if applicable)

Name LANLE PIERCE

Job Title ASST. DIRECTOR OF STATE LEGISLATIVE AFFAIRS

Address 310 W. COLLEGE AVE
Street

Phone (850) 228-4038

TALLAHASSEE FL 32301
City State Zip

Email LANLE.PIERCE@FFBF.ORG

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA FARM BUREAU

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
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 1248

INTRODUCER: Senator Steube

SUBJECT: Breach of the Peace

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	Pre-meeting
2.			RC	

I. Summary:

SB 1248 amends s. 877.03, F.S., which punishes breach of the peace and disorderly conduct. The bill removes reference to “breach of the peace” and several acts prohibited under the statute. As a result of these changes, s. 877.03, F.S., will only punish engaging in brawling or fighting or engaging in conduct that constitutes disorderly conduct.

The bill amends s. 321.05, F.S., to remove reference to “breach of the peace.” As a result of this change, the Florida Highway Patrol will no longer have a common-law right to arrest a person who, in the presence of the officer, commits a breach of peace.

The bill also repeals s. 933.14(3), F.S., which prohibits return of a pistol or firearm without a trial court order if the pistol or firearm was taken by an officer:

- With a search warrant; or
- Without a search warrant upon a view by the officer of a breach of the peace.

Because breach of the peace is a misdemeanor offense, the bill does not have a prison bed impact.

II. Present Situation:

Breach of the Peace or Disorderly Conduct

Section 877.03, F.S., provides that it is a second degree misdemeanor¹ to:

- Commit “such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them”;

¹ A second degree misdemeanor is punishable by up to 60 days in jail, a fine of up to \$500, or both jail and a fine. Sections 775.082 and 775.083, F.S.

- Engage in brawling or fighting; or
- Engage in “such conduct as to constitute a breach of the peace or disorderly conduct.”

Because the statute does not define the terms “breach of peace” and “disorderly conduct,” it is unclear if the terms are effectively synonymous in their meaning. One court has described “breach of peace” as “a generic term including all violations of the public peace, order, or decorum. A breach of the peace includes the violation of any law enacted to preserve peace and good order.”²

Florida Highway Patrol’s Common-Law Right to Make an Arrest for a Breach of the Peace

Section 321.05, F.S., provides, in part, that members of the Florida Highway Patrol have the common-law right to arrest a person, who in the presence of the arresting officer, commits a breach of peace constituting a misdemeanor.

Return of Pistol or Firearm Seized Due to Officer’s View of a Breach of the Peace

Section 933.14(3), F.S., prohibits return of a pistol or firearm without a trial court order if the pistol or firearm was taken by an officer:

- With a search warrant; or
- Without a search warrant upon a view by the officer of a breach of the peace.

III. Effect of Proposed Changes:

Section 1 of the bill removes reference to “breach of the peace” in s. 877.03, F.S., which currently proscribes committing certain acts or engaging in such conduct as to constitute a breach of the peace or disorderly conduct. It also removes reference to the following acts that currently constitute violations of the statute:

- Acts of a nature to corrupt the public morals;
- Acts that outrage the sense of public decency; and
- Acts that affect the peace and quiet of persons who may witness them.

As amended, s. 877.03, F.S., will only prohibit a person from engaging in brawling or fighting or engaging in conduct that constitutes disorderly conduct.

Section 2 of the bill amends s. 321.05, F.S., to remove the reference to “breach of the peace.” This change effectively removes the Florida Highway Patrol’s common-law right to arrest a person who, in the presence of the officer, commits a breach of peace.

Section 3 of the bill repeals s. 933.14(3), F.S., which prohibits return of a pistol or firearm without a trial court order if the pistol or firearm was taken by an officer:

- With a search warrant; or
- Without a search warrant upon a view by the officer of a breach of the peace.

² *Edwards v. State*, 462 So.2d 581, 583 (Fla. 4th DCA 1985) (citations omitted).

The prohibition on returning a pistol or firearm without a trial court order if the pistol or firearm was taken by an officer with a search warrant does not apply exclusively to the offense of breach of the peace. Therefore, its repeal impacts the process of returning a seized pistol or firearm in *all* cases in which a search warrant was issued and a pistol or firearm was taken by an officer, not simply in breach of peace cases. Article III, section 6, of the Florida Constitution provides, in part, that every law must embrace but one subject and matter that is “properly connected” with the subject. “A connection between a provision and the subject is proper (1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.”³

Section 4 of the bill provides the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Because breach of the peace is a misdemeanor offense, the bill does not have a prison bed impact.

VI. Technical Deficiencies:

None.

³ *Franklin v. State*, 887 So. 2d 1063, 1078 (Fla. 2004).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 877.03, 321.05, and 933.14.

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.



424774

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 933.14, Florida
Statutes, is amended to read:

933.14 Return of property taken under search warrant.—

~~(3) No pistol or firearm taken by any officer with a search
warrant or without a search warrant upon a view by the officer
of a breach of the peace shall be returned except pursuant to an~~



424774

~~order of a trial court judge.~~

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to breach of the peace; amending s.
933.14, F.S.; deleting a provision prohibiting the
return of a pistol or firearm taken by any officer,
with or without a search warrant, upon a view by the
officer of a breach of the peace; deleting an
exception; providing an effective date.



214914

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

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

Senate Amendment to Amendment (424774)

In title, delete line 19

and insert:

An act relating to search warrants; amending s.

By Senator Steube

23-01547-17

20171248__

A bill to be entitled

An act relating to breach of the peace; amending s. 877.03, F.S.; deleting provisions that provide criminal penalties for certain conduct constituting a breach of the peace; amending ss. 321.05 and 933.14, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 877.03, Florida Statutes, is amended to read:

877.03 ~~Breach of the peace.~~ Disorderly conduct.—Whoever ~~commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or~~ engages in brawling or fighting, or engages in such conduct as to constitute a ~~breach of the peace or~~ disorderly conduct, commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Section 321.05, Florida Statutes, is amended to read:

321.05 Duties, functions, and powers of patrol officers.—The members of the Florida Highway Patrol are hereby declared to be conservators of the peace and law enforcement officers of the state, with the common-law right to arrest a person who, in the presence of the arresting officer, commits a felony or commits an affray ~~or breach of the peace~~ constituting a misdemeanor, with full power to bear arms; and they shall apprehend, without

23-01547-17

20171248__

warrant, any person in the unlawful commission of any of the acts over which the members of the Florida Highway Patrol are given jurisdiction as hereinafter set out and deliver him or her to the sheriff of the county that further proceedings may be had against him or her according to law. In the performance of any of the powers, duties, and functions authorized by law, members of the Florida Highway Patrol have the same protections and immunities afforded other peace officers, which shall be recognized by all courts having jurisdiction over offenses against the laws of this state, and have authority to apply for, serve, and execute search warrants, arrest warrants, capias, and other process of the court. The patrol officers under the direction and supervision of the Department of Highway Safety and Motor Vehicles shall perform and exercise throughout the state the following duties, functions, and powers:

(1) To patrol the state highways and regulate, control, and direct the movement of traffic thereon; to maintain the public peace by preventing violence on highways; to apprehend fugitives from justice; to enforce all laws regulating and governing traffic, travel, and public safety upon the public highways and providing for the protection of the public highways and public property thereon, including the security and safety of this state's transportation infrastructure; to make arrests without warrant for the violation of any state law committed in their presence in accordance with state law; providing that no search may be made unless it is incident to a lawful arrest, to regulate and direct traffic concentrations and congestions; to enforce laws governing the operation, licensing, and taxing and limiting the size, weight, width, length, and speed of vehicles

23-01547-17

20171248__

and licensing and controlling the operations of drivers and operators of vehicles, including the safety, size, and weight of commercial motor vehicles; to collect all state fees and revenues levied as an incident to the use or right to use the highways for any purpose, including the taxing and registration of commercial motor vehicles; to require the drivers of vehicles to stop and exhibit their driver licenses, registration cards, or documents required by law to be carried by such vehicles; to investigate traffic accidents, secure testimony of witnesses and of persons involved, and make report thereof with copy, if requested in writing, to any person in interest or his or her attorney; to investigate reported thefts of vehicles; and to seize contraband or stolen property on or being transported on the highways. Each patrol officer of the Florida Highway Patrol is subject to and has the same arrest and other authority provided for law enforcement officers generally in chapter 901 and has statewide jurisdiction. Each officer also has arrest authority as provided for state law enforcement officers in s. 901.15. This section does not conflict with, but is supplemental to, chapter 933.

(2) To assist other constituted law enforcement officers of the state to quell mobs and riots, guard prisoners, and police disaster areas.

(3) (a) To make arrests while in fresh pursuit of a person believed to have violated the traffic and other laws.

(b) To make arrest of a person wanted for a felony or against whom a warrant has been issued on any charge in violation of federal, state, or county laws or municipal ordinances.

23-01547-17

20171248__

(4) (a) All fines and costs and the proceeds of the forfeiture of bail bonds and recognizances resulting from the enforcement of this chapter by patrol officers shall be paid into the fine and forfeiture fund established pursuant to s. 142.01 of the county where the offense is committed. In all cases of arrest by patrol officers, the person arrested shall be delivered forthwith by the officer to the sheriff of the county, or he or she shall obtain from the person arrested a recognizance or, if deemed necessary, a cash bond or other sufficient security conditioned for his or her appearance before the proper tribunal of the county to answer the charge for which he or she has been arrested; and all fees accruing shall be taxed against the party arrested, which fees are hereby declared to be part of the compensation of the sheriffs authorized to be fixed by the Legislature under s. 5(c), Art. II of the State Constitution, to be paid such sheriffs in the same manner as fees are paid for like services in other criminal cases. All patrol officers are hereby directed to deliver all bonds accepted and approved by them to the sheriff of the county in which the offense is alleged to have been committed. However, a sheriff shall not be paid any arrest fee for the arrest of a person for violation of any section of chapter 316 when the arresting officer was transported in a Florida Highway Patrol car to the vicinity where the arrest was made; and a sheriff shall not be paid any fee for mileage for himself or herself or a prisoner for miles traveled in a Florida Highway Patrol car. A patrol officer is not entitled to any fee or mileage cost except when responding to a subpoena in a civil cause or except when the patrol officer is appearing as an official witness to

23-01547-17 20171248__

117 testify at any hearing or law action in any court of this state
 118 as a direct result of his or her employment as a patrol officer
 119 during time not compensated as a part of his or her normal
 120 duties. Nothing herein shall be construed as limiting the power
 121 to locate and to take from any person under arrest or about to
 122 be arrested deadly weapons. This section is not a limitation
 123 upon existing powers and duties of sheriffs or police officers.

124 (b) Any person so arrested and released on his or her own
 125 recognizance by an officer and who fails to appear or respond to
 126 a notice to appear, in addition to the traffic violation charge,
 127 commits a noncriminal traffic infraction subject to the penalty
 128 provided in s. 318.18(2).

129 (5) The department may employ or assign some fit and
 130 suitable person with experience in the field of public relations
 131 who shall promote, coordinate, and publicize the traffic safety
 132 activities in the state and assign such person to the office of
 133 the Governor at a salary to be fixed by the department. The
 134 person so assigned or employed shall be a member of the uniform
 135 division of the Florida Highway Patrol, and he or she shall have
 136 the pay and rank of lieutenant while on such assignment.

137 (6) The Division of Florida Highway Patrol is authorized to
 138 adopt rules which may be necessary to implement the provisions
 139 of chapter 316.

140 Section 3. Subsection (3) of section 933.14, Florida
 141 Statutes, is amended to read:

142 933.14 Return of property taken under search warrant.—

143 ~~(3) No pistol or firearm taken by any officer with a search~~
 144 ~~warrant or without a search warrant upon a view by the officer~~
 145 ~~of a breach of the peace shall be returned except pursuant to an~~

23-01547-17 20171248__

146 ~~order of a trial court judge.~~

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

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 1526

INTRODUCER: Senator Bracy

SUBJECT: Public Records/Health Information/Department of Corrections

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 1526 amends s. 945.10, F.S., to include protected health information of inmates and information related to HIV testing held by the Department of Corrections as records that are confidential and exempt from public disclosure in accordance with the federal Health Insurance Portability and Accountability Act (HIPAA).

The bill aligns Florida law with the exemptions established in the HIPAA Privacy Rule by authorizing the release of protected health information and mental health, medical, and substance abuse records to other agencies, including law enforcement agencies, for legitimate state purposes.

The bill provides that the exemptions for protected health information of an inmate and identity of an inmate upon whom an HIV test has been performed are subject to the Open Government Sunset Review Act and stand 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 public record exemptions; thus, it requires a two-thirds vote for final passage.

II. Present Situation:

The Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Rule

HIPAA was enacted on August 21, 1996, to publicize standards for the electronic exchange, privacy, and security of health information.¹ The Privacy Rule (rule) adopted by the U.S. Department of Health and Human Services (HHS) was required by the HIPAA² to address the use and disclosure of personal health information. The requirements of the rule apply to individual and group health plans that provide or pay the cost of medical care, every health care provider that electronically transmits health information in connection with certain transactions, and health care clearinghouses that process nonstandard information received from another entity into a standard format or that process standard information into a nonstandard format. Under the rule, all “individually identifiable health information” is protected. Such information includes demographic data such as an individual’s name, address, date of birth, and social security number; the individual’s past, present, or future physical or mental health condition; the provision of health care to such individual; and payments made or to be made for the provision of health care to the individual. Unless for the purposes authorized by the rule, protected health information may not be disclosed without the written authorization of the protected individual.

Department of Corrections and HIPAA

The Florida Department of Corrections (department) is a covered entity for purposes of the rule. The department provides comprehensive health care for inmates, including medical, nursing, pharmacy, mental health, and dental.³

“Within [a correctional] system, inmates’ health information may originate from or reside in many locations, including booking notes (e.g., infectious or chronic disease status), sick-call triage systems, physician notes, and other departments such as housing and work details (e.g., mobility or injury status).”⁴ The rule protects the health information of inmates, but also recognizes that correctional facilities have legitimate needs to use and share the information without authorization by the inmate. Thus, the rule includes provisions regarding permissible uses and disclosures of inmates’ health information in the correctional context.

Covered entities may disclose the PHI [personal health information] of inmates without their authorization to correctional institutions or law enforcement officials who have lawful custody of an inmate for the purpose of providing health care to the inmate or for the health and safety of the inmate, other inmates, the officers and employees of the institution and others at the facility, and those responsible for inmate transfer. Covered entities may also disclose the PHI of inmates without authorization for law enforcement purposes on the premises of an institution and for the administration and maintenance of the safety, security, and good order of

¹ United States Department of Health and Human Services, *Summary of the HIPAA Privacy Rule*, Last Revised May 2003.

² 45 CFR Parts 160, 162, and 164.

³ Department of Corrections, *Health Care Facts*, available at <http://www.dc.state.fl.us/oth/hlthfact.html> (last visited March 16, 2017).

⁴ Melissa M. Goldstein, JD, *Health Information Privacy and Health Information Technology in the US Correctional Setting*, AM J Public Health, 2014 May, 104(5): 803-809, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987588/> (last visited March 16, 2017).

the institution. These provisions apply only to the release of the PHI of current inmates. When inmates are released, they have the same privacy rights under HIPAA as all other individuals.⁵

The department states that it is “unable to share inmate or offender protected health information and medical and mental health records for legitimate governmental functions in the absence of consent, a subpoena, or other court involvement.”⁶

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.⁷ The records of the legislative, executive, and judicial branches are specifically included.⁸

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁹ guarantees every person’s right to inspect and copy any state or local government public record¹⁰ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹¹

Only the Legislature may create an exemption to public records requirements.¹² This exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances.¹⁴

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

⁵ *Id.*

⁶ Department of Corrections, *Agency Bill Analysis: SB 1526*, (March 10, 2017) (on file with the Senate Committee on Criminal Justice).

⁷ Fla. Const., art. I, s. 24(a).

⁸ *Id.*

⁹ Chapter 119, F.S.

¹⁰ 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).

¹¹ Section 119.07(1)(a), F.S.

¹² Fla. Const., art. I, s. 24(c).

¹³ *Id.*

¹⁴ *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).

the statutory exemption.¹⁵ 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 provisions¹⁶ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁷

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.¹⁸ 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.¹⁹

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.²⁰ 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.²¹

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

The OGSR also requires specified questions to be considered during the review process.²² 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?

¹⁵ *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).

¹⁶ However, the bill may contain multiple exemptions that relate to one subject.

¹⁷ Fla. Const., art. I, s. 24(c).

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.¹⁸

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1.-3., F.S.

²² Section 119.15(6)(a), F.S.

- 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?²³

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.²⁴

Confidential Information

Section 945.10, F.S., makes confidential and exempts from Florida public record laws the following Department of Corrections (department) records:

- Mental health, medical, or substance abuse records of an inmate or an offender;
- Preplea, pretrial intervention, and presentence or postsentence investigative records;
- Information regarding a person in the federal witness protection program;
- Florida Commission on Offender Review records which are confidential or exempt from public disclosure by law;
- Information which if released would jeopardize a person's safety;
- Information concerning a victim's statement and identity;
- Information which identifies an executioner, or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection; and
- Records that are otherwise confidential or exempt from public disclosure by law.

Currently, the only permitted statutory disclosure of mental health, medical, or substance abuse records of an inmate or offender is to the Department of Health and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to human immunodeficiency virus infection (HIV).²⁵ The identify of a person upon whom a test has been performed and the test results are generally confidential and exempt from public records pursuant to s. 381.004(2), F.S.

Section 456.057, F.S., which also governs medical and mental health records maintained by the department, also contains limited record sharing. Most of the allowed disclosures deal with issues such as insurance, billing, investigations of medical malpractice, or medical research, which do not "contemplate the unique needs" of the department.²⁶

²³ Section 119.15(6)(a)1.-6., F.S.

²⁴ Section 119.15(7), F.S.

²⁵ Section 945.10(1)(a), F.S.

²⁶ Department of Corrections, *Agency Bill Analysis: SB 1526*, (March 10, 2017).

III. Effect of Proposed Changes:

Confidential Information

The bill amends s. 945.10(1), F.S., to classify the following Department of Corrections (department) records and information as confidential and exempt from Florida's public record law:

- "Protected health information"²⁷ of an inmate or an offender;
- HIV tests²⁸ of an inmate or offender; and
- HIV test results²⁹ received on an inmate or offender.

The identify of a person upon whom a test has been performed and the test results are also currently confidential and exempt from public records pursuant to s. 381.004(2), F.S.

These additions to the department's confidential and exempt information are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Release of protected health information and mental health, medical, or substance abuse records

The bill aligns Florida law with the exemptions established in the HIPAA Privacy Rule by authorizing the release of protected health information and mental health, medical, and substance abuse records. The bill allows the department's protected health information and mental health, medical, or substance abuse records of an inmate³⁰ to be released to:

- The Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including audits; civil, administrative, or criminal investigations; or inspections relating to the provision of health services;³¹
- A state attorney, a state court, or a law enforcement agency conducting an ongoing criminal investigation if the inmate agrees to the disclosure and provides written consent. If the inmate refuses to provide written consent, in response to a court order, a subpoena, investigative, or

²⁷ "Protected health information" means individually identifiable health information that is: transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any other form or medium. (45 C.F.R. s. 160.103). It excludes identifiable health information: in education records covered by the Family Educational Rights and Privacy Act; in records described at 20 U.S.C. 1232g(a)(4)(B)(iv)(education records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by physician, psychiatrist, psychologist); in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than 50 years.

²⁸ "HIV test" means a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection. (Section 381.004, F.S.).

²⁹ "HIV test result" means a laboratory report of a human immunodeficiency virus test result entered into a medical record on or after July 6, 1988, or any report or notation in a medical record of a laboratory report of a human immunodeficiency virus test. The term does not include test results reported to a health care provider by a patient. (Section 381.004, F.S.).

³⁰ Section 945.10(1)(a), F.S.

³¹ 45 C.F.R. 164.512(d).

administrative subpoena, a court-ordered warrant, or a statutorily authorized investigative demand or other process³² the records can be released to such persons provided that:

- The protected health information and records sought are relevant and material to a legitimate law enforcement inquiry;
- There is a clear connection between the investigated incident and the inmate's protected health information;
- The request is specific and limited in scope to the extent reasonably practicable; and
- De-identified information could not be reasonably used.³³
- A state attorney or a law enforcement agency if an inmate is or is suspected of being a victim of a crime if the inmate agrees to the disclosure and provides written consent. If the inmate is unable to agree because of incapacity or other emergency circumstances³⁴ provided that:
 - The information is needed to determine whether a violation of law by a person other than the inmate has occurred;
 - The information is not intended to be used against the inmate victim;
 - The immediate law enforcement activity would be materially and adversely affected by waiting until the inmate victim is able to agree to the disclosure; and
 - The disclosure is in the best interests of the inmate victim, as determined by the department.³⁵
- A state attorney or a law enforcement agency if the department believes in good faith that the information and records constitute evidence of criminal conduct that occurred in a correctional institution or facility provided that:
 - The protected information and records are specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought;
 - There is a clear connection between the criminal conduct and the inmate whose protected health information and records are sought; and
 - De-identified information could not reasonably be used.³⁶
- The Division of Risk Management of the Department of Financial Services upon certification by the Division that the information is necessary to investigate and provide legal representation for a claim against the department.³⁷
- The Department of Legal Affairs or an attorney retained to represent the department if the inmate is bringing a legal action against the department.³⁸
- Another correctional institution or law enforcement official having lawful custody of the inmate if the protected health information or records are necessary for:
 - The provision of health care to the inmate;
 - The health and safety of the inmate or other inmates;
 - The health and safety of the officers, employees, or others at the correctional institution or facility;

³² All orders, subpoenas, warrants, or other statutorily authorized demand must be in accordance with 45 C.F.R. 164, part E, governing security and privacy of health information.

³³ 45 C.F.R. 164.512(f)(1).

³⁴ The circumstances must be in accordance with 45 C.F.R. 164, part E, governing security and privacy of health information.

³⁵ 45 C.F.R. 164.512(f)(3).

³⁶ 45 C.F.R. 164.512(f)(5).

³⁷ 45 C.F.R. 164.508(a)(2)(C).

³⁸ *Id.*

- The health and safety of the individuals or officers responsible for transporting the inmate from one correctional institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution or facility; or
- The administration and maintenance of the safety, security, and good order of the correctional institution or facility.³⁹
- The Department of Children and Families and the Florida Commission on Offender Review if the inmate received mental health treatment while in the custody of the department and becomes eligible for release under supervision or upon the end of his or her sentence.⁴⁰

The bill also allows the department's protected health information and mental health, medical, or substance abuse records of an inmate be released to persons acting on behalf of a deceased inmate or offender only for the purpose of requesting access to the information if:⁴¹

- The person is appointed by a court to act as the personal representative, executor, administrator, curator, or temporary administrator of the deceased inmate's or offender's estate;
- A court has not made a judicial appointment, but the person was designated as a personal representative in a last will and testament; or
- A court has not made a judicial appointment and the inmate or offender has not designated a person in a self-proved last will. In such case, persons include surviving spouses, adult children, and parents of the inmate or offender.

All requests for access to a deceased inmate or offender's protected health information are required to be in writing and accompanied by the following:

- If a person appointed by the court is acting as a personal representative, a copy of the letter of administration and a copy of the court order appointing the personal representative.
- If made by a person designated by the inmate as the personal representative in a last will and testament, a copy of the self-proved last will designating the person as the inmate's or offender's representative.
- If made by a surviving spouses, adult children, and parents of the inmate or offender, a letter from the person's attorney verifying the person's relationship to the inmate or offender and the absence of a court-appointed representative and self-proved last will.

Public Necessity

The bill provides that the Legislature finds that it is a public necessity that an inmate's or offender's protected health information and HIV testing information held by the department remain confidential and exempt from public disclosure.

The bill is effective July 1, 2017.

³⁹ 45 C.F.R. 164.512(f)(5).

⁴⁰ 45 C.F.R. 164.512(d)(2) or (6).

⁴¹ 45 C.F.R. 164.512(g).

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.

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:

SB 1604 (2017) amends s. 943.04, F.S., to authorize the Florida Department of Law Enforcement, when conducting an investigation or assisting in the investigation of an injury to or death of an inmate under the custody or control of the DOC, to serve a demand for production of the inmate's protected health information, medical records, or mental health records on the DOC. The records disclosed remain confidential and exempt from public records laws.

VIII. Statutes Affected:

This bill substantially amends section 945.10 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. Amendments:

None.

By Senator Bracy

11-01217B-17

20171526__

A bill to be entitled

An act relating to public records; amending s. 945.10, F.S.; providing that certain protected health information held by the Department of Corrections is confidential and exempt from public records requirements; authorizing the release of protected health information and other records of an inmate to certain entities, subject to specified conditions and under certain circumstances; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 945.10, Florida Statutes, is amended, present paragraph (h) of that subsection is redesignated as paragraph (i), a new paragraph (h) is added to that subsection, subsection (2) of that section is amended, and subsection (6) is added to that section, to read:

945.10 Confidential information.—

(1) Except as otherwise provided by law or in this section, the following records and information held by the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) 1. Mental health, medical, or substance abuse records of an inmate or an offender; and

2. Protected health information of an inmate or an offender. Protected health information, as used in this section, has the same meaning as provided in 45 C.F.R. s. 160.103. This

Page 1 of 10

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

11-01217B-17

20171526__

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

(h) The identity of any inmate or offender upon whom an HIV test has been performed and the inmate's or offender's test results, in accordance with s. 381.004. The term "HIV test" has the same meaning as provided in s. 381.004. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) The records and information specified in paragraphs (1) (a) - (i) ~~(1) (a) - (h)~~ may be released as follows unless expressly prohibited by federal law:

(a) Information specified in paragraphs (1) (b), (d), and (f) to the Executive Office of the Governor, the Legislature, the Florida Commission on Offender Review, the Department of Children and Families, a private correctional facility or program that operates under a contract, the Department of Legal Affairs, a state attorney, the court, or a law enforcement agency. A request for records or information pursuant to this paragraph need not be in writing.

(b) Information specified in paragraphs (1) (c), (e), and (i) ~~(h)~~ to the Executive Office of the Governor, the Legislature, the Florida Commission on Offender Review, the Department of Children and Families, a private correctional facility or program that operates under contract, the Department of Legal Affairs, a state attorney, the court, or a law

Page 2 of 10

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

11-01217B-17

20171526__

enforcement agency. A request for records or information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(c) Information specified in paragraph (1)(b) to an attorney representing an inmate under sentence of death, except those portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim. A request for records of information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(d) Information specified in paragraph (1)(b) to a public defender representing a defendant, except those portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim. A request for records or information pursuant to this paragraph need not be in writing.

(e) Information specified in paragraph (1)(b) to state or local governmental agencies. A request for records or information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(f) Information specified in paragraph (1)(b) to a person conducting legitimate research. A request for records and information pursuant to this paragraph must be in writing, the person requesting the records or information must sign a confidentiality agreement, and the department must approve the request in writing.

(g) Protected health information and records specified in ~~paragraphs paragraph~~ (1)(a) and (h) to the Department of Health

11-01217B-17

20171526__

and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to human immunodeficiency virus infection or as authorized in s. 381.004.

(h) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to the Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including audits; civil, administrative, or criminal investigations; or inspections relating to the provision of health services, in accordance with 45 C.F.R. part 164, subpart E.

(i) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to a state attorney, a state court, or a law enforcement agency conducting an ongoing criminal investigation, if the inmate agrees to the disclosure and provides written consent or, if the inmate refuses to provide written consent, in response to an order of a court of competent jurisdiction, a subpoena, including a grand jury, investigative, or administrative subpoena, a court-ordered warrant, or a statutorily authorized investigative demand or other process as authorized by law, in accordance with 45 C.F.R. part 164, subpart E, provided that:

1. The protected health information and records sought are relevant and material to a legitimate law enforcement inquiry;

2. There is a clear connection between the investigated incident and the inmate whose protected health information and records are sought;

11-01217B-17

20171526__

117 3. The request is specific and limited in scope to the
 118 extent reasonably practicable in light of the purpose for which
 119 the information or records are sought; and

120 4. De-identified information could not reasonably be used.

121 (j) Protected health information and mental health,
 122 medical, or substance abuse records specified in paragraph
 123 (1) (a) of an inmate who is or is suspected of being the victim
 124 of a crime, to a state attorney or a law enforcement agency if
 125 the inmate agrees to the disclosure and provides written consent
 126 or, if the inmate is unable to agree because of incapacity or
 127 other emergency circumstance, in accordance with 45 C.F.R. part
 128 164, subpart E, provided that:

129 1. Such protected health information and records are needed
 130 to determine whether a violation of law by a person other than
 131 the inmate victim has occurred;

132 2. Such protected health information or records are not
 133 intended to be used against the inmate victim;

134 3. The immediate law enforcement activity that depends upon
 135 the disclosure would be materially and adversely affected by
 136 waiting until the inmate victim is able to agree to the
 137 disclosure; and

138 4. The disclosure is in the best interests of the inmate
 139 victim, as determined by the department.

140 (k) Protected health information and mental health,
 141 medical, or substance abuse records specified in paragraph
 142 (1) (a) to a state attorney or a law enforcement agency if the
 143 department believes in good faith that the information and
 144 records constitute evidence of criminal conduct that occurred in
 145 a correctional institution or facility, in accordance with 45

11-01217B-17

20171526__

146 C.F.R. part 164, subpart E, provided that:

147 1. The protected health information and records disclosed
 148 are specific and limited in scope to the extent reasonably
 149 practicable in light of the purpose for which the information or
 150 records are sought;

151 2. There is a clear connection between the criminal conduct
 152 and the inmate whose protected health information and records
 153 are sought; and

154 3. De-identified information could not reasonably be used.

155 (l) Protected health information and mental health,
 156 medical, or substance abuse records specified in paragraph
 157 (1) (a) to the Division of Risk Management of the Department of
 158 Financial Services, in accordance with 45 C.F.R. part 164,
 159 subpart E, upon certification by the Division of Risk Management
 160 that such information and records are necessary to investigate
 161 and provide legal representation for a claim against the
 162 Department of Corrections.

163 (m) Protected health information and mental health,
 164 medical, or substance abuse records specified in paragraph
 165 (1) (a) of an inmate who is bringing a legal action against the
 166 department, to the Department of Legal Affairs or to an attorney
 167 retained to represent the department in a legal proceeding, in
 168 accordance with 45 C.F.R. part 164, subpart E.

169 (n) Protected health information and mental health,
 170 medical, or substance abuse records of an inmate as specified in
 171 paragraph (1) (a) to another correctional institution or facility
 172 or law enforcement official having lawful custody of the inmate,
 173 in accordance with 45 C.F.R. part 164, subpart E, if the
 174 protected health information or records are necessary for:

11-01217B-17

20171526__

175 1. The provision of health care to the inmate;
 176 2. The health and safety of the inmate or other inmates;
 177 3. The health and safety of the officers, employees, or
 178 others at the correctional institution or facility;
 179 4. The health and safety of the individuals or officers
 180 responsible for transporting the inmate from one correctional
 181 institution, facility, or setting to another;
 182 5. Law enforcement on the premises of the correctional
 183 institution or facility; or
 184 6. The administration and maintenance of the safety,
 185 security, and good order of the correctional institution or
 186 facility.

187 (o) Protected health information and mental health,
 188 medical, or substance abuse records of an inmate as specified in
 189 paragraph (1)(a) to the Department of Children and Families and
 190 the Florida Commission on Offender Review, in accordance with 45
 191 C.F.R. part 164, subpart E, if the inmate received mental health
 192 treatment while in the custody of the Department of Corrections
 193 and becomes eligible for release under supervision or upon the
 194 end of his or her sentence.

195 (p) Notwithstanding s. 456.057 and in accordance with 45
 196 C.F.R. part 164, subpart E, protected health information and
 197 mental health, medical, or substance abuse records specified in
 198 paragraph (1)(a) of a deceased inmate or offender to an
 199 individual with authority to act on behalf of the deceased
 200 inmate or offender, upon the individual's request. For purposes
 201 of this section, the following individuals have authority to act
 202 on behalf of a deceased inmate or offender only for the purpose
 203 of requesting access to such protected health information and

Page 7 of 10

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

11-01217B-17

20171526__

204 records:
 205 1. A person appointed by a court to act as the personal
 206 representative, executor, administrator, curator, or temporary
 207 administrator of the deceased inmate's or offender's estate;
 208 2. If a court has not made a judicial appointment under
 209 subparagraph 1., a person designated by the inmate or offender
 210 to act as his or her personal representative in a last will that
 211 is self-proved under s. 732.503; or
 212 3. If a court has not made a judicial appointment under
 213 subparagraph 1. or if the inmate or offender has not designated
 214 a person in a self-proved last will as provided in subparagraph
 215 2., only the following individuals:
 216 a. A surviving spouse.
 217 b. If there is no surviving spouse, a surviving adult child
 218 of the inmate or offender.
 219 c. If there is no surviving spouse or adult child, a parent
 220 of the inmate or offender.

221 (q) All requests for access to a deceased inmate's or
 222 offender's protected health information or mental health,
 223 medical, or substance abuse records specified in paragraph
 224 (1)(a) must be in writing and must be accompanied by the
 225 following:
 226 1. If made by a person authorized under subparagraph (p)1.,
 227 a copy of the letter of administration and a copy of the court
 228 order appointing such person as the representative of the
 229 inmate's or offender's estate.
 230 2. If made by a person authorized under subparagraph (p)2.,
 231 a copy of the self-proved last will designating the person as
 232 the inmate's or offender's representative.

Page 8 of 10

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

11-01217B-17

20171526__

233 3. If made by a person authorized under subparagraph (p)3.,
 234 a letter from the person's attorney verifying the person's
 235 relationship to the inmate or offender and the absence of a
 236 court-appointed representative and self-proved last will.

237
 238 Records and information released under this subsection remain
 239 confidential and exempt from the provisions of s. 119.07(1) and
 240 s. 24(a), Art. I of the State Constitution when held by the
 241 receiving person or entity.

242 (6) This section does not limit any right to obtain records
 243 by subpoena or other court process.

244 Section 2. The Legislature finds that it is a public
 245 necessity that an inmate's or offender's protected health
 246 information and HIV testing information held by the Department
 247 of Corrections pursuant to s. 945.10, Florida Statutes, remain
 248 confidential and exempt from public disclosure as the
 249 Legislature envisioned in this statute and as provided in
 250 department rules. Allowing protected health information to be
 251 publicly disclosed would in some cases cause a conflict with
 252 existing federal law and would be a violation of an inmate's or
 253 offender's privacy under the State Constitution. Maintaining the
 254 confidentiality of an inmate's or offender's HIV testing
 255 information is essential to his or her participation in such
 256 testing. Thus, the harm from disclosure would outweigh any
 257 public benefit derived therefrom. Appropriate records and
 258 protected health information are available, however, to various
 259 governmental entities in order for them to perform their duties.
 260 It is mandatory that prisons function as effectively,
 261 efficiently, and nonviolently as possible. To release such

11-01217B-17

20171526__

262 information to the public would severely impede that function
 263 and would jeopardize the health and safety of those within and
 264 outside the prison system.

265 Section 3. 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)

21 Mch 17
Meeting Date

1526
Bill Number (if applicable)

Topic Public Records - Dept. of Corrections

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

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)

APPEARANCE RECORD

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

3/21/17 -
Meeting Date

SB 1526 -
Bill Number (if applicable)

Topic SB 1526 Public Records/Health Info/DOC -

Amendment Barcode (if applicable)

Name Jared Torres

Job Title Legislative Affairs Director -

Address 501 S- Calhoun ST-
Street
Tallahassee FL- 32399-
City State Zip

Phone 850-717-3044-

Email Jared.Torres@fsc.mylorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Corrections -

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 1526

Bill Number (if applicable)

Topic DOC

Amendment Barcode (if applicable)

Name JASON JONES

Job Title GENERAL COUNSEL

Address P.O. BOX 1489

Street

TALLAHASSEE

City

FL

State

32302

Zip

Phone 850 410 7676

Email JASON.JONES@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.

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

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 1604

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Department of Corrections

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Fav/CS
2.			GO	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1604 amends various provisions related to the Department of Corrections (DOC).

The bill exempts the positions of captain and lieutenant of an institution and correctional probation supervisor and senior supervisor from the career service classification. Instead, these positions will be “at-will” positions, with certain benefits of either the senior management service or select exempt service classifications.

The bill authorizes the Florida Department of Law Enforcement (FDLE), when conducting an investigation or assisting the investigation of an injury to or death of an inmate under the custody or control of the Department of Corrections (DOC), to serve a demand for production of the inmate’s protected health information, medical records, or mental health records on the DOC.

The bill also makes the following changes:

- Revises the duties of the security review committee and the Secretary of Corrections;
- Authorizes the DOC to receive documents electronically for inmate admission;
- Allows *all* inmates who are recommended and otherwise eligible to be granted a one-time award of 60 additional days of incentive gain-time;
- Revises training requirements for prisoner transport company employees;
- Exempts employees of contracted community correctional centers from health testing regulations for administering urine screen drug tests on inmates and releasees; and

- Aligns the age limits for housing youthful offenders with the federal Prison Rape Elimination Act (PREA) by reducing the maximum age from 19 to 18 years of age when designating separate institutions and programs for youthful offenders and making conforming changes.

The total fiscal impact of the bill is estimated to be \$941,485 in Fiscal Year 2017-2018. See Section V. Fiscal Impact Statement.

II. Present Situation:

Career Service; Exemptions

Parts I – V of ch. 110, F.S., provide the system of personnel management in the state. There are four employment classifications in Florida’s state personnel system: Career Service, Senior Management Service, Selected Exempt Service, and Other Personal Services (OPS). Each of the services except for OPS hold established positions and receive certain benefits.¹

The terms “career service” and “career service employee” are not defined in the statutes. A “career service employee” who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.² Career service employees are entitled a grievance process³ and the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.⁴ Additionally, there are specific requirements that an agency must follow related to layoff procedures for law enforcement or correctional officers.⁵

Section 110.205, F.S., exempts certain positions assigned to different agencies from the career service classification. Positions in the DOC which have managerial responsibilities, including, but not limited to, positions that are assigned primary duties of serving as the warden, assistant warden, colonel, or major of an institution or as the circuit administrator or deputy circuit administrator, are exempt from the Career Service System.⁶

Senior Management System and Select Exempt Service are separate systems of personnel administration for positions that are exempt from the Career Service System and have duties and responsibilities that are managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.⁷ Employees in either system serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotions, transfer, or other personnel action at the discretion of the agency head.⁸

¹ Florida Department of Management Services, *For State Personnel System Employees*, available at http://www.dms.myflorida.com/workforce_operations/human_resource_management/for_state_personnel_system_employee_s (last visited March 10, 2017). Section 110.2035, F.S.

² Section 110.227(1), F.S.

³ Section 110.227(4), F.S.

⁴ Sections 110.227(5) and (6), F.S.,

⁵ See s. 110.227(3) and (7), F.S.

⁶ Section 110.205(2)(m)2., F.S.

⁷ Sections 110.402 and 110.602, F.S.

⁸ Sections 110.403 and 110.604, F.S.

Criminal Justice Investigations and Forensic Science Program

The FDLE houses the Criminal Justice Investigations and Forensic Science Program. The purpose of the program is to investigate violations of any of the criminal laws of the state. Investigators have the authority to bear arms, make arrests and apply for, serve, and execute warrants, capias, and other process of the court.⁹

The General Appropriations Act directs the FDLE to investigate all deaths of inmates who are in the custody of the DOC and all use of force incidents that result in death or serious bodily injury.¹⁰ An investigation can be initiated by executive order of the Governor or by an existing MOU which requires the FDLE to investigate any incident that results in life-threatening injuries or death of an inmate or person on the property at a DOC facility which occurs as a result of anything other than apparent natural causes. Additionally, the DOC can request the FDLE to assist with the investigation of a credible complaint or other significant evidence of major organized criminal activity involving inmates or DOC employees. In Fiscal Year 2015-2016, there were 148 cases related to the DOC that were investigated by the FDLE.¹¹

Security of Corrections Institutions and Facilities

Pursuant to s. 944.151, F.S., the DOC is responsible for the security of the state's correctional institutions and facilities. To ensure public safety and contain violent and chronic offenders until released from the DOC's custody, the Secretary of Corrections is assigned certain minimum responsibilities:

- Appoint a security review committee.
- Maintain and produce quarterly reports with accurate escape statistics.
- Adopt, enforce, and annually evaluate the emergency escape response procedures, which include, at a minimum, the immediate notification and inclusion of local and state law enforcement through a mutual aid agreement.
- Submit in the annual legislative budget request a prioritized summary of critical repair and renovation security needs.

The security review committee is required to be composed of the following individuals, appointed by the Secretary: the DOC's inspector general, the statewide security coordinator, the regional security coordinators, three wardens, and one correctional officer. The security review committee must:

- Establish a periodic schedule for the physical inspection of buildings and structures of each state and private correctional institution to determine security deficiencies. Priority must be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a significant number of escapes or escape attempts in the past.

⁹ Section 943.04, F.S.

¹⁰ Introductory proviso for specific appropriations 1217 through 1229, ch. 2016-66, L.O.F. See also introductory proviso for specific appropriations 1252 through 1264, ch. 2015-232, L.O.F.

¹¹ Florida Department of Law Enforcement, *Long Range Program Plan FY 17-18 through 21-22*, September 30, 2016, pages 6-7.

- Conduct announced and unannounced comprehensive security audits of all state and private correctional institutions. Priority must be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts. The audit must include an evaluation of the physical plant, landscaping, fencing, security alarms and perimeter lighting, and inmate classification and staffing policies. Each correctional institution must be audited at least annually. The Secretary reports the general survey findings annually to the Governor and the Legislature.
- Adopt and enforce minimum security standards and policies that include, but are not limited to:
 - Random monitoring of outgoing telephone calls by inmates;
 - Maintenance of current photographs of all inmates;
 - Daily inmate counts at varied intervals;
 - Use of canine units, where appropriate;
 - Use of escape alarms and perimeter lighting;
 - Florida Crime Information Center/National Crime Information Center capabilities; and
 - Employment background investigations.
- Make annual written prioritized budget recommendations to the Secretary that identify critical security deficiencies at major correctional institutions.
- Investigate and evaluate the usefulness and dependability of existing security technology at the institutions and new technology available and make periodic written recommendations to the Secretary on the discontinuation or purchase of various security devices.
- Contract, if deemed necessary, with security personnel, consulting engineers, architects, or other security experts for security audits and security consultant services.
- Establish a periodic schedule for conducting announced and unannounced escape simulation drills.

Commitments and Classification; Transfers

Section 944.17, F.S., provides that prisoners sentenced to state prison must be committed by the court to the custody of the DOC. Usually the prisoner has been in the custody of a sheriff in county jail. The sheriff receives the documents from the clerk of court required for the DOC to accept an inmate.¹²

The sheriff or chief correctional officer, or a designated representative, must submit the following forms before a person will be admitted into the state correctional system:

- The uniform commitment and judgment and sentence forms;
- The sheriff's certificate (information related to time spent in the sheriff's custody);
- A certified copy of the indictment or information relating to the offense for which the person was convicted;
- A copy of the probable cause affidavit for each offense identified in the current indictment or information;
- A copy of the Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation of felony sentencing scoresheets;

¹² Department of Corrections, *Agency Bill Analysis: SB 1604*, March 10, 2017 (on file with the Senate Committee on Criminal Justice).

- A copy of the restitution order or the reasons by the court for not requiring restitution;
- The name and address of any victim, if available;
- A printout of a current criminal history record as provided through an FCIC/NCIC printer; and
- Any available health assessments including medical, mental health, and dental, including laboratory or test findings; custody classification; disciplinary and adjustment; and substance abuse assessment and treatment information which may have been developed during the period of incarceration prior to the transfer of the person to the DOC's custody.¹³

In addition to the above, the sheriff or other officer must provide any available presentence investigation reports and any attached documents. Usually, transport officers provide the documents to DOC's staff at the reception facility at the time the inmate is transported.¹⁴ After a prisoner is admitted into the state correctional system, the DOC may request such additional records relating to the prisoner from the clerk of the court, the Department of Children and Families, or any other state or county agency for determining the prisoner's proper custody classification, gain-time eligibility, or eligibility for early release programs.

Gain-Time

Section 944.275, F.S., allows the DOC to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services.

The DOC grants basic gain-time at the rate of 10 days for each month of each sentence imposed on a prisoner to encourage satisfactory behavior, subject to the following:

- Portions of any sentences to be served concurrently are treated as a single sentence when determining basic gain-time;
- Basic gain-time for a partial month is prorated on the basis of a 30-day month; and
- When a prisoner receives a new maximum sentence expiration date because of additional sentences imposed, basic gain-time is granted for the amount of time the maximum sentence expiration date was extended.¹⁵

The DOC may grant incentive gain-time for each month during which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities. The rate of incentive gain-time in effect on the date the inmate committed the offense which resulted in his or her incarceration is the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and cannot be altered by a subsequent change in the severity level of the offense for which the inmate was sentenced.¹⁶

The DOC may grant meritorious gain-time to an inmate who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped inmate, or who in some manner

¹³ Section 944.17(5), F.S.

¹⁴ Department of Corrections, *Agency Bill Analysis: SB 1604*, March 10, 2017.

¹⁵ Section 944.275(4)(a), F.S.

¹⁶ Section 944.275(4)(b), F.S.

performs an outstanding service that would merit the granting of additional deductions from the term of his or her sentence. The grant of meritorious gain-time may be 1 to 60 days.¹⁷

The DOC may grant, upon a recommendation of the education program manager, a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate. An inmate may not receive more than 60 days for educational attainment.¹⁸

For sentences imposed for offenses committed on or after October 1, 1995, an inmate cannot earn any type of gain-time in an amount that would cause his or her sentence to expire, end, or terminate, or that would result in his or her release, prior to serving a minimum of 85 percent of the sentence imposed.¹⁹ However, inmates with sentences imposed for offenses committed prior to October 1, 1995, can earn the educational gain-time over and above the rate of monthly gain-time eligibility limitations.²⁰

Transportation and Return of Prisoners by Private Transport Company

Section 944.597, F.S., authorizes the DOC to contract with private companies for the transport of prisoners within and beyond the limits of the state. A contract with the transport company must include, but is not limited to, the following requirements:

- That the transport company maintains adequate liability coverage with respect to the transportation of prisoners;
- That transport company personnel based in the state meet the minimum standards in accordance with the statutory requirements for Florida law enforcement and correctional officers, and that personnel based outside of Florida meet the minimum standards for a law enforcement or correctional officers in the state where the employee is based;
- That the transport company adheres to standards which provide for humane treatment of prisoners while in the custody of the transport company; and
- That the transport company submits reports to the DOC regarding incidents of escape, use of force, and accidents involving prisoners in the custody of the transport company.

Exemptions From Health Testing Regulations for Personnel Conducting Drug Tests on Inmates and Releasees

Section 945.36, F.S., exempts law enforcement officers, state or county probation officers, or employees of the DOC from the minimum standards found under part I of ch. 483, F.S., governing state clinical laboratories, when administering a urine screen drug test to:

- Persons during incarceration;
- Persons released, as a condition of probation for either a felony or misdemeanor; or
- Persons released, as a condition of community control, conditional release, control release, parole, provisional release, or pretrial release.

¹⁷ Section 944.275(4)(c), F.S.

¹⁸ Section 944.275(4)(d), F.S.

¹⁹ Section 944.275(4)(b)3., F.S.

²⁰ Section 944.275(4)(d), F.S. (“Notwithstanding subparagraphs (b)1. and 2., ...”). *See also* s. 944.275(4)(b)1. and 2., F.S.

The DOC is required to develop a procedure for certification of any law enforcement officer, state or county probation officer, or DOC employee to perform a urine screen drug test on the persons specified above.

Institutions and Programs for Youthful Offenders

Section 958.11, F.S., requires the DOC to designate separate institutions and programs for youthful offenders and employ and utilize personnel specially qualified by training and experience to operate all such institutions and programs for youthful offenders.

Youthful offenders who are at least 14 years of age but are under 19 years of age at the time of reception must be separated from youthful offenders who are 19 years of age or older. If the population of the facilities designated for 14 to 18-year-old youthful offenders exceeds 100 percent of lawful capacity, the DOC may assign 18-year-old youthful offenders to the 19 to 24-year-old facility.

If the youthful offender was originally assigned to a facility designated for 14 to 18-year-old youthful offenders, but subsequently reaches 19 years of age, the DOC may retain the youthful offender in the facility if the DOC determines it is in the best interest of the youthful offender and the DOC.

If the DOC determines that a youthful offender assigned to the 19 to 24-year-old facility is mentally or physically vulnerable, the youthful offender may be reassigned to a facility designated for the 14 to 18-year-old group if the department determines that a reassignment is necessary to protect the safety of the youthful offender or the institution.

If the DOC determines that a youthful offender originally assigned to a facility designated for the 14 to 18-year-old group is disruptive, incorrigible, or uncontrollable, the youthful offender may be assigned to a facility designated for the 19 to 24-year-old group if the DOC determines that a reassignment would best serve the interests of the youthful offender and the DOC.

The guidelines of the Federal Prison Rape Elimination Act (PREA) of 2003 require that inmates under the age of 18 be separated from anyone 18 years of age or older.²¹ The DOC states that it currently maintains separate housing for those inmates who are 17 years of age and under, those who are 18 years of age, and those who are 19 to 21 years of age, in order to meet both the statutes and PREA guidelines.²²

²¹ National PREA Resource Center, *Youthful Inmate Implementation*, available at <https://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/youthful-inmate-implementation> (last visited March 16, 2017). 28 CFR 115.5 (*youthful inmate*) and 115.14.

²² Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017.

III. Effect of Proposed Changes:

Career Service; Exemptions (Section 1)

The bill amends s. 110.205(2)(m)2., F.S., to add to the list of positions in the DOC that are exempt from career service classification. Under the bill, exempt positions in the DOC will include positions that are assigned primary duties of serving as the captain or lieutenant of an institution or as the correctional probation supervisor or senior supervisor. These positions would become “at-will” positions, with certain benefits of either the Senior Management Service or Selected Exempt Service, depending on how the positions will be classified. See Section V. Fiscal Impact Section.

The DOC states that currently, these positions are “grouped within a collective bargaining unit that includes their subordinates” and that the level of responsibility that the DOC holds these employees to is “equal to or greater than that of other supervisors that are classified as Select Exempt Service within State government.”²³

Criminal Justice Investigations (Section 2)

Currently, the DOC requires the FDLE to serve on the DOC a HIPPA complaint subpoena or search warrant in order to receive an inmate’s protected health information, medical record, or mental health record when the FDLE is investigating or assisting the DOC in the investigation of an inmate’s injury or death and the inmate cannot (due to unresponsiveness or death) or does not consent to release of the information.²⁴

The bill amends s. 943.04, F.S., to provide that if the FDLE is conducting an investigation or assisting in the investigation of an injury to or death of an inmate under the custody or control of the DOC, then the FDLE is authorized to serve a demand for production of the inmate’s protected health information, medical records, or mental health records on the DOC. The FDLE must use the records for the limited purpose of investigating or assisting in an investigation of an injury to or death of an inmate. Any records disclosed to the FDLE pursuant to the investigation must remain confidential and exempt from public records laws.²⁵

Security of Corrections Institutions and Facilities (Section 3)

The bill amends s. 944.151, F.S., to align the statute with current DOC policies and practices.²⁶

The bill adds to the DOC’s responsibilities:

- “Safe operation” of correctional institutions and facilities.
- Ensuring the “safety of department employees and offenders.”

²³ *Id.*

²⁴ *Id.*

²⁵ These records are already confidential and exempt under s. 945.10, F.S. See SB 1526 (2017), which amends s. 945.10, F.S., to expand the public records exemption to include additional health information and aligns disclosures allowed by the statute with federal Health Insurance Portability and Accountability Act laws.

²⁶ Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017.

The bill revises the duties of the security review committee and the Secretary of Corrections.

The bill revises the composition, title, and duties of the security review committee making it the “safety and security review committee” and providing that the committee shall evaluate new safety and security technology, review and discuss current issues impacting state and private correctional institutions and facilities, and review and discuss other issues as requested by DOC management. The bill replaces the former composition of the committee with “appropriate department staff” appointed by the Secretary.

Other duties of the former security review committee, discussed above in the Present Situation, are transferred to the Secretary, who is required to direct appropriate DOC staff to accomplish the duties. Under the bill, these former duties are also amended as follows:

- Inspect institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse.
- Announced an unannounced comprehensive security audits must give priority to institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or sexual abuse. This replaces current statutory priority given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts.
- Audit requirements include an evaluation of the confinement, arsenal, key and lock, and entrance and exit policies.
- Evaluation of the physical plant polices include the identification of blind spots or areas where staff or inmates may be isolated and the deployment of video monitoring systems and other appropriate monitoring technologies in the spots or areas.

Commitments and Classification; Transfers (Section 4)

The bill amends s. 944.17, F.S., to allow for the electronic transmission of documents from the sheriff, chief correctional officer, other officer, clerk of the court, and other state agencies to the DOC relating to the admission of the inmate into the correctional system. The DOC states that it has been working on converting the process from paper based to electronic transmittal.²⁷

Gain-Time (Section 5)

The bill revises the conditions in s. 944.275(4)(d), F.S., allowing the education program manager to recommend a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is or has been during the current commitment, awarded a high school equivalency diploma or vocational certificate.²⁸ An inmate with a sentence imposed for an offense committed on or after October 1, 1995, will be ineligible to earn educational gain-time if earning such gain-time would cause his or her sentence to expire, end, or terminate, or would result in his or her release, prior to serving a minimum of 85 percent of the sentence imposed.

²⁷ *Id.*

²⁸ Offenses committed prior to January 1, 1994; on or after January 1, 1994, and before October 1, 1995; and on or after October 1, 1995.

Transportation and Return of Prisoners by Private Transport Company (Section 6)

The bill amends s. 944.597 F.S., by revising the requirements for contract provisions relating to training of transport company employees. The transport company must require its employees to complete at least 100 hours of training before transporting prisoners. The training curriculum must be approved by the DOC and include instruction in:

- Use of restraints;
- Searches of prisoners;
- Use of force, including use of appropriate weapons and firearms;
- Cardiopulmonary resuscitation;
- Map reading; and
- Defensive driving.

The DOC states that this will allow a transport company to hire licensed security personnel instead of correctional officers similar to requirements for transport of prisoners from jails.²⁹

Exemptions From Health Testing Regulations for Personnel Conducting Drug Tests on Inmates and Releasees (Section 7)

The bill amends s. 945.36, F.S., by exempting employees of a contracted community correctional center from health testing regulations (found under part I of ch. 483, F.S., governing state clinical laboratories) for the limited purpose of administering urine screen drug tests on inmates and releasees. The DOC states that this will allow on-site testing and eliminate the need for a correctional officer to travel to a facility to perform the test.³⁰

Institutions and Programs for Youthful Offenders (Section 8)

The bill amends s. 958.11, F.S., changing the age limits on the housing of youthful offenders to align with the federal PREA requirements. It changes the maximum age from 19 to 18 years of age when designating separate institutions and programs for youthful offenders.

The bill authorizes the DOC to assign a youthful offender who is 18 years of age or older to a facility that is not designated for youthful offenders or an age group if he or she is convicted of a new crime that is a felony; is a serious management or disciplinary problem that is detrimental to the program or other inmates; needs medical or other treatment; should be transferred outside of the facility for services; or when bed space is not available in a designated community residential facility.

The bill authorizes inmates who are 17 years of age or under to be placed at an adult facility for medical or mental health reasons, for protective management, or for close management. The youthful offender must be separated from offenders who are 18 years of age or older.

²⁹ Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017. The DOC cites the example of s. 30.24, F.S., dealing with sheriffs' transportation and return of prisoners, which exempts personnel employed by any transport company for the transportation of prisoners from being deputy sheriffs, providing bond, or meeting requirements and training as provided by the Criminal Justice Standards and Training.

³⁰ *Id.*

If the youthful offender was originally assigned to a facility designated for 14 to 17-year-old youthful offenders, but subsequently reaches 18 years of age, the DOC may retain the youthful offender in the facility if the DOC determines it is in the best interest of the youthful offender and the DOC. Additionally, if the youthful offender was originally assigned to a facility designated for 18 to 22-year-old youthful offenders, but subsequently reaches 23 years of age, the DOC may retain the youthful offender in the facility until he or she reaches 25 years of age if the department determines that it is in the best interest of the child and the DOC.

The bill repeals a provision that allowed reassignment of mentally or physically vulnerable youthful offenders between 19 to 24 years of age to facilities designated for the 14 to 18-year-old age group if the DOC determined that the reassignment was necessary to protect the safety of the youthful offender or the institution.

The bill also repeals a provision that allowed reassignment of disruptive, incorrigible, or uncontrollable youthful offenders between 14 and 18 years of age to facilities for the 19 to 24-year-old age group if the department determined that a reassignment would be in the youthful offender's and the DOC's best interests.

Effective Date

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill does not expand an existing or create a new public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

(Section 1 – Position Classifications)

The DOC states that the proposed change to convert Correctional Officer Lieutenants and Captains and Correctional Probation Officer Supervisors and Senior Supervisors from Career Service to Selected Exempt Service ensures that CO Lieutenants and Captains and CPO Supervisors and Senior Supervisors are measured by a standard of accountability which is equivalent to the level of responsibility for the position held.

CO Lieutenants and Captains:	\$ 1,071,267
CPO Supervisor and Senior Supervisor:	\$ 369,633
Total Cost:	\$ 1,440,900

This would align the DOC with other law enforcement agencies and was included in the DOC's Fiscal Year 2017-2018 Legislative Budget Request (LBR) submission. The DOC notes that this portion of the bill (conversion of certain positions to SES) would only be pursued if the LBR funding request is successful. The bill should be amended to exclude this portion if the separate funding request is not successful.

(Section 5 – Educational Gain-Time)

The DOC states that because the impact is a small shift in the release date of some inmates (those that meet the criteria and do not already get to their 85 percent dates), the estimated long-term impact is indeterminate.

However, the DOC estimates that the first year of implementation will have an impact on the average daily population (ADP) of approximately 86 fewer inmates.

Year 1 Impact-Population Reduction: $(86) \times \$15.91 = (\$499,415)$

Using the inmate variable per diem (health care costs and personal care items) the total bill anticipated fiscal impact is \$941,485.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 110.205, 943.04, 944.151, 944.17, 944.275, 944.597, 945.36, and 958.11.

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 March 21, 2017:

The CS amends s. 944.275, F.S., clarifying that the 85 percent limitation on earning gain-time applies to all the types of gain-time.

- B. **Amendments:**

None.



843456

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/21/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 470 and 471
insert:

Section 9. Paragraph (e) of subsection (1) of section
921.002, Florida Statutes, is amended to read:

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

(1) The provision of criminal penalties and of limitations



843456

upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties, and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a sentencing policy. The Criminal Punishment Code embodies the principles that:

(e) The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4)(b)3.; however, a defendant who is 65 years of age or older may have his or her sentence reduced by up to 50 percent as a result of a favorable determination made by the Florida Commission on Offender Review under a discretionary and revocable release program provided in s. 947.148 or s. 947.149. The provisions of chapter 947, relating to parole, shall not apply to persons sentenced under the Criminal Punishment Code.

Section 10. Subsection (1) of section 945.6034, Florida Statutes, is amended to read:

945.6034 Minimum health care standards.—

(1) The Assistant Secretary for Health Services is responsible for developing a comprehensive health care delivery system and promulgating all department health care standards.



843456

Such health care standards shall include, but are not limited to, rules relating to the management structure of the health care system and the provision of health care services to inmates, health care policies, health care plans, quality management systems and procedures, health service bulletins, and treatment protocols. In establishing standards of care, the department shall examine and consider the needs of inmates older than 50 years of age and adopt health care standards unique to this population.

Section 11. Section 947.148, Florida Statutes, is created to read:

947.148 Supervised conditional elderly release.—

(1) The commission shall, in conjunction with the department, establish a supervised conditional elderly release program.

(2) An inmate is eligible for the commission's consideration for release under the program when the inmate is determined by the department to meet all of the following criteria:

(a) Is 65 years of age or older.

(b) Has been convicted of a felony and has served at least 50 percent of his or her sentence.

(c) Is not eligible for parole or conditional medical release.

(d) Has no more than two prior felony convictions, neither of which is:

1. A capital offense;

2. A violent felony of the first degree;

3. A sexual offense; or



843456

69 4. An offense involving a child.
70 (e) Is not currently sentenced for:
71 1. A capital offense;
72 2. A sexual offense; or
73 3. An offense involving a child.
74 (f) Has not received a disciplinary report within the
75 previous 6 months.
76 (3) A petition filed on behalf of an inmate to participate
77 in the program must contain the inmate's:
78 (a) Proposed release plan.
79 (b) Any relevant medical history, including current medical
80 prognosis.
81 (c) Prison experience and criminal history. The criminal
82 history must include all of the following:
83 1. A claim of innocence, if any.
84 2. The degree to which the inmate accepts responsibility
85 for his or her acts leading to the conviction of the crime.
86 3. How any claim of responsibility has affected the
87 inmate's feelings of remorse.
88 (d) Any history of substance abuse and mental health
89 issues.
90 (e) Any disciplinary action taken against the inmate while
91 in prison.
92 (f) Any participation in prison work and other prison
93 programs.
94 (g) Any renunciation of gang affiliation.
95 (4) An inmate may not file a new petition within 1 year
96 after receiving notification of denial of his or her petition to
97 participate in the supervised conditional elderly release



843456

98 program. A petition that is filed before the 1-year period ends
99 shall be returned to the inmate, along with a notation
100 indicating the date that the petition may be refiled.

101 (5) All matters relating to the granting, denying, or
102 revoking of an inmate's supervised conditional release shall be
103 decided in a meeting that is open to the public. A victim of the
104 crime committed by the inmate, the victim's parent or guardian
105 if the victim is a minor, or the lawful representative of the
106 victim or of the victim's parent or guardian if the victim is a
107 minor may make an oral statement or submit a written statement
108 regarding his or her views as to the granting, denying, or
109 revoking of the inmate's supervised conditional release. A
110 person who is not a member or employee of the commission, the
111 victim of the crime committed by the inmate, the victim's parent
112 or guardian if the victim is a minor, or the lawful
113 representative of the victim or of the victim's parent or
114 guardian if the victim is a minor may participate in
115 deliberations concerning the granting, denying, or revoking of
116 an inmate's supervised conditional release only upon the prior
117 written approval of the chair of the commission. The commission
118 shall notify a victim of the crime committed by the inmate, the
119 victim's parent or guardian if the victim is a minor, or the
120 lawful representative of the victim or of the victim's parent or
121 guardian if the victim is a minor:

122 (a) Of the inmate's petition for supervised conditional
123 release within 30 days after the petition is received by the
124 commission;

125 (b) Of the commission's meeting within 30 days before the
126 meeting; and



843456

(c) Of the commission's decision within 30 days after the decision.

(6) The commission may approve an inmate for participation in the supervised conditional elderly release program if the inmate demonstrates all of the following:

(a) Successful participation in programs designed to restore the inmate as a useful and productive person in the community upon release.

(b) Genuine reform and changed behavior over a period of years.

(c) Remorse for actions that have caused pain and suffering to the victims of his or her offenses.

(d) A renunciation of criminal activity and gang affiliation if the inmate was a member of a gang.

(7) In considering an inmate's eligibility for participation in the program, the commission shall review the inmate's:

(a) Entire criminal history and record;

(b) Complete medical history, including history of substance abuse, mental health issues, and current medical prognosis;

(c) Prison disciplinary record;

(d) Work record;

(e) Participation in prison programs; and

(f) Gang affiliation, if any.

The commission shall consider the inmate's responsibility for the acts leading to the conviction, including prior and continued statements of innocence and the inmate's feelings of



843456

remorse.

(8)(a) An examiner shall interview an inmate within 90 days after a petition is filed on behalf of the inmate. An interview may be postponed for a period not to exceed 90 days. Such postponement must be for good cause, which includes, but is not limited to, the need for the commission to obtain a presentence or postsentence investigation report or a violation report. The reason for postponement shall be noted in writing and included in the official record. A postponement for good cause may not result in an interview being conducted later than 90 days after the inmate's initial scheduled interview.

(b) During the interview, the examiner shall explain the program to the inmate and review the inmate's information described in subsection (7).

(c) Within 10 days after the interview, the examiner shall deny the petition or recommend in writing to a panel of at least two commissioners appointed by the chair a release date for the inmate. The commissioners are not bound by the examiner's recommended release date.

(9) An inmate may not be placed in the program merely as a reward for good conduct or efficient performance of duties assigned in prison. An inmate may not be placed in the program unless the commission finds that there is reasonable probability that, if the inmate is placed in the program, he or she will live and conduct himself or herself as a respectable and law-abiding person and that the inmate's release will be compatible with his or her own welfare and the welfare of society.

(10) If the commission accepts the petition, approves the proposed release plan, and determines that the inmate is



843456

185 eligible for the program, a panel of at least two commissioners
186 shall establish the terms and conditions of the supervised
187 release. When granting supervised release under the program, the
188 commission shall require the inmate to participate in 10 hours
189 of community service for each year served in prison, require the
190 inmate to be subject to electronic monitoring for at least 1
191 year, and require the inmate to pay reparation or restitution to
192 the victim for the damage or loss caused by the offense for
193 which the inmate was imprisoned. The commission may elect not to
194 impose any or all of the conditions if it finds reason that it
195 should not do so. If the commission does not order restitution
196 or orders only partial restitution, the commission must state on
197 the record the reasons for its decision. The amount of such
198 reparation or restitution shall be determined by the commission.

199 (11) The commission may impose special conditions it
200 considers warranted from its review of the release plan and the
201 inmate's record, including, but not limited to, a requirement
202 that an inmate:

203 (a) Pay any debt due and owing to the state under s. 960.17
204 or pay attorney fees and costs that are owed to the state under
205 s. 938.29.

206 (b) Not leave the state or a specified area within the
207 state without the consent of the commission.

208 (c) Not associate with persons engaged in criminal
209 activity.

210 (d) Carry out the instructions of his or her supervising
211 correctional probation officer.

212 (12) (a) An inmate may request a review of the terms and
213 conditions of his or her release under the program. A panel of



843456

at least two commissioners appointed by the chair shall consider the inmate's request, render a written decision and the reasons for the decision to continue or to modify the terms and conditions of the supervised release, and inform the inmate of the decision in writing within 30 days after the date of receipt of the request for review. During the period of review of the terms and conditions of the supervised release, the inmate is subject to the authorized terms and conditions of the supervised release until such time that a decision is made to continue or modify the terms and conditions of the supervised release.

(b) The length of supervision shall be the remaining amount of time the inmate has yet to serve, including calculations for gain-time credit, as determined by the department.

(c) An inmate's participation in the program is voluntary, and the inmate must agree to abide by all terms and conditions of the supervised release. The commission, upon authorizing a supervised release date, shall specify in writing the terms and conditions of the program supervision and provide a certified copy of these terms and conditions to the inmate.

(13) (a) At the time of sentencing, a trial court judge may enter an order retaining jurisdiction over an offender for review of a release order by the commission under this section. Such jurisdiction of the trial court judge is limited to the first one-third of the maximum sentence imposed. When an offender is convicted of two or more felonies and concurrent sentences are imposed, the jurisdiction of the trial court applies to the first one-third of the maximum sentence imposed for the most severe felony for which the offender was convicted. When an offender is convicted of two or more felonies and



843456

consecutive sentences are imposed, the jurisdiction of the trial court judge applies to the first one-third of the total consecutive sentences imposed.

(b) In retaining jurisdiction for purposes of this subsection, a trial court must state the justification with individual particularity, and such justification shall be made a part of the court record. A copy of the justification and the uniform commitment form issued by the court pursuant to s. 944.17 shall be delivered to the department.

(c) Gain-time as provided for by law shall accrue, except that an offender over whom the trial court has retained jurisdiction as provided in this subsection may not be released during the first one-third of his or her sentence by reason of gain-time.

(d) In such a case of retained jurisdiction, the commission, within 30 days after the entry of its release order, shall send notice of its release order to the original sentencing judge and to the appropriate state attorney. The release order is contingent upon entry of an order by the appropriate circuit judge relinquishing jurisdiction as provided for in paragraph (e). If the original sentencing judge is no longer serving, notice shall be sent to the chief judge of the circuit in which the offender was sentenced. The chief judge may designate a circuit judge within the circuit to act in the place of the original sentencing judge.

(e) The original sentencing judge or his or her replacement shall notify the commission within 10 days after receipt of the notice required under paragraph (d) as to whether the court desires to retain jurisdiction. If the original sentencing judge



843456

or his or her replacement does not so notify the commission within the 10-day period or notifies the commission that the court does not desire to retain jurisdiction, the commission may dispose of the matter as it sees fit.

(f) Upon receipt of notice of intent to retain jurisdiction from the original sentencing judge or his or her replacement, the commission shall, within 10 days, forward to the court its release order, the examiner's report and recommendation, and all supporting information upon which its release order was based.

(g) Within 30 days after receipt of the items listed in paragraph (f), the original sentencing judge or his or her replacement shall review the order, findings, and evidence. If the judge finds that the order of the commission is not based on competent, substantial evidence or that participation in the program is not in the best interest of the community or the inmate, the court may vacate the release order. The judge or his or her replacement shall notify the commission of the decision of the court, and, if the release order is vacated, such notification must contain the evidence relied on and the reasons for denial. A copy of the notice shall be sent to the inmate.

(14) A correctional probation officer as defined in s. 943.10 shall supervise the inmate released under this program.

(15) The department and the commission shall adopt rules to administer this section.

Section 12. Section 947.141, Florida Statutes, is amended, to read:

947.141 Violations of conditional release, control release, supervised conditional elderly release, ~~or~~ conditional medical release, or addiction-recovery supervision.-



843456

(1) If a member of the commission or a duly authorized representative of the commission has reasonable grounds to believe that an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has violated the terms and conditions of the release in a material respect, such member or representative may cause a warrant to be issued for the arrest of the releasee; if the offender was found to be a sexual predator, the warrant must be issued.

(2) Upon the arrest on a felony charge of an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731, the offender must be detained without bond until the initial appearance of the offender at which a judicial determination of probable cause is made. If the trial court judge determines that there was no probable cause for the arrest, the offender may be released. If the trial court judge determines that there was probable cause for the arrest, such determination also constitutes reasonable grounds to believe that the offender violated the conditions of the release. Within 24 hours after the trial court judge's finding of probable cause, the detention facility administrator or designee shall notify the commission and the department of the finding and transmit to each a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based. The offender must continue to be detained without bond for a period not exceeding 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the commission whether to issue a warrant charging the offender with violation of the conditions of release. Upon



843456

the issuance of the commission's warrant, the offender must continue to be held in custody pending a revocation hearing held in accordance with this section.

(3) Within 45 days after notice to the Florida Commission on Offender Review of the arrest of a releasee charged with a violation of the terms and conditions of conditional release, control release, supervised conditional elderly release, conditional medical release, or addiction-recovery supervision, the releasee must be afforded a hearing conducted by a commissioner or a duly authorized representative thereof. If the releasee elects to proceed with a hearing, the releasee must be informed orally and in writing of the following:

(a) The alleged violation with which the releasee is charged.

(b) The releasee's right to be represented by counsel.

(c) The releasee's right to be heard in person.

(d) The releasee's right to secure, present, and compel the attendance of witnesses relevant to the proceeding.

(e) The releasee's right to produce documents on the releasee's own behalf.

(f) The releasee's right of access to all evidence used against the releasee and to confront and cross-examine adverse witnesses.

(g) The releasee's right to waive the hearing.

(4) Within a reasonable time following the hearing, the commissioner or the commissioner's duly authorized representative who conducted the hearing shall make findings of fact in regard to the alleged violation. A panel of no fewer than two commissioners shall enter an order determining whether



843456

the charge of violation of conditional release, control release, supervised conditional elderly release, conditional medical release, or addiction-recovery supervision has been sustained based upon the findings of fact presented by the hearing commissioner or authorized representative. By such order, the panel may revoke conditional release, control release, supervised conditional elderly release, conditional medical release, or addiction-recovery supervision and thereby return the releasee to prison to serve the sentence imposed, reinstate the original order granting the release, or enter such other order as it considers proper. Effective for inmates whose offenses were committed on or after July 1, 1995, the panel may order the placement of a releasee, upon a finding of violation pursuant to this subsection, into a local detention facility as a condition of supervision.

(5) Effective for inmates whose offenses were committed on or after July 1, 1995, notwithstanding the provisions of ss. 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and 951.23, or any other law to the contrary, by such order as provided in subsection (4), the panel, upon a finding of guilt, may, as a condition of continued supervision, place the releasee in a local detention facility for a period of incarceration not to exceed 22 months. Prior to the expiration of the term of incarceration, or upon recommendation of the chief correctional officer of that county, the commission shall cause inquiry into the inmate's release plan and custody status in the detention facility and consider whether to restore the inmate to supervision, modify the conditions of supervision, or enter an order of revocation, thereby causing the return of the inmate to



843456

prison to serve the sentence imposed. The provisions of this section do not prohibit the panel from entering such other order or conducting any investigation that it deems proper. The commission may only place a person in a local detention facility pursuant to this section if there is a contractual agreement between the chief correctional officer of that county and the Department of Corrections. The agreement must provide for a per diem reimbursement for each person placed under this section, which is payable by the Department of Corrections for the duration of the offender's placement in the facility. This section does not limit the commission's ability to place a person in a local detention facility for less than 1 year.

(6) Whenever a conditional release, control release, supervised conditional elderly release, conditional medical release, or addiction-recovery supervision is revoked by a panel of no fewer than two commissioners and the releasee is ordered to be returned to prison, the releasee, by reason of the misconduct, shall be deemed to have forfeited all gain-time or commutation of time for good conduct, as provided for by law, earned up to the date of release. However, if a conditional medical release is revoked due to the improved medical or physical condition of the releasee, the releasee shall not forfeit gain-time accrued before the date of conditional medical release. This subsection does not deprive the prisoner of the right to gain-time or commutation of time for good conduct, as provided by law, from the date of return to prison.

(7) If a law enforcement officer has probable cause to believe that an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has



843456

violated the terms and conditions of his or her release by committing a felony offense, the officer shall arrest the offender without a warrant, and a warrant need not be issued in the case.

(8) If a law enforcement officer or a correctional probation officer has probable cause to believe that an offender who is supervised under the supervised conditional elderly release program has violated the terms and conditions of his or her supervision in a material respect, the officer may arrest the offender without warrant and bring him or her before one or more commissioners or a duly authorized representative of the commission. Proceedings must take place after a warrant has been issued by a member of the commission or a duly authorized representative of the commission.

Section 13. Present paragraphs (a) and (b) of subsection (1) of section 947.149, Florida Statutes, are redesignated as paragraphs (b) and (c), respectively, a new paragraph (a) is added to that subsection, and subsection (5) of that section is republished, to read:

947.149 Conditional medical release.—

(1) The commission shall, in conjunction with the department, establish the conditional medical release program. An inmate is eligible for consideration for release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be within one of the following designations:

(a) "Elderly and infirm inmate," which means an inmate who has no current or prior conviction for a capital or first degree felony, who has no current or prior conviction for a sexual



843456

offense or an offense against a child, who is 65 years of age or older, and who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate infirm or physically impaired to the extent that the inmate does not constitute a danger to himself or herself or others.

(5) (a) If it is discovered during the conditional medical release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for conditional medical release under this section, the commission may order that the releasee be returned to the custody of the department for a conditional medical release revocation hearing, in accordance with s. 947.141. If conditional medical release is revoked due to improvement in the medical or physical condition of the releasee, she or he shall serve the balance of her or his sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued prior to conditional medical release. If the person whose conditional medical release is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.

(b) In addition to revocation of conditional medical release pursuant to paragraph (a), conditional medical release may also be revoked for violation of any condition of the release established by the commission, in accordance with s. 947.141, and the releasee's gain-time may be forfeited pursuant to s. 944.28(1).



843456

Section 14. For the purpose of incorporating the amendment made by this act to section 947.141, Florida Statutes, in a reference thereto, subsection (1) of section 947.1405, Florida Statutes, is reenacted to read:

947.1405 Conditional release program.—

(1) This section and s. 947.141 may be cited as the "Conditional Release Program Act."

Section 15. For the purpose of incorporating the amendment made by this act to section 947.141, Florida Statutes, in references thereto, subsections (12) and (14) of section 947.146, Florida Statutes, are reenacted to read:

947.146 Control Release Authority.—

(12) When the authority has reasonable grounds to believe that an offender released under this section has violated the terms and conditions of control release, such offender shall be subject to the provisions of s. 947.141 and shall be subject to forfeiture of gain-time pursuant to s. 944.28(1).

(14) Effective July 1, 1996, all control release dates established prior to such date become void and no inmate shall be eligible for release under any previously established control release date. Offenders who are under control release supervision as of July 1, 1996, shall be subject to the conditions established by the authority until such offenders have been discharged from supervision. Offenders who have warrants outstanding based on violation of supervision as of July 1, 1996, or who violate the terms of their supervision subsequent to July 1, 1996, shall be subject to the provisions of s. 947.141.



843456

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

And the title is amended as follows:

Delete line 53

and insert:

provisions to changes made by the act; amending s.
921.002, F.S.; authorizing defendants 65 years of age
or older who receive favorable determinations from the
commission under discretionary and revocable release
programs to serve less than 85 percentage of their
sentences; authorizing the reduction in sentence up to
a specified percentage based on such determination;
amending s. 945.6034, F.S.; requiring the Department
of Corrections to consider the needs of inmates older
than 50 years of age and adopt health care standards
for that population; creating s. 947.148, F.S.;
requiring the Florida Commission on Offender Review,
in conjunction with the department, to establish a
supervised conditional elderly release program;
providing criteria for program eligibility; requiring
that the petition to participate in the program
include certain documents; prohibiting inmates from
filing new petitions under certain circumstances;
requiring specified matters to be decided in meetings
that are open to the public; authorizing certain
persons to make a statement regarding an inmate's
supervised release under the program; requiring that
the commission notify certain persons within a
specified period regarding specified matters;
authorizing the commission to approve an inmate's



843456

participation in the program under certain
circumstances; requiring the commission to review
certain information in considering an inmate's
eligibility for the program; requiring an examiner to
interview an inmate who has filed a petition for
supervised release under the program within a
specified time; requiring the examiner to explain the
program and review certain criteria; requiring that
the examiner deny the petition or recommend a release
date for the inmate; prohibiting use of the program
under certain circumstances; requiring a panel of
commissioners to establish terms and conditions of the
supervised release under certain circumstances;
specifying required conditions for participating in
the program; providing exceptions; authorizing the
commission to impose special conditions of supervised
release; authorizing the inmate to request a review of
the terms and conditions of supervised release;
specifying the length of the supervised release;
providing that participation in the program is
voluntary; requiring the commission to specify in
writing the terms and conditions of release and
provide a certified copy to the inmate; authorizing
the trial court judge to enter an order to retain
jurisdiction over the offender; providing a limitation
of the trial court's jurisdiction; providing for
accrual of gain-time; providing procedures if the
trial court retains jurisdiction of the inmate;
requiring a correctional probation officer to



843456

supervise an inmate who is released under the program;
requiring rulemaking; amending s. 947.141, F.S.;
conforming provisions to changes made by the act;
authorizing the arrest of a releasee under certain
circumstances; requiring that the proceedings take
place under certain circumstances; amending s.
947.149, F.S.; defining the term "elderly and infirm
inmate"; expanding eligibility for conditional medical
release to include elderly and infirm inmates;
reenacting ss. 947.1405(1) and 947.146(12) and (14),
F.S., relating to a short title and the Control
Release Authority, respectively, to incorporate the
amendment made to s. 947.141, F.S., in references
thereto; providing an



363566

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 292 - 305

and insert:

Section 5. Paragraphs (b) and (d) of subsection (4) of section 944.275, Florida Statutes, are amended, and paragraph (f) of subsection (4) is added, to read:

944.275 Gain-time.—

(4)

(b) For each month in which an inmate works diligently,



363566

participates in training, uses time constructively, or otherwise engages in positive activities, the department may grant incentive gain-time in accordance with this paragraph. The rate of incentive gain-time in effect on the date the inmate committed the offense which resulted in his or her incarceration shall be the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and shall not be altered by a subsequent change in the severity level of the offense for which the inmate was sentenced.

1. For sentences imposed for offenses committed prior to January 1, 1994, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

2. For sentences imposed for offenses committed on or after January 1, 1994, and before October 1, 1995:

a. For offenses ranked in offense severity levels 1 through 7, under former s. 921.0012 or former s. 921.0013, up to 25 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

b. For offenses ranked in offense severity levels 8, 9, and 10, under former s. 921.0012 or former s. 921.0013, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

3. For sentences imposed for offenses committed on or after October 1, 1995, the department may grant up to 10 days per month of incentive gain-time, ~~except that no prisoner is eligible to earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85~~



363566

~~percent of the sentence imposed. For purposes of this subparagraph, credits awarded by the court for time physically incarcerated shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by this section, a prisoner shall not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.~~

(d) Notwithstanding the monthly maximum awards of incentive gain-time under subparagraphs (b)1., and 2., and 3., the education program manager shall recommend, and the Department of Corrections may grant, a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is, or has been during the current commitment, awarded a high school equivalency diploma or vocational certificate. Under no circumstances may an inmate receive more than 60 days for educational attainment pursuant to this section.

(f) An inmate who is subject to subparagraph (b)3., is not eligible to earn or receive gain-time under paragraph (a), (b), (c), or (d) or any other type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed. For purposes of this paragraph, credits awarded by the court for time physically incarcerated shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by this section, a



363566

prisoner shall not accumulate further gain-time awards at any
point when the tentative release date is the same as that date
at which the prisoner will have served 85 percent of the
sentence imposed. State prisoners sentenced to life imprisonment
shall be incarcerated for the rest of their natural lives,
unless granted pardon or clemency.

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

And the title is amended as follows:

Delete line 31

and insert:

incentive gain-time by the department; clarifying when
gain-time can be earned; amending s.

By Senator Bracy

11-01078B-17

20171604__

1 A bill to be entitled
 2 An act relating to the Department of Corrections;
 3 amending s. 110.205, F.S.; exempting specified
 4 positions from the career service system; amending s.
 5 943.04, F.S.; authorizing the Department of Law
 6 Enforcement to issue an investigative demand seeking
 7 the production of an inmate's protected health
 8 information, medical records, or mental health records
 9 under certain circumstances; specifying requirements
 10 for the investigative demand; amending s. 944.151,
 11 F.S.; revising legislative intent; revising membership
 12 requirements for the safety and security review
 13 committee appointed by the Department of Corrections;
 14 specifying the duties of the committee; requiring the
 15 department to direct appropriate staff to complete
 16 specified duties of the department; revising
 17 scheduling requirements for inspections of state and
 18 private correctional institutions and facilities;
 19 revising the list of institutions that must be given
 20 priority for inspection; revising the list of
 21 institutions that must be given priority for certain
 22 security audits; revising minimum audit and evaluation
 23 requirements; requiring the department to direct
 24 appropriate staff to review staffing policies and
 25 practices as needed; conforming provisions to changes
 26 made by the act; amending s. 944.17, F.S.; authorizing
 27 the department to receive specified documents
 28 electronically at its discretion; amending s. 944.275,
 29 F.S.; revising the conditions on which an inmate may

Page 1 of 17

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

11-01078B-17

20171604__

30 be granted a one-time award of 60 additional days of
 31 incentive gain-time by the department; amending s.
 32 944.597, F.S.; revising provisions relating to
 33 training of transport company's employees before
 34 transporting prisoners; amending s. 945.36, F.S.;
 35 exempting employees of a contracted community
 36 correctional center from certain health testing
 37 regulations for the limited purpose of administering
 38 urine screen drug tests on inmates and releasees;
 39 amending s. 958.11, F.S.; deleting a provision
 40 authorizing the department to assign 18-year-old
 41 youthful offenders to the 19-24 age group facility
 42 under certain circumstances; deleting a condition that
 43 all female youth offenders are allowed to continue to
 44 be housed together only until certain institutions are
 45 established or adapted for separation by age and
 46 custody classifications; authorizing inmates who are
 47 17 years of age or under to be placed at an adult
 48 facility for specified purposes, subject to certain
 49 conditions; authorizing the department to retain
 50 certain youthful offenders until 25 years of age in a
 51 facility designated for 18- to 22-year-old youth
 52 offenders under certain circumstances; conforming
 53 provisions to changes made by the act; providing an
 54 effective date.

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

57

58 Section 1. Paragraph (m) of subsection (2) of section

Page 2 of 17

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

11-01078B-17

20171604__

110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(m) All assistant division director, deputy division director, and bureau chief positions in any department, and those positions determined by the department to have managerial responsibilities comparable to such positions, which include, but are not limited to:

1. Positions in the Department of Health and the Department of Children and Families which are assigned primary duties of serving as the superintendent or assistant superintendent of an institution.

2. Positions in the Department of Corrections which are assigned primary duties of serving as the warden, assistant warden, colonel, ~~or~~ major, captain, or lieutenant of an institution or which ~~that~~ are assigned primary duties of serving as the circuit administrator, ~~or~~ deputy circuit administrator, correctional probation supervisor, or senior supervisor.

3. Positions in the Department of Transportation which are assigned primary duties of serving as regional toll managers and managers of offices, as specified in s. 20.23(3)(b) and (4)(c).

4. Positions in the Department of Environmental Protection which are assigned the duty of an Environmental Administrator or program administrator.

5. Positions in the Department of Health which are assigned the duties of Environmental Administrator, Assistant County Health Department Director, and County Health Department Financial Administrator.

11-01078B-17

20171604__

6. Positions in the Department of Highway Safety and Motor Vehicles which are assigned primary duties of serving as captains in the Florida Highway Patrol.

Unless otherwise fixed by law, the department shall set the salary and benefits of the positions listed in this paragraph in accordance with the rules established for the Selected Exempt Service.

Section 2. Subsection (6) is added to section 943.04, Florida Statutes, to read:

943.04 Criminal Justice Investigations and Forensic Science Program; creation; investigative, forensic, and related authority.—

(6) (a) In furtherance of the duties and responsibilities of the inspector general under s. 944.31, if the Department of Law Enforcement is conducting an investigation or assisting in the investigation of an injury to or death of an inmate which occurs while the inmate is under the custody or control of the Department of Corrections, the department is authorized to, before the initiation of a criminal proceeding relating to such injury or death, issue in writing and serve upon the Department of Corrections an investigative demand seeking the production of the inmate's protected health information, medical records, or mental health records as specified in s. 945.10(1)(a). The department shall use such records for the limited purpose of investigating or assisting in an investigation of an injury to or death of an inmate for which the records were requested. Any records disclosed pursuant to this subsection remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

11-01078B-17 20171604

of the State Constitution in accordance with s. 945.10(2).

(b) The investigative demand must be specific and limited in scope to the extent reasonably practicable in light of the purpose for which the protected health information or records are sought and must include a certification that:

1. The protected health information or records sought are relevant and material to a legitimate law enforcement inquiry;

2. There is a clear connection between the investigated incident and the inmate whose protected health information and records are sought; and

3. De-identified information could not reasonably be used.

Section 3. Section 944.151, Florida Statutes, is amended to read:

944.151 Safe operation and security of correctional institutions and facilities.—It is the intent of the Legislature that the Department of Corrections shall be responsible for the safe operation and security of the correctional institutions and facilities. The safe operation and security of the state's correctional institutions and facilities are ~~is~~ critical to ensure public safety and the safety of department employees and offenders, and to contain violent and chronic offenders until offenders are otherwise released from the department's custody pursuant to law. The Secretary of Corrections shall, at a minimum:

(1) Appoint appropriate department staff to a safety and security review committee that which shall evaluate new safety and security technology, review and discuss current issues impacting state and private correctional institutions and facilities, and review and discuss other issues as requested by

11-01078B-17 20171604

~~department management, at a minimum, be composed of: the inspector general, the statewide security coordinator, the regional security coordinators, and three wardens and one correctional officer. The security review committee shall:~~

(2) ~~(a)~~ Direct appropriate department staff to establish a periodic schedule for the physical inspection of buildings and structures of each state and private correctional institution and facility to determine safety and security deficiencies. In scheduling the inspections, priority shall be given to older institutions and facilities; ~~institutions and facilities~~ that house a large proportion of violent offenders; institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse; ~~and institutions and facilities that have experienced a significant number of escapes or escape attempts in the past.~~

(3) ~~(b)~~ Direct appropriate department staff to conduct or cause to be conducted announced and unannounced comprehensive security audits of all state and private correctional institutions and facilities. Priority shall be given to those institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or sexual abuse. ~~In conducting the security audits, priority shall be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts.~~ At a minimum, the audit ~~must~~ shall include an evaluation of the physical plant, landscaping, fencing, security alarms and perimeter lighting, and confinement, arsenal, key and

11-01078B-17

20171604

~~lock, and entrance and exit inmate classification and staffing policies. The evaluation of the physical plant policies must include the identification of blind spots or areas where staff or inmates may be isolated and the deployment of video monitoring systems and other appropriate monitoring technologies in such spots or areas. Each correctional institution and facility shall be audited at least annually. The secretary shall annually report the audit general survey findings annually to the Governor and the Legislature.~~

~~(c) Adopt and enforce minimum security standards and policies that include, but are not limited to:~~

~~1. Random monitoring of outgoing telephone calls by inmates.~~

~~2. Maintenance of current photographs of all inmates.~~

~~3. Daily inmate counts at varied intervals.~~

~~4. Use of canine units, where appropriate.~~

~~5. Use of escape alarms and perimeter lighting.~~

~~6. Florida Crime Information Center/National Crime Information Center capabilities.~~

~~7. Employment background investigations.~~

~~(d) Annually make written prioritized budget recommendations to the secretary that identify critical security deficiencies at major correctional institutions.~~

(4)(e) Direct appropriate department staff to investigate and evaluate the usefulness and dependability of existing safety and security technology at state and private correctional the institutions and facilities, investigate and evaluate new available safety and security technology, available and make periodic written recommendations to the secretary on the

11-01078B-17

20171604

~~discontinuation or purchase of various safety and security devices.~~

~~(5)(f) Direct appropriate department staff to contract, if deemed necessary, with security personnel, consulting engineers, architects, or other safety and security experts the department committee deems necessary for safety and security audits and security consultant services.~~

~~(6)(g) Direct appropriate department staff, in conjunction with the regional offices, to establish a periodic schedule for conducting announced and unannounced escape simulation drills.~~

(7)(2) Direct appropriate department staff to maintain and produce quarterly reports with accurate escape statistics. For the purposes of these reports, the term "escape" includes all possible types of escape, regardless of prosecution by the state attorney, and includes including offenders who walk away from nonsecure community facilities.

(8)(3) Direct appropriate department staff to adopt, enforce, and annually evaluate the emergency escape response procedures, which must shall at a minimum include the immediate notification and inclusion of local and state law enforcement through a mutual aid agreement.

(9) Direct appropriate department staff to review staffing policies and practices as needed.

(10) Direct appropriate department staff to adopt and enforce minimum safety and security standards and policies that include, but are not limited to:

(a) Random monitoring of outgoing telephone calls by inmates.

(b) Maintenance of current photographs of all inmates.

11-01078B-17

20171604__

233 (c) Daily inmate counts at varied intervals.
 234 (d) Use of canine units, where appropriate.
 235 (e) Use of escape alarms and perimeter lighting.
 236 (f) Use of the Florida Crime Information Center and
 237 National Crime Information Center capabilities.
 238 (g) Employment background investigations.
 239 (11)(4) Direct appropriate department staff to submit in
 240 the annual legislative budget request a prioritized summary of
 241 critical safety and security deficiencies and repair and
 242 renovation security needs.
 243 Section 4. Subsection (5) of section 944.17, Florida
 244 Statutes, is amended to read:
 245 944.17 Commitments and classification; transfers.—
 246 (5) The department shall also refuse to accept a person
 247 into the state correctional system unless the following
 248 documents are presented in a completed form by the sheriff or
 249 chief correctional officer, or a designated representative, to
 250 the officer in charge of the reception process. The department
 251 may, at its discretion, receive such documents electronically:
 252 (a) The uniform commitment and judgment and sentence forms
 253 as described in subsection (4).
 254 (b) The sheriff's certificate as described in s. 921.161.
 255 (c) A certified copy of the indictment or information
 256 relating to the offense for which the person was convicted.
 257 (d) A copy of the probable cause affidavit for each offense
 258 identified in the current indictment or information.
 259 (e) A copy of the Criminal Punishment Code scoresheet and
 260 any attachments thereto prepared pursuant to Rule 3.701, Rule
 261 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or

Page 9 of 17

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

11-01078B-17

20171604__

262 any other rule pertaining to the preparation of felony
 263 sentencing scoresheets.
 264 (f) A copy of the restitution order or the reasons by the
 265 court for not requiring restitution pursuant to s. 775.089(1).
 266 (g) The name and address of any victim, if available.
 267 (h) A printout of a current criminal history record as
 268 provided through an FCIC/NCIC printer.
 269 (i) Any available health assessments including medical,
 270 mental health, and dental, including laboratory or test
 271 findings; custody classification; disciplinary and adjustment;
 272 and substance abuse assessment and treatment information which
 273 may have been developed during the period of incarceration
 274 before ~~prior to~~ the transfer of the person to the department's
 275 custody. Available information shall be transmitted on standard
 276 forms developed by the department.
 277
 278 In addition, the sheriff or other officer having such person in
 279 charge shall also deliver with the foregoing documents any
 280 available presentence investigation reports as described in s.
 281 921.231 and any attached documents. After a prisoner is admitted
 282 into the state correctional system, the department may request
 283 such additional records relating to the prisoner as it considers
 284 necessary from the clerk of the court, the Department of
 285 Children and Families, or any other state or county agency for
 286 the purpose of determining the prisoner's proper custody
 287 classification, gain-time eligibility, or eligibility for early
 288 release programs. An agency that receives such a request from
 289 the department must provide the information requested. The
 290 department may, at its discretion, receive such information

Page 10 of 17

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

11-01078B-17

20171604__

291 electronically.

292 Section 5. Paragraph (d) of subsection (4) of section
293 944.275, Florida Statutes, is amended to read:

294 944.275 Gain-time.—

295 (4)

296 (d) Notwithstanding the monthly maximum awards of incentive
297 gain-time under subparagraphs (b)1., ~~and 2., and 3.~~, the
298 education program manager shall recommend, and the Department of
299 Corrections may grant, a one-time award of 60 additional days of
300 incentive gain-time to an inmate who is otherwise eligible and
301 who successfully completes requirements for and is, or has been
302 during the current commitment, awarded a high school equivalency
303 diploma or vocational certificate. Under no circumstances may an
304 inmate receive more than 60 days for educational attainment
305 pursuant to this section.

306 Section 6. Subsection (2) of section 944.597, Florida
307 Statutes, is amended to read:

308 944.597 Transportation and return of prisoners by private
309 transport company.—

310 (2) The department shall include, but is ~~shall~~ not be
311 limited to, the following requirements in any contract with any
312 transport company:

313 (a) That the transport company shall maintain adequate
314 liability coverage with respect to the transportation of
315 prisoners.†

316 (b) That the transport company shall require its employees
317 to complete at least 100 hours of training before transporting
318 prisoners. The curriculum for such training must be approved by
319 the department and include instruction in:

Page 11 of 17

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

11-01078B-17

20171604__

320 1. Use of restraints;

321 2. Searches of prisoners;

322 3. Use of force, including use of appropriate weapons and
323 firearms;

324 4. Cardiopulmonary resuscitation;

325 5. Map reading; and

326 6. Defensive driving. ~~personnel employed with the transport~~
327 ~~company who are based in the state shall meet the minimum~~
328 ~~standards in accordance with s. 943.13 and that personnel~~
329 ~~employed with the transport company based outside of Florida~~
330 ~~shall meet the minimum standards for a correctional officer or~~
331 ~~law enforcement officer in the state where the employee is~~
332 ~~based.~~

333 (c) That the transport company shall adhere to standards
334 which provide for humane treatment of prisoners while in the
335 custody of the transport company.†

336 (d) That the transport company shall submit reports to the
337 department regarding incidents of escape, use of force, and
338 accidents involving prisoners in the custody of the transport
339 company.

340 Section 7. Section 945.36, Florida Statutes, is amended to
341 read:

342 945.36 Exemption from health testing regulations for law
343 enforcement personnel conducting drug tests on inmates and
344 releasees.—

345 (1) Any law enforcement officer, state or county probation
346 officer, ~~or~~ employee of the Department of Corrections, or
347 employee of a contracted community correctional center who is
348 certified by the Department of Corrections pursuant to

Page 12 of 17

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

11-01078B-17 20171604

subsection (2), is exempt from part I of chapter 483, for the limited purpose of administering a urine screen drug test to:

- (a) Persons during incarceration;
- (b) Persons released as a condition of probation for either a felony or misdemeanor;
- (c) Persons released as a condition of community control;
- (d) Persons released as a condition of conditional release;
- (e) Persons released as a condition of parole;
- (f) Persons released as a condition of provisional release;
- (g) Persons released as a condition of pretrial release; or
- (h) Persons released as a condition of control release.

(2) The Department of Corrections shall develop a procedure for certification of any law enforcement officer, state or county probation officer, ~~or~~ employee of the Department of Corrections, or employee of a contracted community correctional center to perform a urine screen drug test on the persons specified in subsection (1).

Section 8. Section 958.11, Florida Statutes, is amended to read:

958.11 Designation of institutions and programs for youthful offenders; assignment from youthful offender institutions and programs.—

(1) The department shall by rule designate separate institutions and programs for youthful offenders and shall employ and utilize personnel specially qualified by training and experience to operate all such institutions and programs for youthful offenders. Youthful offenders who are at least 14 years of age but who have not yet reached the age of 18 ~~19~~ years at the time of reception shall be separated from youthful offenders

11-01078B-17 20171604

who are 18 ~~19~~ years of age or older, ~~except that if the population of the facilities designated for 14-year-old to 18-year-old youthful offenders exceeds 100 percent of lawful capacity, the department may assign 18-year-old youthful offenders to the 19-24 age group facility.~~

(2) Youthful offender institutions and programs shall contain only those youthful offenders sentenced as such by a court or classified as such by the department, pursuant to the requirements of subsections (7) ~~(4)~~ and (9) ~~(6)~~, except that under special circumstances select adult offenders may be assigned to youthful offender institutions. All female youthful offenders ~~of all ages~~ may continue to be housed together at those institutions designated by department rule ~~until such time as institutions for female youthful offenders are established or adapted to allow for separation by age and to accommodate all custody classifications.~~

(3) The department may assign a youthful offender who is 18 years of age or older to a facility in the state correctional system which is not designated for the care, custody, control, and supervision of youthful offenders or an age group only in the following circumstances:

- (a) If the youthful offender is convicted of a new crime that which is a felony under the laws of this state.
- (b) If the youthful offender becomes such a serious management or disciplinary problem resulting from serious violations of the rules of the department that his or her original assignment would be detrimental to the interests of the program and to other inmates committed thereto.
- (c) If the youthful offender needs medical treatment,

11-01078B-17

20171604

health services, or other specialized treatment otherwise not available at the youthful offender facility.

(d) If the department determines that the youthful offender should be transferred outside of the state correctional system, as provided by law, for services not provided by the department.

(e) If bed space is not available in a designated community residential facility, the department may assign a youthful offender to a community residential facility, provided that the youthful offender is separated from other offenders insofar as is practical.

(4) The department may assign a youthful offender whose age does not exceed 17 years to an adult facility for medical or mental health reasons, for protective management, or for close management. The youthful offender shall be separated from offenders who are 18 years of age or older.

(5) (f) If the youthful offender was originally assigned to a facility designated for 14- to 17-year-old 14-year-old to 18-year-old youthful offenders, but subsequently reaches the age of 18 19 years, the department may retain the youthful offender in a the facility designated for 18- to 22-year-old youthful offenders if the department determines that it is in the best interest of the youthful offender and the department.

(6) If the youthful offender was originally assigned to a facility designated for 18- to 22-year-old youthful offenders, but subsequently reaches the age of 23 years, the department may retain the offender in the facility until the age of 25 if the department determines that it is in the best interest of the youthful offender and the department.

~~(g) If the department determines that a youthful offender~~

11-01078B-17

20171604

~~originally assigned to a facility designated for the 19-24 age group is mentally or physically vulnerable by such placement, the department may reassign a youthful offender to a facility designated for the 14-18 age group if the department determines that a reassignment is necessary to protect the safety of the youthful offender or the institution.~~

~~(h) If the department determines that a youthful offender originally assigned to a facility designated for the 14-18 age group is disruptive, incorrigible, or uncontrollable, the department may reassign a youthful offender to a facility designated for the 19-24 age group if the department determines that a reassignment would best serve the interests of the youthful offender and the department.~~

(7) (4) The department shall continuously screen all institutions, facilities, and programs for any inmate who meets the eligibility requirements for youthful offender designation specified in s. 958.04(1)(a) and (c) whose age does not exceed 24 years and whose total length of sentence does not exceed 10 years, and the department may classify and assign as a youthful offender any inmate who meets the criteria of this subsection.

(8) (5) The department shall coordinate all youthful offender assignments or transfers and shall review and maintain access to full and complete documentation and substantiation of all such assignments or transfers of youthful offenders to or from facilities in the state correctional system which are not designated for their care, custody, and control, except assignments or transfers made pursuant to paragraph (3)(c).

(9) (6) The department may assign to a youthful offender facility any inmate, except a capital or life felon, whose age

11-01078B-17

20171604__

465 does not exceed 19 years but who does not otherwise meet the
466 criteria of this section, if the department determines that such
467 inmate's mental or physical vulnerability would substantially or
468 materially jeopardize his or her safety in a nonyouthful
469 offender facility. Assignments made under this subsection shall
470 be included in the department's annual report.

471 Section 9. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

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

Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

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 1604

Bill Number (if applicable)

Topic DOC

Amendment Barcode (if applicable)

Name JASON JONES

Job Title GENERAL COUNSEL

Address P.O. BOX 1489

Street

TALLAHASSEE

City

FL

State

32302

Zip

Phone 850 410-7676

Email JASON.JONES@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.

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)

21 Mch 17

Meeting Date

1604

Bill Number (if applicable)

Topic Department of Corrections

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

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
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 1694

INTRODUCER: Senator Torres

SUBJECT: Support for Parental Victims of Child Domestic Violence

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Favorable
2.			CF	
3.			RC	

I. Summary:

SB 1694 requires the Department of Juvenile Justice and the Florida Coalition Against Domestic Violence to develop materials detailing the resources and services available for parents and legal guardians who are victims of domestic violence. The materials must also include the resources available for a child who has committed acts of domestic violence or who has demonstrated behaviors that may escalate to domestic violence.

The bill specifies which resources and services must be included in the materials and that the Department of Juvenile Justice must post the materials on its website. The materials must also be available to certified domestic violence centers and other specified entities.

The bill requires the issues involved in child-to-parent domestic violence cases be included in the domestic violence portion of a law enforcement officer's basic skills course for his or her initial certification.

The bill may have a negative indeterminate fiscal impact on the Department of Juvenile Justice, the Florida Coalition Against Domestic Violence, and the Florida Department of Law Enforcement. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

II. Present Situation:

Domestic Violence

Domestic violence affects thousands of individuals and families in Florida. In 2015, there were 107,666 domestic violence offenses reported to law enforcement.¹ Law enforcement officers who investigate alleged domestic violence incidents have to inform victims of the domestic violence centers where the victims can receive services.²

Section 741.28(2), F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. A family or household member includes:

- Spouses;
- Former spouses;
- Persons related by blood or marriage;
- Persons who are presently residing together as if a family or who have resided together in the past as if a family in the same single family dwelling unit; and
- Persons who are parents of a child in common, regardless of whether they have been married.³

Certified Domestic Violence Centers

The Department of Children and Families (DCF) operates Florida's domestic violence program. The program is a clearinghouse that oversees state and federal funding for the prevention and intervention of domestic violence. Specifically, the program oversees the funding designated for Florida's certified domestic violence centers.⁴

Florida has 42 certified domestic violence centers that provide crisis intervention and support services to adult domestic violence victims. The centers provide services that include emergency shelters, safety planning, and counseling. Some centers also provide transportation, relocation assistance, and transitional housing.⁵ In Fiscal Year 2015-16 domestic violence shelters provided 16,362 individuals with emergency shelter; however, 5,205 requests for emergency shelter were denied due to lack of capacity and resources.⁶

¹ Florida Department of Law Enforcement, *Domestic Violence*, available at <http://www.fdle.state.fl.us/cms/FSAC/Crime-Trends/Domestic-Violence.aspx> (last visited March 19, 2017).

² Section 741.29(1), F.S.

³ The family or household members must be currently residing or have in the past resided together in the same single dwelling unit; this excludes persons who have a child in common. Section 741.28(3), F.S.

⁴ Florida Department of Child and Families, MyFamilies.com, Services, *Domestic Violence*, available at <http://www.myflfamilies.com/service-programs/domestic-violence> (last visited March 17, 2017).

⁵ *Id.*

⁶ Florida Coalition Against Domestic Violence, 2015-2016 Annual Report to the Florida Legislature, *Responding to Domestic Violence*, available at <https://www.fcadv.org/sites/default/files/2015-16%20Annual%20Report.pdf> (last visited March 17, 2017).

Florida Coalition Against Domestic Violence

The Florida Coalition Against Domestic Violence (FCADV) works closely with the DCF to administer Florida's activities related to the prevention of domestic violence.⁷ Specifically, the FCADV implements and evaluates the services provided by the domestic violence centers.⁸ The FCADV must annually report to the Legislature to identify which programs in the state assist victims of domestic violence.⁹ The FCADV also operates Florida's domestic violence hotline.¹⁰

Department of Juvenile Justice***Families in Need of Services***

When a child commits an act of domestic violence against a family member, the Department of Juvenile Justice (DJJ) gets involved. Specifically, s. 984.04, F.S., requires the DJJ to provide an array of services designed to preserve the unity of the family and address the family's specific needs.¹¹ Families in need of services are families that have a child:

- Who is running away;
- Who is persistently disobeying reasonable and lawful demands of the parent or legal custodian and is beyond the control of the parent or legal custodian; or
- Who is habitually truant from school or engaging in other serious behaviors that place the child at risk of future abuse, neglect, or abandonment or is at risk of entering the juvenile justice system.¹²

A family is not eligible to receive services if, at the time of the referral, there is an open investigation into an allegation of abuse, neglect, or abandonment or if the child is currently under supervision by the DJJ or the DCF due to an adjudication of dependency or delinquency.¹³

Children in Need of Services

The DJJ also provides services to children in need of services. A child in need of services is a child who:

- Does not have a pending investigation into an allegation or suspicion of abuse, neglect, or abandonment;
- Does not have a pending referral alleging that the child is delinquent; or
- Is not currently supervised by the DJJ or the DCF for an adjudication of dependency or delinquency.

⁷ Section 39.903(1), F.S.

⁸ Section 39.9035(1), F.S.

⁹ Section 39.904(3), F.S.

¹⁰ Florida Coalition Against Domestic Violence, *About FCADV*, available at <http://www.fcadv.org/about/about-fcadv> (last visited March 17, 2017).

¹¹ Section 984.04, F.S.

¹² Section 984.03(25), F.S.

¹³ *Id.*

A court must also find that the child has:

- Persistently run away from his or her parents or legal custodians despite reasonable efforts¹⁴ to remedy the conditions contributing to the behavior.
- Been habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation.¹⁵
- Persistently disobeyed the reasonable and lawful demands¹⁶ of his or her parents or legal custodians, and he or she is beyond control of his or her parents or legal custodians despite the efforts made by his or her parents or legal custodians and the appropriate agencies to remedy the conditions contributing to the behavior.

The Florida Network

The Florida Network of Youth and Family Services (network) provides the services for families and children in need of services for the DJJ.¹⁷ Specifically, the network provides crisis intervention for families and children through residential and counseling services.

One of the services the network provides is domestic violence respite. A domestic violence respite is a placement that is available for the care and custody for a youth charged with domestic violence.¹⁸ This is an alternative placement for the youth so he or she does not have to be placed in secure detention.¹⁹ A domestic violence respite is also available for a youth when a shelter bed for a family in need of services is unavailable.²⁰ The network has served 783 youth through the domestic violence respite program.²¹

Section 943.171, F.S., Basic Skills Training for Domestic Violence Cases

Section 943.171, F.S., requires that every basic skills course for a law enforcement officer to receive his or her initial certification must include 6 hours of training on handling domestic violence cases. Specifically, the domestic violence training has to include a training to recognize and determine the aggressor.²²

¹⁴ Reasonable efforts include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the DJJ or the DCF. Section 984.03(9), F.S.

¹⁵ The child and the child's parents or legal custodians must have also voluntarily participated in family mediation, services, and treatment offered by the DJJ or the DCF. Section 984.03(9), F.S.

¹⁶ Reasonable efforts may include good faith participation in family or individual counseling. Section 984.03(9), F.S.

¹⁷ The Florida Network of Youth and Family Services, *About the Florida Network*, available at <https://www.floridanetwork.org/missionvalues.html> (last visited March 17, 2017).

¹⁸ Section 985.03(43), F.S.

¹⁹ Secure detention is a physically restricting facility for the temporary care of children who are pending adjudication, disposition, or placement. Section 985.03(45), F.S.

²⁰ Section 985.03(43), F.S.

²¹ The Florida Network of Youth and Family Services, *2015 Annual Report*, available at <https://www.floridanetwork.org/PDFs/2015AnnualReport.pdf> (last visited March 17, 2017).

²² Section 943.171, F.S.

III. Effect of Proposed Changes:

Domestic Violence

The bill requires the DJJ and the Florida Coalition Against Domestic Violence to develop and maintain updated information and materials detailing the resources and services available to:

- Parents and legal custodians who are victims of domestic violence committed by children or fear that they will become victims; and
- Children who have committed acts of domestic violence or who demonstrate behaviors that may escalate into domestic violence.

The bill specifies that the materials and services must include, but are not limited to:

- The services available under ch. 984, F.S.;
- Domestic violence services available under ch. 39, F.S.; and
- Juvenile justice services available under ch. 985, F.S., including prevention, diversion, detention, and alternative placements.

The materials must also describe how to access the resources and services throughout the state.

The DJJ must post information and materials on the DJJ website and make the materials available for distribution to the public by providing it to:

- Certified domestic violence centers;
- Other organizations serving victims of domestic violence;
- The clerks of courts;
- Law enforcement agencies; and
- Other appropriate organizations.

Section 943.171, F.S., Basic Skills Training for Domestic Violence Cases

The bill requires the issues involved in child-to-parent domestic violence cases be included in the domestic violence portion of an officer's basic skills course for his or her initial certification.

The bill is effective 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:**

None.

B. Private Sector Impact:

The bill requires the FCADV to work with the DJJ to develop and maintain materials specifying the resources and services available for certain victims of domestic violence. The costs of developing and making these materials available to the specified entities is unknown. It is likely that the bill will have a negative indeterminate fiscal impact on the FCADV.

C. Government Sector Impact:

The bill requires the DJJ to work with the FCADV to develop and maintain materials specifying the resources and services available for certain victims of domestic violence. The costs of developing and making these materials available to the specified entities is unknown. It is likely that the bill will have a negative indeterminate fiscal impact on the DJJ.

The bill requires the issues involved in child-to-parent domestic violence cases be included in the domestic violence portion of an officer's basic skills course for his or her initial certification. The costs to include this new training are unknown. The bill will likely have a negative indeterminate fiscal impact on the Florida Department of Law Enforcement (the Criminal Justice Standards and Training Commission), which would have to update its basic skills course.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill amends s. 984.11, F.S., to require the DJJ and the FCADV to develop and maintain materials specifying the resources and services that are available to parents and legal guardians who are victims of domestic violence and children who have committed acts of domestic violence or *who demonstrate behaviors that may escalate into domestic violence*. Section 948.11, F.S., is limited to *services to families in need of services*, and may not be an appropriate statutory placement to include the services for *children who demonstrate behaviors that may escalate into domestic violence*. This is because a *child who demonstrates behaviors that may escalate into domestic violence* would likely be classified as a *child in need of services* and s. 948.11, F.S., is limited to *families in need of services*.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 984.11 and 943.171.

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 Torres

15-01240B-17

20171694__

A bill to be entitled

An act relating to support for parental victims of child domestic violence; amending s. 984.11, F.S.; requiring the Department of Juvenile Justice and the Florida Coalition Against Domestic Violence to collaborate to develop and maintain updated information and materials regarding specified services and resources; requiring the department to make the information and materials available through specified means; amending s. 943.171, F.S.; requiring domestic violence training for law enforcement officers to include training concerning child-to-parent cases; providing an effective date.

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

Section 1. Subsection (5) is added to section 984.11, Florida Statutes, to read:

984.11 Services to families in need of services.—

(5) The department and the Florida Coalition Against Domestic Violence shall collaborate to develop and maintain updated information and materials describing resources and services available to parents and legal custodians who are victims of domestic violence committed by children or who fear that they will become victims of such acts and to children who have committed acts of domestic violence or who demonstrate behaviors that may escalate into domestic violence. Such resources and services shall include, but are not limited to, those available under this chapter, domestic violence services

Page 1 of 2

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

15-01240B-17

20171694__

available under chapter 39, and juvenile justice services available pursuant to chapter 985, including prevention, diversion, detention, and alternative placements. The materials shall describe how parents and legal custodians may access the resources and services in their local area. The department shall post this information on its website and make the materials available to certified domestic violence centers, other organizations serving victims of domestic violence, clerks of court, law enforcement agencies, and other appropriate organizations for distribution to the public.

Section 2. Subsection (1) of section 943.171, Florida Statutes, is amended to read:

943.171 Basic skills training in handling domestic violence cases.—

(1) The commission shall establish standards for instruction of law enforcement officers in the subject of domestic violence. Every basic skills course required in order for law enforcement officers to obtain initial certification shall, ~~after January 1, 1986,~~ include a minimum of 6 hours of training in handling domestic violence cases. Such training must include training in the recognition and determination of the primary aggressor in domestic violence cases and the issues involved in child-to-parent cases.

Section 3. This act shall take effect July 1, 2017.

Page 2 of 2

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)

21 Mch 17

Meeting Date

1694

Bill Number (if applicable)

Topic Parental Victims - Child Domestic Violence

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Street

Tall

City

FL

State

32301

Zip

Phone 850.510.9922

Email

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)

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Committee on Criminal Justice Judge:

Started: 3/21/2017 4:05:12 PM

Ends: 3/21/2017 4:42:38 PM

Length: 00:37:27

4:05:22 PM	Roll Call
4:05:31 PM	SB 548 by Bracy Temporarily Postponed
4:05:48 PM	SB 564 by Campbell Temporarily Postponed
4:05:59 PM	SB 1248 by Steube Temporarily Postponed
4:06:08 PM	Tab 8 SB 628 by Garcia; Transmission of Disease through Bodily Fluids
4:07:09 PM	Delete all amendment barcode 208470
4:09:29 PM	Bill as amended
4:09:52 PM	Audience waiving in support
4:10:33 PM	Roll Call
4:11:32 PM	SB 628 Favorable as a Committee Substitute
4:11:50 PM	Tab 10 SB 832 by Young; Drones
4:12:33 PM	Senator Dana Young
4:13:46 PM	Amendment Barcode 937444
4:14:57 PM	Amendment to the Amendment barcode 274534
4:15:12 PM	Amendment to the Amendment Withdrawn
4:15:48 PM	Bill as amended
4:16:01 PM	Meghan Sirjane-Samples, Florida League of Cities recognized
4:18:02 PM	Eric Poole, Florida Association of Counties recognized
4:18:35 PM	David Daniel, UAS Association of Florida
4:20:14 PM	Senator Young
4:20:17 PM	Roll Call
4:21:08 PM	SB 832 Favorable as a committee substitute
4:21:23 PM	Tab 12 SB 1526 by Bracy; Public Records/Health Information/Department of Corrections
4:22:54 PM	Audience waving in support
4:23:34 PM	Roll Call
4:23:42 PM	SB 1526 Favorable
4:23:59 PM	Tab 13 SB 1604 by Bracy; Department of Corrections
4:24:43 PM	Amendment barcode 363566
4:25:33 PM	Bill as amended
4:26:08 PM	Question by Senator Clemens
4:27:39 PM	Jarred Torres, Department of Corrections recognized
4:29:01 PM	Senator Clemens
4:29:12 PM	Jarred Torres
4:29:54 PM	Roll Call
4:30:54 PM	SB 1604 Favorable as a Committee Substitute
4:31:08 PM	Confirmation Hearings
4:31:44 PM	Criminal Conflict and Civil Regional Counsel confirmation appointments
4:32:38 PM	Candice Brower recognized
4:32:48 PM	Ita Neymotin recognized
4:32:55 PM	Motion to recommend confirmation of all appointees
4:33:24 PM	Roll call
4:33:28 PM	Apointees confirmed
4:33:43 PM	Tab 14 SB 1694 by Torres; Support for Parental Victims of Child Domestic Violence
4:34:24 PM	Senator Torres
4:35:53 PM	Roll Call
4:36:23 PM	SB 1694 Favorable
4:36:35 PM	Tab 9 SB 776 by Baxley; Unlawful Acquisition of Utility Services
4:38:18 PM	Substitute Delete All amendment barcode 539650
4:39:18 PM	Amendment Adopted
4:40:18 PM	Bill as amended
4:40:35 PM	Audience waives in support
4:40:40 PM	Debate

4:40:41 PM	Senator Baxley
4:40:46 PM	Roll Call
4:40:57 PM	SB 776 Favorable as a committee substitute
4:41:34 PM	Senator Rouson
4:41:52 PM	Meeting Adjourned